PSC__________ AC 45252		SUPREME COURT
WILLIAM W. TAYLOR PLAINTIFF	:	STATE OF CONNECTICUT
V.	:	
PLANNING AND ZONING COMMISSION FOR THE TOWN OF WESTPORT	:	
TOWN OF WESTPORT DEFENDANTS	:	April 27, 2023

PETITION FOR CERTIFICATION

Pursuant to Connecticut Rules of Appellate Procedure, 84-1 the plaintiff/appellant, William W. Taylor, respectfully petitions the Supreme Court of the State of Connecticut to appeal from the decision of the Appellate Court entered in the case on April 11, 2023, and reported at 218 Conn. App. 616 (2023), and attached hereto at appendix page A3.

1. QUESTIONS PRESENTED FOR REVIEW:

Did the Appellate Court err in not granting plaintiff automatic approval of his site plan and excavation and fill permit pursuant to {C.G.S. 8-3(g)(1)} as a result of the town planning and zoning commission's failure to comply with the statutory hearing requirement of C.G.S. 8-7d?

2. BASIS FOR CERTIFICATION:

The Appellate Court has decided a question of substance in a way that is not in accord with applicable decisions of the Supreme Court. The topic is also of great public importance for consistency in application of the law.

3. SUMMARY OF THE CASE:

This case is an appeal by William W. Taylor, Appellant, of the trial Court's decision to uphold the Defendant Planning and Zoning Commission for the Town of Westport/Town of Westport which has denied his special permit and site plan applications. The property is owned by the Appellant. The property is a vacant lot located at 715 Post Road East, Westport, Connecticut. The Appellant filed his applications with all the required supporting materials such as: the certificate of mailing to adjacent landowners; Notice letters;12 copies of professional site plans/maps; 12 copies of building plans (full size and 11"x17"); three copies of the current conditions survey map; supporting exhibits such as three traffic studies conducted in 2012, 2017, updated 2018 with BETA comments; and the site engineering report. The zoning applications sought approval to build a 4220 sq. ft office building with 22 parking spaces, combined with a special application for excavation and fill permit (the "Applications"). All the required materials were submitted by the Appellant on April 11, 2019, and signed off as ready by the Planning and Zoning Department. The matter was scheduled for a public hearing on June 20, 2019.

On June 4, 2019, an email sent by the Zoning office to Appellant's counsel informing same of the need to return to the ZBA board to review the site plan, resubmit to a traffic study, provide the engineer's drainage report, and return to the ARB, architectual review board, for their re-review of the building design. The Appellant's counsel promptly responded to the zoning office staff concerns to clarify the record. One June 13, 2019, the zoning office staff compiled a memorandum to the members of the zoning commission.

In the memorandum the zoning office attached the two prior variance approvals for the site in 2014 and 2018. The variance approvals specifically provide that "This variance is

granted upon the condition that all construction and site improvements shall be in strict accordance with the plans and other documents submitted and any statements or representations made by the applicant or agent on the record." The Appellant's counsel addressed the issues raised with the zoning report of June 13, 2019, with corrections to certain pages to the site plans. An error was made by the civil engineer in that a wall was being taken down which was incorrect, thus is created deminimous changes to certain notations on the site plan.

On June 20, 2019, the zoning office issued another memorandum to the Planning and Zoning Commission stating that the "public hearing should not be closed until all the outstanding issues in the staff report AND supplemental report are addressed."

The public hearing was prematurely closed by motions of Commission members Stevens and Gratix. Appellant's counsel was interrupted and her presentation was cut off by Commission Chairman Lebowitz and Commission member Stephens without granting the Appellant any opportunity to be heard on his applications.

At the subsequent commission meeting the commission denied the applications. The Chairman admitted it was wrong not to grant the applicant any opportunity to be heard even if the commission did not like the applicant or the application. The focus of many comments of the commission were not on the application but were impressions based on the applicant's advocate.

Commission member Stephens stated that applicant's filings (professional drawings and reports) submitted on the day of the hearing were "crap". The minutes of the subsequent commission meetings provide evidence that the Commission did not have a clear and reasonable understanding for the application's denial as incomplete. The

Commission members commented on the plaintiff's previous applications, stating repeatedly that they were a "shit show" , "horrible", and a "Clustered. A 'CF'".

After the denial of the Appellant's applications, the plaintiff brought an appeal in the Superior Court. The appeal was tried before the Trial Court, (Adams, J.). The court issued a memorandum of decision on November 9, 2021. The court upheld the application's denial. Thereafter, the Appellant filed a petition for certification to an appeal which was granted by the Appellate Court. The Appellate Court reversed the decision of the Trial Court finding that "even a differential review of the commission's actions leads us to conclude that the plaintiff did not receive a dispassionate consideration of his application or that the commission's decision was made reasonably and fairly after a full hearing . . ." and the Appellate Court reversed the judgment directed a new hearing before the Planning and Zoning Commission with direction that, on an appropriate motion, some members of the commission should consider recusing themselves. The plaintiff now files his petition for certification. He believes that to go back to the planning and zoning commission will be a futile exercise.

4. **ARGUMENT:**

The Appellate Court by unanimous decision found that the plaintiff was denied a fair hearing by the Planning and Zoning Commission under the statute C.G.S. 8-7d. C.G.S. 8-3(g)(1) contains a remedy for an applicant to have his site plan automatically approved when a planning and zoning commission neglects or fails to follow the timeliness provisions of the statute C.G.S. 8-7d.

The Appellate Court did not grant the automatic approval of the site plan and excavation permit because it relied upon the presumption that the defendant was correct in

stating that the application was incomplete. This presumption is in conflict with the defendant's written policy of not scheduling a public hearing for incomplete applications. This also contravenes established public policy of approving a site plan or other such application when there is undue delay due to a Town's malfeasance and failure to act in a timely manner. In the case at hand the Appellate Court found sufficient malfeasance to reverse the judgment of the trial court. Therefore, that in and of itself merits automatic approval of the plaintiff's applications.

If the Appellate Court's decision is allowed to stand in this matter it will open the door to abusive labeling of applications, plans and supporting material, as "incomplete" when they are considered unpopular with the governing body. Allowing such plans to be identified as incomplete will perpetuate a system of undue delay that the Connecticut legislature sought to extinguish. See the legislative commentary of Mrs. Polinsky (38th) on bill LCO 8432, p.2514, (see attached) "At present, the statutes impose no deadlines at all and it is not impossible for simple site plan to disappear into the bowels of the commission for a year or two."

Failure of this Appellate Court to grant the site plan frustrates the intended purpose of the public policy to automatically approve such plans as stated in C.G.S. 8-3(g)(1). "Approval of a site plan shall be presumed unless a decision to deny or modify it is rendered within the period specified in section 8-7d." "A certificate of approval of any plan for which the period for approval has expired and on which no action has been taken shall be sent to the applicant within fifteen days of the date on which the period for approval has expired." See *Vartuli v Sotire* ,192 Conn. 353, 362-364; 472 A.d 336 (1984) and *University Realty*

Inc. v Planning Commission of City of Meriden, 3 Conn. App. 556; 490 A.2d 96 (1985). The policy was enacted to thwart such actions of delay as occurred in the case at hand.

5. CONCLUSION:

For the reasons (s) stated herein, the petitioner respectfully requests that this petition for certification be granted.

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CERTIFICATION

Pursuant to P.B. section 84-4, 62-7 and 66-3, it is hereby certified that this petition for certification complies with all applicable rules of appellate procedure, including Practice Book section 84-5; that it does not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law; and that a copy of theis petition and appendix was sent electronically April 27, 2023 to:

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APPENDIX TO PETITION FOR CERTIFICATION TO APPEAL

Parties to the Appeal. A2

Appellate Court Decision A3

Superior Court Memorandum of Decision A4

Legislative History Substitute for House Bill 6285 amended by House Amendment Schedule "A", LCO 8432. . . .page 2514 . . . . A5

PARTIES TO THE APPEAL

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WILLIAM W. TAYLOR *v.* PLANNING AND ZONING COMMISSION OF THE TOWN OF WESTPORT ET AL.
(AC 45252)

Alvord, Prescott and Suarez, Js.

Syllabus

The plaintiff, who owns an unimproved lot of land in the town of Westport, appealed to the trial court from the decision of the defendant planning and zoning commission denying his application for a site plan and a special excavation and fill permit. Prior to the hearing on his application, the commission informed the plaintiff that the application was incomplete and requested that the plaintiff consent to an extension for the hearing date. In response, the plaintiff's attorney filed a memorandum with attached supplemental and revised documents with the commission one day before the scheduled hearing that set forth the reasons why she believed the application was complete. At the hearing, the commission stated that it had not reviewed the memorandum and denied the plaintiff's request to be heard regarding the completeness of the application, and it ultimately denied the application without prejudice on the basis that it was incomplete. Following a hearing, the court rendered judgment denying the plaintiff's appeal, from which the plaintiff, on the granting of certification, appealed to this court. *Held* that the trial court improperly denied the plaintiff's appeal because, under the particular circumstances of this case, the commission's failure to provide the plaintiff with an opportunity to establish a record as to why his application was complete deprived him of his right to fundamental fairness: after scheduling the plaintiff's application for a hearing, the commission became aware that the completeness of the application was in dispute, thus, the commission was required to provide the plaintiff with an opportunity to be heard on the completeness of his application at the public hearing; moreover, in order for an appellate court to review a planning and zoning commission's decision to deny an application on the ground that the application is incomplete, a record as to why the application was incomplete must be established so that the record may be reviewed; furthermore, here, the record of the hearing before the commission, including commission members' acknowledgements that closing the hearing was unfair and certain intemperate remarks by commission members, demonstrated that the plaintiff did not receive a dispassionate consideration of his application or that the commission's decision was made reasonably and fairly after a full hearing; accordingly, the plaintiff was entitled to a hearing on his application.

Argued February 2—officially released April 11, 2023

Procedural History

Appeal from the decision of the named defendant denying the plaintiff's applications for a site plan and special excavation and fill permit, brought to the Superior Court in the judicial district of Stamford-Norwalk and tried to the court, *Hon. Taggart D. Adams*, judge trial referee; judgment denying the plaintiff's appeal, from which the plaintiff, on the granting of certification, appealed to this court. *Reversed*; *judgment directed*; *new hearing*.

Laurel Fedor, for the appellant (plaintiff).

Peter V. Gelderman, for the appellees (defendants).

Opinion

PRESCOTT, J. In this certified zoning appeal, the plaintiff, William W. Taylor, appeals from the judgment of the Superior Court denying his appeal from the decision of the defendant Planning and Zoning Commission of the Town of Westport (commission),[1] denying his 2019 site plan and special excavation and fill permit applications.[2] The principal issue in this certified appeal is whether the court improperly concluded that the commission did not deprive the plaintiff of fundamental fairness by preventing him from being heard on whether his application was sufficiently complete such that it should be adjudicated on its merits. We reverse the judgment of the court because, under the circumstances of this case, the commission was required to provide the plaintiff with an opportunity to be heard on whether his application was complete at the public hearing on his application, prior to denying it for incompleteness.

The following facts and procedural history are relevant to our resolution of this appeal. The plaintiff owns an unimproved lot of land at 715 Post Road East in Westport (property). In 2014 and 2018, the plaintiff submitted site plan and special excavation and fill permit applications to the commission seeking its approval to build an office building on the property. In an effort to obtain the commission's approval of the 2014 and 2018 applications, the plaintiff sought and received the approval of the building design from Westport's architectural review board and also obtained the necessary zoning variances from Westport's zoning board of appeals. The plaintiff, however, ultimately withdrew his 2014 and 2018 applications to the commission.

On April 11, 2019, the plaintiff submitted to the commission the site plan and special permit for excavation and fill application that is the subject of the present appeal. The plaintiff's 2019 application sought the commission's approval to build a 4220 square foot office building with 22 parking spaces on the property.[3] The plaintiff did not seek any additional or new approvals from the architectural review board or obtain new zoning variances for his 2019 application. The application was scheduled to be heard before the commission on June 20, 2019.[4] The plaintiff retained an attorney, Laurel Fedor, to represent his interests in the application process.

Following the submission of the application, but prior to the hearing, Cindy Tyminski, the deputy planning and zoning director for Westport, emailed Fedor on June 4, 2019, and informed her that the application was "not ready to appear" before the commission because it was incomplete. Tyminski stated that the application was incomplete because it required new variances from the zoning board of appeals, an updated traffic report to supplement the original report that was completed

approximately five years earlier, a drainage report, a new approval from the architectural review board so that the board could review the modifications in the site plan in relation to the building's design, and revisions to the intended tree plantings to conform with the dictates of Westport's tree board. Tyminski requested that the plaintiff consent to an extension for the application's hearing date so that the application could be completed.[5]

Rather than consent to an extension, that same day, Fedor emailed Mary Young, Westport's planning and zoning director. Fedor informed Young that Tyminski had requested that the plaintiff consent to an extension in order for him to complete the application prior to it being heard. Fedor expressed her opinion that the application was complete. Fedor explained to Young in her email that the plaintiff had previously obtained the required zoning variances and architectural review board approval, the site plan had not changed since the variances and approval were obtained, the drainage report had been submitted with the plaintiff's application on April 11, 2019, the intended tree plantings on the site plan had been revised, and "[t]he traffic study was updated in 2017." Finally, Fedor stated that, for these reasons, the plaintiff wished to have the application heard, as originally scheduled, on June 20, 2019.[6]

On June 13, 2019, Tyminski distributed a memorandum to the commission regarding the plaintiff's application. Tyminski's memorandum to the commission stated that "[t]he public hearing should not be closed until all the outstanding issues are addressed. The commission may also consider a denial as the application is incomplete." In concluding that the application was incomplete, Tyminski cited the "outstanding issues" in the application that she had brought to Fedor's attention previously in her June 4, 2019 email.

After receiving a copy of Tyminski's memorandum, Fedor responded by filing[7] her own memorandum that set forth the reasons why she believed the application was complete and attached supplemental and revised documents to it. Fedor's memorandum was received one day before the scheduled hearing on the application. Fedor's arguments in her memorandum as to why the plaintiff's application was complete were the same arguments Fedor set forth in her email to Young. In her memorandum, Fedor first argued that the plaintiff did not need to obtain new zoning variances for his application because the site plan application had not been modified since the original variances were obtained in 2014 and 2018. In response to Tyminski's statement in her memorandum that the site plan had been modified because, unlike in the 2014 and 2018 site plans, the 2019 site plan required the removal and reconstruction of a large retaining wall on the property, Fedor argued that the site plan filed on April 11, 2019, contained a typo-

graphical error. Fedor said that a revised site plan was attached to her memorandum and that it showed that there would be "no removal or reconstruction of [the] existing concrete retaining walls." Fedor next argued that a new approval from the architectural review board should not be required because the building's design in the site plan had not changed since the architectural review board approved it in 2014. Fedor also argued that the intended tree plantings in the site plan had been revised to conform with the tree board's requirements, that the traffic report had been "updated" in 2017 and that all of this supplemental information was attached to the memorandum. She also stated that a drainage report was attached to the memorandum and previously had been submitted with the application on April 11, 2019.

On the day of the hearing, Tyminski sent an updated memorandum to the commission. Tyminski informed the commission that "additional information and revised plans" had been submitted by Fedor the day before and that these new materials pertaining to the application had not been reviewed by planning and zoning staff members. She concluded in her June 20, 2019 memorandum that "the public hearing should not be closed until all the outstanding issues in the staff report AND supplemental report are addressed. The applicant may consider withdrawing and resubmitting after the variance and [architectural review board] approvals are received. The comission may also consider a denial as the application is incomplete."

The hearing on the application was opened on June 20, 2019, as scheduled. Fedor was present at the hearing. Immediately after opening the hearing, Paul Lebowitz, the commission chairman, told Fedor, "I don't want to hear this right now." Lebowitz explained that he did not approve of the manner in which Fedor had handled the application, particularly because she submitted a revised site plan the day before the hearing. Lebowitz told Fedor, "So what I'm going to give you is a choice, because that's what we do here. We may continue this. [Or] [y]ou may withdraw it." Fedor replied that the plaintiff would not withdraw his application and asked for an opportunity to be heard, specifically requesting fifteen minutes. Lebowitz quickly cut her off and stated, "No, no. I'm sorry. In reference to what I just addressed. Not in reference to your application. In reference to what I've asked you regarding either continue or withdraw." Fedor attempted to address the completeness of the application, but Lebowitz denied her the opportunity to be heard further on the application. Lebowitz then asked, "Any other commissioners want to weigh in on this?"

Commission member Chip Stephens[8] stated that the application should not be considered. Specifically, Stephens stated: "This commission, most of the people

sitting here have been through this three other times and [it has been] rejected three times because of the location, because of problems and for us to spend time that is very valuable tonight and any other time, to have your application come in in pieces at the tail end [and] for you to have treated the staff in the manner you have, bringing things in reluctantly, late and everything else, I find it wrong that this commission even move forward. We [do not] have the documents that were requested. We have a new state statute that requires when applications like this are changed quite a bit that they return to the [zoning board of appeals]. I believe [you have] been told that repeatedly by [Tyminski]. . . . I think that this commission should close this issue and then move on."

Al Gratrix, another commission member, also stated that, in his view, the application was incomplete and that the commission should not be holding a hearing on it. Stephens made a motion to close the hearing, and Gratrix seconded the motion. The commission unanimously voted to close the hearing before Fedor had the opportunity to respond to the commission's position that the application was incomplete or to present evidence in support of her position.

Following the public hearing, the commission met three times to deliberate publicly on the application. The first meeting took place on July 11, 2019, at which time Lebowitz expressed his position that, "out of fairness," the commission should provide the plaintiff another opportunity to withdraw the application. Lebowitz stated that he did not want to "short circuit any applicant." He further explained: "I [do not] like to have any applicant on any application, regardless of whether we like them, [do not] like them, like the application, [do not] like the application. . . . Regardless of whether [we have] seen the applicant before on this site, I [do not] ever want to . . . turn to an applicant and before they say one word I say to them that I move to close. . . . [B]ecause it is an unheard application, I should have instead of saying closed, I should have said continued. Go away."

Lebowitz's opinion that the commission acted unfairly by prematurely closing the hearing was a point of contention among the commission members. Stephens, who did not agree with Lebowitz, moved to deny the application immediately, rather than provide the plaintiff with an additional opportunity to withdraw it. Stephens stated: "We voted to close [the hearing] because [the plaintiff and Fedor] stomped on the staff. The staff told them to do certain things [to] which they totally said no, [we are] not going to do it. [We are] not going to go to the [zoning board of appeals] no matter what you said, in their face. They would not provide information that was needed and we have considered this property three—at least three other times. I believe

in my tenure, which is a very troubled property. And instead of, in your words, just a few minutes ago, being contrite or helpful, or [cooperative] they completely gave the staff holy hell for asking for everything that was needed and decided. [Fedor] sat there and you gave her plenty of opportunity to come back, to withdraw or to get it right. She looked at you, [Lebowitz], and said no, [I am] going to do this. . . .

"You did mention, you said I hate as a person to turn down something that, you know, we [did not] like the person. The person's fine. Everybody has their right to build in this town. You have a right as a landowner to do whatever you want if you can get it by the commission. [This person] was egregious. [This person] was confrontational. [This person] would not listen to our chairman, who repeatedly . . . [asked] would you like to withdraw or would you like to change this, and the answer was no. I will remind you that on the day of that application [Fedor] threw a bunch of crap at us that was crap. We [could not] even, you know, work on that stuff. So, no, I totally disagree. I think we should have had a resolution tonight."

All other members who voiced an opinion immediately agreed with Stephens that the application should be denied. Even Lebowitz, who did not immediately agree that the application should be denied, described one of the plaintiff's previous applications as a "shit show . . . . It was horrible. The site is horrible. Everything's horrible. . . . And, quite frankly, the way we were treated by the applicant was horrible. No question about all of those things. You're absolutely a hundred percent right." Stephens also used a strong expletive to describe one of the plaintiff's previous applications.[9]

Stephens moved to deny the application. That motion was seconded by commission member Catherine Walsh. Walsh later stated: "I want to deny her, get her out and have her come back." After the motion to deny the application was seconded, but before a vote on the motion was taken, Lebowitz told the commission that he was concerned that there was no basis on which the application could be properly denied. Lebowitz initially opined that, because a hearing had not been held, there was no evidence in the record. Lebowitz stated: "Based on what though? We [did not] have any testimony. [W]e [did not] hear [from Fedor]. . . . The first thing out of my mouth when she got up was. . . I berated her for dumping on our staff . . . . I stopped her cold. She never got a chance to say anything other than the word no, which was when I asked her. So, in other words, [there is] no record of testimony. [There is] no reading in of the staff report. We never went through any of the materials . . . ." After further discussion and a brief recess, the commission members, including Lebowitz, agreed that the application materials and memoranda regarding the application were in the record

because the hearing had been opened.[10] Lebowitz ultimately stated that there were "a lot of good reasons for a denial."

During this July 11, 2019 deliberation session, the commission unanimously voted to deny the plaintiff's application. The commission decided that a resolution formally denying the application would be drafted and then it would be reviewed at the next deliberation session. Prior to ending the session, Young advised the commission: "I do think [it is] good for the record, if you find yourself in a similar situation, to at least give a token five minutes to an applicant at the podium to either dig their grave further, giving more reasons for denial. But to dismiss someone who sat there for hours for the opportunity to be heard then say we [do not] want to hear you [does not] look well—"

The plaintiff's application was briefly discussed again at a deliberation session on July 18, 2019. Young told the commission that she intended to have the town attorney review the resolution denying the plaintiff's application prior to the commission voting on it.

The final deliberation session on the application was held on July 25, 2019. At the outset, Lebowitz stated that the town attorney had advised the commission to deny the application without prejudice because it was incomplete. Stephens strongly disagreed and stated that the application should be denied with prejudice. A heated discussion ensued. Following further discussion, Stephens begrudgingly agreed to deny the application without prejudice stating: "Wait till this person comes back. And I'm not reading this. I'm not giving them—" The commission reviewed the resolution and unanimously voted to deny the application without prejudice. The commission's reasons for its denial were grounded in the incompleteness of the application and the commission's need for more information and time to determine whether the application should be approved.[11]

The plaintiff appealed from the commission's denial of his application to the Superior Court, claiming that the commission (1) deprived him of a full and fair hearing on the application, (2) was biased against his application and, (3) arbitrarily denied the application. Following a hearing, the court denied the plaintiff's appeal. The court concluded that the commission's denial of the plaintiff's application without prejudice was well within its authority and that substantial evidence supported the commission's decision, particularly in light of the fact that the plaintiff submitted a "revised proposal" on June 19, 2019, which the planning and zoning staff was unable to review before the hearing. To support its conclusion, the court found that the plaintiff was "clearly in a hurry to obtain comission approval" and that "the record [did] not provide specific reasons

port why a revised plan submitted on June 19, 2019, had to be approved by the full comission on June 20, without input and analysis from its staff." The court also was unpersuaded by the plaintiff's claim that the commission violated his rights by failing to provide him with an opportunity to be heard on his application because the court found that the claim was "unsupported by any citation to authority." The plaintiff filed a petition for certification to appeal, which we granted. This appeal followed.

On appeal, the plaintiff claims that the court improperly (1) concluded that the commission did not violate the principles of fundamental fairness by depriving him of an opportunity to be heard on his application, (2) concluded that substantial evidence supported the commission's decision, and (3) failed to conclude that the application was complete. We conclude that the court improperly denied the plaintiff's appeal because, under the particular circumstances of this case, the commission's failure to provide the plaintiff with an opportunity to establish a record as to why his application was complete deprived him of his right to fundamental fairness. Because that issue is dispositive of the present appeal, we do not reach the plaintiff's remaining claims.

We begin by setting forth the relevant legal principles, including our standard of review. When a planning and zoning commission acts on an application for a special permit or site plan, it acts in an administrative capacity, and it must determine whether the applicant's proposed use is one that satisfies the standards set forth in existing zoning regulations and statutes. See *Priore* v. *Haig*, 344 Conn. 636, 653, 280 A.3d 402 (2022) (when acting on special permit application, commission acts in administrative capacity and it must determine whether application meets standards set forth in zoning regulations); *Pansy Road, LLC* v. *Town Plan & Zoning Commission*, 283 Conn. 369, 375, 926 A.2d 1029 (2007) ("[w]hen reviewing a site plan application, a planning commission similarly acts in an administrative capacity and may not reject an application that complies with the relevant regulations").

A planning and zoning commission may deny an application because it fails to provide the required information pursuant to the applicable zoning regulations. See *Friedman* v. *Planning & Zoning Commission*, 222 Conn. 262, 267–69, 608 A.2d 1178 (1992). "Where an administrative agency denies an application and gives reasons for its action, the question on appeal is whether the evidence in the record reasonably supports the agency's action, and the court cannot substitute its judgment as to the weight of the evidence for that of the agency." R. Fuller, 9A Connecticut Practice Series: Land Use Law and Practice (4th Ed. 2015) § 33.3, p. 272. Accordingly, in order for an appellate court to review a planning and zoning commission's decision to deny

an application for which the reason given for its denial is that the application is incomplete, a record as to why the application is incomplete must be established so that the record may be reviewed.[12]

Section 44 of the Westport Zoning Regulations provides in relevant part: "For all uses requiring a Special Permit or Site Plan, a complete application shall be submitted on Westport Planning and Zoning forms together with . . . the following information." Westport Zoning Regs., § 44-1. "The applicant shall obtain a written report indicating recommendations, preliminary approvals, final approvals or disapprovals from any of the following agencies having jurisdiction over the application . . . ."[13] Id., § 44-2.1. "A storm drainage analysis shall be required for any project containing . . . twenty (20) or more parking spaces in a new or expanded parking lot . . . ." Id., § 44-2.4. "A traffic impact analysis submitted by a recognized traffic engineer shall be required . . . ."[14] Id., § 44-2.5.

"[Although] proceedings before zoning and planning boards and commissions are informal and are conducted without regard to the strict rules of evidence . . . they cannot be so conducted as to violate the fundamental rules of natural justice. . . . Fundamentals of natural justice require that there must be due notice of the hearing, and at the hearing no one may be deprived of the right to produce relevant evidence or to cross-examine witnesses produced by his adversary . . . . Put differently, [d]ue process of law requires that *the parties involved have an opportunity to know the facts on which the commission is asked to act . . . and to offer rebuttal evidence*." (Citation omitted; emphasis added; internal quotation marks omitted.) *Megin* v. *Zoning Board of Appeals*, 106 Conn. App. 602, 608–609, 942 A.2d 511, cert. denied, 289 Conn. 901, 957 A.2d 871 (2008).

"In determining whether a land use commission has violated an applicant's right to fundamental fairness, [w]e generally employ a deferential standard of review to [its] actions . . . . [C]ourts are not to substitute their judgment for that of the board, and . . . the decisions of local boards will not be disturbed as long as honest judgment *has been reasonably and fairly made after a full hearing*. . . . Judicial review of administrative process is designed to assure that administrative agencies act on evidence which is probative and reliable and act in a manner consistent with the requirements of fundamental fairness. . . . Further, we have repeatedly emphasized that [n]eutrality and impartiality of members are essential to the fair and proper operation of . . . [zoning] authorities. . . . In reviewing the challenged conduct of public officials, fairness and impartiality are fundamental." (Citations omitted; emphasis added; internal quotation marks omitted.) *Barry* v. *Historic District Commission*, 108 Conn. App.

682, 704–705, 950 A.2d 1, cert. denied, 289 Conn. 942, 959 A.2d 1008 (2008), and cert. denied, 289 Conn. 943, 959 A.2d 1008 (2008).

"The question of whether the board violated the plaintiff's right to fundamental fairness in [an] administrative proceeding presents a question of law . . . ." (Internal quotation marks omitted.) Id., 705. "When . . . the [Superior Court] draws conclusions of law, [the scope of our appellate] review is plenary and we must decide whether its conclusions are legally and logically correct and find support in the facts that appear in the record." (Internal quotation marks omitted.) *Andrews* v. *Planning & Zoning Commission*, 97 Conn. App. 316, 319, 904 A.2d 275 (2006).

We begin by noting that the court's memorandum of decision is unclear as to whether the court reviewed the merits of the plaintiff's claim regarding his right to be heard on his application or whether it declined to review that claim because it was inadequately briefed. We construe the memorandum of decision as concluding that the court was not persuaded by the merits of the plaintiff's claim because, in its view, he had failed to cite *persuasive* authority.[15] Moreover, for the reasons we discuss further, we conclude that the court improperly held that, under the particular circumstances of this case, the plaintiff was not deprived of his right to fundamental fairness.

The defendants argue that "there was no reason to hear from the applicant where the application was incomplete." The purpose of requiring a hearing to be held on a zoning application, however, is to afford interested parties the opportunity to present their views to the commission as to how it should decide an application. See *Clifford* v. *Planning & Zoning Commission*, 280 Conn. 434, 443, 908 A.2d 1049 (2006). In the present case, the commission, having scheduled the plaintiff's application for a hearing, became aware that the completeness of the application was in dispute and that this was the main issue that needed to be resolved prior to the hearing being closed. The commission opened the hearing and stated, for the record, its view that the application was incomplete. But the commission prohibited the plaintiff from addressing that concern.[16] Given these factual circumstances, the commission was required to provide the plaintiff with an opportunity to be heard on the completeness of his application at the public hearing.

Our conclusion that the commission deprived the plaintiff of his right to fundamental fairness is further supported by the commission's discussion of the plaintiff's application at the deliberation hearings that followed. Lebowitz recognized the inherent unfairness in closing the hearing without providing the plaintiff with a full opportunity to be heard and initially stated that,

he did not think there was a basis on which the commission properly could deny the application. Young also acknowledged that it was unfair to close the hearing. She advised the commission that, in the future, it should refrain from depriving an individual who "sat for hours for the opportunity to be heard" from receiving their "token five minutes." Despite these concerns, other members disagreed with the notion that the application had been handled unfairly. Rather than focusing solely on the purported incompleteness of the current application to support their position, the commission members justified the closing of the hearing by stating that the plaintiff "stomped on the staff," "gave the staff holy hell," "was egregious," "was confrontational," and that "on the day of the application [Fedor] threw a bunch of crap at [them] that was crap." Furthermore, the members commented on the plaintiff's previous applications, stating repeatedly that they were a "shit show," and "horrible."[17] Accordingly, even a deferential review of the commission's actions leads us to conclude that the plaintiff did not receive a dispassionate consideration of his application or that the commission's decision was made reasonably and fairly after a full hearing at which the plaintiff was allowed to address the dispute over whether his application was complete.[18]

We reverse the judgment of the Superior Court and remand with direction to sustain the plaintiff's appeal and to order the commission to hold a hearing on the plaintiff's application.

In this opinion the other judges concurred.

[1] The town of Westport was also named as a defendant in the underlying action. The original amended complaint contained seven counts against the defendants. The court granted the defendants' motion to strike counts two through seven of that amended complaint, which were primarily brought against the town of Westport. The plaintiff pleaded over, removing counts two through seven, leaving the first count as the sole remaining count of the plaintiff's complaint.

[2] The plaintiff was required to submit both a site plan application and an application for a special permit for excavation and fill. These applications, however, were processed together as application #19-020. Therefore, we refer to the 2019 site plan and special permit applications together as the plaintiff's application.

[3] There is a dispute between the parties as to the extent to which the plaintiff's 2019 application differed from his 2014 and 2018 applications. This dispute, however, does not affect our resolution of this appeal.

[4] According to General Statutes § 8-3c, the commission was required to hold a public hearing on the application for a special permit, in accordance with General Statutes § 8-7d. Pursuant to § 8-7d, a hearing must be held within sixty-five days after the commission's receipt of the application, unless the petitioner or applicant consents to an extension of this period. According to § 43-5.1 of the Westport Zoning Regulations, the commission was required to consider the special permit and site plan together at the same public hearing because the special permit was dependent on the approval of the site plan. The parties do not dispute that a hearing on the application was required and had been scheduled pursuant to § 8-7d.

[5] Pursuant to General Statutes § 8-7d, the applicant may consent to an extension of the hearing date for an application.

[6] Young responded to Fedor's email, stating: "Both [Tyminski] and I offer suggestions in the spirit of facilitating all our applicants to a successful hearing, but ultimately the choice is the applicant's whether to take our advice or leave it. Your application will remain scheduled for our June 20

us with the requested materials."

[7] The memorandum was addressed to Tyminski and the commission members and stamped "received" on June 19, 2019.

[8] Chip Stephens is also known as Ronald F. Stephens.

[9] Specifically, Stephens said it was: "Clustered. A 'CF.' "

[10] The resolution denying the plaintiff's application states that the planning and zoning staff notified the commission that the plaintiff had submitted a memorandum with supplemental and revised materials attached to it on June 19, 2019, but that there was inadequate time to review them prior to the June 20, 2019 public hearing. Therefore, we conclude that the commission reviewed Tyminski's June 13, 2019 and June 20, 2019 memoranda but did not review Fedor's June 19, 2019 memorandum and the supplemental and revised materials attached to it.

[11] Specifically, the resolution cited the following reasons for denial: "(1) The application as submitted was incomplete. (2) More information is needed to confirm that this application conforms to all applicable zoning standards. (3) More information is needed to determine whether the application conforms to § 32-8.5 [of the Westport Zoning Regulations] that requires the commission [to] consider impacts to the public, health, safety, and welfare associated with the proposed excavation and fill activities. (4) More information is required to determine whether the application conforms to the special permit standards contained in § 44-6 [of the Westport] Zoning Regulations that requires in part, that the project may not have a significant adverse effect on [the] safety in the streets nor [cause] unreasonable traffic congestion in the area, nor interfere with the pattern of highway circulation. (5) More information is required to determine whether the application conforms to the legislative intent defined in § 1 of the [Westport] Zoning Regulations that requires in part, that the [commission] administer the Westport Zoning Regulations to promote health, safety, and general welfare. (6) The site plan application for development of the property is contingent upon approval of the special permit for excavation and fill activities that has not yet been granted. (7) More time is needed for [planning and zoning] staff to verify the applicant's claim that [the] revised plans submitted on [June 19, 2019] do not require further review by the zoning board of appeals and architectural review board. (8) An updated traffic safety and operations peer review needs to be conducted of the application and revised plans as authorized pursuant to § 43-6.4 of the [Westport] Zoning Regulations as the town of Westport does not have a traffic engineer on staff."

[12] An applicant should be permitted to create a record that includes the applicant's argument as to why their application is not incomplete. Otherwise, a court would be unable to review fairly a planning and zoning commission's denial of an application on the grounds of incompleteness. The defendants conceded as much at oral argument. In the present case, the record contains the application that was submitted by the applicant, as well as the statements made by the commission members reflecting the reasons why they voted to deny the application. The consequence of the commission having denied the applicant the right to present evidence and arguments that were contrary to the commission's view that the application was not complete, however, is that such contrary evidence and arguments are not part of the record before this court. Because appellate review of a planning and zoning decision is confined to matters in the record, a planning and zoning commission's deprivation of an applicant's right to be heard with respect to the completeness of an application may thereafter thwart an applicant's ability to demonstrate on appeal that the commission improperly denied an application on the ground of incompleteness. Stated otherwise, prohibiting an applicant from presenting evidence and argument before the commission may unfairly insulate an erroneous ruling from review.

[13] The agencies from which approval may be required include the zoning board of appeals, architectural review board, and tree board. See Westport Zoning Regs., § 44-2.1.

[14] General Statutes § 8-3 (g) (1) provides in relevant part: "The zoning regulations may require that a site plan be filed with the commission or other municipal agency or official to aid in determining the conformity of a proposed building . . . with specific provisions of such regulations. . . . A site plan may be modified or denied only if it fails to comply with requirements already set forth in the zoning . . . regulations. . . ."

[15] To the extent that the court's holding was based on its conclusion that the plaintiff failed to adequately brief the claim, we note that, in the plaintiff's brief before the Superior Court, the plaintiff made similar arguments to those presented to this court on appeal. The plaintiff cited relevant and

pertinent authority in support of his claim that fundamental fairness required that he have an opportunity to be heard on his application.

[16] As previously discussed, Fedor filed a memorandum on June 19, 2019. That memorandum set forth the plaintiff's argument that his application was complete. Attached to the memorandum were revised and supplemental documents that related to the application. The record reflects that the memorandum and attached documents were not reviewed by the commission members prior to denying the application on the basis that it was incomplete. See footnote 10 of this opinion.

[17] Fundamental fairness requires both that a full and fair opportunity to be heard is provided and that commission members are neutral and impartial when deciding whether to approve zoning applications. See *Barry* v. *Historic District Commission*, supra, 108 Conn. App. 705. Based on certain commission members' intemperate remarks that suggest an absence of neutrality or impartiality toward the plaintiff and his application, on remand, and upon an appropriate motion, some members of the commission should consider recusing themselves.

[18] In his principal brief and at oral argument before our court, the plaintiff argued that his site plan and special permit application should be automatically approved, presumably pursuant to General Statutes § 8-3 (g) (1). Section 8-3 (g) (1) provides in relevant part: "Approval of a site plan shall be presumed unless a decision to deny or modify it is rendered within the period specified in section 8-7d. . . ." We disagree with the plaintiff that his site plan application and special permit application must be automatically approved under the circumstances of this case, in which the critical question to be reviewed is whether the plaintiff ever filed a complete application. To apply § 8-3 (g) (1) to an application that is or may be incomplete would be nonsensical.

SUPERIOR COURT
STAMFORD-NORWALK
JUDICIAL DISTRICT
2021 NOV -9 P 3:44

DOCKET NO. FST CV 19-6043389-S : SUPERIOR COURT

WILLIAM W. TAYLOR : JUDICIAL DISTRICT OF
: STAMFORD/NORWALK
V. : AT STAMFORD

PLANNING AND ZONING COMMISSION
FOR THE TOWN OF WESTPORT : November 9, 2021

MEMORANDUM OF DECISION
RE: Plaintiff's Appeal from Planning and Zoning Commission's Decision

I. Background

William Taylor has appealed the decision of the Town of Westport's Planning and Zoning Commission ("Commission") to deny, without prejudice, Taylor's application for approval of a site plan and special permit for excavation and fill related to plans to develop Taylor's otherwise vacant property located at 715 Post Road East in Westport, Connecticut by constructing a two-story office building thereon with parking. The appeal has been fully briefed, and argument by counsel took place remotely before this court on July 14, 2021. The issue of the plaintiff's aggrievement was not contested by the Town at any time in this proceeding, and the necessary aggrievement for jurisdictional purposes is found to exist.

The application before the Commission was to build a 4,220 square foot office building with 22 parking spaces, combined with an application for excavation and fill. Taylor contends that the Commission's proceedings with respect to the applications before it violated statutory, regulatory, and constitutional due process requirements, and the Commission's decision was illegal, arbitrary and should be considered void.

II. The Administrative Record

The Commission's actions respecting the Taylor application are evidenced in the Return of Record (ROR) of the Commission's proceedings located in the court files at Docket Entries (DE) 115.00, 116.00, and 117.00. The administrative record of the Commission is replete with evidence of the efforts of Commission members and staff to obtain what they saw as the necessary information for the Commission to be in a position to act on the Taylor application, and the efforts of Taylor and his representative to respond thereto, and to speed the Commission's review.

The record reflects that in April 2019, Taylor authorized Attorney Laurel Fedor to represent his interests in pursuing all steps necessary to develop his property into a "professional building". ROR, part 1, DE 115.00, p. 15 of 34. There was considerable back and forth between the Planning and Zoning Commission personnel and Attorney Fedor in connection with the Taylor application. In the morning of June 4, 2019, Cindy Tyminski of the Commission staff communicated to Fedor that the Taylor application was "not ready" to appear before the Commission as the outstanding issues included required variances, the types of trees involved in the development, an updated traffic report, a drainage report, and a review by the Town Architectural Review Board. The Commission staff requested a "full extension to open" to allow Fedor to be able to have "enough time to get this [application] complete and ready to appear in front of the Commission". DE 116.00; ROR, part 2, pp. 32-33 of 59. Fedor replied that same day that she did not want an extension; that much of the requested information had been supplied, and that she planned to proceed before the Commission on June 20. Id. 34 of 59. This prompted a response from Mary Young, Westport's Planning and Zoning Director advising that suggestions from Tyminski were for the purpose of "facilitating all our applicants to a

successful hearing", but it was the applicant's choice "to take our advice or leave it", and the application would be scheduled for the June 20th meeting. DE 116.00 at 36 of 59.

The Commission's records contain a lengthy memorandum, dated June 13, 2019, written by Ms. Tyminski, Deputy Planning and Zoning Director for Westport and addressed to the Commission members summarizing the pertinent dates applicable and outlining certain issues pertaining the Taylor application. DE 116.00 at 44-45 of 59. Specifically, the Tyminski memorandum noted the history of past applications for the property that had been withdrawn and certain additional information required to permit processing of the pending application. Among the points raised in the memorandum were the applicable statutory timelines, approval of a new variance application, a new application to the Architectural Review Board (ARB), changes in the proposed planting of new trees, and an up-to-date traffic report. DE 116.00, pp. 44. The memorandum concluded with the following: the public hearing required should "not be closed until all outstanding issues are addressed. The Commission may also consider a denial as the application is incomplete". Id; p. 45.

Attorney Fedor responded to Tyminski's June 13, 2019 memorandum with a memorandum of her own dated June 19, 2019. In the latter memorandum Fedor contended no new variances or ARB proceedings were required, revisions to plans satisfied the local tree board, a 2017 traffic study was in the file, and Fedor contended that recent traffic and drainage reports were attached to her memorandum. DE 117.00, p. 1. The court notes that a letter from the engineers, Tighe & Bond, dated October 2017 that discussed traffic issues at the site was included with Fedor's memorandum. DE 117, pp. 6-13.

On June 20, 2019 Tyminski sent a memorandum to all Commission members outlining the statutory time limits applicable to the Taylor application such as when a public hearing may

be opened and closed and a decision rendered. The memorandum noted that "additional information and revised plans" had been submitted the day before and had "not been reviewed" by the Commission staff and other information needed to be sent to our "peer reviewer" for a response. DE 117.00, p. 137. The memorandum concluded the public hearing should not be closed until the outstanding issues raised by the Commission staff, "are addressed". The staff memorandum suggested the applicant consider withdrawing the application until the variance and ARB approvals were received. Alternatively, the Tyminski memorandum reiterated the earlier suggestion to the Commission that it deny the application [as] incomplete. Id.

The Commission held a public hearing on the Taylor application on June 20, 2019. From the outset of the June 20, 2019 hearing Attorney Fedor encountered rough sailing. Commission Chairman Lebowitz stated to Attorney Fedor he did not want to hear the Taylor application "right now", because there had been submitted new versions of the proposed site plan, including, one dated that day – June 20 – described as an "entire redesign" that had not been reviewed by the Commission staff. June 20, 2019, public hearing transcript, p. 3.[1] Chairman Lebowitz offered Attorney Fedor the opportunity to withdraw the Taylor application, an offer that Fedor declined. DE 118.00, p. 9 of 69.

At a July 11, 2019 work session the Commission voted unanimously to deny the application as incomplete. P. + Z. Transcript, Commission meeting July 11, 2019, p. 25; DE 118.00, p. 40 of 69. Subsequently, at another work session held a week later, the members voiced their continuing support of the position taken at the July 11 meeting. P. + Z. Transcript, July 18, 2019, DE 118.00, pp. 48-49 of 69.

[1] The June 20, 2019 public hearing transcript (hereafter referred to as "P. + Z. Transcript") is not contained in the ROR. The P. + Z. Transcript was presented to the court in connection with an earlier motion by Taylor in this case and is found at DE 118.00, pp. 6-15.

At its July 25, 2019 meeting the Commission voted unanimously in favor of Resolution 19-020. This resolution outlined the background of the Taylor application and specified additional information needed, including the fact that the latest submission by Attorney Fedor on June 19, 2019, one day before the public hearing, had not been able to be reviewed by the staff, and concluding the application was incomplete. The resolution stated the Taylor application was "denied without prejudice" and listed eight numbered reasons for the Commission's action. A copy of the resolution was mailed to Attorney Fedor on July 29, 2019, and appears at ROR 94; DE 117.00, pp. 149-154.

The Commission's discussion on July 25, 2019 made clear what the members perceived as the problem with the Taylor application. Planning and Zoning Director Mary Young stated that what was submitted by Attorney Fedor on July 19, 2019 was different than submitted earlier and had not been available to Tyminski for review and had not been analyzed. DE 118, p. 67 of 69. The Commission's Chairman, Lebowitz, stated that "we did not have a chance to look into their [Taylor's and Fedor's] claim . . . Which is the whole reason we denied." Id., p. 66 of 69.

III. DISCUSSION

There appear to be few limits noted in the case law or legal literature on what information a land use agency may consider in performing its functions beyond the obvious boundaries of relevance and availability. The leading commentator on Connecticut land use law has noted:

> The effect and reliability of evidence before the agency is a matter for the agency members themselves.

R. Fuller, Connecticut Land Use Law and Practice, 4th ed. § 21: 5 (at p. 646).

"It is axiomatic that the review of site plan applications is an administrative function of a Planning and Zoning Commission . . . [citation omitted] When a commission is functioning in such . . . capacity a reviewing court's standard of review . . . is limited to whether it was illegal, arbitrary or an abuse of [its] discretion." *Gerlt* v. *Planning & Zoning Commission*, 290 Conn. 313, 322 (2009) [quoting *Clifford* v. *Planning & Zoning Commission*, 280 Conn. 434, 440 (2006)].

When ruling upon an application for a special permit a local planning and zoning board acts within its administrative capacity. *Putnam Park Apartments, Inc.* v. *Planning and Zoning Commission of Town of Greenwich*, 193 Conn. App. 42 (2019). A court reviewing a decision of a planning and zoning board is bound by that board's decision if it is supported by substantial evidence. Id., 54. The substantial evidence rule is, in effect, a compromise, or middle road, between broad, de novo review and restricted review or abstention from review at all. Id. The rule is designed to correct ascertainable abuses without affecting administration of planning and zoning laws. Id.

The relationships between the Commission employees and its members on one hand and the plaintiff Taylor and specifically his designated agent, Attorney Fedor on the other, permeates the facts of this case and is critical to resolving the issues presented. The plaintiff and Attorney Fedor were clearly in a hurry to obtain Commission approval of their site plan and special permit. This desire for expedition was evidenced by Fedor's stated plan to move forward swiftly and by her rushing to be heard at the next Commission meeting scheduled for June 20, 2019. The expedited pace was contrary to the advice and admonitions of Commission staff personnel, such as Tyminski, who advised a less accelerated schedule to get the application "complete". In fact, when the June 20, 2019 commission meeting took place. Planning and

Zoning Director, Mary Young, noted that Fedor had submitted a <u>different</u> set of plans the day before which Tyminski had not had an opportunity to analyze and about which the Commission Chairman simply stated "you didn't give us time." DE 118.00, p. 67.

The record makes clear that Taylor and Fedor were seeking expeditious approval of their plan, but the record does not provide specific reasons for the applicant's rush, and particularly does not support why a revised plan submitted on June 19, 2019 had to be approved by the full Commission on June 20, without input and analysis from its staff. The court notes, as well, that Taylor's brief in support of this appeal does not supply any rationale for extra haste.

The submission on June 19, 2019 by Fedor that is referenced in the Commission [June 20 minutes?] is a document entitled "RESPONDING MEMORANDUM" and is directed to Tyminski's June 13, 2019 memorandum and the Commission members directly. DE 117.00, pp. 1-154. The ROR is somewhat difficult to decipher, but it appears that Fedor's submission contained her own memorandum, an Architectural Review Board memorandum, site plan drawings – with the July 19, 2019 "Received" stamp of the Commissioner, and engineer's letter, with the same stamp.

This court has carefully reviewed the facts and the related chronology of events connected with submission to and consideration by the Commission of the Taylor application. The court finds that the Commission's treatment of the application and its denial "without prejudice" was well within its recognized authority to administer the planning and zoning statutes and regulations. The court finds there was substantial evidence to support the actions of the Commission and its staff in this case.

Tyminski's staff responsibilities were to put the Taylor application before the Commission members in a manner that provided them with all the information necessary for the

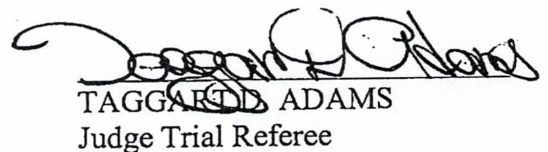
Commission as a whole to make an informed and considered decision. That she prompted Taylor and Fedor not to be impatient and to take the proper amount of time to get the application "complete" was a fulfillment of her staff responsibilities. Her recommendation that the public hearing not be closed until issues raised by the Commission staff "are addressed" was similarly in line with these responsibilities.

The court notes Taylor's contention that the Commission's treatment of his application involved "irregularities" violative of "statutory", "regulatory" and "constitutional due process requirements;" Plaintiff's Brief, 1, DE 127.00; is unsupported by any citation of authority.

The Commission's recognition that a revised proposal submitted by Taylor either the day before, or the day of, the Commission hearing and its resolution to deny the application, with clearly stated reasons and "without prejudice", is supported by substantial evidence in light of the new submissions made by Taylor that were not able to be reviewed by its own staff.

IV. CONCLUSION

In light of the Commission's determination to deny the Taylor application "without prejudice" and the occasional glimpse in the record of what might be described as the somewhat "brittle" relationship between the Commission, and its staff on one side, and Taylor and his representative Fedor on the other, the court takes the completely unsolicited step to suggest that the parties revisit the subject application with open minds in order to seek a resolution that might satisfy both sides without the need for further conflict or judicial intervention.



TAGGART D. ADAMS
Judge Trial Referee

Decision entered in accordance with the foregoing 11-9-2021. JDNO Notice sent. Andrew [illegible]

Legislative History for Connecticut Act

HB 6285 PA 77-450 (Scanned) FAY 1977

House 2511-2515 (5)

Senate 2767-2769
2999-3000 (5)

Gen. Law 477, 503 (2)

12 p.

Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate and House of Representatives Proceedings

Connecticut State Library

Compiled 2015

PA77-450

Joint Standing Committee hearings,General Law. 1977:pt.2
Proceedings / Connecticut General Assembly, House. 1977 v.20:pt.6
Proceedings / Connecticut General Assembly, Senate. 1977 v.20:pt.7., p.2767-2769

Proceedings / Connecticut General Assembly, Senate. 1979 v.22:pt.8., p.2999-3000

MR. MOTTO (2nd):

Mr. Speaker, may I be cast in the negative rather.

THE SPEAKER:

Rep. Motto in the negative.

MR. RITTER (6th):

Mr. Speaker, I'd like to be recorded in the affirmative.

THE DEPUTY SPEAKER:

Rep. Ritter from the 6th district recorded in the affirmative.

The Clerk please announce the tally.

THE CLERK:

Total Number Voting........................143
Necessary for Passage...................... 72
Those Voting Yea.................... 22
Those Voting Nay....................121
Those Absent and Not Voting......... 8

THE DEPUTY SPEAKER:

The bill FAILS.

THE CLERK:

Calendar No. 749, substitute for H.B. No. 7982, File No. 632,

An Act Concerning Occupational Safety and Health.

MR. O'NEILL (34th):

Mr. Speaker, may that item be passed retaining its place.

THE DEPUTY SPEAKER:

You've heard the motion. Any objections to the motion? So

ordered.

THE CLERK:

Calendar No. 751, substitute for H.B. No. 6285, File No. 636,

An Act Concerning Time Limits for Hearings and Decisions in Planning and

Zoning Matters, favorable report of the Committee on General Law.

MRS. POLINSKY (38th):

Mr. Speaker, I move acceptance of the joint committee's favorable report and passage of the bill.

THE DEPUTY SPEAKER:

The question is on acceptance of the committee's favorable report and passage of the bill. Would you remark?

MRS. POLINSKY (38th):

Mr. Speaker, the Clerk has an amendment, LCO 8432 and I would like permission to summarize the amendment.

THE DEPUTY SPEAKER:

The Clerk has LCO 8432 designated House Amendment Schedule "A". Will the Clerk please call.

THE CLERK:

House Amendment Schedule "A", LCO 8432 offered by Rep. Polinsky, 38th district, Rep. Barnes, 21st district.

THE DEPUTY SPEAKER:

Is there any objection to the representative from the 38th district summarizing the amendment? Any objection? Please proceed.

MRS. POLINSKY (38th):

In summarizing this bill, Mr. Speaker, I'd like to say that the purpose of this amendment is to clarify further and to avoid any possibility of ambiguous language in the proposed bill. In brief, this amendment more clearly states the thirty day period is allowed for a multi-session public hearing. This amendment also more clearly defines the official date of receipt of an application, request or appeal.

Mr. Speaker, I move adoption of this amendment.

THE DEPUTY SPEAKER:

Question is on adoption of House Amendment Schedule "A". Will you remark further on the amendment? Will you remark further? If not, all those in favor signify by saying aye. Those opposed? House "A" is ADOPTED.

Will you remark further on the bill as amended by House Amendment Schedule "A"?

MRS. POLINSKY (38th):

Mr. Speaker, this is the second of general law's package of three planning and zoning bills. This bill concerns itself only with the subject of uniformity of time limits in the existing planning and zoning statutes. This bill would impose uniform time periods for commencing public hearings, complete public hearings and rendering decisions for specific zoning petitions, applications and requests or appeals before zoning commissions, planning commissions, combined planning and zoning commissions or zoning board of appeal. In other words, whenever a public hearing is held, whether on a request for a zone change, for a subdivision approval, a special permit, a special exception or whatever, the time limits would all be uniform. As the law reads now, the deadlines are neither uniform nor clear. Simply stated, this bill proposes that all public hearings must be held within 35--65 days of official receipt of a request for such hearing; further, that the public hearing shall be completed within thirty days after it begins and this thirty day period would, of course, only apply in those very few cases where the subject matter is so controversial as to cause the hearing to be conducted over several sessions. And lastly, that the decision must be rendered within 65 days after the public hearing is completed.

This bill would also permit extensions of each of the uniform

time periods specified but only where the applicant consents to such extension and in no event could an extension exceed twice the time period specified.

Other than the addition of a 30 day time limit for an extended public hearing, the only other matter of any substance in this bill is that of imposing a time limit on site plan decisions. At present, the statutes impose no deadlines at all and it is not impossible for simple site plan to disappear into the bowels of the commission for a year or two. This bill would impose the same 65 day deadline as presently exists for decisions on subdivision applications where no public hearing is required. It would also, with the consent of the applicant, allow for two additional sixty-five day extensions for site plan review.

I urge passage of this bill.

THE DEPUTY SPEAKER:

House "A" is ruled technical. Will you remark on the bill as amended by House Amendment Schedule "A"? Will you remark further? If not, will the members please take their seats and the staff please come to the well of the House. The machine will be opened. Have all the members voted? If so, the machine will be locked and the Clerk please take a tally.

MRS. OSIECKI (108th):

Mr. Speaker, may I be recorded in the affirmative please.

THE DEPUTY SPEAKER:

The Clerk please note the representative from the 108th in the affirmative.

The Clerk please announce the tally.

THE CLERK:

THE CLERK:

Total Number Voting..........................143
Necessary for Passage........................ 72
Those Voting Yea..................143
Those Voting Nay.................. 0
Those Absent and Not Voting....... 8

THE DEPUTY SPEAKER:

The bill as amended is PASSED.

THE CLERK:

Page 10 of the Calendar, Calendar No. 753, substitute for H.B. No. 8198, File No. 637, An Act Concerning Retirement Benefits for State Employees.

MR. O'NEILL (34th):

Mr. Speaker, may that item be passed temporarily please.

THE DEPUTY SPEAKER:

You've heard the motion. Any objections to the motion? Any objection? So ordered.

THE CLERK:

Calendar No. 755, substitute for H.B. No. 5785, File No. 642, An Act Concerning the Possession of Untraceable Handguns, favorable report of the committee on Judiciary.

MR. ABATE (148th):

Mr. Speaker, I move acceptance of the joint committee's favorable report and passage of the bill.

THE DEPUTY SPEAKER:

Question is on acceptance of the joint committee's favorable report and passage of the bill. Will you remark sir?

MR. ABATE (148th):

Mr. Speaker, the Clerk has an amendment, LCO 8068. Would the Clerk

Page eight of the Calendar, Cal. 816, File 636 and 937, Substitute for House Bill 6285. Joint favorable report of the Committee on General Law. AN ACT CONCERNING TIME LIMITS FOR HEARINGS AND DECISIONS IN PLANNING AND ZONING MATTERS, as amended by House Amendment Schedule A.

THE PRESIDENT:

Senator Cutillo.

SENATOR CUTILLO: (15th)

Mr. President, I move acceptance of the joint committee's favorable report and passage of the bill, in concurrence with the House as amended. Will you give me a moment, please? Thank you, Mr. President.

THE PRESIDENT:

Do you waive the reading, Senator?

SENATOR CUTILLO:

Yes. Mr. President, I am trying to get to the summary of the bill from the legislative research. Mr. President, the bill would impose uniform time periods for commencing hearings, completing hearings and rendering decisions for specified zoning petitions, applications, requests or appeals before a zoning commission, a combined planning and zoning commission or a zoning board of appeals. It would impose uniform time periods for commencing hearings, completing hearings and rendering decisions in all matters, formal application request or appeal is submitted to a planning commission and require that a decision

on an application for approval of a site plan be rendered within sixty-five days after receipt of the site plan and permit extension of such time periods for an additional one hundred thirty days but only with the consent of the applicant. Mr. President, I move acceptance of the bill as amended and request that it be put on the Consent Calendar if there is no objection.

THE PRESIDENT:

Senator Gunther.

SENATOR GUNTHER: (21st)

Mr. President, I don't know whether I have an objection or not. Frankly, in looking over the bill, I know the purpose of the bill. I know that the purpose of the bill is to make it clean up some of the language in the existing law as far as appeals and the time scheduling and that sort of thing. I have only one problem. I turned the bill over to my planning and zoning administrator who is a professional and I believe one of the most competent people in the state who read over the bill and says it is quite confusing. Actually, when you come right down to it, it is not impossible that a bill could go for some two hundred and ninety days or even a whole year under the terms of this particular bill.

Do you want a point of order? Senator Rome?

THE PRESIDENT:

Senator Rome.

SENATOR ROME: (8th)

I am wondering if we can't pass retain it. Our counsel

can look over the objections together with your counsel.

SENATOR CUTILLO:

If I may, Mr. President and Senator Gunther, if there are problems certainly I have no problem to having it pass retained. I would suggest to the minority though that Rep. Barnes be contacted as she did a lot of work on this in General Law.

THE PRESIDENT:

The bill will be marked pass retained.

THE CLERK:

Page eight of the Calendar, Cal. 819, File 633, Substitute for House Bill 7883. Joint favorable report of the Committee on State and Urban Development. AN ACT CONCERNING SETTLEMENT BY THE STATE OF A CLAIM AGAINST ACTION HOUSING, INC., A NONPROFIT COMMUNITY HOUSING DEVELOPMENT CORPORATION, as amended by House Amendment Schedule A.

THE PRESIDENT:

Senator Cloud.

SENATOR CLOUD: (2nd)

Mr. President, I move acceptance of the committee's favorable report and passage of the bill as amended by House Amendment Schedule A.

THE PRESIDENT:

Do you have comments to make, Senator?

SENATOR DePIANO:

Mr. President, may I be recorded in the Yeas.

THE CHAIR:

Sure.

SENATOR GUIDERA:

May I be recorded in the affirmative, please. I don't think my vote was recorded.

THE CHAIR:

Alright, Senator Guidera.

Total voting 29. Necessary for passage 15. There are 29 Yeas; zero nays. The bill is adopted.

THE CLERK:

Page 5 of the Calendar, bottom of the page. Calendar 816. Files 636, 937.

Favorable Report of the Joint Standing Committee on General Law. Substitute for House Bill 6285. AN ACT CONCERNING TIME LIMITS FOR HEARINGS AND DECISIONS IN PLANNING AND ZONING MATTERS. As amended by House Amendment Schedule "A".

THE CHAIR:

Senator Cutillo.

SENATOR CUTILLO:

Mr. President, I move acceptance of the Joint Committee's Favorable Report and passage of the bill in concurrence with the House as amended.

THE CHAIR:

You have comments to make, Senator?

SENATOR CUTILLO:

Mr. President, the bill imposes a uniform time periods for commencing hearings, completing hearings and rendering decisions for specified zoning petitions.

Applications, requests or appeals before a zoning commission. The combined planning and zoning commission or a zoning board of appeals. It imposes uniform time periods for commencing hearings, completing hearings and rendering decisions in all matters when a formal application request or appeal is submitted to a planning commission. It requires the decision on an application for approval of a site plan be rendered within 65 days after receipt of the site plan and permit the extension of such time period for an additional 130 days but only with the consent of the applicant.

The House amendment by the way, Mr. President and members of the Circle, specifies that public hearings held on a zoning matter, or a hearing held by planning commission be completed within 30 days of the start of the hearing rather than within 95 as I had just said; so I really going over what the amendment does.

If there is no objection I would move this matter to the Consent Calendar.

THE CHAIR:

Without objection, so ordered.

THE CLERK:

Turning to page 6 of the Calendar. Top item on the page. Calendar 817. Files 602, 936. Favorable Report of the Joint Standing Committee on General Law. Substitute for House Bill 8137. AN ACT CONCERNING DISCLOSURE OF SERVICE CONTRACT AGREEMENTS. As amended by House Amendment Schedule "A".

THE CHAIR:

Senator Cutillo.

SENATOR CUTILLO:

Mr. President, I move acceptance of the Joint Committee's Favorable Report and passage of the bill in concurrence with the House.

REP. DODES: That's the problem with planning and zoning commissions (INAUDIBLE). Well, I know, but it is a losing question and I don't know how you handle it.

CHAIRMAN RITTER: Would you distinguish between the (INAUDIBLE) amendment or the (INAUDIBLE) amendment?

REP. DODES: Well, you could, but again as I said one word, may and shall as a Tech Amendment and it could be a subject of change. But if you have made some obvious mistakes in saying, you know, for example, front yard set back shall be 15 feet at the public hearing and then the Commission gets ahold of it and says well let us change it to 20, we think it's better. I don't think anyone is going to get too upset about that. But if it is a change in the use or location of the building, or drive, or something that would really affect people, again it is a very subjective matter on how you make that decision. And I think that town attorneys probably turn gray when the Commissions ask them whether they have to back to public hearing or should we just make the change.

Okay, 6281 is basicly the same as 6285 in terms of this new section 7-e. There is a misprint on 6285, they have it 7-80 and I don't think that it is what was meant. It should be 8-70. But in any event here we talk about certain distances on line 22...and I am not sure what certain distances is. And I have seen in my own experience problems where you ask the petitioner to send out the mail with his experience and if it isn't sent certified, I have seen petitioners—whether they were telling the truth or not—look you square in the eye and say well, we sent out letters to everybody, and of course only two people showed up...must have heard it through the grapevine, everybody else says, I never got a letter...and they say, well, it must have gotten lost in the mail.

So I think you could run into a problem here unless you make it specific that it should be certified mail. And that...perhaps an easier way would be for the developer to pay the fee to the Planning and Zoning Commission in making sure that it is done by the staff and that they know for certain that everyone has been notified. It solves a lot of problems for both sides. 6282, an act concerning zoning Board of Appeals. I think this is very close to Senate Bill 573. And I think it is a good idea that these decisions shall become effective and be filed in the appropriate town, city (INAUDIBLE). Many times these things

Right now the system is you turn down the 14 and the person comes back with a new petition now because maybe 10 would be a good thing. We go through the whole process again. I think you have to understand what the process is. That process costs the community (INAUDIBLE) representing the community, it costs them the time of sitting in another public hearing, putting out the legal notices. You have to either run a tape or bring in a stenographer. There is considerable expense in running that whole hearing. When in fact if you had...far less expensive...yet inexpensively than the current system operates today. The next section we talk to...

REP. RITTER: Will you state the number of the section each time?

MONTE LEE: Alright. It is Section 3 and it would be relating to Bill 6285. And here again is the situation I talked to earlier where we are talking about giving a new method of providing notice to effected property owners. That is something that is coming up. We also point out to you, and I think this is something brought up by the Bar Association...there is a provision in the law Section 8-3d that provides zone changes, special permits, special exceptions, and variances must be recorded in the land records. The problem in the law right now in this particular section 8-3c if you look at the language, it says the effective day is at the time fixed by the Commission which contradicts what is said in 8-3d which says the effective time is when you record it. And this is the thing that we are trying to clarify here. I know you have several other bills before you with the same intent.

Section 4 which relates to Bill 6280 deals with the Zoning Board of Appeals and answers the thing that we are saying here is let's abolish use variances. That is as simply stated as I can put it. We find that the granting of a use variance is really a circumventing of the zoning powers. The courts of this state have said that the power to determine what is the zoning of the piece of property is strictly the province of the Zoning Commission. It is not a Zoning Board of Appeals. Zoning Board of Appeals is to vary things within the intent of the regulations. And when you turn around and give somebody a variance to shut-up an office in the middle of a residential zone, I think that is within the intent of the zoning which says that the residential property. I think that strictly should be considered a zoning change and this is the reason we are suggesting this change to the law. Right now, the