

NO. CV 04-4001119 : SUPERIOR COURT
JASYN SADLER, ET AL. : J.D. OF HARTFORD
VS. : AT HARTFORD
TOWN OF WEST HARTFORD, ET AL. : APRIL 21, 2005

NO. CV 04-4002125 : SUPERIOR COURT
JASYN SADLER, ET AL. : J.D. OF HARTFORD
VS. : AT HARTFORD
TOWN OF WEST HARTFORD, ET AL. : APRIL 21, 2005

NO. CV 04-4001448 : SUPERIOR COURT
JASYN SADLER, ET AL. : J.D. OF HARTFORD
VS. : AT HARTFORD
TOWN OF WEST HARTFORD, ET AL. : APRIL 21, 2005

NO. CV 04-4001388 : SUPERIOR COURT
JASYN SADLER, ET AL. : J.D. OF HARTFORD
VS. : AT HARTFORD
TOWN OF WEST HARTFORD, ET AL. : APRIL 21, 2005

MEMORANDUM OF DECISION

I

STATEMENT OF APPEAL

In these four consolidated administrative appeals, the plaintiffs, Jasyn Sadler, Emily Sadler, Brenda Kurz and Henry Steiner, appeal from three decisions of the defendant West

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Hartford planning and zoning commission and one decision of the defendant West Hartford town council. The plaintiffs appeal from the defendant commission's approvals of an inland wetlands and watercourses permit application to allow the defendants,¹ BBS Development, LLC (BBS) and the town of West Hartford (applicants), to convert an existing parking lot into a public park (Docket No. CV 04 4001119); four applications for a special use permits (Docket No. CV 04 4002125); and an application for subdivision approval (Docket No. CV 04 4001388). The plaintiffs also appeal from the town council's approval of the applicants' application to establish and modify special development districts and adopt certain zone changes (Docket No. CV 04 4001448). All four appeals relate to the proposed Blue Back Square development in downtown West Hartford.

II

BACKGROUND

On April 23, 2004, the defendant BBS Development, LLC (BBS) and the defendant town of West Hartford (applicants) submitted inland wetlands and watercourses application # 801

¹ In addition to these defendants, Hayes-Velhage Post 96 American Legion, Inc. is a defendant in Docket Nos. CV 04 4002125 and CV 04 4001388. Raymond Road Associates, LLC is a defendant in Docket Nos. CV 04 4001448 and CV 04 4001388. The Grody Company and Anthony Donatelli are defendants in Docket No. CV 04 4001448.

seeking permission to conduct regulated activities associated with the conversion of an existing parking lot into a municipal park at 72 and 90 Raymond Road in West Hartford. (Return of Record [ROR], Item 236.) Also on that date, the defendant West Hartford submitted four special use permit applications, # 1015 for "[e]xpansion of governmental/municipal uses, including parking structure, outdoor parking, office relocation and park use" concerning property located at 50 South Main Street and 72, 90 and 103 Raymond Road; (ROR, Item 259, p.1); # 1016 for "[e]xpansion of library use, creation of public walk/square, establishment of public parking structure" at 20-28 South Main Street and 33 Raymond Road; (ROR, Item 270, p. 1); # 1017 "to construct and operate [a] theater" at 20 and 28 South Main Street; (ROR, Item 281, p. 1); and # 1018 for a "[p]rivate [n]onprofit [m]embership [c]lub" at a "portion of [n]ortheast [c]orner of 33 Raymond Road." (ROR, Item 293, p. 1.) On May 3, 2004, the defendants BBS, West Hartford, Hayes-Velhage Post 96 American Legion, Inc. (Hayes-Velhage), the Grody Company, Anthony Donatelli, Raymond Road Associates, LLC and others² submitted an application requesting special development district (SDD) approvals and zone changes with regard to 33, 61, 65, 69, 72,

² Although several others were listed as defendants and were listed as applicants on the application form, the court, *Booth, J.*, granted defendant BBS' motion to drop these defendants from the case, Docket No. CV 04 4001448, by agreement of all parties on January 7, 2005. Accordingly, their names need not be mentioned here.

90 and 103 Raymond Road, 20, 28 and 50 South Main Street and 96 Memorial Road. (ROR, Item 1.) The defendants BBS, West Hartford, Raymond Road Associates, LLC and Hayes-Velhage filed subdivision application # 274 for 33, 61, 65, 69 and 103 Raymond Road, 20, 28 and 50 South Main Street, and 96 Memorial Road in West Hartford on April 23, 2004, for the "[r]econfiguration and subdivision of subject property into seven lots, including creation of new public street and rights-of-way, expansion of certain existing rights-of-way, and establishment/modification of building lines." (ROR, Item 248, p.1.)

The town council and commission held a joint hearing³ regarding these applications on June 10, 2004; (ROR, Item 202); June 14, 2004; (ROR, Item 203); June 16, 2004; (ROR, Item 204); June 17, 2004; (ROR, Item 205); June 21, 2004; (ROR, Item 206); June 23, 2004; (ROR,

³ General Statutes § 7-159a and § 177-42 (D) of the West Hartford code of ordinances authorized the municipal defendants to hold the joint public hearings because several approvals from multiple town agencies were required for the project. General Statutes § 7-159a, provides: "Notwithstanding any provision of the general statutes, any special act or any municipal ordinance, the legislative body of any municipality may, by ordinance, establish procedures for the holding of one public hearing on any application for a proposal that requires approval by more than one municipal agency, body, commission or committee."

Section 177-42 (D) of the West Hartford code of ordinances, provides in relevant part: "(1) Whenever any proposed development, or group of developments within the [t]own of West Hartford requires review and/or decision by any combination of the [t]own [c]ouncil, [p]lan and [z]oning [c]ommission, [i]nland [w]etlands and [w]atercourses [a]gency and/or [z]oning [b]oard of [a]ppeals, those agencies may hold joint hearings with respect to some or all of the application and/or other matters before them when it appears that such joint hearings may be beneficial."

Item 207); June 24, 2004; (ROR, Item 208); June 26, 2004; (ROR, Item 209); June 27, 2004; (ROR, Item 210); June 28, 2004; (ROR, Item 211); June 29, 2004; (ROR, Item 212); June 30, 2004; (ROR, Item 213); and July 1, 2004. (ROR, Item 214.) On July 1, 2004, the commission held a special meeting at which it voted to approve the inland wetlands and subdivision applications. (ROR, Item 218, pp. 16-20.) On July 14, 2004, the town council held a special meeting at which it voted unanimously to approve the applicants' "[a]pplication for [s]pecial [d]evelopment [d]istrict approvals in connection with Blue Back Square . . . amendment of SDD number 36, creation of new SDDs, zoning changes from SDD/BC to SDD/CBDH and from CBDH to SDD/CDBH, and approval of development plan." (ROR, Item 217, pp. 135-36.) On August 2, 2004, the commission held a meeting at which it voted to approve the special use permit applications. (ROR, Items 267, p. 21; 278, p. 10; 290, p. 12; and 301, p. 7.)

The plaintiffs, Jasyn Sadler, Emily Sadler, Brenda Kurz and Henry Steiner,⁴ appealed from these decisions to the Superior Court, and the appeals were tried to the court, *Booth, J.*, on March 18, 2005.

⁴ Jasyn Sadler, Emily Sadler, Brenda Kurz and Henry Steiner are the only plaintiffs who are parties to all four consolidated appeals. Barbara Scully is a plaintiff in Docket Nos. CV 04 4002125 and CV 04 4001448. Daniel Holden and Lisa Holden are plaintiffs in Docket No. CV 04 4002125.

III

JURISDICTION

A

Aggrievement

"[P]leading and proof of aggrievement are prerequisites to a trial court's jurisdiction over the subject matter of an administrative appeal. . . . It is [therefore] fundamental that, in order to have standing to bring an administrative appeal, a person must be aggrieved." (Citation omitted; internal quotation marks omitted.) *Bongiorno Supermarket, Inc. v. Zoning Board of Appeals*, 266 Conn. 531, 537-38, 833 A.2d 883 (2003). "Aggrievement presents a question of fact for the trial court and the party alleging aggrievement bears the burden of proving it." *Id.*, 538-39. A plaintiff may prove aggrievement by testimony at the time of trial; *Winchester Woods Associates v. Planning and Zoning Commission*, 219 Conn. 303, 308, 592 A.2d 953 (1991); or "by the production of the original documents or certified copies from the record." (Internal quotation marks omitted.) *Quarry Knoll II Corp. v. Planning & Zoning Commission*, 256 Conn. 674, 703, 780 A.2d 1 (2001).

With regard to the three zoning appeals, the plaintiffs have sufficiently pleaded and proved that they are statutorily aggrieved. In the complaints, the plaintiffs allege that they "are

statutorily aggrieved by the [c]ommission's action in that pursuant to . . . General Statutes § 8-8 (a) (1), they are owners of property that 'abuts or is within a radius of [100] feet of any portion of the land involved in the decision' of the [c]ouncil. In addition, the [p]laintiffs, as owners of property on Burr Street, are aggrieved by the [c]ommission's decision through its connection to the proposed Blue Back Square development, which will cause increased traffic, parking and other quality of life related concerns that negatively affect property values, resulting in significant economic loss to the [p]laintiffs." (Complaint, count one, ¶ 16; see counts two through four, ¶ 17, Docket No. CV 04 4002125; Complaint, ¶ 33, Docket No. CV 04 4001448; Complaint, ¶ 18, Docket No. CV 04 4001388.) At trial, plaintiffs Brenda Kurz, Henry Steiner, Daniel Holden, and Jasyn Sadler testified that they own or occupy property at various locations on Burr Street in West Hartford, which abut or are within 100 feet of the proposed development. Further, Kurz testified that special development district 36 will be directly across from her property.

In an appeal of a decision of a zoning commission, a plaintiff's ownership of "land that abuts or is within a radius of one hundred feet of any portion of the land involved in the decision of the board" gives it the right to appeal a decision of a municipal zoning commission to the Superior Court. See General Statutes § 8-8 (a) (1). From the facts adduced at trial, and from the

facts alleged, the court finds that the plaintiffs Brenda Kurz, Henry Steiner, Daniel Holden, and Jasyn Sadler are statutorily aggrieved by the defendants' decisions.

Although a plaintiff's ownership of land abutting or within ninety feet of land within a wetland or watercourse gives it the right to appeal a decision of an inland wetlands agency to the Superior Court; see General Statutes § 22a-43 (a); none of the plaintiffs testified that their properties abut or are within a radius of ninety feet of the parcel that is the subject of the wetlands application. They do not argue that they meet the requirements for classical or statutory aggrievement as to the wetlands parcel alone, but instead argue that the Blue Back Square proposal should be treated as a whole, and aggrievement as to one portion of the site should provide each plaintiff with standing to appeal all land use decisions related to the entire project. In support of this contention, they rely on *Caltabiano v. Planning & Zoning Commission*, 211 Conn. 662, 560 A.2d 975 (1989). In *Caltabiano*, the Supreme Court considered "the narrow issue of whether the term 'land involved' in General Statutes § 8-8 (a), which establishes statutory aggrievement to appeal the decision of a zoning agency to the Superior Court, refers to the overall parcel of land owned by the applicant before that agency or the particular piece of that land that was the subject of the agency decision." *Caltabiano v. Planning & Zoning Commission*, supra, 211 Conn. 663. The court concluded "that the 'land

involved' in such a decision concerns the complete tract of land owned by the applicant rather than the discrete part of it containing the activity considered in the decision of the agency." *Id.* The plaintiffs argue that the holding in *Caltabiano* establishes statutory aggrievement in the context of the inland wetlands appeal. In light of this court's decision concerning the underlying issues concerning all four appeals, it is not necessary to decide whether the plaintiffs have standing specifically to appeal the inland wetlands decision. For the purposes of deciding these consolidated appeals, the court assumes that the plaintiffs are statutorily aggrieved for all purposes.⁵

B

Timeliness and Service of Process

General Statutes § 22a-43 (a) provides in relevant part, "any person aggrieved by any . . . decision or action made pursuant to [§§] 22a-36 to 22a-45, inclusive, by . . . a . . . municipality or

⁵ Although the inland wetlands appeal is not decided on this basis, there is a serious question whether any of the plaintiffs satisfy the requirements of statutory aggrievement with regard to that appeal because none of the plaintiffs own or occupy "land which abuts any portion of land within, or is within a radius of ninety feet of, the wetland or watercourse involved" in the inland wetlands application. See General Statutes § 22a-43 (a). Nevertheless, they do own or occupy land abutting the proposed Blue Back Square development as a whole, which may be sufficient for them to qualify as statutorily aggrieved under § 22a-43. See *Caltabiano v. Planning & Zoning Commission*, supra, 211 Conn. 663.

any person owning or occupying land which abuts any portion of land within, or is within a radius of ninety feet of, the wetland or watercourse involved in any . . . decision or action made pursuant to said sections may, within the time specified in subsection (b) of section 8-8, from the publication of such . . . decision or action, appeal to the superior court Such appeal shall be made returnable to the court in the same manner as that prescribed for civil actions brought to the court, except that the record shall be transmitted to the court within the time specified in subsection (i) of section 8-8. . . . Notice of such appeal shall be served upon the inland wetlands agency and the commissioner [of environmental protection] The commissioner may appear as a party to any action brought by any other person within thirty days from the date such appeal is returned to the court. . . ."

Notice of the commission's decision on the inland wetlands permit application was published on July 9, 2004. (ROR, Item 247.) On July 23, 2004, the plaintiffs commenced the appeal of the inland wetlands approval by service of process on BBS, by leaving one verified true and attested copy of the [appeal] with and in the hands of Tricia A. Haught, who accepted service for Michael P. Byrne, [a]gent for [s]ervice, at Day, Berry & Howard, LLP, CityPlace I in said [t]own of Hartford, and by service of process on the town of West Hartford and the West Hartford planning and zoning commission, "by leaving one verified true and attested copy of the

[appeal for each party] with and in the hands of Ellen Guest, Sr. Staff Assistant, who accepted service for Tanya Meck, Chair [of the commission], and Norma Cronin, Town Clerk" (Marshal's return, Docket No. CV 04 4001119.) Although the commissioner of environmental protection was not served in accordance with General Statutes § 22a-43 (a), this omission does not deprive the court of jurisdiction because the commissioner is not a necessary party to an inland wetlands appeal. *Demar v. Open Space & Conservation Commission*, 211 Conn. 416, 426-28, 559 A.2d 1103 (1989). Accordingly, the inland wetlands appeal is timely and that service was made upon the proper parties.

General Statutes § 8-8 (b) provides in relevant part: "[A]ny person aggrieved by any decision of a board . . . may take an appeal to the superior court for the judicial district in which the municipality is located. The appeal shall be commenced by service of process in accordance with subsections (f) and (g) of this section within fifteen days from the date that notice of the decision was published as required by the general statutes. . . ." Section 8-8 (f) provides, in part, that "[f]or any appeal taken before [October 1, 2004], process shall be served by leaving a true and attested copy of the process with, or at the usual place of abode of, the chairman or clerk of the board, and by leaving a true and attested copy with the clerk of the municipality." Subsection (g) provides, in part, "[s]ervice of process shall also be made on each person who

petitioned the board in the proceeding, provided such person's legal rights, duties or privileges were determined therein. However, failure to make service within fifteen days on parties other than the board shall not deprive the court of jurisdiction over the appeal. . . ."

Notice of the commission's decision on the subdivision application was also published on July 9, 2004. (ROR, Item 247.) On July 23, 2004, the plaintiffs commenced the appeal of the subdivision approval by service of process on the town of West Hartford, the West Hartford planning and zoning commission and BBS in the same manner as in the other appeals.

(Marshal's return.) On July 26, 2004, the plaintiffs made service on the defendants Raymond Road Associates, LLC and Hayes-Velhage. (Marshal's return, Docket No. CV 04 4001388.)

Notice of the commission's approvals of the special use permits was published on August 5, 2004. (ROR, Item 269.) On August 19, 2004, the plaintiffs commenced the appeal of these approvals by service of process on the town of West Hartford and the West Hartford planning and zoning commission in the same manner as that in the other appeals. (Marshal's return, Docket No. CV 04 4002125.) The plaintiff also served BBS and Hayes-Velhage on that date. (Marshal's return, Docket No. CV 04 4002125.)

Finally, notice of the council's approval of the applicants' application to establish and modify special development districts and adopt zone changes was published on July 20, 2004.