

\*\*\*\*\*

The “officially released” date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the “officially released” date appearing in the opinion. In no event will any such motions be accepted before the “officially released” date.

All opinions are subject to modification and technical correction prior to official publication in the Connecticut Reports and Connecticut Appellate Reports. In the event of discrepancies between the electronic version of an opinion and the print version appearing in the Connecticut Law Journal and subsequently in the Connecticut Reports or Connecticut Appellate Reports, the latest print version is to be considered authoritative.

The syllabus and procedural history accompanying the opinion as it appears on the Commission on Official Legal Publications Electronic Bulletin Board Service and in the Connecticut Law Journal and bound volumes of official reports are copyrighted by the Secretary of the State, State of Connecticut, and may not be reproduced and distributed without the express written permission of the Commission on Official Legal Publications, Judicial Branch, State of Connecticut.

\*\*\*\*\*

BORDEN, J., dissenting. The majority's opinion rests on the proposition that Eastwood Drive is a dead-end street within the meaning of the applicable subdivision regulations of the town of Hartland. Because I disagree with the majority's interpretation of those regulations, I dissent. I conclude that Eastwood Drive does not constitute a dead-end street under the facts of this case.

I begin with a brief restatement of certain undisputed facts. Eastwood Drive is an existing street in an existing subdivision, namely, the Eastwood subdivision, which was approved in 1988 by the defendant planning and zoning commission of the town of Hartland. Eastwood Drive has a particular and peculiar shape, which can be aptly described as looking something like a partially flattened lollipop.<sup>1</sup> That is, it has a stem of 850 feet, which begins at Route 20. The stem leads into a loop that is 2650 feet in length on which there are fourteen existing lots and houses, ten on the outside perimeter and four on the inside perimeter. In sum, Eastwood Drive is approximately two-thirds of a mile long in total, of which the stem constitutes approximately one-sixth of a mile and the loop constitutes approximately one-half of a mile. When one comes to the top end of the stem, one can drive either right or left on the loop to access any of the fourteen lots on it.

Eastwood Drive would, under the new subdivision application filed by the plaintiff, Harry Kraiza, Jr., connect to a new street, namely, Hazel Lane, which would be 1100 feet in length and which is conceded to be a dead-end street because it ends in a cul-de-sac. Under the applicable subdivision regulations, however, only dead-end streets that are more than 1200 feet in length are proscribed. Thus, because Hazel Lane would be less than 1200 feet in length, the plaintiff's application would have to have been approved—unless the length of Eastwood Drive, *as a dead-end street*, were added to the length of Hazel Lane. That addition is what the defendant did, making, in the defendant's view, the total of the two connected streets—Eastwood Drive and Hazel Lane—one long, dead-end street proscribed by the regulations. In doing so, the defendant rejected the opinion of the planning consultant that it had hired, Martin J. Connor, who opined that Eastwood Drive was not a dead-end street the length of which should be combined with that of Hazel Lane in assessing whether the plaintiff's proposed subdivision complied with the regulations.<sup>2</sup>

The critical question, therefore, is whether Eastwood Drive—an existing, prior approved street in the existing Eastwood subdivision—is itself a dead-end street. The majority concludes that it is. I conclude otherwise.

I first address the majority's use of the scope of review. In part I of the majority opinion, the majority correctly determines that the question of whether Eastwood Drive is a dead-end street is a question of statutory interpretation, that it is not a question that had been subject to prior judicial scrutiny or to which the administrative agency had applied a time tested interpretation and, therefore, that the court's scope of review was plenary. I fully agree with those conclusions.

I turn, therefore, to the question before us in this appeal: is Eastwood Drive a dead-end street within the meaning of the subdivision regulations? The majority, focusing on only part of the applicable language of the subdivision regulations, namely, the language defining a dead-end street as "any street . . . which presently provides only one means of ingress or egress"; Hartland Subdivision Regs., § I-1J; concludes that Eastwood Drive is a dead-end street because it provides only one means of ingress and egress from Route 20. This conclusion is flawed. In my view, the language of the applicable regulations simply does not contemplate a street of the particular and peculiar configuration of Eastwood Drive.

I begin with the language of the regulations. Section I-1J provides as follows: " 'Dead-end Street' shall mean any street described in paragraph D of this Section<sup>3</sup> which is used for access to any current lot of record, and which presently provides only one means of ingress or egress." Section I-6A-2 provides: "Arrangement of streets shall provide for the continuation of the principal streets in adjoining subdivision, or for their proper projection when adjoining property is not subdivided. Permanent dead-end streets shall not exceed 1200 feet in length and shall be equipped with a turn-around roadway with a minimum radius of forty-five (45) feet for the outside curb at the closed end. Such turn-around roadway shall include a right of way with a minimum width of fifty (50) feet, measured from the outside curb at the closed end and continuing to an adjoining property line." These two provisions must be read together. See *Hatt v. Burlington Coat Factory*, 263 Conn. 279, 310, 819 A.2d 260 (2003) (statutes that relate to same subject matter are to be read together).

It may be true, as the majority posits, that § I-1J, read literally and in isolation from § I-6A-2, might include Eastwood Drive, because, using Route 20 as the starting point, there is only one means of ingress and egress to it, namely, the 850 foot long stem. Reading the two provisions together, and in light of common sense; see *Tayco Corp. v. Planning & Zoning Commission*, 294 Conn. 673, 686, 986 A.2d 290 (2010); and the normal usages of the English language, however, leads to a different conclusion.

The references in § 1-6A-2 to "a turn-around roadway

with a minimum radius of forty-five (45) feet,” which “shall include a right of way with a minimum width of fifty (50) feet, measured from the outside curb at the closed end,” indicate that the definition of “dead-end street” contemplates something much more limited than any street that has only one means of ingress or egress, no matter how peculiar and particular its configuration. Those references indicate that a dead-end street would have a “turn-around roadway” and a “closed end.” The language “turn-around roadway” strongly suggests that a dead-end street is one in which drivers would have to turn around in order to get out; hence, the minimum radius requirement for the turn-around. The language “closed end” also strongly suggests the same thing, namely, that a dead-end street is one that has an end that is closed to getting out; hence, the requirement that there be a right-of-way with a minimum width at the closed end.

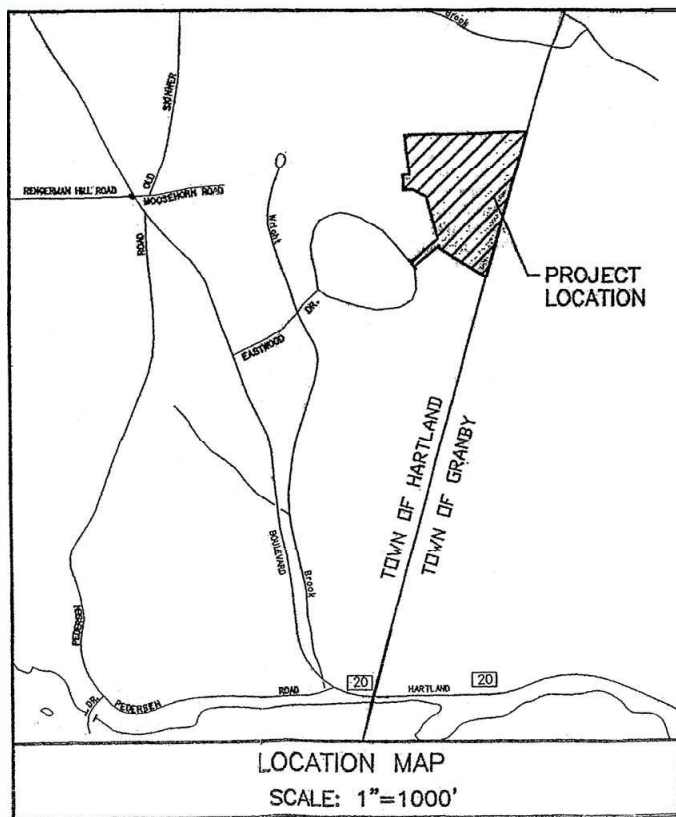
It is impossible to regard the two way, half-mile long loop of Eastwood Drive as either a turn-around roadway or a closed end. It is not a turn-around roadway because no driver, having come to the end of the stem, has to turn around in order to get out; all she has to do is to continue on around the loop in either direction. Similarly, it does not have a closed end because the end is not closed to getting out; all the driver has to do to get out is to keep driving around the loop in either direction. Common sense and the normal usages of our English language indicate that, when the drafters of the regulations drafted both §§ I-1J and I-6A-2, they had in mind the commonly understood meaning of a dead-end street, namely, a street that requires a driver to turn around at its closed end in order to get out. In other words, they had in mind what most people regard as a dead-end street, namely, a street ending in something like a cul-de-sac. See, e.g., Webster’s Third New International Dictionary (1961), giving one definition of “dead end” as “cul-de-sac.” See also *200 Associates, LLC v. Planning & Zoning Commission*, 83 Conn. App. 167, 173–74, 851 A.2d 1175 (ordinary meaning of cul-de-sac “is a blind alley or a street open at one end only, or a street closed at one end, usually with a turnaround at the closed end, which does not describe . . . a loop road that allows traffic to flow in two directions”), cert. denied, 271 Conn. 906, 859 A.2d 567 (2004).

This is precisely why Connor, the defendant’s planning consultant, advised the defendant that Eastwood Drive is not a dead-end street. See footnote 2 of this opinion. It is also the most likely explanation of why the defendant, in 1988, when it approved the Eastwood subdivision, thereby approved Eastwood Drive: because it was not then, and is not now, a dead-end street within the meaning of those regulations. It is something else, namely, what can most aptly be described as a loop street or, perhaps, a lollipop street.

This leads me to one final comment. The dialogue among the members of the defendant indicates that they put some emphasis on the fact that the regulations do not include any provisions for loop or lollipop streets, and, therefore, Eastwood Drive must be a dead-end street because it has only one means of ingress or egress from Route 20. Simply because the regulations of the town do not include a description of such streets does not mean that they do not exist in the town; and simply because the regulations lack such a description does not mean that a street that does not otherwise come within the meaning of the those regulations must therefore be stuffed into a definition that does exist. As our Supreme Court has stated: “[C]alling a bull a cow will [not] change its gender.” *State v. Gooch*, 186 Conn. 17, 18, 438 A.2d 867 (1982). Similarly, calling a loop or lollipop street a dead-end street does not make it so.

I, therefore, dissent and would reverse the trial court’s judgment and remand the case with direction to sustain the plaintiff’s appeal.

#### APPENDIX



<sup>1</sup> The Appendix to this dissenting opinion is a rendering of Eastwood Drive taken from the record of the case.

<sup>2</sup> Specifically, Connor opined: “Eastwood [Drive] would not be described as a permanent dead-end street according to the [town of Hartland] Regulations. . . . It would be better described as a ‘loop’ or ‘lollipop’ road. A permanent dead-end road is usually described as a cul-de-sac.”

<sup>3</sup> Paragraph D defines “Street” as “any right-of-way dedicated and accepted for public travel, and any right-of-way recorded in the Land Records of the Town of Hartland, which is used or to be used for public access to (a) any lot of record or (b) any lot sold or set apart in accordance with the Zoning

Regulations and amendments thereto.” There is no dispute that Eastwood Drive is a “street.”