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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.

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VERTEFEUILLE, J., with whom, ZARELLA, J., joins, dissenting. I respectfully disagree with the majority's conclusion that the plaintiff, the city of Torrington, may not maintain the present action collaterally challenging the 1991 stipulated judgment because the contested provisions of the judgment were not so far outside the valid authority of the named defendant, the zoning commission of the town of Harwinton (commission), as to make reliance on that judgment unjustified. I conclude that there was an obvious lack of jurisdiction when the commission waived the requirements of its own regulations in clear violation of state law, and, therefore, the plaintiff's collateral attack on the stipulated judgment is proper.

Notwithstanding the general rule prohibiting collateral attacks on the decisions of zoning authorities, this court in *Upjohn Co.* v. *Zoning Board of Appeals*, 224 Conn. 96, 104–105, 616 A.2d 793 (1992), recognized "that there may be exceptional cases in which a previously unchallenged condition was so far outside what could have been regarded as a valid exercise of zoning power that there could not have been any justified reliance on it . . . ." The issue in the present case is whether the commission's lack of jurisdiction to agree to certain provisions of the stipulated judgment was sufficiently egregious such that reliance on that judgment was unwarranted. Analysis of the applicable regulations and statutes clearly reveals that, in entering into the stipulated judgment, the commission lacked the authority to excuse noncompliance with the requirements of the Harwinton zoning regulations, and, moreover, that in doing so, it acted in blatant disregard of statutory requirements.

It is axiomatic that a special permit application and site plan must conform to the standards set out in the regulations; *Barberino Realty & Development Corp.* v. *Planning & Zoning Commission*, 222 Conn. 607, 614–15, 610 A.2d 1205 (1992); and if a special permit does not comply with the applicable regulations, the commission cannot approve it. *Weigel* v. *Planning & Zoning Commission*, 160 Conn. 239, 246–47, 278 A.2d 766 (1971); R. Fuller, 9A Connecticut Practice Series: Land Use Law and Practice (2d Ed. 1999) § 33.4, p. 162. In the present case, the individual defendants, Jerry Saglimbeni, Anthony D'Andrea and Robert D'Andrea (defendants), have conceded that the special permit application and site plan approved by the commission did not meet the requirements of Harwinton's special permit and zoning regulations (regulations). The commission admitted in its brief filed with the trial court that "if the [stipulated] judgment did not modify the zoning regulations as to access, density, usable area, drainage, sewers and open

space, then the commission's decision cannot be upheld under the requirements of the zoning regulations alone.''

The issue before us, then, is the commission's authority to ''modify'' or waive the requirements of the regulations. The commission effectively waived three provisions of the regulations in the stipulated judgment. First, the commission agreed that the defendants could ''submit a single application for a special permit . . . and [the commission] agrees to permit the construction of [thirty-six] single family units on the [parcel].'' This stipulation contravened § 4.7 of the Harwinton zoning regulations, which requires that ''an application for a Special Permit in a [planned residential] zone shall consist of no more than [thirty] dwelling units.'' Second, the commission acknowledged that the parcel had adequate ''usable'' area to permit construction of thirty-six living units.[1] Usable area is defined by § 4.7.4 (c) of the Harwinton zoning regulations as ''land other than . . . regulated inland wetlands and watercourses . . . [and] 50% of all land with a slope in excess of 25% . . . .'' Despite the presence of inland wetlands and steep grades on the site, the commission conceded that the site contained sufficient usable land to accommodate thirty-six living units. Furthermore, there is no evidence in the record that the commission received the required survey, site plan map and certifications from a licensed professional engineer and a licensed land surveyor before determining that there was sufficient ''usable'' land on the site. Third, the commission provided an acknowledgment that the parcel had ''adequate road access . . . either through Torrington, Harwinton or a combination of the two . . . .'' This stipulation was in clear breach of § 4.7.4 (d) (1) of the Harwinton zoning regulations, which requires that a development with thirty or more dwellings have access ''either . . . directly onto a State Highway and shall have more than one point of vehicular access to a State Highway or Town road, or . . . directly onto a Town road leading to a State Highway . . . and shall have more than one point of vehicular access to the Town road.''

These waivers were critical components of the stipulated judgment negotiated between the commission and the other defendants, yet there can be no serious doubt that the commission lacked the authority to grant such waivers. Pursuant to General Statutes (Rev. to 1991) § 8-6,[2] the power to vary the application of zoning regulations falls within the exclusive jurisdiction of the zoning board of appeals. *Langer* v. *Planning & Zoning Commission*, 163 Conn. 453, 457, 313 A.2d 44 (1972) (''the power to vary [zoning regulations] to accommodate practical difficulties and do substantial justice lies exclusively in a [zoning] board of appeals''); R. Fuller, 9 Connecticut Practice Series: Land Use Law and Practice (2d Ed. 1999) § 22.16, p. 505 (''the exclusive authority to vary the zoning regulations is vested in the zoning

board of appeals''). ''The zoning commission itself cannot vary the requirements of the special permit or site plan provisions of the zoning regulations.'' R. Fuller, 9 Connecticut Practice Series: Land Use Law and Practice (2d Ed. 1999) § 15.15, pp. 363–64.

What makes the commission's action in granting these waivers especially egregious is its wholesale disregard of its statutory obligations when it considered the special permit application for the site in question. General Statutes § 8-3c (b)[3] requires that the commission hold a public hearing on an application for a special permit after giving notice to the public of the time and place of the public hearing. In the present case, the commission waived certain requirements of its regulations applicable to a special permit for the site without providing the opportunity for the public, including the plaintiff, an abutting property owner, to be heard on the application. Previously, we have emphasized the importance of public hearings, particularly in zoning cases. *Willimantic Car Wash, Inc.* v. *Zoning Board of Appeals*, 247 Conn. 732, 739, 724 A.2d 1108 (1999); *Couch* v. *Zoning Commission*, 141 Conn. 349, 357, 106 A.2d 173 (1954). ''Because of the public impact of land use decisions, Connecticut's governing statutory scheme promotes public participation in such decision making, and particularly provides for public hearings with substantial procedural safeguards. . . . [H]earings play an essential role in the scheme of zoning and in its development. . . . They furnish a method of showing to the commission the real effect of the proposed change upon the social and economic life of the community. . . . Hearings likewise provide the necessary forum for those whose properties will be affected by a change to register their approval or disapproval and to state the reasons therefor.'' (Citations omitted; internal quotation marks omitted.) *Willimantic Car Wash, Inc.* v. *Zoning Board of Appeals*, supra, 739; *Couch* v. *Zoning Commission*, supra, 357. The commission's waiver of several requirements of its regulations without first holding a public hearing was a clear violation of § 8-3c (b).

Section 8-3c (b)[4] further requires that the commission receive a report from the local inland wetlands agency with regard to any special permit application and that the commission give ''due consideration'' to that report. The site of the proposed development in the present case clearly contained inland wetlands. Yet the commission stipulated that there was sufficient ''usable'' area, defined as land *exclusive* of wetlands, without obtaining and considering the statutorily required report from the local inland wetlands agency. Our legislature clearly has established a strong public policy favoring protection of the inland wetlands of this state. *Aaron* v. *Conservation Commission*, 183 Conn. 532, 542, 441 A.2d 30 (1981). General Statutes § 22a-36 details the legislature's clear concern for the protection of inland wetlands in this

state, providing in relevant part: ''The inland wetlands and watercourses of the state of Connecticut are an indispensable and irreplaceable but fragile natural resource with which the citizens of the state have been endowed. . . . The preservation and protection of the wetlands and watercourses from random, unnecessary, undesirable and unregulated uses, disturbance or destruction is in the public interest and is essential to the health, welfare and safety of the citizens of the state. . . .'' To effectuate this intent, the legislature has required each municipality to establish an agency to regulate activities affecting wetlands and watercourses within that municipality. See General Statutes § 22a-42. The commission in the present case, however, stipulated that the site contained sufficient ''usable'' area (exclusive of wetlands) for thirty-six living units without obtaining and considering the statutorily required report of the Harwinton inland wetlands commission.

When the commission entered into the stipulated judgment, it acted in utter disregard of at least two important statutory obligations, one requiring a public hearing to obtain public input on issues raised in the special permit application, and the second requiring consideration of a report from the local inland wetlands agency. General Statutes § 8-3c (b). I conclude that the commission's abdication of its statutory role brings this case within the exception recognized in *Upjohn Co.* for actions so far outside the authority of a zoning commission that those actions could not reasonably have been relied upon.

The majority asserts that the commission's lack of jurisdiction was not obvious because: (1) the waivers were given in the interest of settling litigation; (2) the variations of the regulations were rendered moot by conditions later imposed by the commission when it approved Saglimbeni's application; and (3) the plaintiff gave its approval to the zone change during the application process. These considerations, however, are tangential to the issue before us, namely, whether, by agreeing to waive certain requirements of the zoning regulations and doing so in violation of the procedures mandated in § 8-3c (b), the commission exceeded its authority in such an obvious way that its actions reasonably could not have been relied upon. That question should be resolved by an objective analysis of the commission's legal authority under applicable statutes and regulations at the time it took the action in question. It should not be resolved by considering whether the plaintiff in this zoning appeal approved of the zone change at some earlier stage in the process or whether, years after the action at issue, the commission took other actions that made moot its earlier illegal action that resolved a pending lawsuit. Whether the commission acted egregiously in excess of its authority is a question of law to be resolved by application of an objective standard, e.g., whether an individual pos-

sessing reasonable knowledge of zoning law would conclude that the action of the zoning authority was so far in excess of its valid powers that there could not have been any justified reliance on that action. Application of that objective standard in the present case reveals that the commission's lack of jurisdiction was obvious.

Accordingly, I respectfully dissent.

[1] Section 4.7.4 (c) of the Harwinton zoning regulations, which defines the term "usable," provides in relevant part: "For the purpose of this section 'usable' area shall be defined as land other than the following areas which shall be shown on a site plan map:

"*—regulated inland wetlands and watercourses* as defined in the Harwinton Inland Wetlands Regulations and shown on the Harwinton Inland Wetlands Map, the boundaries of which shall be located in the field by a certified soil scientist and mapped by a Connecticut licensed surveyor,

"*—100 year flood hazard areas* as defined by the Federal Emergency Management Agency (see Flood Hazard Areas Map on file in the office of the Planning and Zoning Commission), the boundaries of which shall be certified by a Connecticut licensed professional engineer,

"*—land subject to existing easements which prohibit building development,* the boundaries of which shall be certified by a Connecticut licensed professional engineer,

"*—50% of all land with a slope in excess of 25%* as delineated on the site plan map showing topographic contours based upon a field or aerial survey and certified by a Connecticut licensed land surveyor.

"Based upon the above required information the applicant's engineer shall certify the total 'usable' area of land on the site." (Emphasis in original.)

[2] General Statutes (Rev. to 1991) § 8-6 provides in relevant part: "The zoning board of appeals shall have the following powers and duties . . . (3) to determine and vary the application of the zoning bylaws, ordinances or regulations in harmony with their general purpose and intent and with due consideration for conserving the public health, safety, convenience, welfare and property values solely with respect to a parcel of land where, owing to conditions especially affecting such parcel but not affecting generally the district in which it is situated, a literal enforcement of such bylaws, ordinances or regulations would result in exceptional difficulty or unusual hardship so that substantial justice will be done and the public safety and welfare secured, provided that the zoning regulations may specify the extent to which uses shall not be permitted by variance in districts in which such uses are not otherwise allowed. . . ."

Section 8-6 was amended in 1993, at which time the existing, previously quoted language was designated as subsection (a) and new language was added and designated as subsection (b). See Public Acts 1993, No. 93-385, § 1.

[3] General Statutes § 8-3c (b) provides in relevant part: "The zoning commission or combined planning and zoning commission of any municipality shall hold a public hearing on an application or request for a special permit or special exception, as provided in section 8-2, and on an application for a special exemption under section 8-2g. The commission shall not render a decision on the application until the inland wetlands agency has submitted a report with its final decision to such commission. In making its decision the zoning commission shall give due consideration to the report of the inland wetlands agency. Notice of the time and place of such hearing shall be published in a newspaper having a substantial circulation in such municipality at least twice, at intervals of not less than two days, the first not more than fifteen days, nor less than ten days, and the last not less than two days before the date of such hearing. In addition to such notice, such zoning commission may, by regulation, provide for notice by mail to persons who are owners of land which is adjacent to the land which is the subject of the hearing. At such hearing any party may appear in person and may be represented by agent or by attorney. . . ."

[4] See footnote 3 of this opinion.