DOCKET NO. LND-CV-16-6069189-S : SUPERIOR COURT

111 SOUTH MAIN STREET, LLC : LAND USE LITIGATION DOCKET

V. : AT HARTFORD

NEWTOWN PLANNING AND :
ZONING COMMISSION, ET AL. : OCTOBER 21, 2016

MEMORANDUM OF DECISION

I

The plaintiff, 111 South Main Street, LLC, the owner of property at 111 South Main Street in Newtown appeals from a decision of the defendant, the Newtown planning and zoning commission (commission), approving a zone change sought by the codefendant, NERP Holding and Acquisitions Company, LLC (NERP), for property at 116 South Main Street owned by the codefendants, Nicole G. Buxton and John S. Mead. Specifically, after a public hearing was held on November 5, 2015, the commission approved an amendment to the zoning regulations of Newtown (regulations) to establish a fourth special development district[1] (SDD4) in the South Main Village design district (SMVDD) overlay zone[2] for the property and approved a change

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[1] According to appendix B of the regulations, there are three previously created SDDs–Highland Plaza, 121-25 South Main Street; 84 South Main Street; and Walgreens Drug Store at 47-49 South Main Street. (Return of Record [ROR], Item 21, pp. XIV-1-2-XIV-1-10.)

[2] Section 6.06.320 of Newtown's zoning regulations provides: "Any proposed Special Development District shall be considered to be a village district pursuant to [General Statutes §] 8-2j." (ROR, Item 21, p. VI-6-1.) General Statutes § 8-2j, in relevant part, provides: "(a) The zoning commission of each municipality may establish village districts as part of the zoning regulations adopted under section 8-2 or under any special act. Such districts shall be located in areas of distinctive character, landscape or historic value that are specifically identified in the

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plan of conservation and development of the municipality.

"(b) The regulations establishing village districts shall protect the distinctive character, landscape and historic structures within such districts and may regulate, on and after the effective date of such regulations, new construction, substantial reconstruction and rehabilitation of properties within such districts and in view from public roadways, including, but not limited to, (1) the design and placement of buildings, (2) the maintenance of public views, (3) the design, paving materials and placement of public roadways, and (4) other elements that the commission deems appropriate to maintain and protect the character of the village district. In adopting the regulations, the commission shall consider the design, relationship and compatibility of structures, plantings, signs, roadways, street hardware and other objects in public view. The regulations shall establish criteria from which a property owner and the commission may make a reasonable determination of what is permitted within such district. The regulations shall encourage the conversion, conservation and preservation of existing buildings and sites in a manner that maintains the historic or distinctive character of the district. The regulations concerning the exterior of structures or sites shall be consistent with: (A) The 'Connecticut Historical Commission - The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings', revised through 1990, as amended; or (B) the distinctive characteristics of the district identified in the municipal plan of conservation and development. The regulations shall provide (i) that proposed buildings or modifications to existing buildings be harmoniously related to their surroundings, and the terrain in the district and to the use, scale and architecture of existing buildings in the district that have a functional or visual relationship to a proposed building or modification, (ii) that all spaces, structures and related site improvements visible from public roadways be designed to be compatible with the elements of the area of the village district in and around the proposed building or modification, (iii) that the color, size, height, location, proportion of openings, roof treatments, building materials and landscaping of commercial or residential property and any proposed signs and lighting be evaluated for compatibility with the local architectural motif and the maintenance of views, historic buildings, monuments and landscaping, and (iv) that the removal or disruption of historic traditional or significant structures or architectural elements shall be minimized.

"(c) All development in the village district shall be designed to achieve the following compatibility objectives: (1) The building and layout of buildings and included site improvements shall reinforce existing buildings and streetscape patterns and the placement of buildings and included site improvements shall assure there is no adverse impact on the district; (2) proposed streets shall be connected to the existing district road network, wherever possible; (3) open spaces within the proposed development shall reinforce open space patterns of the district, in form and siting; (4) locally significant features of the site such as distinctive buildings or sight lines of vistas from within the district, shall be integrated into the site design; (5) the

from the R-1 zone to the SMVDD on November 6, 2015. (Return of Record [ROR], Item 4.) Notice of the decision was published in the Newtown Bee on November 13, 2015. (ROR, Item 5.)

The appeal was commenced on or around November 20, 2015. On March 31, 2016, the commission filed the return of record. The plaintiff filed its brief on May 2, 2016, NERP and the commission filed their briefs on June 6, 2016, and Buxton and Mead filed their brief on June 8, 2016. On July 27, 2016, NERP filed an answer and the appeal was heard.

II

General Statutes § 8-8 (b), in relevant part, provides that "any 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 . . . ." General Statutes § 8-8 (a) (1) defines "aggrieved person" as "a person aggrieved by a decision of a board" and "includes any person owning land in this state

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landscape design shall complement the district's landscape patterns; (6) the exterior signs, site lighting and accessory structures shall support a uniform architectural theme if such a theme exists and be compatible with their surroundings; and (7) the scale, proportions, massing and detailing of any proposed building shall be in proportion to the scale, proportion, massing and detailing in the district.

"(d) All applications for new construction and substantial reconstruction within the district and in view from public roadways shall be subject to review and recommendation by an architect or architectural firm, landscape architect, or planner who is a member of the American Institute of Certified Planners selected and contracted by the commission and designated as the village district consultant for such application. Alternatively, the commission may designate as the village district consultant for such application an architectural review board whose members shall include at least one architect, landscape architect or planner who is a member of the American Institute of Certified Planners. . . ."

that abuts or is within a radius of one hundred feet of any portion of the land involved in the decision of the board."

Before this court, a deed was produced that indicates that the plaintiff has owned 111 South Main Street since August 1, 2001. (Exhibit 1.) Additionally, all counsel agreed that the plaintiff's property is within 100 feet of 116 South Main Street. Accordingly, this court found that the plaintiff is aggrieved. General Statutes § 8-8 (a) (1) and (b).

III

"We have often articulated the proper, limited scope of judicial review of a decision of a local zoning commission when it acts in a legislative capacity by amending zoning regulations. [T]he commission, acting in a legislative capacity, [has] broad authority to adopt the amendments. . . . In such circumstances, it is not the function of the court to retry the case. Conclusions reached by the commission must be upheld by the trial court if they are reasonably supported by the record. The credibility of the witnesses and the determination of issues of fact are matters solely within the province of the agency. The question is not whether the trial court would have reached the same conclusion but whether the record before the agency supports the decision reached. . . . Acting in such legislative capacity, the local board is free to amend its regulations whenever time, experience, and responsible planning for contemporary or future conditions reasonably indicate the need for a change. . . . The discretion of a legislative body, because of its constituted role as formulator of public policy, is much broader than that of an

administrative board, which serves a quasi-judicial function. . . . This legislative discretion is 'wide and liberal,' and must not be disturbed by the courts unless the party aggrieved by that decision establishes that the commission acted arbitrarily or illegally. . . . Zoning must be sufficiently flexible to meet the demands of increased population and evolutionary changes in such fields as architecture, transportation, and redevelopment. . . . The responsibility for meeting these demands rests, under our law, with the reasoned discretion of each municipality acting through its duly authorized zoning commission. Courts will not interfere with these local legislative decisions unless the action taken is clearly contrary to law or in abuse of discretion. . . . Within these broad parameters, [t]he test of the action of the commission is twofold: (1) The zone change must be in accord with a comprehensive plan, General Statutes § 8-2 . . . and (2) it must be reasonably related to the normal police power purposes enumerated in § 8-2." (Citations omitted; internal quotation marks omitted.) *Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc.* v. *Planning & Zoning Commission*, 220 Conn. 527, 542-44, 600 A.2d 757 (1991). "[T]he plaintiffs bear the burden of establishing that [legislative body] acted improperly." *Konigsberg* v. *Board of Aldermen*, 283 Conn. 553, 930 A.2d 1 (2007).

"In rezoning the property in question, the commission acted as a legislative body. . . . We have said on many occasions that courts cannot substitute their judgment for the wide and liberal discretion vested in local zoning authorities when they have acted within their prescribed legislative powers. . . . The courts allow zoning authorities this discretion in determining the

public need and the means of meeting it, because the local authority lives close to the circumstances and conditions which create the problem and shape the solution. . . . Courts, therefore, must not disturb the decision of a zoning commission unless the party aggrieved by that decision establishes that the commission acted arbitrarily or illegally." (Citations omitted; internal quotation marks omitted.) *First Hartford Realty Corporation* v. *Plan & Zoning Commission*, 165 Conn. 533, 540-41, 338 A.2d 490 (1973).

"Where a zoning agency has stated its reasons for its actions, the court should determine only whether the assigned grounds are reasonably supported by the record and whether they are pertinent to the considerations which the authority was required to apply under the zoning regulations. . . . The zone change must be sustained if even one of the stated reasons is sufficient to support it. . . . The principle that a court should confine its review to the reasons given by a zoning agency does not apply to any utterances, however incomplete, by the members of the agency subsequent to their vote. It applies where the agency has rendered a formal, official, collective statement of reasons for its action. . . . We have also stated, however, that the failure of the zoning agency to give such reasons requires the court to search the entire record to find a basis for the commission's decision." (Citations omitted; internal quotation marks omitted.) *Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc.* v. *Planning & Zoning Commission*, supra, 220 Conn. 544.

IV

A

Buxton and Mead's 8.2 acre property that NERP proposes to develop is approximately 50 percent wetlands in the rear of the lot. (ROR, Item 7, p. 2; Item 19, p. 5.) The property is on the west side of South Main Street in the R-1 zone and contains a house built in 1810 in the lot's northeasterly corner. (ROR, Item 18; Item 19, pp. 4-5.) Although presently unoccupied, the house was once a wayside inn[3]; (ROR, Item 18; Item 19, p. 39); and is now listed on the historic resources inventory compiled by the Connecticut historic commission. (ROR, Item 18; Item 19,

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[3] In the Connecticut historical commission historic resources inventory building and structures report, the house was described as follows: "*Architectural significance*: This building is significant as an extant, largely intact example of an early nineteenth century dwelling. This house is also important for its former use as an inn and for its contribution to the historic character of Newtown.

"*Historical significance*: The street card lists the construction of this house as 1810. The current owner gives it a building date of 1812. An 1854 map of Newtown lists the name I. Middlebrook with this building. An 1867 map gives the name Mrs. Middlebrook. The owner states that a 1914 postcard depicting this house had written on the back, 'Originally the Middlebrook Inn.'" (ROR, Item 18.)

Additionally, a work from 1917, entitled "Newtown's History and Historian Ezra Levan Johnson," described the property as follows: "The Bridgeport and Newtown turnpike, incorporated in 1801, so increased travel along the line from New Milford to Bridgeport, that the need of another inn within Newtown limits on the south led Robert Middlebrook of Trumbull to buy a 50 acre farm on which a large house had just been erected, that seemed just the building and the location for a wayside inn. A spacious front yard, well filled with young maple trees, added to its attractiveness, and it was not long before the Middlebrook Inn became as popular as any hostelry in Fairfield county. Within 17 miles of Bridgeport, belated travelers from either direction found it a matter of convenience to stop over. . . . The house is still standing and in all respects the same architecture as when built, but the maple trees of more than a century's growth begin to show decay." (ROR, Item 18.)

p. 41.) The properties across the street are zoned commercial including the plaintiff's property, which is zoned B-1 and contains a NAPA auto parts store and a florist. (ROR, Item 19, pp. 4-5.) NERP seeks to demolish the house and construct a 19,097 square foot retail store with a 15,053 square foot outside display area for a tenant, Tractor Supply Company. (ROR, Item 4; Items 7-8; Item 14.)

The SMVDD is an overlay zone on both sides of South Main Street[4] from the Monroe town line to the borough of Newtown.[5] (ROR, Item 16, pp. 147, 150.) According to Newtown's

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[4] According to the second page of Buxton and Mead's brief, the westerly side of South Main Street, running south, contains: "an automobile repair/truck storage facility, a combination office building/frozen yogurt emporium, another office building, a golf course, a residence, a pizza parlor, a pet grooming facility sharing space with a discount cigarette establishment, a real estate office and commercial establishment, (having a purpose unknown to this writer), a surveyor's office, an abandoned Greenhouse, a veterinary hospital, thence two residences, *the premises*, another residence, a pool supply establishment, thence two residences, an upholstery repair shop, thence three residences, a combination of retail space and apartment space, a coffee shop/tutorial facility, a bridal shop, a restaurant under construction, two or three residences, (it is difficult to tell through the vegetation and overgrowth), a sign shop, a fireplace insert store/gift shop, two residences, a yarn shop, something called 'Tumble Jumble,' a Shopping Center known as 'Sand Hill Plaza,' two more smaller shopping centers, a 'Drive In,' a granite supply facility, some residences and what appears to be an inactive concrete facility.

"The opposite side of the street is, for the most part, zoned for business and commercial use including property owned by the Plaintiff and located across the street from the subject premises." (Emphasis in original.)

Before this court, the plaintiff's counsel disputed this description as it was not in the record. The court did not make a viewing of the property, but notes that commission members may rely on their personal knowledge of the area involved in deciding a zone change application. *Blaker* v. *Planning & Zoning Commission*, 212 Conn. 471, 484, 562 A.2d 1093 (1989).

[5] According to pages seventeen and eighteen of NERP's brief, the borough of Newtown is the primary commercial center of Newtown and has its own zoning commission, zoning board of appeals and zoning regulations.

plan of conservation and development (POCD), the properties in the SMVDD are mixed uses. (ROR, Item 16, pp. 137, 148-49.)

NERP's proposal concerns only the commission's legislative actions of amending the regulations to establish the SDD4 and changing the zone from R-1 to SMVDD. (ROR, Items 6-7.) Under § 6.06.440 of the regulations, the approval of a SDD "shall be construed to amend these Regulations."[6] (ROR, Item 21, p. VI-6-2.) NERP did not and was not required to submit a request for a special exception with the specific details of the project at the time. Specifically, § 6.06.510 provides: "After the approval of the application and schematic plans, the applicant shall file detailed plans for review by the Commission showing the details of the proposed development as fully as possible and including elevations and perspectives of proposed construction." (ROR, Item 21, p. VI-6-2.) NERP's proposed text amendment and drawings gave, however, a general picture of the facility. (ROR, Items 7-8; Item 15.)

Over sixty people signed a petition in opposition to the proposal, but the petition was rejected by the commission at the public hearing for certain irregularities. (ROR, Item 19,

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[6] In full, § 6.06.440 provides: "Upon specific findings that each of the objectives stated within Section 2.02.100 will be met, the Commission may approve by 4/5 majority vote the establishment of a Special Development District as described in the application and as may be modified by the Commission and such approval shall be construed to amend these Regulations insofar (and only insofar) as specific deletions, additions and changes are made which are related to the land and structures in the tract, and the tract shall be designated as a separate Special Development District provided that the requirements of Subsection 6.06.500 below are met." (ROR, Item 21, p. VI-6-2.)

pp. 35, 48-49.) Also at the public hearing, residents spoke both in favor of and in opposition to the proposal. (ROR, Item 6; Item 19, pp. 28-36.)

The plaintiff argues that the commission's decision to approve NERP's proposal (1) is inconsistent with the POCD; (2) fails to conform to article II, § 2 of the regulations because tearing down the existing structure does not "protect the distinctive character, landscape and historic structures within the district" or "maintain and enhance the unique character of South Main Street including the residential and natural characteristics"; (3) fails to conform to article VI, § 6 of the regulations as the commission "abused its discretion in hearing an essentially blank application"; and (4) constitutes spot zoning. The commission and the defendants maintain that the proposals are consistent with the POCD and, to the extent they can be at this stage, with both articles II and VI of the regulations and do not constitute spot zoning.

General Statutes § 8-2j (f), in relevant part, provides: "If a commission grants or denies an application, it shall state upon the record the reasons for its decision. . . ." The commission failed to provide a collective reason for its action. Therefore, the court has searched the record to determine the basis of the commission's decision. See *Smith-Groh, Inc.* v. *Planning & Zoning Commission*, 78 Conn. App. 216, 227, 826 A.2d 249 (2003) ("we must consider this case under the well settled principle of judicial review of zoning decisions that where the commission has failed to state its reasons, the court is obligated to search the record for a basis for its action" [internal quotation marks omitted]).

B

The plaintiff first argues that NERP's proposal is inconsistent with the POCD. General Statutes § 8-2 (a), in relevant part, provides that "in adopting [zoning] regulations the commission shall consider the plan of conservation and development prepared under section 8-23. . . ." Under General Statutes § 8-23 (e) (1) (A), a POCD is adopted by the commission, in its planning capacity, as "a statement of policies, goals and standards for the physical and economic development of the municipality. . . ." The POCD has long been held to be "merely advisory so far as zoning is concerned." *First Hartford Realty Corporation* v. *Plan & Zoning Commission*, supra, 165 Conn. 542; see also *Levinsky* v. *Zoning Commission*, 144 Conn. 117, 123, 127 A.2d 822 (1956) ("Under the general law it does not control the zoning commission on its enactment of zoning regulations. When the zoning commission acts under the general law, the master plan is merely advisory."). Thus, the POCD is not controlling.

Nevertheless, § 6.06.220 of the regulations provides that "[t]o be eligible under this section, the proposed Special Development District (SDD) must be . . . in accordance with the Newtown Plan of Conservation and Development as amended, and other applicable plans adopted by the Commission." (ROR, Item 21, p. VI-6-1.) Newtown's POCD sets forth several goals and serves many purposes. It addresses the SMVDD in section five describing its "History" as follows: "The [SMVDD] was created in 2007 as an overlay zone along South Main Street . . . to enhance opportunities for adaptive reuse of existing residential structures and to

provide for limited infill development that will not generate large volumes of vehicular trips along Newtown's main transportation corridor appropriate to the location and scale of any particular site. Such opportunities are intended to maintain and enhance the unique small town New England character of South Main Street including the residential and natural characteristics that define the corridor, provide economic development, limit the scale and type of uses that will be allowed, encourage historic preservation, limit the amount of traffic that will be generated and to control traffic access by limiting the number, size and location of driveways onto South Main Street." (ROR, Item 16, p. 147.)

Demolition of a structure that was once an historic inn is counter to the POCD goal of encouraging historic preservation, but it is only one facet of the POCD. Among other things, the POCD also strives to provide economic development in a controlled manner by limiting the scale and type of uses that will be allowed and the amount of traffic generated[7] while protecting natural resources and maintaining and enhancing the unique small town, New England character of South Main Street. (ROR, Item 16, p. 147.) At the public hearing, the commission's chairperson, Robert Mulholland, noted, "very specifically we said in the Design District – provide economic development, limited to the scale of the environment. Ok, I mean that's not one of the things that was highlighted by uh the opposing attorney, but uh, that is what's in our

[7] There are no issues with traffic according to the traffic report which stated that "[t]he anticipated minor increase in traffic volume due to the proposed project can be accommodated on the adjacent roadway network." (ROR, Item 14, p. 3.)

plan of Conservation and Development. This is the type of Economic Development that we are trying to encourage." (ROR, Item 19, p. 63.) Additionally, the POCD notes that "[p]roper development, even large scale development, can complement the overall character of the SMVDD corridor provided it is designed sensitively and the architecture complements the desired character of the corridor." (ROR, Item 16, p. 149.) The POCD further states, "Since the creation of the SMVDD, three (3) applications for a Special Design District (SDD) have been approved. One involved adaptive reuse of a Victorian home and the other two were for commercial establishments: one a single use within a single building and the other a multi-use, multi-building commercial facility. These three (3) SDDs illustrate the diversity that can be achieved within the SMVDD." (ROR, Item 16, p. 148.) In the commission's approval, it found, consistent with General Statutes § 8-3 (b), its regulations and the POCD, that the plaintiff's proposal is "consistent with the purpose and intent of the Town of Newtown Plan of Conservation and Development." (ROR, Item 19, p. 65.)

"[B]oth the text amendment to the zoning ordinance and the zoning change in the map amendment constitute decisions of the [commission] acting in its legislative capacity." *Konigsberg* v. *Board of Aldermen*, supra, 283 Conn. 581. "The standard of review according to which courts must analyze challenges to legislative decisions of local zoning authorities is well settled. In such circumstances, it is not the function of the court to retry the case. Conclusions reached by the [zoning authority] must be upheld by the trial court if they are reasonably

supported by the record. The credibility of the witnesses and the determination of issues of fact are matters solely within the province of the agency. . . . The question is not whether the trial court would have reached the same conclusion, but whether the record before the agency supports the decision reached." (Internal quotation marks omitted.) *Gaida* v. *Planning & Zoning Commission*, 108 Conn. App. 19, 31-32, 947 A.2d 361, cert denied, 289 Conn. 922, 958 A.2d 150 (2008). In deciding a zone change application, commission members may rely on their personal knowledge of the area involved. *Blaker* v. *Planning & Zoning Commission*, 212 Conn. 471, 484, 562 A.2d 1093 (1989).

In the present case, the record indicates that the application approved by the commission was actually the seventh version as the matter had been reviewed by Newtown land use officials for some period of time. (ROR, Item 19, p. 60.) Additionally, there was extensive discussion at the public hearing concerning the unique status of the SDD that would require zone change approval for most modifications. (ROR, Item 19, pp. 60-62.) Indeed, uses in the new district are more restrictive than those allowed in the B-2 zone. (ROR, Item 19, p. 9.) Concerning the process, Mulholland remarked "this is a twostep process then so we've got two chances to be sure that what's being done fits with the environment and also fits with the economic desires of the town." (ROR, Item 19, pp. 63-64.) Moreover, some residents supported the proposal noting that they needed a place to purchase farming equipment. (ROR, Item 19, pp. 33-34, 50.) Hence, the record reasonably supports the commission's legislative determination under its regulations

that the proposal was not inconsistent with the POCD. See *Gaida* v. *Planning & Zoning Commission,* supra, 108 Conn. App. 31-32.

The plaintiff's next argues that the proposal fails to conform to article II, § 2 of the regulations because tearing down the existing structure would not "protect the distinctive character, landscape and historic structures within the district" or "maintain and enhance the unique character of South Main Street including the residential and natural characteristics." Section 2.02.100 provides: "The purpose of the South Main Village Design District (SMVDD) is to establish an overlay zone that identifies the district and provides regulations and design guidelines that will serve to protect the distinctive character, landscape and historic structures within the South Main Street corridor.

"The intent of the SMVDD is to help guide development along South Main Street in ways that will:

"protect the distinctive character, landscape and historic structures within the district,

"be appropriate to the location and scale of any particular site, "maintain and enhance the unique character of South Main Street including the residential and natural characteristics,

"encourage the conservation and preservation of architecturally significant or historic buildings in a manner that maintains the distinctive character of the district,

"provide for compatible economic development,

" manage the amount of traffic that will be generated,

"control traffic access by limiting the number, size and location of driveways onto South Main Street, and

"promote the sharing of parking and other amenities."[8] (ROR, Item 21, pp. II-2-1.)

Under this regulation, the commission has the discretion, based upon the evidence in the record, to determine whether the proposal will meet all of the requirements of § 2.02.100 including whether it would be "appropriate to the location and scale of [this] site" and "maintain and enhance the unique character of South Main Street including the residential and natural characteristics."[9] Similar to the POCD, historic preservation is just one purpose among others in

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[8] Additionally, § 2.02.430 provides: "All development in the district shall be designed to achieve the following compatibility objectives:
"(a) The building and layout of buildings and included site improvements shall reinforce existing buildings and streetscape patterns and the placement of buildings and included site improvements shall assure there is no adverse impact on the district;
"(b) proposed streets shall be connected to the existing district road network, wherever possible;
"(c) open spaces within the proposed development shall reinforce open space patterns of the district, in form and siting;
"(d) locally significant features of the site such as distinctive buildings, historic buildings, historic factors or sight lines of vistas from within the district, shall be integrated into the site design;
"(e) the landscape design shall complement the district's landscape patterns;
"(f) the exterior signs, site lighting and accessory structures shall support a uniform architectural theme if such a theme exists and be compatible with their surroundings; and
"(g) the scale, proportions, massing and detailing of any proposed building shall be in proportion to the scale, proportion, massing and detailing in the district." (ROR, Item 21, p. II-2-3.)

[9] "[Z]oning regulations are local legislative enactments . . . and, therefore, their interpretation is governed by the same principles that apply to the construction of statutes. . . . Moreover, regulations must be interpreted in accordance with the principle that a reasonable and rational result was intended. . . . The process of statutory interpretation involves the determination of the meaning of the statutory language [or in this case, the relevant zoning regulation] as applied to

§ 2.02.100. The commission has also interpreted the regulation to allow for commercial uses. (ROR, Item 16, p. 148.) While the specific details of the proposal will be reviewed during the next phase under §§ 2.02.210 and 6.06.500 of the regulations, an agricultural supply store does not seem to violate § 2.02.100. Furthermore, the court cannot substitute its judgment for the wide and liberal discretion vested in the commission. See *First Hartford Realty Corporation* v. *Plan & Zoning Commission*, supra, 165 Conn. 540.

The plaintiff next asserts that the commission failed to comply with article VI of the regulations in that the "application completely failed to indicate what zone change was sought, which regulations were implicated, and that the defendant desired to create a Special Development District." In addition to the actual application form, NERP's proposed text amendment and drawings gave a picture of the proposed facility. (ROR, Items 7-8.) As the plaintiff acknowledges, it is "within the discretionary power of the commission to proceed on the application with the supporting material as submitted." See *Woodburn* v. *Conservation Commission*, 37 Conn. App. 166, 179, 655 A.2d 764, cert. denied 233 Conn. 906, 657 A.2d 645 (1995). Furthermore, § 6.06.510 provides "[a]fter the approval of the application and schematic

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the facts of the case, including the question of whether the language does so apply. . . .

"Whenever possible, the language of zoning regulations will be construed so that no clause is deemed superfluous, void or insignificant. . . . The regulations must be interpreted so as to reconcile their provisions and make them operative so far as possible. . . . When more than one construction is possible, we adopt the one that renders the enactment effective and workable and reject any that might lead to unreasonable or bizarre results." (Internal quotation marks omitted.) *Kraiza* v. *Planning & Zoning Commission*, 304 Conn. 447, 453-54, 41 A.3d 258 (2012).

plans, the applicant shall file detailed plans for review by the Commission showing the details of the proposed development as fully as possible and including elevations and perspectives of proposed construction." (ROR, Item 21, p. IV-6-2.) Indeed, the commission had various supporting documents noting this two step regulatory process. (ROR, Item 19, p. 64.) Therefore, the court cannot hold that the commission failed to comply with the regulations in considering NERP's proposal.

The plaintiff's last argument is that the commission's decision constitutes spot zoning. "Spot zoning had been defined as the reclassification of a small area of land in such a manner as to disturb the tenor of the surrounding neighborhood. . . . Two elements must be satisfied before spot zoning can be said to exist. First, the zone change must concern a small area of land. Second, the change must be out of harmony with the comprehensive plan for zoning adopted to serve the needs of the community as a whole. . . . The vice of spot zoning lies in the fact that it singles out for special treatment a lot or a small area in a way that does not further such a [comprehensive] plan." (Internal quotation marks omitted.) *Gaida* v. *Planning & Zoning Commission*, supra, 108 Conn. App. 32. "[T]he ultimate test is whether, upon the facts and circumstances before the zoning authority, the extension is, primarily, an orderly development of an existing district which serves a public need in a reasonable way or whether it is an attempt to accommodate an individual property owner." (Internal quotation marks omitted.) Id., 33.

NERP notes in its brief that at eight acres, SDD4 is a little smaller than the SDD of Highland Plaza and larger than the SDDs of Walgreens and 84 South Main Street. Whether it is small or not is, of course, subjective, but it must be examined from the perspective of the SMVDD and not simply as the change of zone from residence to business. See *Campion* v. *Board of Aldermen*, 278 Conn. 500, 531-32, 899 A.2d 542 (2006) ("We previously have concluded that a parcel of land as small as 2.5 acres was not so small that it properly could not be considered a separate zone. . . . The [applicant's] application for a planned development district pertains to a parcel that is more than four acres in size. Furthermore, in the present case the board of aldermen specifically concluded that the new zone was in conformance with the city's comprehensive plan and that the planned development district would benefit the community as a whole. The courts must be cautious about disturbing the decisions of a local legislative zoning body familiar with the circumstances of community concern." [Citation omitted; internal quotation marks omitted.]).

The second characteristic of spot zoning is that the designated parcel must be out of harmony with the comprehensive plan for the community as a whole. *Gaida* v. *Planning & Zoning Commission*, supra, 108 Conn. App. 32. In *Campion* v. *Board Of Aldermen,* supra, 278 Conn. 517-18, the court stated, "In sum, like a floating zone, a planned development district alters the zone boundaries of the area by carving a new zone out of an existing one, and, consequently, represents a legitimate legislative act by the city to regulate growth and meet the

need for flexibility in modern zoning ordinances."[10] (Internal quotation marks omitted.) The court added, "The fact that the application pertains to one individual landowner's parcel of property is irrelevant. In short, rather than requiring uniformity with bordering zoning districts, the uniformity requirement . . . requires only that a planned development district be uniform within itself." Id., 523-24; see also R. Fuller, 9 Connecticut Practice Series: Land Use Law and Practice (4th Ed. 2015) § 4:8, p. 80 ("[t]he spot zoning concept has become obsolete because the size of the parcel involved in a zone change is immaterial if the commission's action meets the

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[10] Indeed, the court both compared and distinguished planned development districts from a floating zone: "[W]e acknowledge that a floating zone differs from a planned development district in certain respects. We conclude, however, that these differences are largely procedural in nature and are not significant enough to invalidate planned development districts that derive their authority from the city's 1925 Special Act. For example, a floating zone is approved in two discrete steps–first, the zone is created in the form of a text amendment, but without connection to a particular parcel of property–and second, the zone is later landed on a particular property through a zoning map amendment. In short, with respect to floating zones, development plans for specific properties within a district are approved separately from the zoning map amendment. Planned development districts . . . however, combine into a single step the approval of a zoning map amendment and a general development plan for the district. This procedural discrepancy does not change the fact that both floating zones and planned development districts have the effect of alter[ing] the zone boundaries of [an] area by carving a new zone out of an existing one." (Internal quotation marks omitted.) Id., 518-19.

Campion relied on *Sheridan* v. *Planning Board*, 159 Conn. 1, 266 A.2d 396 (1969), which approved the legislative creation of floating zones. In *Sheridan*, the court stated, "Unlike the special exception, when a zoning board grants an application requesting it to apply a floating zone to a particular property, it alters the zone boundaries of the area by carving a new zone out of an existing one. . . . This legislative function meets the need for flexibility in modern zoning ordinances since the exact location of the new zone is left for future determination, as the demand develops, and applications are granted which meet all conditions specified by the board. . . . Thus, a floating zone provides more control over changes than does the granting of special exceptions, as noted above, with no greater likelihood of creating incompatible uses, and with no less forewarning than precedes the granting of a special exception." (Citations omitted.) Id., 17.

two part test for a zone change: (1) the zone change is in accordance with the comprehensive plan, and (2) it is reasonably related to the normal police power purposes in General Statutes 8-2").

In the present case, the existing SMVDD overlay zone encourages the creation of the SDD for the plaintiff's development and the commission made a legislative determination that this new SDD furthers the comprehensive plan. As to police powers under § 8-2, the statute enumerates "convenience" and "health and general welfare"[11] among other things as considerations for the commission. The commission also heard testimony from residents regarding the need for a store selling farm equipment to the local farmers. (ROR, Item 19, pp. 33-34.) The commission's action is reasonably related to its police powers and does not constitute spot zoning. See *Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc.* v. *Planning & Zoning Commission*, supra, 220 Conn. 544.

As to a legislative decision by the commission, "[i]t is the rare case in which the legislative judgment of what is beneficial to the community can be superseded by that of the judiciary." *Ghent* v. *Zoning Commission*, 220 Conn 584, 601, 600 A.2d 1010 (1991). Moreover, "zoning must be sufficiently flexible to meet the demands of increased population and

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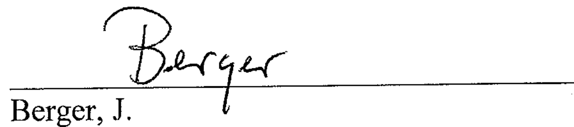
[11] The promotion of health and welfare is also listed as a purpose of the regulations in article I, § 1. (ROR, Item 21, p. I-1-1.)

evolutionary changes in such fields as . . . redevelopment."[12] (Internal quotation marks omitted.) *Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc.* v. *Planning & Zoning Commission*, supra, 220 Conn. 543.

For the above reasons, the court cannot conclude based on the record that the plaintiff has sustained its burden to prove that commission acted outside of its legislative discretion in approving the defendants' zone change and text amendment. Thus, the plaintiff's appeal is dismissed.



Berger, J.

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[12] More to the point, the planned development district is one measure which has been utilized to counter the inflexibility created by single use Euclidean zoning. See *Campion* v. *Board of Aldermen*, supra, 278 Conn. 529 ("Euclidean zoning is a fairly static and rigid form of zoning . . . . The term Euclidean zoning describes the early zoning concept of separating incompatible land uses through the establishment of fixed legislative rules . . . . Euclid[e]an zoning is designed to achieve stability in land use planning and zoning and to be a comparatively inflexible, self-executing mechanism which, once in place, allows for little modification beyond self-contained procedures for predetermined exceptions or variances." [Internal quotation marks omitted.]).