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August 10, 2023

VIA HAND DELIVERY AND EMAIL TO M. LIPE at Michele.Lipe@southwindsor-ct.gov

Chair Bart Pacekonis, and Planning and Zoning Commission Members
Town of South Windsor
1540 Sullivan Avenue
South Windsor, CT 06074

Michele Lipe, Town Planner
Town of South Windsor
1540 Sullivan Avenue
South Windsor, CT 06074

Re: **Application of Metro Realty for Rezoning of 240 Deming Street and part of 440 Buckland Road**

Dear Chair Pacekonis, Commission Members, and Ms. Lipe:

We are writing on behalf of Metro Realty to address three "petitions" filed with the Commission at the public hearing on July 25, 2023: (1) a petition to disqualify Commissioner Alan Cavagnaro on the asserted basis of "predetermination"; (2) an environmental intervention petition filed under General Statutes § 22a-19 by Margaret Glover, Paul Pasqualoni, and Loc Pho; and (3) a so-called "protest petition," ostensibly prepared under General Statutes § 8-3(b), aiming to require a two-thirds supermajority vote to approve the zone change.

Each of these petitions is factually and legally deficient, as explained below:

Section § 22a-19 intervention petitions

The application before the Commission is to rezone five acres of land. There is no site plan application at this time.

General Statutes § 22a-19 allows intervention when a proceeding or action for judicial review "involves *conduct* which has, or which is reasonably likely to have, the effect of unreasonably polluting, impairing or destroying the public trust in the air, water, or other natural resources of the state" (emphasis added).

The Connecticut Supreme Court has held that *a zone change application, by itself, does not involve "conduct" that would cause pollution,* and therefore § 22a-19 cannot be used to intervene in a zone change petition. A zone change is a mere reclassification of land. "Conduct" only occurs when an applicant seeks a permit the granting of which will allow some form of physical construction. That is not the case here. *See e.g., Pond View, LLC v. Planning and Zoning Commission of Town of Monroe*, 288 Conn. 143 (2008) (copy attached at Tab 1). This Pond View holding was reaffirmed in *Douglas v. Planning and Zoning Commission of Town of Watertown*, 127 Conn. App. 87 (2011) (copy attached at Tab 1). *At pages 158-160, the Court held that a zone change is a procedural issue, and therefore not "conduct" covered by § 22a-19.* Thus, the § 22a-19 interventions are invalid, because they are premature.

Protest Petition

General Statutes § 8-3(b) requires a protest petition to be signed by the owners of 20 percent of the land within 500 feet of the land proposed for rezoning. As shown on the attached analysis prepared by SLR Consulting and Metro Realty (Tab 2), there are 35.817 acres within 500 feet of the perimeter of the land proposed for rezoning. Twenty percent is 7.16 acres. Those who signed the petition (Tab 3) own only 5.56 of the 35.817 acres, which is 15.5 percent. The petition on its face is deficient.

Commissioner Cavagnaro

The standard for disqualification of a land use commissioner based on predetermination is that the commission has made one or more statements, orally or in writing, demonstrating that he/she had determined how to vote on the pending application prior to the public hearing. *See R. Fuller, Connecticut Land Use Law and Practice* § 47.2 (2011 and 2023 online update), citing *Simko v. Ervin,* 234 Conn. 498, 508 (1995). In addition, our courts have held that "The law does not require that members of zoning commission must have no opinion concerning the proper development of their communities. It would be strange, indeed, if this were true," citing *Cioffoletti v. Planning and Zoning Comm.*, 209 Conn. 544, 555 (1989).

Here, the petition seeking disqualification is based solely on Commission Cavagnaro's membership in a statewide organization that advocates for affordable housing, not any statement he has made before the current public hearing, predicting or indicating how he would vote on Metro Realty's application. Thus, the petition lacks the very type of evidence that our courts have held is necessary to show disqualifying predetermination.

The three petitions must be denied. Thank you for your attention.

Very truly yours,

Timothy S. Hollister

TSH:afz
Enclosure

cc: Attorney John Parks
Metro Realty
SLR Consulting

Tab 1

288 Conn. 143
Supreme Court of Connecticut.

POND VIEW, LLC
v.
PLANNING AND ZONING COMMISSION
OF the TOWN OF MONROE et al.

No. 17878.
|
Argued April 23, 2008.
|
Decided July 29, 2008.

Synopsis

Background: Landowner appealed from town planning and zoning commission which denied landowner's application for a zone change and special exception permit for its property in order to develop shopping center. The Superior Court, Judicial District of Fairfield, Howard T. Owens, Jr., Judge Trial Referee, sustained in part and remanded. Environmental intervenors who had filed petition in protest with the commission filed petition for certification to appeal. The Appellate Court granted certification, and the Supreme Court transferred the appeal.

Holdings: The Supreme Court, At, J., held that:

[1] challenged procedural issues were not within scope of statute;

[2] zoning changes did not result in any environmental harm as required for standing; and

[3] protest petition did not confer statutory standing on intervenors.

Appeal dismissed.

Procedural Posture(s): On Appeal.

West Headnotes (12)

[1] **Zoning and Planning** Right of review and parties

Town planning and zoning commission did not join in environmental intervenors' petition for certification to appeal from the trial court's judgment or file its own petition for certification, although it filed an appellate brief and participated in oral argument before the Supreme Court in support of the position of the intervenors, and thus commission was not an appellant in the appeal to the Supreme Court and the Supreme Court would not consider its contentions regarding the propriety of the trial court's judgment.

2 Cases that cite this headnote

[2] **Zoning and Planning** Further Review

While zoning appeals from the Superior Court may proceed only upon a grant of certification by the Appellate Court, they are subject to the same jurisdictional prerequisites as other appeals from the Superior Court. C.G.S.A. § 52–263.

[3] **Action** Persons entitled to sue

If a party is found to lack standing, the court is without subject matter jurisdiction to determine the cause.

6 Cases that cite this headnote

[4] **Courts** Determination of questions of jurisdiction in general

A determination regarding a trial court's subject matter jurisdiction is a question of law.

8 Cases that cite this headnote

[5] **Appeal and Error** Plenary, free, or independent review

When the trial court draws conclusions of law, review is plenary and the Supreme Court, must

decide whether its conclusions are legally and logically correct and find support in the facts that appear in the record.

5 Cases that cite this headnote

[6] **Action** Persons entitled to sue

Two broad yet distinct categories of aggrievement exist for standing purposes, classical and statutory.

50 Cases that cite this headnote

[7] **Action** Persons entitled to sue

Classical aggrievement requires a two part showing to demonstrate standing; first, a party must demonstrate a specific, personal and legal interest in the subject matter of the controversy, as opposed to a general interest that all members of the community share, and second, the party must also show that the alleged conduct has specially and injuriously affected that specific personal or legal interest.

26 Cases that cite this headnote

[8] **Action** Persons entitled to sue

Statutory aggrievement exists by legislative fiat, not by judicial analysis of the particular facts of the case; in other words, in cases of statutory aggrievement, particular legislation grants standing to those who claim injury to an interest protected by that legislation.

70 Cases that cite this headnote

[9] **Zoning and Planning** Right of review and parties

Issue of whether trial court could review town planning and zoning commission's decision to determine whether it was supported by substantial evidence despite environmental intervenors' protest petition, along with trial court's treatment of zoning statute's supermajority and notice provisions, were procedural issues rather than environmental issues within scope of environmental intervenor statute, and thus intervenors did not have standing as statutorily aggrieved parties to appeal trial court's determination that commission's decision denying application for a zone change was arbitrary and void. C.G.S.A. § 22a–19.

16 Cases that cite this headnote

[10] **Zoning and Planning** Right of review and parties

Zoning changes did not result in any environmental harm to the "air, water or other natural resources of the state" as required for environmental intervenors to have standing as statutorily aggrieved persons to appeal merits of trial court decision that planning and zoning commission's decision denying application for a zone change in order to construct shopping center was arbitrary and void; alleged environmental harms all stemmed from proposed construction under a site plan application and special exception permit, which were the subject of a separate appeal. C.G.S.A. § 22a–19.

6 Cases that cite this headnote

[11] **Zoning and Planning** Right of review and parties

Protest petition which environmental intervenors filed with town planning and zoning commission did not confer statutory standing on intervenors as aggrieved parties to pursue appeal of trial court's determination that commission's decision denying application for zoning change was arbitrary and void; although filing of the petition required commission to approve the application only by a supermajority, commission automatically denied the application because a supermajority had not voted for it, and trial court concluded in essence that a supermajority should have voted for it, none of those actions caused damage to any interest that intervenors may have had to have a supermajority approve the zone change. C.G.S.A. § 8–3(b).

5 Cases that cite this headnote

[12] **Zoning and Planning** Number of votes required

The filing of a valid protest petition permits a planning and zoning commission to approve an application for a zone change only by a supermajority. C.G.S.A. § 8–3(b).

2 Cases that cite this headnote

Attorneys and Law Firms

**2 Frank B. Cochran, New Haven, for the appellants (defendant Elizabeth Murphy et al.).

Christopher J. Smith, with whom was Beth Bryan Critton, Hartford, for the appellee (plaintiff).

Frederick J. Martin, town attorney, Monroe, for the appellee (named defendant).

NORCOTT, KATZ, PALMER, VERTEFEUILLE and ZARELLA, Js.

Opinion

KATZ, J.

[1] *145 The defendants Elizabeth Murphy and Sally Lundy, environmental intervenors **3 (intervenors) [1] pursuant to General Statutes § 22a–19(a), [2] appeal, following the Appellate Court's grant of certification, from the judgment of the trial court sustaining the appeal of the plaintiff, Pond View, LLC, from the decision of the *146 named defendant, the planning and zoning commission of the town of Monroe (commission), denying the plaintiff's application for a zone change. On appeal to this court, [3] the intervenors contend, inter alia, that, when reviewing the commission's decision, the trial court failed to take into account the effect of a valid protest petition filed with the commission pursuant to General Statutes 8–3(b). [4] The plaintiff responds that the intervenors lack standing to bring this appeal because they have failed to raise any environmental issues in accordance with § 22a–19(a). [5] We agree with the plaintiff that the intervenors lack standing, and, therefore, we lack jurisdiction to consider their appeal.

The record reflects the following undisputed facts and procedural history. The plaintiff owns a parcel of land in the town of Monroe (town), approximately one acre of which falls within a DB–2 business and commercial zone, and approximately seventeen acres of which *147 fall within a residential zone. The one acre within the business and commercial zone abuts Main Street, which is state highway Route 25, where many of the businesses in the town are clustered. On or about November 16, 2004, relative to a proposed retail development project to build a shopping center, the plaintiff filed a combined application with the commission for: (1) a design district zone change to designate the entire parcel as a DB–1 business and commercial zone; and (2) a special exception permit **4 for approval of the site plan of its shopping center project, as required under the town's zoning regulations. [6]

Notice of the public hearing on the combined application, which was set to begin on December 1, 2004, was published on or about November 19, 2004. Prior to the start of the commission's hearing on the plaintiff's combined application, the intervenors filed a pleading to intervene in the proceedings pursuant to § 22a–19(a). The intervenors' verified pleading alleged that: (1) the proposed site development plan for the shopping center would destroy forested steep hillside; (2) the proposed roads, loading docks and parking areas associated with the project significantly would impact natural resources, including air, water and other resources; (3) the construction and operation of the project negatively would impact downstream wetland and watercourse resources; (4) the proposed large septic systems in the site plan would pollute downgradient water resources; and (5) the excavation and site work would produce major erosion, sedimentation and pollution *148 discharges into the air and water that are beyond the ability of an erosion control system to prevent.

On December 1 and 2, 2004, the commission held hearings on the combined application, at which time the plaintiff presented supporting expert evidence. The intervenors filed a petition in protest of the plaintiff's application pursuant to § 8–3(b), which was signed by approximately forty individuals who owned property near the plaintiff's property. On March 3, 2005, the commission voted on the application. Susan Scholler, vice chairman of the commission, submitted a written motion setting forth specific reasons to deny the application for a zone change, essentially contending that it represented too great a change from the existing zoning and would have too great an impact on a neighborhood that

residents expected to be residential, not commercial.[7] Her motion was not seconded and therefore failed. Commission member John Epifano then moved to grant the application for the zone change, which was seconded, and the commission thereafter voted three to two to grant the plaintiff's application for a zone change. Both Scholler's and Epifano's motions noted that the intervenors had filed a protest petition in accordance with § 8–3(b). Because § 8–3(b) requires a two-thirds vote to approve an application when it has been opposed by a valid protest petition, however, the commission deemed the three to two vote insufficient, and ***149** accordingly "automatically" denied ****5** the plaintiff's application for failing to receive the four requisite votes. As a result of its denial of the zone change application, the commission denied as moot the plaintiff's application for a special exception permit for approval of its site development plan.

Pursuant to General Statutes § 8–8, the plaintiff appealed from the commission's decision to the Superior Court. The plaintiff served notice of its appeal on the intervenors and stated in its complaint to the trial court: "[Murphy and Lundy] ... may, within their discretion, be [i]ntervenors to this appeal as provided by [§] 22a–19...." The intervenors filed an answer to the plaintiff's complaint in which they "aver[red] that they were properly named as defending parties because they circulated the protest [petition]" and raised a special defense that the "plaintiff has abandoned the plan to construct a shopping center in a residential zone." Thereafter, the intervenors filed their brief on the merits of the appeal, but did not file a motion to be made parties, pursuant to General Statutes § 52–102(1)[8] and Practice Book § 9–6. Prior to the commencement of oral argument on the merits of the appeal, the plaintiff filed a motion to strike the intervenors' brief on the ground that the intervenors had raised issues that were outside of the scope of those permitted pursuant to § 22a–19.

The trial court held hearings and thereafter issued a memorandum of decision sustaining the plaintiff's appeal from the denial of its application for a zone ***150** change.[9] The trial court concluded that the record did not support the commission's decision to deny the plaintiff's application. The trial court determined, in light of the record, that Scholler's motion setting forth specific reasons to deny the plaintiff's application; see footnote 7 of this opinion; "adequately represent[ed]" the commission's reasons for denying the application. The court concluded, however, that there was no evidence in the record to support these reasons and that the concerns raised by the surrounding landowners, while reasonable, were unsubstantiated.

Specifically, the court concluded that the record supported the view that the zone change satisfied the requirements of *Harris v. Zoning Commission*, 259 Conn. 402, 417, 788 A.2d 1239 (2002), in that it was: (1) in accordance with the town's comprehensive plan; and (2) reasonably related to the normal police power purposes enumerated in General Statutes § 8–2. For guidance in applying the town's comprehensive plan, the court looked to the town's zoning regulations and their requirements for commercial zones, and to the town's 2000 plan for conservation and development. The trial court noted that the town's plan for conservation and development revealed an intent to encourage incremental development of businesses and industry to expand tax revenue, particularly along ****6** Routes 25 and 111, but that major expansions were disfavored, specifically because of limited access to highways and "lack of public water and/or sewers in certain areas."

In concluding that the plaintiff had proffered sufficient evidence in support of its application, the trial court relied on the following evidence. The town's ***151** inland wetlands commission conditionally had approved the proposed development prior to the commission's decision, and the plaintiff had received favorable approval from other town officials and agencies. The plaintiff also had proffered reports, studies and testimony from experts in support of its application for both the zone change and the site plan application that addressed and reported favorably on various concerns relative to the town's comprehensive plan and the impact on adjacent property owners, including environmental concerns. Accordingly, the court concluded that the commission's decision denying the plaintiff's application for a zone change was arbitrary and void. Because the commission had not reached the merits of the plaintiff's application for the special exception permit regarding the site development plan, the court did not consider that issue and remanded the case to the commission to address that application.

In a footnote in its memorandum of decision, the trial court stated that it was denying the plaintiff's motion to strike the intervenors' brief, noting that all but one of the issues raised by the intervenors also had been raised by the commission. The only allegation raised solely by the intervenors was a challenge to the commission's lack of jurisdiction on the basis

of the plaintiff's failure to file notice of the zone change ten days in advance of the hearing in violation of § 8–3(a). The court stated that it nonetheless would consider the § 8–3(a) argument "[f]or the sake of completeness" and because it implicated the commission's jurisdiction. The court rejected the intervenors' contention regarding § 8–3(a) as meritless, however, because the statute referred to calendar days and not business days, and therefore the filing of the notice was timely. The trial court did not draw any conclusion as to whether the arguments raised by the intervenors in their brief properly were within the scope of § 22a–19(a), nor did the ***152** trial court address expressly how the intervenors' protest petition figured into its determinations.

Thereafter, the intervenors filed a motion for reargument with the trial court in which they contended that the trial court had failed to rule on a dispositive issue: whether "a decision to deny [a zone change application], required by § 8–3(b), may nonetheless be invalidated as arbitrary, capricious or illegal." Over the plaintiff's objection, the court granted the intervenors' motion and held oral argument, but subsequently reaffirmed its earlier decision. Following this decision by the court, the commission did not seek permission to appeal. The intervenors, however, filed a petition for certification to appeal to the Appellate Court pursuant to General Statutes § 8–9, which the plaintiff opposed on the ground that the intervenors did not have standing. The Appellate Court ultimately granted the intervenors' petition for certification.

While the intervenors' petition for certification was pending, the following additional events occurred relevant to this case. After the trial court's decision approving the zone change, the commission, on or about September 21, 2006, voted four to one to approve the plaintiff's application for a special exception permit, which would allow the plaintiff to build the shopping center in accordance with its site plan. On or about December 5, 2006, the intervenors ****7** filed an appeal from that decision to the Superior Court. In that appeal, the intervenors, along with two other individuals, Jeffrey Zimnoch and Hannah Zimnoch, alleged in their complaint that Murphy, Jeffrey Zimnoch and Hannah Zimnoch were statutorily aggrieved pursuant to General Statutes § 8–8(a) because they owned property within 100 feet of the plaintiff's property, and that Lundy was "classically aggrieved by being subjected to dust, noise, ***153** potential loss of her well and other nuisances...." [10] They also alleged standing under General Statutes §§ 8–3(b), 22a–16 and 22a–19(a). In that appeal, the intervenors alleged that the decision of the commission to grant the special permit exception was "arbitrary, illegal, without support and procedurally improper...." That appeal currently is pending before the Superior Court.

In the present appeal before this court, the intervenors raise five claims of impropriety by the trial court. The intervenors first contend that the trial court failed to apply the correct standard of review for the denial of a zone change when a valid protest petition has been filed pursuant to § 8–3(b). Second, the intervenors contend that, contrary to the trial court's conclusion, the record of the administrative proceedings "overwhelmingly" supports the commission's decision to deny the plaintiff's application for a zone change. Third, they contend that the trial court failed to consider the effect of the protest petition on the commission's decision, and fourth, absent a finding that the protest petition was invalid, the court failed to sustain the decision on that ground. Finally, the intervenors contend that the plaintiff failed to comply with the requirements of § 8–3(a) because it did not file "the precise boundaries of the area proposed for a change" with the town clerk's office ten business days before the hearing on the application.

[2] The plaintiff responds that the intervenors lack standing to bring this appeal because they have failed to raise any of the environmental issues within the scope of § 22a–19 and because they never made a motion to be made parties. In the event that this court determines ***154** that the intervenors do have standing, the plaintiff contends that the trial court reviewed its claim under the appropriate standard of review and properly determined that the commission's decision was arbitrary and capricious. We conclude that the intervenors lack standing. [11]

I

We begin with the plaintiff's contention that this court lacks subject matter jurisdiction ****8** because the intervenors have raised only procedural issues and therefore do not have standing to bring this appeal as environmental intervenors pursuant to § 22a–19. Specifically, the plaintiff contends that the zone change itself does not involve "conduct" that may be analyzed for its unreasonable pollution effects on the air, water or other natural resources. Rather, it is the plaintiff's site specific development proposal presented via

its application for a special exception permit that involves the actual conduct that ultimately and allegedly could have unreasonable environmental effects. Thus, it contends that the proper forum for these § 22a–19 intervenors is the proceeding relating to the commission's later grant of the special exception permit, the appeal from which currently is pending before the Superior Court. The intervenors *155 respond that they have standing to bring their claims under § 22a–19 because concerns related to the preservation of natural resources underlying the town's plan of conservation and development provided a basis for the commission's denial of the proposed zone change and thus bring the issues in this appeal within the scope of that statute. We agree with the plaintiff.

[3] [4] [5] "We begin with some well settled principles regarding standing and its aggrievement component, as recently reaffirmed in *Windels v. Environmental Protection Commission*, 284 Conn. 268, 287–89, 933 A.2d 256 (2007). If a party is found to lack standing, the court is without subject matter jurisdiction to determine the cause.... A determination regarding a trial court's subject matter jurisdiction is a question of law. When ... the trial court draws conclusions of law, our 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....

"Standing is not a technical rule intended to keep aggrieved parties out of court; nor is it a test of substantive rights. Rather it is a practical concept designed to ensure that courts and parties are not vexed by suits brought to vindicate nonjusticiable interests and that judicial decisions which may affect the rights of others are forged in hot controversy, with each view fairly and vigorously represented.... These two objectives are ordinarily held to have been met when a complainant makes a colorable claim of direct injury he has suffered or is likely to suffer, in an individual or representative capacity. Such a personal stake in the outcome of the controversy ... provides the requisite assurance of concrete adverseness and diligent advocacy.... The requirement of directness between the injuries claimed by the plaintiff and the conduct of the defendant also is expressed, in our standing jurisprudence, by the focus *156 on whether the plaintiff is the proper party to assert the claim at issue....

[6] [7] "Two broad yet distinct categories of aggrievement exist, classical and statutory.... Classical aggrievement requires a two part showing. First, a party must demonstrate a specific, personal and legal interest in the subject matter of the [controversy], as opposed to a general interest that all members of the community share.... Second, the party must also show that the [alleged conduct] has specially and injuriously affected that specific personal or legal interest....

[8] "Statutory aggrievement exists by legislative fiat, not by judicial analysis of the particular facts of the case. In other words, in cases of statutory aggrievement, particular legislation grants standing to those who claim injury to an interest protected by that legislation." (Internal quotation marks omitted.) *Andross v. West* **9 *Hartford*, 285 Conn. 309, 321–22, 939 A.2d 1146 (2008).

The statute that the intervenors in the present case claim grants them standing, § 22a–19(a), provides: "In any administrative, licensing or other proceeding, and in any judicial review thereof made available by law, the Attorney General, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity may intervene as a party on the filing of a verified pleading asserting that the proceeding or action for judicial review involves *conduct* which has, or which is reasonably likely to have, the effect of unreasonably polluting, impairing or destroying the public trust in the air, water or other natural resources of the state." (Emphasis added.)

On the basis of this expansive language, we previously have concluded that § 22a–19 confers standing on a broad range of individuals, entities and government *157 agencies to intervene in both administrative proceedings and subsequent "judicial review" thereof on appeal.[12] *AvalonBay Communities, Inc. v. Zoning Commission*, 280 Conn. 405, 413–14, 908 A.2d 1033 (2006); *Red Hill Coalition v. Town Plan & Zoning Commission*, 212 Conn. 727, 733–34, 563 A.2d 1347 (1989). We also consistently have acknowledged, however, that an intervenor's standing pursuant to § 22a–19 strictly is limited to challenging only environmental issues covered by the statute and "only those environmental concerns that are within the jurisdiction of the particular administrative agency conducting the proceeding into which the party seeks to intervene." *Nizzardo v. State Traffic Commission*, 259 Conn. 131, 148, 788 A.2d 1158 (2002); accord *Rocque v. Northeast Utilities Service Co.*, 254 Conn. 78, 85, 755 A.2d 196 (2000) (intervention under § 22a–19 "strictly limited to the raising of environmental

issues" [internal quotation marks omitted]); *Mystic Marinelife Aquarium, Inc. v. Gill,* 175 Conn. 483, 490, 499–500, 400 A.2d 726 (1978) (concluding that intervenor that has filed verified pleading at administrative level pursuant to § 22a–19 has standing to appeal on basis of that pleading "limited to ... environmental issues only"); *Belford v. New Haven,* 170 Conn. 46, 54, 364 A.2d 194 (1975) ("[t]he [Environmental Protection Act of 1971, General Statutes § 22a–14 et seq.] does ***158** not ... confer standing upon individuals to challenge legislative decisions of a municipality which do not directly threaten the public trust in the air, water and other natural resources of this state").

[9] In the present case, there can be little doubt that the intervenors are persons who legally may intervene in an administrative proceeding and appeal therefrom under § 22a–19(a), for the statute grants that power to "any" individual. ****10** Nor is there any debate that the intervenors properly filed a pleading with the commission containing the requisite specific allegations that the proposed site development plan would cause certain adverse environmental impacts on the "air, water or other natural resources...." *Red Hill Coalition, Inc. v. Town Plan & Zoning Commission,* supra, 212 Conn. at 733–34, 563 A.2d 1347 (§ 22a–19[a] grants individuals standing to intervene before planning and zoning commissions as matter of right, "once a verified pleading is filed complying with the statute, whether or not those allegations ultimately prove to be unfounded"). The sole question then is whether the issues that the intervenors ask us to decide in the present appeal are those properly within the scope of the statute.

Although they have raised five claims in their brief, the primary issues that emerge on appeal concern the trial court's standard of review, its treatment of the supermajority provision in § 8–3(b), and its construction of the notice provision in § 8–3(a). Specifically, the intervenors challenge the trial court's determination that it could review the commission's decision to determine whether the decision was supported by substantial evidence, *despite* their protest petition, which the court did not conclude was invalid. They submit that the proper standard of review is that "denial of a proposal to change the zone of property could be considered arbitrary only if it was counter to law or unsupported by any of the applicable statutory principles of zoning."

***159** It is clear that these issues are not environmental issues traditionally within the scope of § 22a–19. The issues related to § 8–3 raise questions of construction of a zoning statute of general application, and the issue of the standard of review is one of appellate procedure in an administrative appeal. The intervenors have cited no case, and we have found none, in which this court has permitted environmental intervenors to raise purely procedural issues when the only basis for standing that they have alleged is § 22a–19. Although this court never expressly has concluded that standing under § 22a–19 does not include standing to raise any related procedural issues, it is axiomatic that the statute encompasses substantive environmental issues only, and the court repeatedly has declined to consider whether procedural issues are covered.[13] See, e.g., *Rocque v. Northeast Utilities Service Co.,* supra, 254 Conn. at 80, 85–86, 755 A.2d 196 (stating first that § 22a–19 is limited to environmental issues, and declining to decide question of whether fraud and collusion in settlement between state and nuclear power plant over dumping of contaminated wastewater from plant constituted environmental issue because claim was meritless); *Gardiner v. Conservation Commission,* 222 Conn. 98, 106–107, 608 A.2d 672 (1992) (declining to consider abstract claim that § 22a–19 permits standing to raise nonenvironmental claims that bear "inextricable nexus" to environmental issues).[14] The ****11** cases wherein we have permitted standing ***160** under § 22a–19 have involved circumstances in which the *conduct* at issue in the application before this court allegedly would cause direct harm to the environment. See, e.g., *Red Hill Coalition, Inc. v. Town Plan & Zoning Commission,* supra, 212 Conn. at 730–33, 563 A.2d 1347 (intervention pursuant to § 22a–19 on ground that proposed development of land "would result in the irreversible elimination of major portions of prime agricultural land" was proper but agricultural land ultimately determined not "natural resource" within meaning of statute [internal quotation marks omitted]); *Mystic Marinelife Aquarium, Inc. v. Gill,* supra, 175 Conn. at 485, 490, 400 A.2d 726 (appeal from approval of permit to construct floating dock and other structures along river that would harm environment); see also *Fort Trumbull Conservancy, LLC v. New London,* 282 Conn. 791, 805–808, 925 A.2d 292 (2007) (concluding [1] that development plan itself constituted conduct that could cause harm to environment within the meaning of § 22a–16, and [2] that allegation of violation of "technical or procedural requirements" does not

give rise to claim of unreasonable pollution for purposes of standing under § 22a–16).

[10] To the extent that the intervenors challenge the merits of the trial court's decision—i.e., the propriety of its determination that all of the evidence supported the plaintiff's position that the development resulting from the proposed zone change would be consistent with the town's comprehensive development plan—that challenge relates to the *special exception permit* application that is the subject of the appeal currently pending before the Superior Court. In other words, any environmental harm to the "air, water or other natural ***161** resources of the state" necessarily would result from the plaintiff's conduct in actually developing the property, not from the zone change at issue in this appeal. Indeed, it is evident from the allegations in the intervenors' complaint that the alleged environmental harms all stem from the site plan application for the construction of the shopping center. Therefore, to the extent that the intervenors want to challenge the environmental impacts of the construction of the shopping center and related procedural issues that are within the commission's jurisdiction to consider, the proper forum for such challenges is their appeal from the commission's decision granting the plaintiff's special exception permit or, more specifically, approving the site plan. It is this application that actually involves the "conduct" by the plaintiff—i.e., the construction of a shopping center—that might lead to adverse environmental impacts that standing pursuant to § 22a–19 is meant to guard against.

II

[11] The intervenors also claim to have standing by virtue of having filed the protest petition in accordance with § 8–3(b), which, they contend, created a personal and legal interest in, and made them "indispensable" parties to, the present action. We disagree.

[12] That statute provides in relevant part: "If a protest against a proposed change is filed at or before a hearing with the zoning commission, signed by the owners of twenty percent or more of the area ****12** of the lots included in such proposed change or of the lots within five hundred feet in all directions of the property included in the proposed change, such change shall not be adopted except by a vote of two-thirds of all the members of the commission...." General Statutes § 8–3(b). As the text clearly indicates, the filing of a valid protest petition permits a planning and zoning commission to ***162** approve an application for a zone change only by a supermajority. Thus, the only interest of the intervenors that the statute protected was their right to force a supermajority vote on the zone change. See *Blaker v. Planning & Zoning Commission*, 212 Conn. 471, 475–76, 562 A.2d 1093 (1989) (reviewing plaintiff's appeal from zoning commission's decision granting applicant's zone change on basis that commission approved zoning application by less than supermajority despite plaintiff's § 8–3[b] protest petition), on appeal after remand, 219 Conn. 139, 592 A.2d 155 (1991). In the present case, the commission complied with the provisions of § 8–3(b) when it automatically denied the application because a supermajority had not voted in favor of it. The trial court, however, concluded that the decision of some members to deny the application was not supported by substantial evidence, and therefore, in essence, determined that a supermajority *should* have voted to grant the application. None of these actions caused damage to any interest that the intervenors may have had under the statute to have a supermajority approve the zone change, and thus they are not aggrieved.[15] See *AvalonBay Communities, Inc. v. Orange*, 256 Conn. 557, 568, 775 A.2d 284 (2001) ("The fundamental test for determining aggrievement encompasses a well-settled twofold determination: first, the party claiming aggrievement must successfully demonstrate a specific, personal and legal interest in [the subject matter of the challenged action], as distinguished from a general interest, such as is the concern of all members of the ***163** community as a whole. Second, the party claiming aggrievement must successfully establish that this specific personal and legal interest has been specially and injuriously affected by the [challenged action]." [Internal quotation marks omitted.]).[16]

Because the intervenors have not alleged and proved any basis other than § 22a–19(a) for standing in this action, we are without jurisdiction to hear their appeal. ****13** Accordingly, we do not reach the merits of their claims.

The appeal is dismissed.

In this opinion the other justices concurred.

All Citations

288 Conn. 143, 953 A.2d 1

Footnotes

1 Although we refer to Murphy and Lundy jointly as the intervenors, where necessary, we refer to them individually by name.

2 General Statutes § 22a–19(a) provides: "In any administrative, licensing or other proceeding, and in any judicial review thereof made available by law, the Attorney General, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity may intervene as a party on the filing of a verified pleading asserting that the proceeding or action for judicial review involves conduct which has, or which is reasonably likely to have, the effect of unreasonably polluting, impairing or destroying the public trust in the air, water or other natural resources of the state."

3 We transferred the appeal from the Appellate Court to this court pursuant to General Statutes § 51–199(c) and Practice Book § 65–1.

4 General Statutes § 8–3(b) provides: "Such [zoning] regulations and boundaries [for zoning districts] shall be established, changed or repealed only by a majority vote of all the members of the zoning commission, except as otherwise provided in this chapter. In making its decision the commission shall take into consideration the plan of conservation and development, prepared pursuant to section 8–23, and shall state on the record its findings on consistency of the proposed establishment, change or repeal of such regulations and boundaries with such plan. If a protest against a proposed change is filed at or before a hearing with the zoning commission, signed by the owners of twenty per cent or more of the area of the lots included in such proposed change or of the lots within five hundred feet in all directions of the property included in the proposed change, such change shall not be adopted except by a vote of two-thirds of all the members of the commission."

5 The commission filed an appellate brief and participated in oral argument before this court in support of the position of the intervenors. Because, however, it did not join in the intervenors' petition for certification to appeal from the trial court's judgment or file its own petition for certification, the commission is not an appellant in the appeal to this court and we do not consider its contentions regarding the propriety of the trial court's judgment herein.

6 Section 117–1100 of the Monroe zoning regulations provides in relevant part: "A DB [Design Business] District shall be established and/or a DB use shall be permitted only in an area where the uses meet the conditions for a special exception permit, as provided in Sections 117–1801 and 117–1802.... Any new building to be constructed or any building not formerly a business shall be required to obtain a special exception permit for business use prior to its use. In addition the use will:

"(1) Have no significant detrimental impact on the environment...."

7 The specific reasons listed in Scholler's motion were: (1) the proposal is inconsistent with the plan for conservation and development; (2) the evidence and the testimony presented by the plaintiff do not make a case for rezoning according to General Statutes § 8–2; and (3) the plaintiff had not made a case for rezoning in light of the impacts on the adjoining properties; (4) "the existing character of the land and the degree of development impact to the area is inappropriate for a project of this magnitude"; (5) the establishment of a commercial zone would degrade the values of adjoining residential properties; (6)

questions exist regarding the public health and welfare, particularly in the areas of water supply, sewage disposal, traffic management, and levels of activity to adjoining properties; and (7) questions remain as to the impact on outlying local roads.

8 General Statutes § 52–102 provides: "Upon motion made by any party or nonparty to a civil action, the person named in the party's motion or the nonparty so moving, as the case may be, (1) may be made a party by the court if that person has or claims an interest in the controversy, or any part thereof, adverse to the plaintiff, or (2) shall be made a party by the court if that person is necessary for a complete determination or settlement of any question involved therein; provided no person who is immune from liability shall be made a defendant in the controversy."

9 We note that the intervenors filed a certification with the Appellate Court indicating that transcripts of the proceedings before the trial court were not necessary to the resolution of their appeal because the plaintiff's aggrievement was not at issue. Thus, the transcripts of the proceedings before the trial court are not part of the record in this appeal.

10 Although the intervenors' complaint in the other appeal now pending before the Superior Court avers that Murphy lives within 100 feet of the plaintiff's land, the intervenors have made no similar allegation in this appeal, and have not invoked standing under § 8–8.

11 Because we conclude that the intervenors lack standing to bring this appeal, we need not determine whether the trial court's ruling as to the zone change constitutes a final judgment on the "combined application" in light of the fact that the commission had not yet determined whether to grant the other portion of the application, namely, the special exception permit. See *State v. Salmon,* 250 Conn. 147, 162–63, 735 A.2d 333 (1999) (adopting "bright-line test requiring the appellant, in order to establish a right of appellate review pursuant to [General Statutes] § 52–263, to establish in the following sequence that: [1] it was a party to the underlying action; [2] it was aggrieved by the trial court decision; and [3] the appeal is from a final judgment"). While zoning appeals from the Superior Court may proceed only upon a grant of certification by the Appellate Court, they are subject to the same jurisdictional prerequisites as § 52–263 appeals. See *Kaufman v. Zoning Commission,* 232 Conn. 122, 129–30 and n. 7, 653 A.2d 798 (1995).

12 We previously have concluded that § 22a–19(a) does not create "the right to appeal from administrative matters that are not otherwise appealable." *Fort Trumbull Conservancy, LLC v. Planning & Zoning Commission,* 266 Conn. 338, 361, 832 A.2d 611 (2003). In this regard, we note that §§ 8–8 and 8–9 create the avenues for appeal to the Superior Court and Appellate Court respectively in the present case. Section 22a–19 governs the *scope* of issues that environmental intervenors have standing to raise when availing themselves of such avenues of appeal. Id., at 360–61, 832 A.2d 611; see also *Branhaven Plaza, LLC v. Inland Wetlands Commission,* 251 Conn. 269, 273–76 and n. 9, 740 A.2d 847 (1999) (certification to appeal pursuant to § 8–8 to raise issues within scope of § 22a–19 [a]); *Mystic Marinelife Aquarium, Inc. v. Gill,* 175 Conn. 483, 490, 400 A.2d 726 (1978) (having become proper party in administrative proceeding, intervenor had statutory standing to appeal for limited purpose of raising environmental issues).

13 The plaintiff relies on *Connecticut Coalition Against Millstone v. Connecticut Siting Council,* 286 Conn. 57, 83–85, 942 A.2d 345 (2008), wherein we dismissed as moot one intervenor's claim that he was aggrieved under the Uniform Administrative Procedure Act, General Statutes § 4–166 et seq., to raise a claim that two sitting council members had acted unethically because the trial court had dismissed that ethics claim on the merits after finding aggrievement under § 22a–19. We did not, however, review the trial court's conclusions

concerning aggrievement under § 22a–19 and, therefore, that case is not helpful to either the plaintiff or the intervenors.

14 Even if we were inclined to consider procedural issues that bear a nexus to substantive environmental concerns covered by § 22a–19, such as those related to § 8–3(a) and (b) in the present case, it is clear to us that no significant nexus exists between those issues and the environmental claims pleaded in the intervenors' verified complaint. Moreover, we fail to see how any of the procedural issues that the intervenors raise in the present case have prevented them from raising the environmental claims that they are permitted to raise under § 22a–19.

15 Indeed, if we were to conclude that § 8–3(b) afforded standing to appeal under these circumstances, such a construction would undermine § 8–8(a)(1), which authorizes aggrieved persons to appeal and which defines an "aggrieved person" as a person living within "one hundred feet of any portion of the land involved in the decision of the board." Because a § 8–3(b) petition may be signed by persons owning property within *five* hundred feet of a proposed change, the plaintiff's proposed construction would permit property owners that do not satisfy statutory aggrievement under § 8–8, which is intended to govern all zoning appeals, to appeal nonetheless.

16 We disagree with any contention by the intervenors that they were named in the plaintiff's complaint to the trial court as necessary defendants or as anything other than § 22a–19 intervenors. In addition, as we already have indicated, the environmental issues related to the special exception permit application were the only legal interests at stake for the intervenors in the appeal from the commission's decision. As the previous discussion herein should make clear, that interest is not sufficiently implicated in the present appeal. See also *Fox v. Zoning Board of Appeals,* 84 Conn.App. 628, 637, 854 A.2d 806 (2004) ("[i]t is well established that [m]ere status as a party or a participant in the proceedings below does not in and of itself constitute aggrievement for the purposes of appellate review" [internal quotation marks omitted]).

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127 Conn.App. 87
Appellate Court of Connecticut.

Sebastian DOUGLAS et al.
v.
PLANNING AND ZONING COMMISSION
OF the TOWN OF WATERTOWN.

No. 31626
|
Argued Oct. 19, 2010.
|
Decided March 8, 2011.

Synopsis

Background: Landowners appealed decision of town's zoning commission upholding zoning ordinance amendment that created a zone permitting retail and office development in an existing industrial zone. The Superior Court, Judicial District of Waterbury, Brunetti, J., dismissed landowners for lack of standing. Landowners appealed.

Holdings: The Appellate Court, Flynn, J., held that:

[1] owner of property that abutted or was within a radius of 100 feet of any portion of the zone was a statutorily "aggrieved person" with standing to challenge the amendment, and

[2] owners of property from other parts of town did not have standing under environmental protection statute to challenge the amendment.

Affirmed in part, and reversed in part, with directions.

Procedural Posture(s): On Appeal; Motion to Dismiss.

West Headnotes (14)

[1] **Action** Persons entitled to sue

If a party is found to lack standing, the court is without subject matter jurisdiction to determine the cause.

1 Case that cites this headnote

[2] **Appeal and Error** Subject-matter jurisdiction

Courts Determination of questions of jurisdiction in general

A determination regarding a trial court's subject matter jurisdiction is a question of law, and when the trial court draws conclusions of law, the Appellate Court's review is plenary and it must decide whether its conclusions are legally and logically correct and find support in the facts that appear in the record.

1 Case that cites this headnote

[3] **Courts** Jurisdiction of Cause of Action

Subject matter jurisdiction involves the authority of the court to adjudicate the type of controversy presented by the action before it.

1 Case that cites this headnote

[4] **Courts** Acts and proceedings without jurisdiction

A court lacks discretion to consider the merits of a case over which it is without jurisdiction.

1 Case that cites this headnote

[5] **Courts** Time of making objection

Courts Determination of questions of jurisdiction in general

The objection of want of jurisdiction may be made at any time and the court or tribunal may act on its own motion, and should do so when the lack of jurisdiction is called to its attention.

[6] **Courts** Waiver of Objections

Courts Time of making objection

The requirement of subject matter jurisdiction cannot be waived by any party and can be raised at any stage of the proceedings.

[7] **Action** ⇐ Persons entitled to sue

"Standing" is not a technical rule intended to keep aggrieved parties out of court, nor is it a test of substantive rights; rather it is a practical concept designed to ensure that courts and parties are not vexed by suits brought to vindicate nonjusticiable interests and that judicial decisions which may affect the rights of others are forged in hot controversy, with each view fairly and vigorously represented.

1 Case that cites this headnote

[8] **Zoning and Planning** ⇐ Modification or amendment

Text amendment to zoning regulation, which created a zone permitting retail and office development in an existing industrial zone, sufficiently defined the specific, limited geographic area to which the text amendment related, and, therefore, the new zoning district could not be considered a floating zone for standing purposes.

4 Cases that cite this headnote

[9] **Action** ⇐ Persons entitled to sue

Classical aggrievement for standing purposes encompasses twofold showing: first, party claiming aggrievement must successfully demonstrate specific personal and legal interest in subject matter of decision, as distinguished from general interest, such as is the concern of all community members as a whole, and second, party must successfully establish that the specific personal and legal interest has been specially and injuriously affected by the decision.

4 Cases that cite this headnote

[10] **Zoning and Planning** ⇐ Right of Review; Standing

Neither prong of twofold test for proving classical aggrievement for standing purposes must be shown by person allegedly aggrieved by a decision of a zoning board if the plaintiff is statutorily aggrieved. C.G.S.A. § 8–8(a)(1).

6 Cases that cite this headnote

[11] **Zoning and Planning** ⇐ Modification or amendment

Even if landowner was able to opt out of the text amendment to the zoning map permitting commercial uses in area of the municipality, which, prior to the amendment, allowed only industrial uses, owner was a statutorily "aggrieved party" with standing to challenge amendment to regulations, where owner's property abutted or was within a radius of 100 feet of any portion of defined, bounded zoning district to which text amendment pertained. C.G.S.A. § 8–8(a)(1).

4 Cases that cite this headnote

[12] **Environmental Law** ⇐ Other particular parties

An intervenor's standing pursuant to environmental protection statute allowing a person to intervene as a party to challenge administrative decision which is likely to cause unreasonable pollution is limited to challenging only environmental issues covered by the statute, and only those environmental concerns that are within the jurisdiction of the particular administrative agency conducting the proceeding into which the party seeks to intervene. C.G.S.A. § 22a–19.

4 Cases that cite this headnote

[13] **Environmental Law** ⇐ Other particular parties

Allegations of noncompliance with procedural requirements when zoning commission proceeded to add text amendment to zoning regulation permitting commercial uses in area of the municipality, which, prior to the amendment, allowed only industrial uses, did not give rise

to standing to challenge the commission's action pursuant to environmental protection statute allowing a person to intervene as a party to challenge administrative decision which is likely to cause unreasonable pollution. C.G.S.A. § 22a–19(a).

3 Cases that cite this headnote

[14] **Environmental Law** ⇐ Other particular parties

Zoning and Planning ⇐ Modification or amendment

Inclusion of environmental issues in the complaint by owners of land outside of affected zoning area did not per se provide owners with standing under environmental protection statute to challenge zoning commission's text amendment to zoning regulation permitting commercial uses in area of the municipality, which, prior to the amendment, allowed only industrial uses; zoning change was a legislative action which did not directly threaten the environment. C.G.S.A. § 22a–19.

1 Case that cites this headnote

Attorneys and Law Firms

**670 Marjorie Shansky, New Haven, for the appellants (plaintiffs).

Dov Braunstein, with whom, on the brief, was Paul R. Jessell, Watertown, for the appellee (defendant).

**671 DiPENTIMA, C.J., and LAVINE and FLYNN, Js.

Opinion

FLYNN, J.

*89 The plaintiff Jonathan Andrew and the intervening plaintiffs, Sebastian Douglas, Gloria Lynn, Elizabeth Wasiutynski, Bohdan Wasiutynski, Angela Maggi, Judith M. Wick and Glenn LaFreniere, appeal from the judgment of the trial court dismissing their challenge to the defendant Watertown planning and zoning commission's (commission) adoption of a text amendment to the Watertown zoning regulations (text amendment) to create a B–PCD262 zone permitting retail and office development in an existing industrial zone. The text amendment created what the trial court termed an "overlay zone," which, under specific circumstances and subject to specific preconditions detailed in the text amendment, affected the land bounded by Route 262, Turkey Brook, Echo Lake Road, Connecticut Route 8, and Frost Bridge Road, in Watertown. Andrew (landed plaintiff) appeals as an owner of land located within the newly created zoning district pursuant to General Statutes § 8–8(a)(1),[1] and the other seven plaintiffs (intervening plaintiffs) each filed verified petitions *90 to intervene in the administrative proceedings before the commission pursuant to General Statutes § 22a–19 (a). On appeal to this court, the landed plaintiff contends that the trial court erred in holding that he did not have standing to challenge the adoption of the text amendment establishing the new zoning district. The intervening plaintiffs contend, inter alia, that the trial court erred in holding that they did not have standing to appeal to the Superior Court from the decision of the commission adopting the new zoning district. We conclude that the trial court improperly dismissed the landed plaintiff's case and reverse the judgment in part with direction to restore the landed plaintiff's case to the docket. As to the intervening plaintiffs, we affirm the judgment of the trial court dismissing their intervening complaint.

The following facts are relevant to our analysis. The landed plaintiff owns land that abuts or is within a radius of 100 feet of the new zoning district, and the intervening plaintiffs own land elsewhere in the town of Watertown. The commission proposed a text amendment to article III —business districts of the Watertown zoning regulations to add a new Section 36 entitled "Draft November 8, 2008, Route 262 Planned Commercial District (B–PCD262)". See Watertown Zoning Regs., § 36. The text amendment added to the previously permitted industrial uses certain commercial uses for the development of "high quality retail and office development."[2] Section 36.2 of the Watertown **672 zoning regulations provides in relevant part that "[t]he outermost *91 boundaries of the overlay District are Route 262, Turkey Brook, Echo Lake Road, Route 8, and Frost Bridge Road," consisting of only approximately 150 acres.[3] After hearings, the commission enacted the text amendment on November 10, 2008, and published notice on November 13, 2008, in the newspaper.

The intervening plaintiffs and the landed plaintiff filed the original action, by verified complaint, on January 2, 2009.

The intervening plaintiffs were all recognized by the trial court as intervening petitioners during the zoning hearing pursuant to § 22a–19 (a). In their response to the motion to dismiss, the intervening plaintiffs claimed inadequacies in the special permit process *92 and that traffic volume will have a severe environmental impact and thus were aggrieved. The landed plaintiff claimed aggrievement because he is the owner of property that is within, abuts or is within a radius of 100 feet of the 150 acre area identified by the defendant for the overlay zone. All plaintiffs claimed aggrievement because the approval of the amendment was illegal, arbitrary, capricious, in abuse of the commission's discretion and in violation of its own regulations and applicable statutes. In response, the commission argued that the plaintiffs were not aggrieved and, thus, lacked standing to bring the case. The commission filed a motion to dismiss on February 6, 2009. The commission filed a reply to the plaintiffs' objection on March 26, 2009. The trial court, *Brunetti, J.*, granted the commission's motion to dismiss on July 21, 2009, by written memorandum of decision. This appeal followed.

[1] [2] We begin by setting forth the legal principles that govern our review. "If a party is found to lack standing, the court is without subject matter jurisdiction to determine the cause.... A determination **673 regarding a trial court's subject matter jurisdiction is a question of law. When ... the trial court draws conclusions of law, our 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....

[3] [4] [5] [6] "Subject matter jurisdiction involves the authority of the court to adjudicate the type of controversy presented by the action before it.... [A] court lacks discretion to consider the merits of a case over which it is without jurisdiction.... The objection of want of jurisdiction may be made at any time ... [a]nd the court or tribunal may act on its own motion, and should do so when the lack of jurisdiction is called to its attention.... The requirement of subject matter jurisdiction cannot be waived by any party and can be raised at any stage [of] the proceedings....

[7] *93 "Standing is not a technical rule intended to keep aggrieved parties out of court; nor is it a test of substantive rights. Rather it is a practical concept designed to ensure that courts and parties are not vexed by suits brought to vindicate nonjusticiable interests and that judicial decisions which may affect the rights of others are forged in hot controversy, with each view fairly and vigorously represented.... These two objectives are ordinarily held to have been met when a complainant makes a colorable claim of direct injury he has suffered or is likely to suffer, in an individual or representative capacity. Such a personal stake in the outcome of the controversy ... provides the requisite assurance of concrete adverseness and diligent advocacy.... The requirement of directness between the injuries claimed by the plaintiff and the conduct of the defendant also is expressed, in our standing jurisprudence, by the focus on whether the plaintiff is the proper party to assert the claim at issue." (Citations omitted; internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC v. Alves*, 262 Conn. 480, 485–86, 815 A.2d 1188 (2003).

I

We first address the judgment of dismissal as it relates only to the landed plaintiff. The landed plaintiff claims that the trial court erred in holding that he did not have standing to challenge the commission's adoption of the text amendment to the zoning regulations. Specifically, he argues that he is statutorily aggrieved under § 8–8(a)(1) because his land abuts or is within a radius of 100 feet of the area affected by the newly created overlay zone. In response, the commission argues that the landed plaintiff does not have standing because the text amendment created a floating zone. Specifically, the commission argues that the zone does not apply to any specific parcel of land, and, therefore, the landed plaintiff is not aggrieved. We agree with the landed plaintiff.

*94 We begin by addressing the defendant's claim that the text amendment created a floating zone.[4] By definition, a **674 floating zone does not apply to a specifically described parcel of land. *Campion v. Board of Aldermen*, 278 Conn. 500, 519, 899 A.2d 542 (2006). A floating zone "differs from the traditional 'Euclidean' zone [which has definite bounds] in that it has no defined boundaries and is said to 'float' over the entire area where it may eventually be established." *Schwartz v. Town Plan & Zoning Commission*, 168 Conn. 20, 22, 357 A.2d 495 (1975). In *Schwartz*, our Supreme Court held that the plaintiffs were not aggrieved by the enactment of floating zone regulations. Id., at 25–26, 357 A.2d 495. "At the time of [the commission's] adoption the new districts, designated regional, community, and neighborhood shopping center districts, did not affect any particular area or property within

the town." Id., at 22, 357 A.2d 495. In examining the *Schwartz* decision, this court in *Hayes Family Ltd. Partnership v. Planning & Zoning Commission*, 98 Conn.App. 213, 222 n. 9, 907 A.2d 1235 (2006), cert. denied, 281 Conn. 903, 904, 916 A.2d 44 (2007), concluded that *Schwartz* is distinguishable from cases in which the plaintiff can demonstrate that it, unlike the community as a whole, owned property likely to be affected by a particular regulation. Additionally, the *Hayes* court noted that there was no indication that the plaintiffs in *Schwartz* even owned property whose ***95** development potential was impacted directly by a specific provision in those regulations. Id. "Aggrievement does not demand certainty, only the possibility of an adverse effect on a legally protected interest." (Internal quotation marks omitted.) Id., at 222, 907 A.2d 1235. "Since the floating zone regulations establish a zone for a type of use with an *undetermined location,* the zone can technically be applied anywhere in the municipality. It can result in individual preferences and respond to development pressures rather than considering the best area for location of particular uses." (Emphasis added; internal quotation marks omitted.) *Campion v. Board of Aldermen*, supra, at 519, 899 A.2d 542.

The trial court held that the landed plaintiff was not aggrieved because no particular area was affected by the text amendment. The court, citing *Schwartz v. Town Plan & Zoning Commission*, supra, 168 Conn. at 23, 357 A.2d 495, reasoned that "there can be no aggrievement when the zoning regulations of a municipality are amended in such a way that no particular area or property is affected." (Internal quotation marks omitted.) In particular, under *Schwartz*, "[b]efore the floating zone can 'descend,' an application must be made for a change of zone and a public hearing must be held." *Schwartz v. Town Plan & Zoning Commission*, supra, at 24, 357 A.2d 495. The trial court also relied on a more recent case, *Harris v. Zoning Commission*, 259 Conn. 402, 788 A.2d 1239 (2002), in which our Supreme Court further explained that the aggrievement principle set forth in *Sheridan v. Planning Board*, 159 Conn. 1, 266 A.2d 396 (1969), "stands for the proposition that a prospective, personal and legal interest in the subject matter of a zoning commission's decision does not satisfy the first prong of the test for classical aggrievement." *Harris v. Zoning Commission*, supra, at 414 n. 12, 788 A.2d 1239.

[8] In the present case, the parcel of land subject to the commission's decision does not float over the entire ***96** community but has distinct geographical boundaries. The text amendment creates a new zoning district, which the plaintiffs refer to as the "Route 262 Planned Commercial District (B–PCD262)" for specific property bounded ****675** by Route 262, Turkey Brook, Echo Lake Road, Connecticut Route 8, and Frost Bridge Road in Watertown. The text amendment defines the specific geographical area to which it relates. The newly created B–PCD262 zoning district permits commercial uses in an IR–80 industrial zone. The text amendment applies to the otherwise industrially zoned area, and the commission identified the area "Route 262, Turkey Brook, Echo Lake Road, Route 8, and Frost Bridge Road" as the boundaries of the new zoning district in § 36.2 of the regulations titled "Overlay District Location." The parties do not dispute that the area has definite bounds. The area described is bounded on all sides and consists of only approximately 150 acres. Because this particular 150 acre area is affected by the commission's decision, the area affected has descended to a particular part of the town under the language set forth in *Schwartz*. We conclude that the text amendment sufficiently defined the specific, limited geographic area to which the text amendment related, and, therefore, the new zoning district cannot be considered a floating zone.

We next address the landed plaintiff's claim that he is statutorily aggrieved because he owns land that abuts or is within a radius of 100 feet of any portion of the land of the particular area to be affected by this newly created zoning district that permits certain commercial uses in an otherwise industrially zoned area. Section 8–8(a)(1), which governs planning and zoning commission appeals allows an appeal to be brought by an " 'aggrieved person' ... [and] includes any person owning land which abuts or is within a radius of one hundred feet of any portion of the land involved in the decision of the board." A person owning property within ***97** the designated distance of the land involved in the agency's decision is called "statutorily aggrieved" and has standing to appeal.

[9] **[10]** In *Light Rigging Co. v. Dept. of Public Utility Control*, 219 Conn. 168, 173, 592 A.2d 386 (1991), our Supreme Court held that classical aggrievement in an administrative appeal is established if there is a possibility, as distinguished from a certainty, that some legally protected interest has been affected by the action of a zoning authority. Statutory aggrievement, as opposed to classical

aggrievement, occurs when a landowner owns 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"; General Statutes § 8–8(a)(1); and the landowner appeals to the Superior Court. Citing *Harris v. Zoning Commission,* supra, 259 Conn. at 402, 788 A.2d 1239, the trial court held that the landed plaintiff had "not shown any aggrievement." However, in *Harris,* our Supreme Court dealt with classical aggrievement, not statutory aggrievement. See id., at 413–15 and 415 n. 15, 788 A.2d 1239. Classical aggrievement requires a twofold showing. "[F]irst, the party claiming aggrievement must successfully demonstrate a specific personal and legal interest in the subject matter of the decision, as distinguished from a general interest, such as is the concern of all the members of the community as a whole. Second, the party claiming aggrievement must successfully establish that the specific personal and legal interest has been specially and injuriously affected by the decision." (Internal quotation marks omitted.) Id., at 410, 788 A.2d 1239. Neither of these prongs must be proved if a plaintiff is statutorily aggrieved under § 8–8(a)(1).

In the present case, the trial court dismissed the case of all plaintiffs because they were not aggrieved. In the case of the landed plaintiff, the court dismissed his case for lack of aggrievement although it ****676** found that he owned land that abuts or is within a radius of 100 feet ***98** of the bounds the commission established as affected by its text amendment to the regulations permitting commercial uses in that area of the municipality, which, prior to the amendment, allowed only industrial uses.

[11] The trial court specifically found that "[i]n the present case, the landed plaintiff owns land in an area, which the commission added an overlay zone."[5] This finding is dispositive of our resolution of this claim. "Persons whose land falls within the statutory category need not prove aggrievement independent of their status of owners of property bearing the necessary relationship to property involved in the agency's action." R. Fuller, 9A Connecticut Practice Series: Land Use Law and Practice (2007) § 32.4, p. 147. Our decision in *Cole v. Planning & Zoning Commission,* 30 Conn.App. 511, 620 A.2d 1324 (1993), is analogous to the present case. In *Cole,* we held that pursuant to § 8–8(a)(1), the plaintiffs were aggrieved parties by virtue of their ownership of land within the zone to which the amendment at issue pertained.[6] Id., at 514–15, 620 A.2d 1324. The plaintiffs had appealed from ***99** a decision of the Cornwall planning and zoning commission that adopted an amendment to its regulations permitting the operation of a commercial sawmill in certain residential zones. Id., at 512, 620 A.2d 1324. The plaintiffs in *Cole* owned land within 100 feet of the property on which a permanent sawmill operation was intended to be established in accordance with the new regulation. Id., at 515, 620 A.2d 1324. The court found that the plaintiffs were aggrieved parties by virtue of their ownership of land within the zone to which the amendment pertained. Id. Their appeal, like the appeal in the present case, was from the adoption of the amendment to the regulations, not from the issuances of a permit and site plan approval for the actual use. Id., at 511, 620 A.2d 1324. The plaintiffs in *Cole* alleged that "[a] permanent sawmill [operation] was not permitted on said property under the original regulation but was permitted under the amended regulation." Id., at 515, 620 A.2d 1324. Similarly, the text amendment in the present case amended the existing bounded parcel of IR–80 industrial zoned property to permit certain new uses, particularly, "high quality retail and office development," and to exclude other certain enumerated commercial uses, e.g., Laundromats. In both cases, additional limitations to the text amendment were anticipated to be set forth in the permit process. In *Cole* ****677** and the present case, the use was prospective but then was permitted by the new regulation. We conclude, therefore, that the text amendment created a defined, bounded zoning district and that the landed plaintiff is statutorily aggrieved under § 8–8(a)(1) because his property falls within the particular zone to which the text amendment pertained.

The commission also argues that the landed plaintiff is not aggrieved because there has not been any change to the zoning map, nor have any zoning map change applications been filed. Additionally, the commission argues that further steps in the application process must ***100** be taken, such as submission and approval of a conceptual site plan filed in conjunction with a zoning map application, before the text amendment touches or impacts any parcel of land. Whether the zoning map has been changed or further steps in the application process will be taken is immaterial to our determination that the landed plaintiff is statutorily aggrieved. The area is no less bounded than if it were delineated on the zoning map. The landed plaintiff, as an owner of land within the newly created, bounded zoning district, the area to which the text amendment pertains, is an aggrieved party by virtue of §

8–8(a)(1). See *Cole v. Planning & Zoning Commission*, supra, 30 Conn.App. at 511, 620 A.2d 1324.

The commission also argues that the landed plaintiff is not aggrieved because a person owning land within the B–PCD262 zone is not required to join or to have his or her property included in the amendment to the zoning map. Whether a landowner may choose to have his or her property not included in the amendment to the zoning map, a future step in the process, is immaterial to our conclusion because the landed plaintiff is already statutorily aggrieved by virtue of owning land within the newly created B–PCD262 zone. The commission's argument erroneously presumes that the new zoning district is a floating zone. For the reasons stated earlier in this opinion, the newly created zoning district is not a floating zone because it has defined, definite bounds.

The text amendment created the new B–PCD262 zone, a new zoning district with specifically defined, definite bounds, which permits development that previously was not permitted. In its brief, the commission recognizes that the new text amendment permits development that was not permitted at all in the preexisting zone. Even if the landed plaintiff were somehow able to opt out of the amendment to the zoning map, he is no less statutorily aggrieved because his land still "abuts ***101** or is within a radius of one hundred feet of any portion of the land involved in the decision of the board." General Statutes § 8–8(a)(1). The landed plaintiff's decision to opt out does not affect whether his neighbors decide to opt out and, consequently, whether the lands of such adjoining property owners are still subject to the text amendment. The landed plaintiff, therefore, is no less of an abutter of some adjoining property owner who did not decide to opt out. "Statutory aggrievement exists by legislative fiat, which grants appellants standing by virtue of a particular legislation, rather than by judicial analysis of the particular facts of the case." (Internal quotation marks omitted.) *Cole v. Planning & Zoning Commission*, supra, 30 Conn.App. at 514–15, 620 A.2d 1324. The landed plaintiff only had to prove that he owns land that abuts or is within a radius of 100 feet of any portion of the land involved in the decision of the commission to have standing to appeal by legislative fiat. It was not necessary for the landed plaintiff to prove any specific aggrievement.

****678** The text amendment created a defined, bounded zoning district, and the landed plaintiff is statutorily aggrieved because his property falls within the particular zone to which the text amendment pertained. We conclude, therefore, that the trial court improperly dismissed the landed plaintiff's case and reverse the judgment in part, with direction to restore his case to the docket.

II

We next turn to the question as to whether the trial court properly dismissed the claims of the intervening plaintiffs.

The intervening plaintiffs claim that the court erred in holding that they did not have standing to challenge the conduct of the commission in adopting the text amendment. Specifically, the intervening plaintiffs ***102** argue that the commission illegally failed to follow regulations requiring it to submit an environmental impact statement in connection with the text amendment.

"We begin with some well settled principles regarding standing and its aggrievement component, as recently reaffirmed in *Windels v. Environmental Protection Commission*, 284 Conn. 268, 287–89, 933 A.2d 256 (2007). If a party is found to lack standing, the court is without subject matter jurisdiction to determine the cause.... A determination regarding a trial court's subject matter jurisdiction is a question of law. When ... the trial court draws conclusions of law, our 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.) *Pond View, LLC v. Planning & Zoning Commission*, 288 Conn. 143, 155, 953 A.2d 1 (2008).

The intervening plaintiffs intervened under § 22a–19 (a), which provides: "In any administrative, licensing or other proceeding, and in any judicial review thereof made available by law, the Attorney General, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity may intervene as a party on the filing of a verified pleading asserting that the proceeding or action for judicial review involves conduct which has, or which is reasonably likely to have, the effect of unreasonably polluting, impairing or destroying the public trust in the air, water or other natural resources of the state." General Statutes § 22a–19 (a).

[12] On the basis of this expansive language, our Supreme Court previously has concluded that § 22a–19 confers standing on a broad range of individuals, entities and ***103** government agencies to intervene in both administrative proceedings and subsequent "judicial review" thereof on appeal. See *AvalonBay Communities, Inc. v. Zoning Commission*, 280 Conn. 405, 413–14, 908 A.2d 1033 (2006); *Red Hill Coalition, Inc. v. Town Plan & Zoning Commission*, 212 Conn. 727, 733–34, 563 A.2d 1347 (1989). An intervenor's standing pursuant to § 22a–19 strictly is limited to challenging only environmental issues covered by the statute, and "only those environmental concerns that are within the jurisdiction of the particular administrative agency conducting the proceeding into which the party seeks to intervene." *Nizzardo v. State Traffic Commission*, 259 Conn. 131, 148, 788 A.2d 1158 (2002).

[13] In *Pond View, LLC v. Planning & Zoning Commission*, supra, 288 Conn. at 143, 953 A.2d 1, our Supreme Court reiterated its prior holding that intervening environmental plaintiffs have standing to intervene on environmental issues only. ****679** Id., at 157, 953 A.2d 1. The court held that a person seeking to intervene under § 22a–19 (a) must plead issues to be decided that fall within the ambit of the statute. Id., at 159, 953 A.2d 1. In the present case, the intervening plaintiffs set out numerous claimed irregularities in the manner in which the commission proceeded. These are set forth in paragraph 24(a) through (j), inclusive, of the complaint.[7] All of these subparagraphs set out procedural ***104** irregularities. Subparagraph (f) comes closest to the required environmental threshold in its claim that the commission voted on the amendment without "defensible standards and without standards protective of water quality, erosion and flooding." However, even paragraph 24(f) of the complaint is really a claim of lack of standards in the legislative adoption, thus making it "illegal, arbitrary, capricious, and in abuse of its discretion, and in violation of its own regulations and applicable state statutes." The *Pond View, LLC*, court made it clear that the issues that the intervenors ask to be decided must be those properly within the scope of the statute. *Pond View, LLC v. Planning & Zoning Commission*, supra, at 159, 953 A.2d 1. Claimed noncompliance with zoning statutes or zoning regulations are not within that scope. Allegations of noncompliance with procedural requirements do not give rise to standing to challenge the commission's action pursuant to § 22a–19 (a). See *Fort Trumbull Conservancy, LLC v. New London*, supra, 282 Conn. at 797–98, 925 A.2d 292 (plaintiff's claim that defendants failed to follow certain procedural requirements in adopting development plan insufficient to establish standing under General Statutes § 22a–16).

The intervening plaintiffs also argue that they have standing to appeal under § 22a–19 because of the reasonable likelihood of environmental harm as a result of the text amendment to the zoning regulations. In support, they argue that their allegations are distinguishable from those that undermined the plaintiffs' case in *Pond View, LLC*, a case on which the trial court relied in dismissing their complaint. We disagree with the intervening plaintiffs.

***105** In paragraph 22 of their complaint, the intervening plaintiffs allege various environmental issues, including poor water and air quality, that may arise as a result of the amendment to the zoning regulations.[8] Relying on our Supreme Court's ****680** holding in *Pond View, LLC*, the trial court found that the conduct of the commission, construed even in the light most favorable to the plaintiff, cannot be found to be harmful to the environment because the creation of an overlay zone is not conduct that causes environmental harm. "The cases wherein we have permitted standing under § 22a–19 have involved circumstances in which the *conduct* at issue in the application before this court allegedly would cause direct harm to the environment. See, e.g., ***106** *Red Hill Coalition, Inc. v. Town Plan & Zoning Commission*, supra, 212 Conn. [at] 730–33 [563 A.2d 1347] (intervention pursuant to § 22a–19 on ground that proposed development of land would result in the irreversible elimination of major portions of prime agricultural land was proper but agricultural land ultimately determined not natural resource within meaning of statute ...); *Mystic Marinelife Aquarium, Inc. v. Gill*, [175 Conn. 483, 485, 490, 400 A.2d 726 (1978)] (appeal from approval of permit to construct floating dock and other structures along river that would harm environment); see also *Fort Trumbull Conservancy, LLC v. New London*, [supra, 282 Conn. at 805–808, 925 A.2d 292] (concluding [1] that development plan itself constituted conduct that could cause harm to environment within the meaning of § 22a–16, and [2] that allegation of violation of technical or procedural requirements does not give rise to claim of unreasonable pollution for purposes of standing under § 22a–16)."[9] ****681** (Emphasis in original; ***107** internal quotation marks omitted.) *Pond View, LLC v.*

Planning & Zoning Commission, supra, 288 Conn. at 159–60, 953 A.2d 1. In *Pond View, LLC*, the commission argued, and the court agreed, that a zone change itself did not involve " 'conduct' " within the meaning of § 22a–19 that could be analyzed for its unreasonable pollution effects on air, water or other natural resources. Id., at 154–55, 953 A.2d 1.

[14] The intervening plaintiffs distinguish the intervenors' allegations in *Pond View, LLC*, on the ground that they were not environmental.[10] It is not necessary for us to address this argument because the distinction, if any, is immaterial to our conclusion. The inclusion of environmental issues in the complaint does not per se provide the intervening plaintiffs standing under § 22a–19 or allow them to avoid application of our court's holding in *Pond View, LLC*. The language in *Pond View, LLC*, clearly states that a zone change is a legislative action which does not directly threaten the environment. Id., at 157, 160–61, 953 A.2d 1. "[A]ny environmental harm to the 'air, water or other natural resources of the state' necessarily would result from the [commission's] conduct in actually developing the property, not from the zone change...." Id., at 160–61, 953 A.2d 1. The court in *Pond View, LLC*, further stated that the proper forum to challenge alleged environmental harm and related procedural issues under § 22a–19 was in an appeal from the commission's decision granting a special exception permit or, more specifically, approving the site plan. Id., at 161, 953 A.2d 1. "It is this application that actually involves the 'conduct' ... that might lead to adverse environmental impacts that standing pursuant to § 22a–19 is meant to guard against." *108 Id. For these reasons, as to the intervening plaintiffs, we affirm the judgment of the trial court.

We conclude that the trial court improperly dismissed the landed plaintiff's case and reverse the judgment in part, with direction to restore the landed plaintiff's case to the docket. As to the remaining plaintiffs, we affirm the judgment of the trial court dismissing their intervening complaints.

In this opinion the other judges concurred.

All Citations

127 Conn.App. 87, 13 A.3d 669

Footnotes

1 General Statutes § 8–8(a) provides in relevant part: "As used in this section: (1) 'Aggrieved person' means a person aggrieved by a decision of a board and includes any officer, department, board or bureau of the municipality charged with enforcement of any order, requirement or decision of the board. In the case of a decision by a zoning commission, planning commission, combined planning and zoning commission or zoning board of appeals, 'aggrieved person' includes any person owning 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...."

2 Section 36.1.1 of the Watertown zoning regulations provides that the intent of the B–PCD262 zone is to: "Provide an opportunity for high quality commercial development near Route 8 along a portion of Route 262 and Echo Lake Road east of Turkey Brook within a Planned Commercial District overlay zone to be adopted in accordance with a Zoning Map petition on the existing IR–80 zoning District. The primary objectives of the District are to expand retail, office, and other compatible use options within the Town of Watertown, as defined in Sections 36.9 and 36.10, and to increase the diversity of the town's tax base." See also § 36.9 of the Watertown zoning regulations (permitted uses).

3 Section 36.2 of the Watertown zoning regulations provides: "Overlay District Location: The Commission may adopt and may amend an overlay zoning District, hereinafter defined as 'District', 'Planned Commercial District', or 'B–PCD262', to an IR–80 District in accordance with the procedures, guidelines, standards and conditions specified in Section 81 and these Regulations. On a lot or lots within the overlay District, only buildings, other structures, and site improvements associated with uses consistent with Section 36.9 and Section 36.10 are permitted. The outermost boundaries of the overlay District are Route 262, Turkey Brook,

Echo Lake Road, Route 8, and Frost Bridge Road. The Commission may amend the Zoning Map to include all or a portion of land within said boundaries to be the B–PCD262 overlay District. A lot or any portion of a lot not within the adopted overlay District, as District is defined on the Zoning Map, is not in the District. The Planned Commercial District may be one or several lots, however, the Commission encourages all lots in the District to be developed as if one parcel. No lot may be developed inconsistent with the provisions and intent of Section 36, as determined by the Commission. The location, orientation, structure, texture, materials, landscaping, and other features shall be consistent with the character of the District, character of the neighborhood, character of the Town, the Zoning and Subdivision Regulations, the Zoning Map, and the Plan of Conservation and Development, all as interpreted by the Commission. Development of a parcel should demonstrate high quality design merit."

The trial court refers to the new zoning district as "in the area generally described as land north of Route 262, south of Echo Lake Road and west of Route 8...." Each description refers to the same bounded area creating the new zoning district. For the purpose of this opinion, we use the description of the bounds defined in § 36.2 of the regulations. This minor difference in language is immaterial because the specific boundaries are adequately defined in both descriptions and the bounds are not in dispute.

4 The trial court refers to the newly created zoning district as an overlay zone. Citing *Heithaus v. Planning & Zoning Commission*, 258 Conn. 205, 216–18, 779 A.2d 750 (2001), the trial court stated that "[a]n overlay zone has been considered a 'floating zone,' which is a zone that floats 'over the entire area where it may eventually be established' or a 'special permit' " The trial court found that "the floating zone is a more proper designation [of the area in the present case], as this overlay zone is alleged to create a zone which will allow for zoning changes." The trial court dismissed the case based on a finding that no particular area or property was affected, the quintessential attribute of a floating zone. Despite the trial court's reference to this area as an overlay zone, whether the area in question properly can be considered a floating zone is relevant to our resolution of this claim.

5 See footnote 4 of this opinion.

6 See also *Stauton v. Planning & Zoning Commission*, 271 Conn. 152, 160, 856 A.2d 400 (2004) ("we must interpret the phrase 'land involved' in § 8–8(a)(1) in light of the legislature's intent to relieve a narrow class of landowners who are presumptively affected by the zoning commission's adverse decision because of their close proximity to a *projected zoning action* from the arduous burden of proving classical aggrievement" [emphasis added]); *Lewis v. Planning & Zoning Commission*, 62 Conn.App. 284, 286, 296, 771 A.2d 167 (2001) (by virtue of statute defining aggrieved person to include "any person owning 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," owners of 277 acres of town's 4121 acres of subdividable land were statutorily aggrieved parties entitled to appeal decision of town planning and zoning commission to amend two sections of town subdivision regulations governing lot area calculations, to increase required lot size in cases in which ponds, lakes, or slopes were present); *Swiconek v. Zoning Board of Appeals*, 51 Conn.Supp. 190, 978 A.2d 1174 (2009) (site plan submitted with zoning variance application showed that landowner's and trust's properties were abutting, and thus trust's property fell within zone of statutory aggrievement as required for standing to contest grant of variance).

7 Paragraph 24 of the complaint states: "The plaintiffs/appellants ... are also aggrieved because the action of the Commission in approving the Amendment was illegal, arbitrary, capricious, and in abuse of its discretion, and in violation of its own regulations and applicable state statutes in that: (a) The commission failed or refused to follow its own Regulations (b) Notice was defective, misleading, and incomplete; (c) the Commission revised the proposed Amendment after the close of the Public Hearing and did not re-expose the materially changed

Amendment to public hearing as required by law; (d) the [commission] failed to follow the mandates of the Connecticut General Statutes; (e) the Commission failed to consider or make requisite findings relating to the allegations of the Petitioning intervenors; (f) The Commission voted on an Amendment without defensible standards and without standards protective of water quality, erosion and flooding; (g) The conduct of the Public Hearing was fundamentally unfair; (h) A Commissioner who recused himself from the proceedings remained in the hearing room commenting, clapping, and otherwise participating in the proceedings; (i) The Commission approved an Application that materially failed to demonstrate consistency with the Plan of Conservation and Development; (j) The decision of the [commission] is not supported by substantial evidence and does not find a basis in fact or law."

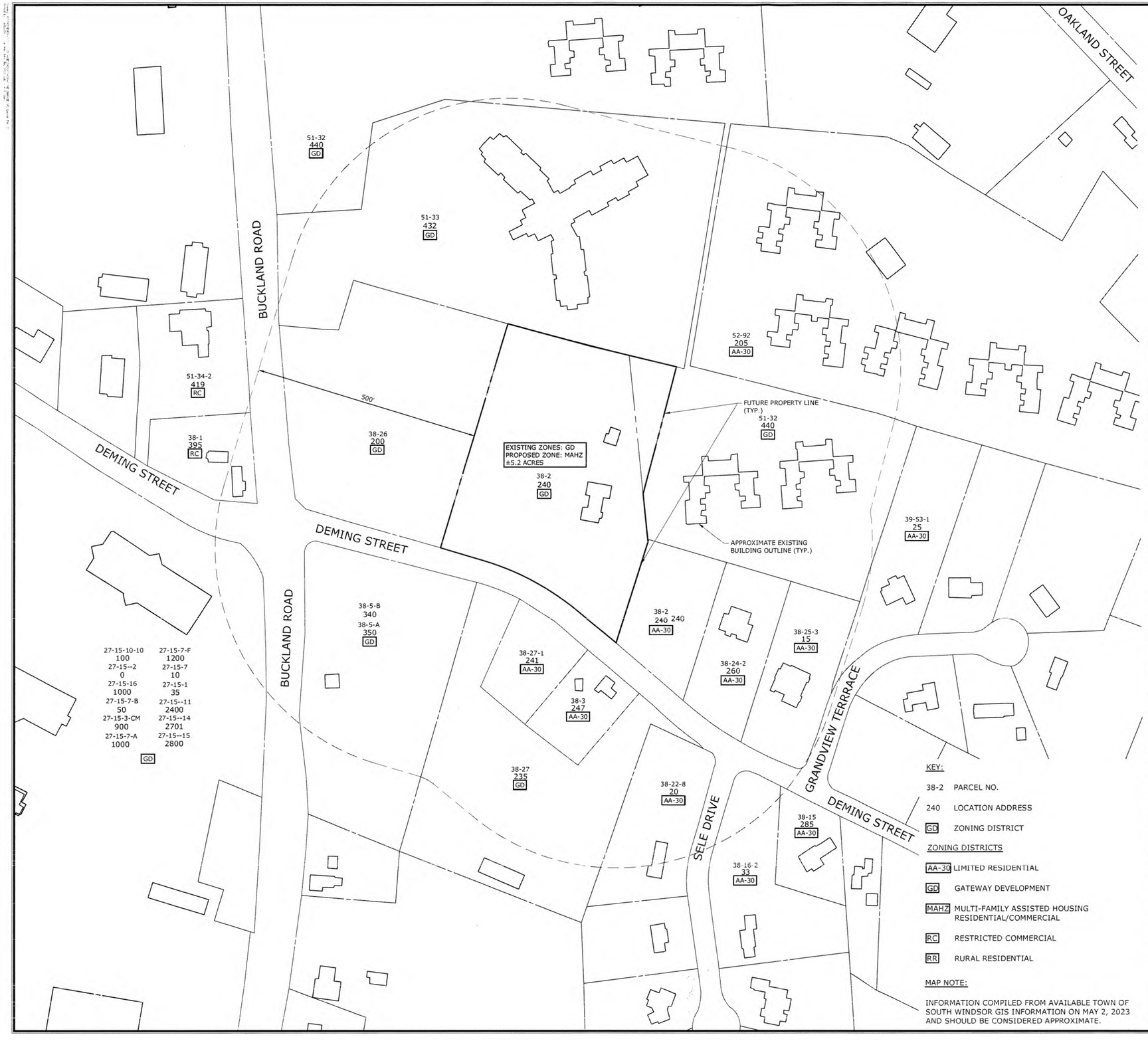
8 Paragraph 22 of the complaint states: "The plaintiffs/appellants ... are aggrieved by the decision of the [commission] because they were all recognized as intervening petitioners pursuant to the provisions of ... § 22a–19 (a) by the Commission during the Public Hearing upon their allegations of reasonable likelihood of unreasonable pollution to natural resources within the jurisdiction of the Commission as a result of the amendment to the Zoning Regulations because: (a) The combination of environmentally sensitive resources, liberal provisions on the amount of impervious cover permitted (up to 75%) and inadequately-defined Special Permit process and criteria leaves the subject property open to gross development that can adversely affect water quality [through] erosion and inadequate storm water management directives and create down-stream flooding without meaningful review; (b) Traffic volumes associated with the uncontrolled scale of permitted uses will create dangerous traffic conditions, poor air quality and introduce pollutants in runoff adding non-point source pollution to the likely unreasonable impacts of permitted development in this environmentally sensitive location. The traffic will unavoidably and chronically deposit polluting residues of more than 17 known contaminants on the roads, driveways, and parking surfaces including, but not limited to asbestos and copper, chloride, biochemical oxygen demand chromium, zinc, volatile solids, rubber, grease, and the like; (c) Pollution from automobile tailpipes increases the risk of asthma, lung cancer, leukemia and other ailments, particularly in people who live near busy roads. The proposed Overlay District relieves an applicant from providing mitigation for increased congestion as a result of development, expressly counter to the Commission's mandate under Connecticut law, [General Statutes] § 8–2, that is, 'to lessen congestion in the streets.' "

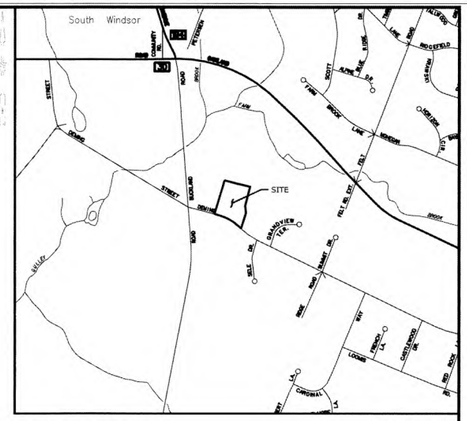
9 The pleadings and circumstances in *Red Hill Coalition, Inc.*, and *Mystic Marinelife Aquarium, Inc.*, allege direct harm to the environment and are distinguishable from the present case. In *Red Hill Coalition, Inc.*, the pleadings alleged direct harm to agricultural land which was the subject of a favorable report of the Glastonbury conservation commission. *Red Hill Coalition, Inc. v. Town Plan & Zoning Commission*, supra, 212 Conn. at 730, 563 A.2d 1347. Further, the commissioner of agriculture and the commissioner of environmental protection were granted permission to file a brief as amici curiae in support of the plaintiffs. Id., at 729 n. 3, 563 A.2d 1347. The trial court concluded that because the planning and zoning commission considered environmental issues by reviewing the conservation commission's report, the intervention in the zoning commission hearing was appropriate under § 22a–19 (a). Id., at 733 n. 7, 563 A.2d 1347. The intervenors in the present case did not raise such issues. In *Mystic Marinelife Aquarium, Inc.*, the § 22a–19 intervenors appealed from a decision of the commissioner of the department of environmental protection granting a permit to erect a floating dock directly in the Mystic River. *Mystic Marinelife Aquarium, Inc. v. Gill*, supra, 175 Conn. at 483, 400 A.2d 726. The intervenors pleaded direct environmental harm under General Statutes § 25–7b, which "places upon the commissioner the duty of regulation of the erection of structures in tidal, coastal or navigable waters with regard to be had to certain considerations set out in that statute." Id., at 495, 400 A.2d 726. Again, the intervenors in the present case did not raise such an issue.

Instead, the intervening plaintiffs argue that the commission illegally failed to follow regulations requiring it to submit an environmental impact statement in connection with the text amendment.

10 In *Pond View, LLC,* the intervenors alleged that they had standing to bring their claims under § 22a–19 because concerns related to the preservation of natural resources underlying the town's plan of conservation and development provided a basis for the commission's denial of the proposed zone change and thus bring the issues in the appeal within the scope of that statute. *Pond View, LLC v. Planning & Zoning Commission,* supra, 288 Conn. at 154–55, 953 A.2d 1.

Tab 2





LOCATION MAP:

PROPOERTY OWNERS WITHIN 500 FT.

ASSEROR'S MAP-LOT #	Address	OWNERS NAME AND MAILING ADDRESS	LOT SIZE (AC.)	Lot Area within 500 ft.
27-15-7-B	50 ANDREWS WAY	SOUTH WINDSOR DEVELOPERS LLC 145 HUDSON ST STE 6C NEW YORK NY 10013	10.59	SEE EVERGREEN WALK
38-5-B	340 BUCKLAND ROAD	J HANNOUSH FAMILY OF SOUTH WINDSOR LLC 122 ELM STREET ENFIELD CT 06082	3.9	3.35
38-5-A	350 BUCKLAND ROAD	BUCKLAND COMMONS LLC 1774 ELLINGTON ROAD SOUTH WINDSOR CT 06074	0.14	0
51-34-2	419 BUCKLAND ROAD	CARMON & COMPANY LLC PO BOX 6 WINDSOR CT 06095	1.44	0.003
51-33	432 BUCKLAND ROAD	KRE BSL HUSKY BUCKLAND LLC PO BOX 92129 SOUTHLAKE TX 76092	9.2	8.89
51-32	440 BUCKLAND ROAD	BERRY PATCH II ASSOCIATES LIMITED 6 EXECUTIVE DRIVE FARMINGTON CT 06032	19.32	5.1
27-15-10-10	100 CEDAR AVENUE	BARTLETT & STAGE LLC 7500 E MCDONALD DR SCOTTSDALE AZ 85250	0 (EVERGREEN WALK UNIT)	SEE EVERGREEN WALK
38-1	176 DEMING STREET	WINDSOR FEDERAL SAVINGS AND 250 BROAD STREET WINDSOR CT 06095	0.87	0.22
38-26	200 DEMING STREET	SOUTH WINDSOR FARMS PROPCO LLC 315 NORWOOD PARK SOUTH NORWOOD MA 02062	4.62	4.62
38-27	235 DEMING STREET	ASTICOU INVESTMENT LLC 1744 ELLINGTON ROAD SOUTH WINDSOR CT 06074	4.63	3.25
38-27-1	241 DEMING STREET	CRUZ RAUL 241 DEMING STREET SOUTH WINDSOR CT 06074	0.76	0.76
38-3	247 DEMING STREET	GLOVER MARGARET A 247 DEMING STREET SOUTH WINDSOR CT 06074	0.72	0.72
38-24-2	260 DEMING STREET	PHO LOC H & TAWNY 260 DEMING STREET SOUTH WINDSOR CT 06074	1.19	1.19
38-15	285 DEMING STREET	RAJU UDAY K & 285 DEMING STREET SOUTH WINDSOR CT 06074	0.69	0.004
27-15--2	EVERGREEN WAY	EVERGREEN WALK LIFESTYLE CENTER LLC 501 EVERGREEN WAY STE 503 SOUTH WINDSOR CT 06074	0 (EVERGREEN WALK UNIT)	SEE EVERGREEN WALK
27-15-16	1000 EVERGREEN WAY	CD-HRA (WINDSOR) LLC 2240 BLAKE ST STE 200 DENVER CO 80205	5.8	SEE EVERGREEN WALK
38-25-3	15 GRANDVIEW TERRACE	PASQUALONI PAUL TR 15 GRANDVIEW TERRACE SOUTH WINDSOR CT 06074	1.41	1.41
39-53-1	25 GRANDVIEW TERRACE	FARAO BRIAN & CARIN 25 GRANDVIEW TERRACE SOUTH WINDSOR CT 06074	1.73	0.06
27-15-3-CM	900 HEMLOCK AVENUE	WSL-EVERGREEN CROSSING LLC 660 STEAMBOAT RD 3RD FLOOR GREENWICH CT 06830	0 (EVERGREEN WALK UNIT)	SEE EVERGREEN WALK
27-15-7-A	1000 LONGLEAF LANE	RHD SOUTH WINDSOR LLC 405 ROTHROCK RD SUITE B102 COPLEY OH 44321	2.73	SEE EVERGREEN WALK
27-15-7-F	1200 LONGLEAF LANE	RHD SOUTH WINDSOR LLC 4520 EVERHARD ROAD #147 CANTON OH 44718	0.37	SEE EVERGREEN WALK
52-92	205 OAKLAND ROAD	BERRY PATCH ASSOCIATES LP 6 EXECUTIVE DRIVE STE 1000 FARMINGTON CT 06032	13.63	4.29
27-15-7	10 SEDONA CIRCLE	10 SEDONA CIRCLE- 570 PIERMONT RD STE #120 CLOSTER NJ 07624	1.1	SEE EVERGREEN WALK
38-22-8	20 SELE DRIVE	BASILE MARK T & ROBERTA L 20 SELE DRIVE SOUTH WINDSOR CT 06074	1.52	1.14
38-16-2	33 SELE DRIVE	ATTIANESE VINCENT & ANTONINA C 33 SELE DRIVE SOUTH WINDSOR CT 06074	1.82	0.28
27-15-1	35 TAMARACK AVENUE	BUCKLAND ROAD RETAIL LLC 501 EVERGREEN WAY STE 503 SOUTH WINDSOR CT 06074	0 (EVERGREEN WALK UNIT)	SEE EVERGREEN WALK
27-15--11	2400 TAMARACK AVENUE	EVERGREEN MEDICAL ASSOCIATES II LLC 16435 N SCOTTSDALE RD STE 320 SCOTTSDALE AZ 85254	0 (EVERGREEN WALK UNIT)	SEE EVERGREEN WALK
27-15--14	2701 TAMARACK AVENUE	AGM PROPERTIES LLC 23 PEASE FARM RD ELLINGTON CT 06029	0 (EVERGREEN WALK UNIT)	SEE EVERGREEN WALK
27-15--15	2800 TAMARACK AVENUE	EVERGREEN MEDICAL ASSOCIATES LLC 16435 N SCOTTSDALE RD STE 320 SCOTTSDALE AZ 85254	0 (EVERGREEN WALK UNIT)	SEE EVERGREEN WALK
N/A	EVERGREEN WALK	EVERGREEN WALK	240	0.53

KEY:

38-2 PARCEL NO.

240 LOCATION ADDRESS

GD ZONING DISTRICT

ZONING DISTRICTS

AA-30 LIMITED RESIDENTIAL

GD GATEWAY DEVELOPMENT

MAHZ MULTI-FAMILY ASSISTED HOUSING RESIDENTIAL/COMMERCIAL

RC RESTRICTED COMMERCIAL

RR RURAL RESIDENTIAL

MAP NOTE:

INFORMATION COMPILED FROM AVAILABLE TOWN OF SOUTH WINDSOR GIS INFORMATION ON MAY 2, 2023 AND SHOULD BE CONSIDERED APPROXIMATE.

SLR
99 REALTY DRIVE
CHESHIRE, CT 06410
203.271.1773
SLRCONSULTING.COM

DESCRIPTION	DATE	BY
PROPERTY LINES	05/23/2023	RYE

ZONE CHANGE MAP

MULTI-FAMILY DEVELOPMENT

240 DEMING STREET
SOUTH WINDSOR, CONNECTICUT

RYE	LCD	TD
DESIGNED	DRAWN	CHECKED

1"=100'
SCALE

MAY 10, 2023
DATE

13571.00069
PROJECT NO

ZC
SHEET NAME

Address within 500 ft.	Acreage within 500 ft.
340 Buckland Road	3.35
419 Buckland Road	0.003
432 Buckland Road	8.89
440 Buckland Road	5.1
176 Deming Street	0.22
200 Deming Street	4.62
235 Deming Street	3.25
241 Deming Street	0.76
247 Deming Street	0.72
260 Deming Street	1.19
285 Deming Street	0.004
15 Grandview Terrace	1.41
25 Grandview Terrace	0.06
205 Oakland Road	4.29
20 Sele Drive	1.14
33 Sele Drive	0.28
Evergreen Walk	0.53
TOTAL ACREAGE WITHIN 500 FT.	**35.817**

AMOUNT OF TOTAL ACREAGED NEEDED FOR 20%	**7.16**

Address of Signor	Acreage within 500 ft.
241 Deming Street	0.76
247 Deming Street	0.72
260 Deming Street	1.19
301 Deming Street	0
8 Grandview Terrace	0
15 Grandview Terrace	1.41
25 Grandview Terrace	0.06
28 Grandview Terrace	0
35 Grandview Terrace	0
20 Sele Drive	1.14
32 Sele Drive	0
33 Sele Drive	0.28
PETITION TOTAL	**5.56**

PETITION % OF TOTAL	15.5%

Tab 3

Petition against Zoning Change from Buckland Gateway Development Zone to Multifamily Assisted Housing

We the undersigned protest the proposed zoning amendments for the Buckland Gateway Development Zone set forth in application 23-25P submitted by The Metro Realty Management Corporation received by the South Windsor Planning and Zoning Committee May 23, 2023. We are owners of twenty per cent of the lots within five hundred feet in all directions of the property included in the proposed change. We understand the proposed changes shall not be adopted except by a vote of two-thirds of all the members of the commission.

The applicant name and summary description of the proposed rezoning is as follows:

Name/Description: The Metro Realty Management Corporation – request for a zone change of approx. 4.82 acres from Buckland Gateway Development Zone to the Multifamily Assisted Housing (MAHZ)" to include a portion of 240 Deming Street (4.82 ac) and a portion of 440 Buckland Road (.36 ac), including conceptual plan in accordance with Sec 7.22.2.A.

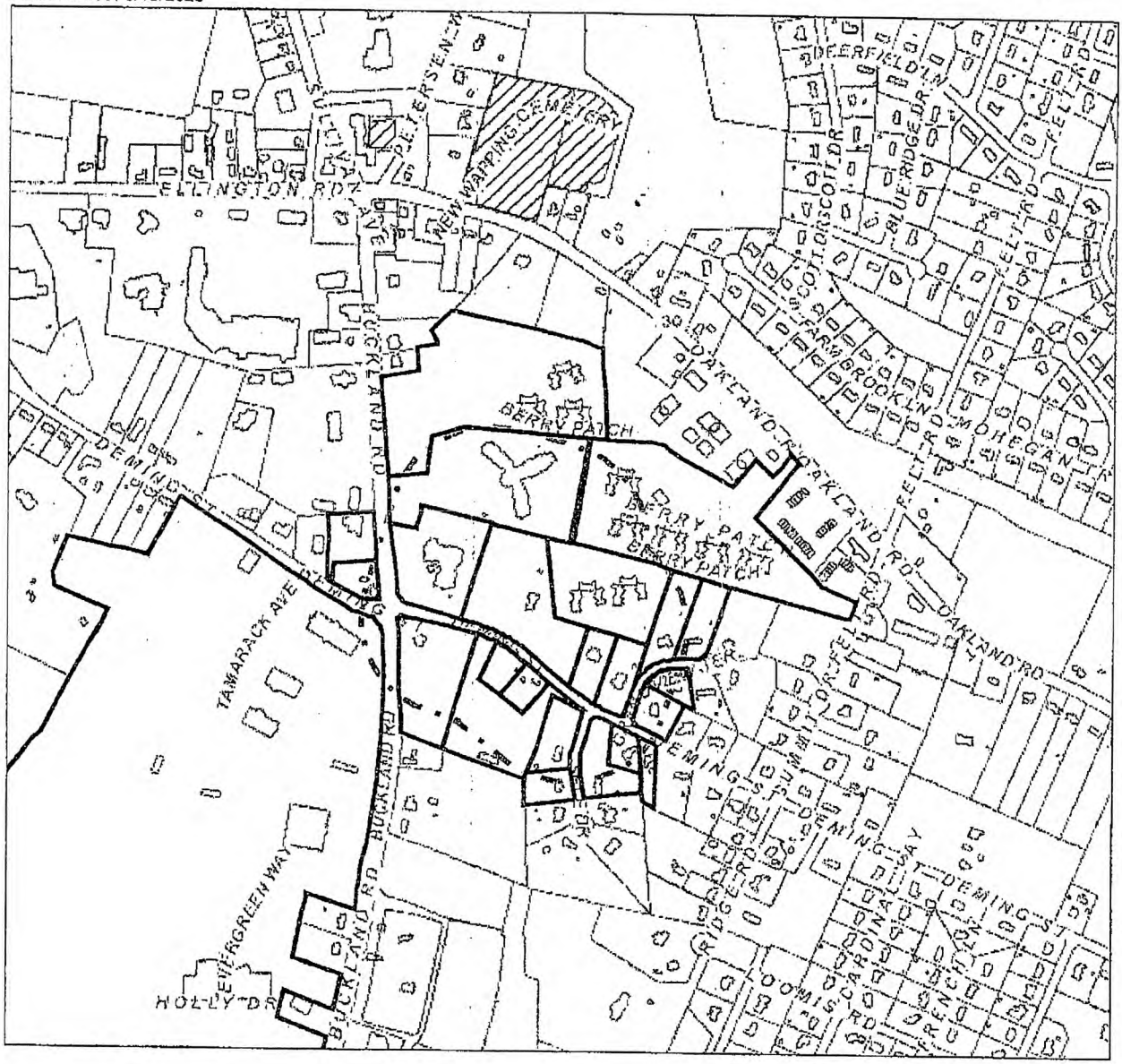
CRUZ RAUL PROPERTY WITHIN 500 FEET 241 DEMING STREET SOUTH WINDSOR, CT 06074	TETREAULT NAPOLEON A III & JENNIE L PROPERTY WITHIN 500 FEET 8 GRANDVIEW TERRACE SOUTH WINDSOR, CT 06074
SIGNATURE	SIGNATURE SIGNATURE
DATE 26 June 2023	DATE 6/28/2023
GLOVER MARGARET A PROPERTY WITHIN 500 FEET 247 DEMING STREET SOUTH WINDSOR, CT 06074	PASQUALONI PAUL TR PROPERTY WITHIN 500 FEET 15 GRANDVIEW TERRACE SOUTH WINDSOR, CT 06074
SIGNATURE	SIGNATURE
DATE 27 June 2023	DATE 6/28/2023

PHO LOC H & TAWNY PROPERTY WITHIN 500 FEET 260 DEMING STREET SOUTH WINDSOR, CT 06074	FARACI BRIAN & CARIN PROPERTY WITHIN 500 FEET 25 GRANDVIEW TERRACE SOUTH WINDSOR, CT 06074
SIGNATURE SIGNATURE	SIGNATURE SIGNATURE
DATE 6/28/23	DATE
RAJU UDAI K & PROPERTY WITHIN 500 FEET 285 DEMING STREET SOUTH WINDSOR, CT 06074	PLEIN WILLIAM J & COSME CLARA PROPERTY WITHIN 500 FEET 28 GRANDVIEW TERR SOUTH WINDSOR, CT 06074
SIGNATURE	SIGNATURE SIGNATURE
DATE	DATE 6-08-23
SANGHANI KAMLESH V PROPERTY WITHIN 500 FEET 301 DEMING STREET SOUTH WINDSOR, CT 06074	RAVIWONGSE ANUWAT NAN PROPERTY WITHIN 500 FEET 35 GRANDVIEW TERRACE SOUTH WINDSOR, CT 06074
SIGNATURE	SIGNATURE
DATE 06/28/2023	DATE 06/28/2023
BASILE MARK T & ROBERTA L PROPERTY WITHIN 500 FEET 20 SELE DRIVE SOUTH WINDSOR, CT 06074	ATTIANESE VINCENT & ANTONINA C PROPERTY WITHIN 500 FEET 33 SELE DRIVE SOUTH WINDSOR, CT 06074
SIGNATURE SIGNATURE	SIGNATURE SIGNATURE
DATE 7/5/23	DATE 06/28/2023
MARGIOTT PAUL R & VICTORIA A M PROPERTY WITHIN 500 FEET 32 SELE DRIVE SOUTH WINDSOR, CT 06074	
SIGNATURE SIGNATURE	
DATE 7/5/23	

Town of South Windsor

Geographic Information System (GIS)

Date Printed: 6/19/2023



MAP DISCLAIMER - NOTICE OF LIABILITY

This map is for assessment purposes only. It is not for legal description or conveyances. All information is subject to verification by any user. The Town of South Windsor and its mapping contractors assume no legal responsibility for the information contained herein.

Approximate Scale: 1 inch = 200 ft

N W E S

TOWN OF SOUTH WINDSOR, CONNECTICUT - Adjoining (500 ft)

Count	Parcel ID	Site Address	Owner Name	Mailing Address	Mailing City	Mailing State	Mailing Zip
1	3200050	50 ANDREWS WAY	SOUTH WINDSOR DEVELOPERS LLC	145 HUDSON ST STE 6C	NEW YORK	NY	10013- 0000
2	15300340	340 BUCKLAND ROAD	J HANNOUSH FAMILY OF SOUTH WINDSOR LLC	122 ELM STREET	ENFIELD	CT	06082- 0000
3	15300350	350 BUCKLAND ROAD	BUCKLAND COMMONS LLC	1744 ELLINGTON ROAD	SOUTH WINDSOR	CT	06074- 0000
4	15300350	350 BUCKLAND ROAD	BUCKLAND COMMONS LLC	1774 ELLINGTON ROAD	SOUTH WINDSOR	CT	06074- 0000
5	15300419	419 BUCKLAND ROAD	CARMON & COMPANY LLC	PO BOX 6	WINDSOR	CT	06095- 0000
6	15300432	432 BUCKLAND ROAD	KRE BSL HUSKY BUCKLAND LLC	PO BOX 92129	SOUTHLAKE	TX	76092- 0000
7	15300440	440 BUCKLAND ROAD	BERRY PATCH II ASSOCIATES LIMITED	6 EXECUTIVE DRIVE	FARMINGTON	CT	06032- 0000
8	17850100	100 CEDAR AVENUE	BARTLETT & STAGE LLC	7500 E MCDONALD DR	SCOTTSDALE	AZ	85250- 0000
9	27600176	176 DEMING STREET	WINDSOR FEDERAL SAVINGS AND	250 BROAD STREET	WINDSOR	CT	06095- 0000
10	27600200	200 DEMING STREET	SOUTH WINDSOR FARMS PROPCO LLC	315 NORWOOD PARK SOUTH	NORWOOD	MA	02062- 0000
11	27600235	235 DEMING STREET	ASTICOU INVESTMENT LLC	1744 ELLINGTON ROAD	SOUTH WINDSOR	CT	06074- 0000
12	27600240	240 DEMING STREET	CALVARY CHURCH OF THE ASSEMBLIES	240 DEMING STREET	SOUTH WINDSOR	CT	06074- 0000
13	27600241	241 DEMING STREET	CRUZ RAUL	241 DEMING STREET	SOUTH WINDSOR	CT	06074- 0000
14	27600247	247 DEMING STREET	GLOVER MARGARET A	247 DEMING STREET	SOUTH WINDSOR	CT	06074- 0000
15	27600260	260 DEMING STREET	PHO LOC H & TAWNY	260 DEMING STREET	SOUTH WINDSOR	CT	06074- 0000
16	27600285	285 DEMING STREET	RAJU UDAI K &	285 DEMING STREET	SOUTH WINDSOR	CT	06074- 0000
17	27600301	301 DEMING STREET	SANGHANI KAMLESH V	301 DEMING STREET	SOUTH WINDSOR	CT	06074- 0000
18	31301000	1000 EVERGREEN WAY	CD-HRA (WINDSOR) LLC	2240 BLAKE ST STE 200	DENVER	CO	80205- 0000
19	31300000	EVERGREEN WAY	EVERGREEN WALK LIFESTYLE CENTER LLC	501 EVERGREEN WAY STE 503	SOUTH WINDSOR	CT	06074- 0000
20	37700008	8 GRANDVIEW TERRACE	TETREAULT NAPOLEON A III & JENNIE L	8 GRANDVIEW TERRACE	SOUTH WINDSOR	CT	06074- 0000
21	37700015	15 GRANDVIEW TERRACE	PASQUALONI PAUL TR	15 GRANDVIEW TERRACE	SOUTH WINDSOR	CT	06074- 0000
22	37700025	25 GRANDVIEW TERRACE	FARACI BRIAN & CARIN	25 GRANDVIEW TERRACE	SOUTH WINDSOR	CT	06074- 0000
23	37700028	28 GRANDVIEW TERRACE	PLEIN WILLIAM J &	28 GRANDVIEW TERR	SOUTH WINDSOR	CT	06074- 0000
24	37700035	35 GRANDVIEW TERRACE	RAVIWONGSE ANUWAT NAN	35 GRANDVIEW TERRACE	SOUTH WINDSOR	CT	06074- 0000
25	41350900	900 HEMLOCK AVENUE	WSL-EVERGREEN CROSSING LLC	660 STEAMBOAT RD 3RD FLOOR	GREENWICH	CT	06830- 0000
26	54651000	1000 LONGLEAF LANE	RHD SOUTH WINDSOR LLC	405 ROTHROCK RD SUITE B102	COPLEY	OH	44321- 0000
27	54651200	1200 LONGLEAF LANE	RHD SOUTH WINDSOR LLC	4520 EVERHARD ROAD #147	CANTON	OH	44718- 0000
28	65700205	205 OAKLAND ROAD	BERRY PATCH ASSOCIATES LP	6 EXECUTIVE DRIVE STE 1000	FARMINGTON	CT	06032- 0000
29	81770010	10 SEDONA CIRCLE	10 SEDONA CIRCLE-	570 PIERMONT RD STE #120	CLOSTER	NJ	07624- 0000
30	81800020	20 SELE DRIVE	BASILE MARK T & ROBERTA L	20 SELE DRIVE	SOUTH WINDSOR	CT	06074- 0000
31	81800032	32 SELE DRIVE	MARGIOTT PAUL R & VICTORIA A M	32 SELE DRIVE	SOUTH WINDSOR	CT	06074- 0000
32	81800033	33 SELE DRIVE	ATTIANESE VINCENT & ANTONINA C	33 SELE DRIVE	SOUTH WINDSOR	CT	06074- 0000
33	89302400	2400 TAMARACK AVENUE	EVERGREEN MEDICAL ASSOCIATES II LLC	16435 N SCOTTSDALE RD STE 320	SCOTTSDALE	AZ	85254- 0000
34	89302701	2701 TAMARACK AVENUE	AGM PROPERTIES LLC	23 PEASE FARM RD	ELLINGTON	CT	06029- 0000
35	89302800	2800 TAMARACK AVENUE	EVERGREEN MEDICAL ASSOCIATES LLC	16435 N SCOTTSDALE RD STE 320	SCOTTSDALE	AZ	85254- 0000
36	89300035	35 TAMARACK AVENUE	BUCKLAND ROAD RETAIL LLC	501 EVERGREEN WAY STE 503	SOUTH WINDSOR	CT	06074- 0000