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06339-151141

# CONNECTICUT FEDERATION OF PLANNING AND ZONING AGENCIES QUARTERLY NEWSLETTER

Spring 2023 Volume XXVII, Issue 2

## SHORT TERM RENTAL OF HOME CAN BE PERMITTED USE

The owner of a large, shorefront home was issued a cease-and-desist order for offering his property for short term rentals. Typically, the rentals were for one week or less. The home was located in a neighborhood that permitted single family dwellings. The zoning regulations in effect at the time the owner started renting his property did not specifically permit short term rentals.

The owner appealed the cease-and-desist order to the zoning board of appeals claiming that the short-term rental of a single-family home was permitted because it was consistent with this permitted use as long as the rental was to a family and guests. The Board upheld the issuance of the cease-and-desist order finding that short term rentals were prohibited as they were not listed as a permitted use in the regulations at the time this rental activity commenced.

The matter eventually found its way to the State Appellate Court which ruled that under the applicable version of the zoning regulations, short term rentals are a permitted use of a single-family home. The court reached this decision by noting that the owner of a single-family home can do three things with it: he or she can live in it, sell it or rent it. A denial of one of these uses requires that the zoning regulations not be vague as to what is allowed. In the absence of clear language on renting, the court would not impose a restriction on short term rental of a single-family home.

As a final matter, the court addressed whether the short-term duration of a rental of a single-family home took it outside the definition of the terms 'home' or 'residence' as used in the zoning regulations. The court found that as long as a single family occupies a building as a home or residence at a given time, the building is being used as a permitted use. It makes no difference the duration of the rental unless the zoning regulations specifically provide for a rental period. The court also notes that this decision does not apply to a situation where a property is not rented to a family but instead to a group of individuals. *Wihbey v. Zoning Board of Appeals, 218 Conn. App. 356 (2023).*

## FUNDEMENTAL FAIRNESS REQUIRES FAIR HEARING

An application was submitted to allow for the excavation and development of a parcel of property for an office building. The zoning regulations required that a special exception application and site plan be filed with the Planning and Zoning Commission. In addition, the application needed to be reviewed by an architectural review board and variances were also needed to address some zoning compliance issues. The applicant had filed two similar applications with the

Written and Edited by
Attorney Steven E. Byrne
790 Farmington Ave., Farmington CT 06032
Tel. (860) 677-7355
Fax. (860) 677-5262
attysbyrne@gmail.com
cfpza@gmail.com

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Commission, both of which had been withdrawn. In connection with the earlier applications, the necessary variances and architectural review had been obtained.

When the current application was filed, the planning office staff informed the applicant that his application was not complete. Staff informed the applicant that the variances would need to be obtained again as well as another review by the architectural board. The applicant's attorney strongly disagreed and demanded that the application be heard as scheduled.

At the public hearing on the application, the Commission essentially denied the applicant the right to speak. Instead, the Commission only wanted to know whether the applicant would withdraw the application or grant an extension so that the Commission's staff could review amended documents recently filed by the applicant. The applicant, through his attorney, rejected these options and wanted to proceed on the application. This led to the hearing being closed and the application denied as incomplete.

The Appellate Court found that by not providing the applicant with the opportunity to present its application and, specifically, address the issue of whether the application was complete, it denied the applicant his right to fundamental fairness. Fundamental fairness requires, at a minimum, that a person be allowed to produce relevant evidence and to cross examine witnesses. By denying the applicant the opportunity to be heard on whether his application was complete, the Commission did not provide him with a fair hearing and thus could not reach an honest decision. A remand was ordered by the court for a full hearing before the Commission. In reaching its decision, the court took note of the use of profanity by some of the Commission members in regard to the applicant and his application. *Taylor v. Planning & Zoning Commission, 218 Conn. App. 616 (2023).*

### 75th ANNUAL CONFERENCE

The Federation's Annual Conference was held on March 23, 2023 at the Aqua Turf Country Club in Southington Connecticut. Our principal speaker was Hiram Peck, Planner for the Town of Avon, who made a presentation on how municipal land use agencies can comply with the numerous laws passed in 2021 that apply to local planning and zoning. In particular, Hiram's presentation addressed how affordable housing needs and requirements can be met and that by being proactive, municipalities can minimize the effects from any proposed state legislation on fair share housing.

In addition to this presentation, Attorney John Parese presented Length of Service Awards and Lifetime Achievement Awards to those nominated for these awards. If you would like any of the presentation materials, please contact us at contact.cfpza.gmail.com.


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790 Farmington Ave., Farmington CT 06032
Tel. (860) 677-7355
Fax. (860) 677-5262
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cfpza@gmail.com



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### TELECOMMUNICATIONS ACT OF 1996 DOES NOT APPLY TO ALL WIRELESS SERVICES

In a recent decision involving municipal approval of the installation of small wireless facilities, a court has found that the Telecommunications Act of 1996 only applies to the provision of wireless telephone service and not to the myriad of other wireless services we now use on our smartphones. Thus, a wireless telecommunication provider's reliance on the Telecommunications Act of 1996 to overturn a municipality's denial of its application to install numerous small wireless facilities was misplaced. The purpose of this installation was to improve existing services to accommodate new 5G technology.

In deciding that the Village's decision did not come under the reach of the 1996 Telecommunications Act, the court stated the Act applied to providing access for remote users to telephone land lines. Since the existing wireless network in the Village provided this level of service, the Village's decision to deny additional wireless service did not violate the Act. *Extenet Systems Inc. v. Village of Flower Hill, No. 19-CV-5588-FB-VMS (E.D. N.Y. 2022)*

### ANNOUNCEMENTS

**Membership Dues**

Notices for this year's annual membership dues were mailed March 1, 2023. The Federation is a nonprofit organization which operates solely on the funds provided by its members. So that we can continue to offer the services you enjoy, please pay promptly.

**Workshops**

Connecticut law now requires that every land use agency member receive 4 hours of training every two years. At the price of $180.00 per session for each agency attending, our workshops are an affordable way for your board to 'stay legal'. Each workshop attendee will receive a booklet which sets forth the 'basics' as well as a booklet on good governance which covers conflict of interest as well as how to run a meeting and a public hearing.

### *ABOUT THE EDITOR*

*Steven Byrne is an attorney with an office in Farmington, Connecticut. A principal in the law firm of Byrne & Byrne LLC, he maintains a strong focus in the area of land use law and is available for consultation and representation in all land use matters both at the administrative and court levels.*


Written and Edited by
Attorney Steven E. Byrne
790 Farmington Ave., Farmington CT 06032
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cfpza@gmail.com