COURT REJECTS USE OF SPECIAL PERMIT REGULATIONS FOR SUBDIVISION APPLICATIONS

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In a case of statewide significance, the Connecticut Supreme Court has held that a combined planning and zoning commission may not require a special permit for subdivisions of more than 30 lots. The case, entitled Lord Family of Windsor, LLC v. Planning & Zoning Commission, 288 Conn. 730 (Sept. 16, 2008), involved a developer who proposed to create a 60-lot residential subdivision in the Town of Windsor. Windsor's Zoning Regulations contained a provision (Section 4.5.2) that purported to require a special use permit for "proposed single-family residential subdivisions with more than 30 lots."

The subdivision was approved with numerous conditions relating to the proposed homes, including the requirements that lot owners be "responsible for spraying detention ponds and basins for mosquito control," and that town staff be allowed to review and approve "final architectural plans" and "the limits of tree clearing." The conditions also required that all homes "be constructed with full basements, central air conditioning and lawn irrigation" and "have a habitable floor area of no less than 2700 square feet except for one-story houses which may have no less than 2400 square feet of habitable floor area . . . ."

The residential zone in which the subdivision was proposed allowed single-family dwellings as of right and had no special requirements for mosquito control, tree clearing, architectural style, basements, air conditioning, lawn irrigation or home size. However, because the developer proposed to create 60 residential lots, the commission, under Section 4.5.2 of its zoning regulations, claimed to have the right to treat the subdivision as a "special use", for which the commission could establish additional requirements.

The developer appealed six of the conditions to the Superior Court. That court held that three of the conditions (including the last two mentioned above) were not supported by the record or the special permit regulations and it ordered them to be struck from the approval. However, it also held that there is enough overlap between the statutory planning and zoning functions to allow a commission to require a special permit for subdivisions greater than a certain size. Therefore, it upheld the first three conditions mentioned above. The Appellate Court granted certification to the developer to appeal that portion of the decision, and the Connecticut Supreme Court transferred the appeal to itself.

The Supreme Court agreed with the developer's contention that special permits are an exercise of a zoning function, while subdivision approval is an exercise of the statutorily distinct planning function. It referred to prior cases, such as Pansy Road, LLC v. Town Plan & Zoning Commission, 283 Conn. 369, 376 (2007), in which it held that the "designation of a particular use of property as a permitted use establishes a conclusive presumption that such use does not adversely affect the district and precludes further inquiry into its effect on traffic, municipal

services, property values or the general harmony of the district." It then held that Section 4.5.2 would "evade [that] principle" by allowing the commission "to conduct a further inquiry into the effects of a land use [i.e., single-family dwellings] that is permitted as of right."

The Court also agreed with the developer that Section 4.5.2 effectively creates different standards for the same use based solely upon the identity of the property owner. For example, if the developer's property comprised three adjacent parcels owned by different persons, those owners could collectively create 60 lots, but could avoid the special permit requirement by limiting their individual subdivisions to 20 lots apiece. The Court reiterated that "the zoning power can be exercised only to regulate land use and is not concerned with ownership."

For these reasons, the Court held that the trial court "improperly upheld" the remaining three challenged conditions. It remanded the case "with direction to render judgment sustaining the plaintiffs' appeal."