MEMORANDUM

TO: **New Canaan Planning and Zoning Commission**

FROM: **Joseph L. Hammer**
Day Pitney LLP

DATE: **January 18, 2013**

RE: **Grace Property Holdings, LLC – Application for Amendment to Special Permit – 365 Lukes Wood Road – Map 41, Block 38, Lot 77**

The applicant, Grace Property Holdings, LLC ("Grace"), submits this memorandum in further support of the above-referenced application.

A. Grace holds a valid special permit allowing it to establish a religious use and ancillary uses on its property, including a permanent sanctuary with a capacity of 900 persons.

Grace Property Holdings, LLC ("Grace") holds a valid special permit allowing it to establish a religious use on its property with a permanent sanctuary with a capacity of up to 900 persons, and with ancillary and accessory uses similar to those of other churches. Grace was clear during the 2007 proceedings that there would be church-related use of the property outside of regular religious services and also that it would make its facilities available to community and non-profit groups as other churches in New Canaan also do.[1] Indeed, the Commission's approval of the 2007 special permit and 2008 amendment recognized that there would be use by third-parties when it set specific conditions applicable to such ancillary use.[2]

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[1] In its original special permit application, Grace stated that it is supportive of community type use of the facilities which is compatible with church activities.

[2] As the Town Attorney noted at the November 27, 2012 hearing on the pending application for amendment, approval of a church carries with it a series of incidental uses and some level of community service associated with all churches and with all houses of worship.

In its May, 2008 approval of the amendment to the special permit (for a permanent sanctuary with a capacity of 900 persons), the Commission directed Grace to return for design review of the architectural drawings for the permanent sanctuary, as it had not yet been designed.[3] (2008 Amendment to Special Permit, ¶3.) The purpose of this future proceeding was not to conduct a wholesale reexamination of the church project under the special permit criteria or to revisit uses, traffic or any of the other items carefully considered by the Commission in its earlier approvals.[4] Rather, the design review was to ensure that the design of the permanent sanctuary be in accordance with the design review guidelines of § 6.12.D of the New Canaan Zoning Regulations. The special permit amendment process utilized here affords the public more process and opportunity to be heard than the design review process otherwise would.[5]

B. The arguments made as to potential use of the Grace facilities beyond the scope of the existing special permit are irrelevant to and cannot properly be considered in this proceeding.

Grace respectfully submits that provided it remains within the approved 900 person maximum capacity permanent sanctuary, as it has, it would not be proper in this proceeding to

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[3] As addressed in Grace's prior memorandum to the Commission dated November 27, 2012, such design review was not to involve any consideration of traffic provided that the permanent sanctuary capacity did not exceed 900 persons. Thus, under the terms of the existing approvals, the only basis to examine traffic would be if Grace proposed a permanent sanctuary with a capacity of more than 900. (2008 Amendment to Special Permit, ¶¶ 4-5.)

[4] The Commission's 2007 approval of the special permit and its 2008 approval of the amendment to the special permit were both affirmed by the Superior Court after exhaustive review, including consideration of many of the arguments made again in this proceeding by the same parties who took those appeals.

[5] The contention that any application for amendment to a special permit must be evaluated in light of all of the special permit criteria would render meaningless the inclusion of an amendment process (§ 8.2.B.6.d) in the Zoning Regulations, as all amendments would necessarily be treated as new applications. As pointed out by Town Planner Steve Kleppin in commenting on Grace's pending application for amendment, "[t]he use has been approved and affirmed through litigation. The changes proposed are site planning issues not related to use." (11/21/12 Planner's Memo at 4.)

revisit, reconsider or modify the existing conditions of approval relating to third-party use of the facility, or to impose new conditions restricting church activities.[6] For example, in a case involving an application for amendment of a special permit to allow construction of a storage building on a site with a previously approved shooting range special permit use, and where the applicant did not seek to modify the use, a Superior Court held that the zoning commission could not impose new restrictions on the gun range hours of operation where the existing special use permit did not include a condition providing that the permit was subject to periodic review. *East Windsor Sportsmen's Club v. Planning & Zoning Comm'n of East Windsor*, 4 Conn. Super. Ct. Rpts. 657, 658 (1989). Similarly, Grace does not seek any expansion of or modification to the uses allowed under its special permit, and its special permit does not provide for periodic review of the use of the property.

The arguments that have been made regarding the potential for uses to occur that are beyond the scope of the approved religious institution use are no more than an attempt, five years after the approvals, to attack yet again the special permit held by Grace and to rehash claims previously disposed of by the Commission and the Court. As Grace has stated in this proceeding, it intends to abide by the special permit that it holds, and it does not seek an expansion of that permit or any different permit. Grace will not use the property in any manner different than contemplated and approved in 2007 and 2008. It does not seek a special permit for a park, a philanthropic organization or a club.[7] Nor does Grace seek a special permit for the

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[6] During the earlier proceedings, potential traffic impacts were thoroughly examined not just in conjunction with Sunday services but also with use of the facilities during weekday mornings and during evenings, and it was determined that area roads could accommodate all such activity.

[7] Allowing ancillary use of a church building by a non-profit or community group, as is commonplace in New Canaan, does not transform such third-party use into a "club" or "philanthropic" use requiring a separate special permit. If this were the case, virtually all

adjoining lot known as Lot 76. If Grace were to seek to conduct any activities requiring further zoning approval, then it would either obtain such approval or not undertake the particular activity.

The claims made as to potential activities by Grace Farms Foundation exceeding the scope of the existing permit are not only flatly wrong and speculative, but they are completely irrelevant to this proceeding.[8] In fact, this very claim was rejected by the Superior Court (Mottolese, J.) in a nearly 70-page decision dismissing the appeals from the Commission's 2007 and 2008 approvals, as follows:

> Any violation of use limitations inherent in a religious institutional use or pursuant to commission imposed conditions are always subject to enforcement by the commission and its enforcement officer under authority conferred by section 8.5 of the [New Canaan zoning] regulations. It [is] the commission's duty to assume that a land owner who seeks approval for a special permit use will use the property for the permitted purpose, not a prohibited purpose.

(1/6/12 Court Decision at 60.)

In addition, in rejecting the claims made in the earlier appeals that the uses had not been adequately defined by Grace in its original application and that zoning violations might occur, the Superior Court found as follows:

> The plaintiffs themselves have identified a few of the myriad uses which are possible but which create concern, such as: weddings, support groups, offices, fund raisers, sporting events, festivals, funerals, Sunday school, summer camp. Obviously, some of these are traditional church activities. Whether others such as "festivals" and "summer camps" will qualify as permissible accessory uses must await future determination, if they ever materialize. An administrative agency has

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churches in New Canaan would be in violation of the zoning regulations through their support of such activities. The Commission's inclusion of conditions in Grace's earlier approvals addressing third-party use also belies this baseless claim.

[8] The documents submitted by Mr. Shah regarding Grace Farms Foundation have no bearing on this proceeding.

> reasonable discretion to determine if sufficient documentation has been submitted to proceed with an application. R. Fuller, 9 *Conn. Land Use Law and Practice* (2d ed.) 1999, section 15.12 at 360. Therefore it is within the discretion of a zoning agency to determine whether sufficient documentation has been provided in order to enable it to proceed with an application. See, *Woodburn v. Conservation Commission*, 37 Conn. App. 166, 176 (1995). Moreover, speculative, future violations may not be the basis for a commission's decision. *Krawski v. Planning and Zoning Commission*, 21 Conn.App. 667, 672 (1990) [sic] because they may never occur.

(1/6/12 Court Decision at 59.) *See also Oakbridge/Rogers Ave. Realty, LLC v. Planning & Zoning Comm'n of Milford*, 78 Conn. App. 242, 249-50 (Conn. App. 2003)(holding that zoning commission illegally rejected application for amendment of special permit to allow addition of four boat slips to existing pier where it feared that additional slips could be used by third parties in violation of the zoning regulations limiting such use to the owner, and noting that potential misuse is a zoning enforcement issue and not a basis to deny the application.)

Further, it is well-established in land use proceedings such as these that generalized concerns do not qualify as substantial evidence. (1/6/12 Court Decision at 59 (citing *Riverbend Associates, Inc. v. Conservation Inland Wetlands Commission*, 269 Conn. 57, 70, 848 A.2d 395 (2004).)

C. Grace submits that it would be improper to revisit the issue of use or to impose conditions or restrictions on use that were not placed on the original special permit approval.

As addressed above, Grace submits that it would be improper to revisit the religious or ancillary uses allowed by the existing special permit or to impose additional restrictions on church activities or ancillary third-party activities in this proceeding for amendment.[9]

[9] In their zeal to obstruct Grace's use of its valid special permit and to impose restrictions on use of the church facilities unique to Grace, certain parties ask this Commission, contrary to the Religious Exercise in Land Use and by Institutionalized Persons Act, 42 U.S.C.S. §§ 2000cc-2000cc-5, and state statute, Connecticut General Statutes § 52-571b, to treat Grace differently than other applicants and other churches, in a manner which would constrict and impair the ability of the church to function and of its members to exercise their right to worship. In

Nonetheless, Grace wishes to be responsive to the request made by the Commission at the December 18, 2012 hearing that Grace provide further information regarding typical or expected use. However, it should be noted that church use and ancillary third-party use are somewhat fluid and subject to change from time to time, as with any church. Programs are developed, refined and sometimes discontinued. Similarly, community and non-profit groups change over time. Therefore, Grace is submitting the attached summary of typical types of uses that it is anticipated may occur on the property.

CONCLUSION

For all of the above reasons, Grace respectfully requests that its application be approved as submitted.

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addition, to suggest that the church's practice of social justice is not a religious use, but instead some kind of philanthropic or club use would place a substantial burden on the church's exercise of religion in violation of RLUIPA. "[A] substantial burden exists when the state puts 'substantial pressure on an adherent to modify his behavior and violate his beliefs." *Rocky Mtn. Christian Church v. Bd. of County Commissioners of Boulder County*, 481 F. Supp. 2d 1213, 1223 (D. Colo. 2007) (citing *Thomas v. Rev. Bd. of the Indiana Employment Sec. Div.*, 450 U.S. 707, 718 (1981)).

GRACE COMMUNITY CHURCH TYPICAL USAGE	CHURCH	COMMUNITY/NON PROFIT GROUPS
WEEK DAY MORNING	BIBLE STUDIES -6 TO 15, up to 75 ON OCCASION COFFEE/BREAKFASTS SOCIAL JUSTICE/MINISTRY SERVICE MEETING - 3 TO 20 OPEN ART - 1 TO 10 PARENT/CHILD PROGRAMS HOLIDAY SCHOOL CHILDREN ACTIVITIES LIBRARY VISITS/RESEARCH - INDIVIDUALS PASTORS MEETINGS MINISTRY LEADERSHIP MEETINGS COUNSELING - INDIVIDUALS PANTRY COLLECTION - INDIVIDUALS SPEAKER SERIES - ON OCCASION, 10 TO 75 PEOPLE SPRING/SUMMER GARDENING - INDIVIDUALS SEASONAL RECREATIONAL PROGRAMS AND CHURCH SPORTS SUMMER CHILDREN'S BIBLE SCHOOL/CHURCH CAMPS	COMMUNITY BIBLE STUDIES AND INTERFAITH ORGANIZATION MEETINGS - 20 TO 150 PEOPLE NON PROFIT EXECUTIVE/BOARD MEETINGS ARTS/SERVICE/SOCIAL JUSTICE - EX. ARTS FOR HEALING, PURA VIDA, NEW CANAAN CARES, NEXT GENERATION NEPAL OPEN LIBRARY/BOOKS ON FAITH AND SOCIAL JUSTICE - INDIVIDUALS
WEEK DAY AFTERNOON	BIBLE STUDIES - 6 TO 15, up to 75 ON OCCASION COFFEE/LUNCHEONS/SOCIALS BOOK DISCUSSION GROUPS - 5 TO 12 SOCIAL JUSTICE/MINISTRY SERVICE MEETING - 3 TO 20 OPEN ART - 1 TO 10 PARENT/CHILD PROGRAMS HOLIDAY SCHOOL CHILDREN ACTIVITIES LIBRARY VISITS/RESEARCH - INDIVIDUALS PASTORS MEETINGS MINISTRY LEADERSHIP MEETINGS MINISTRY MEETINGS COUNSELING - INDIVIDUALS PANTRY COLLECTION - INDIVIDUALS WORSHIP/DRAMA REHEARSALS SPEAKER SERIES - ON OCCASION, 10 TO 75 PEOPLE SEASONAL RECREATIONAL PROGRAMS AND CHURCH SPORTS AFTER SCHOOL YOUTH PROGRAMS SPRING/SUMMER GARDENING - INDIVIDUALS	ARTS/SERVICE/SOCIAL JUSTICE - EX. ARTS FOR HEALING, PURA VIDA, NEW CANAAN CARES, NEXT GENERATION NEPAL SERVICE/NON PROFIT LUNCHEON MEETINGS/SPEAKER SERIES OPEN LIBRARY/BOOKS ON FAITH AND SOCIAL JUSTICE - INDIVIDUALS YOUTH PROGRAMS - EX. SCOUTS
WEEK DAY EVENING	BIBLE STUDIES - 6 TO 15, up to 75 ON OCCASION FELLOWSHIP DINNERS/SOCIALS BOOK DISCUSSION GROUPS - 5 TO 12 SOCIAL JUSTICE/MINISTRY SERVICE MEETING - 3 TO 20 OPEN ART - 1 TO 10 LIBRARY VISITS/RESEARCH - INDIVIDUALS PASTORS/ELDERS/PLANNING TEAM MEETINGS MINISTRY LEADERSHIP MEETINGS COUNSELING - INDIVIDUALS PANTRY COLLECTION - INDIVIDUALS WORSHIP/DRAMA REHEARSALS SPEAKER SERIES - ON OCCASION, 10 TO 100 PEOPLE DEBATES - EX. GIVE ME AN ANSWER (PASTOR KNECHTLE) SEASONAL RECREATIONAL PRDGRAMS AND CHURCH SPORTS YOUTH PROGRAMS	INTERFAITH ORGANIZATION MEETING/GATHERINGS NON PROFIT EXECUTIVE/BOARD MEETINGS ARTS/SERVICE/SOCIAL JUSTICE - EX. ARTS FOR HEALING, PURA VIDA, NEW CANAAN CARES, NEXT GENERATION NEPAL SERVICE/NON PROFIT FUNDRAISER
	* As customary with other New Canaan churches and as has been the practice of Grace Community Church over the past 11 years, the frequency of the above activities/events varies. They are scheduled on a daily, weekly, monthly or seasonal basis. The various activities/events do not all occur at the same time. ** Most daily activities are for individuals and groups of less than 12.	* As customary with other New Canaan churches and as has been the practice of Grace Community Church over the last 11 years and as intended with the new facility, the frequency of activities/events varies. They are scheduled on a daily, weekly, monthly or seasonal basis. The various activities/events do not all occur at the same time. ** Community/non profit events to be scheduled such that they do not conflict with church events/programs.

GRACE COMMUNITY CHURCH TYPICAL USAGE	CHURCH	COMMUNITY/NON PROFIT GROUPS
SATURDAY	FELLOWSHIP BREAKFASTS/LUNCH/DINNERS RECREATIONAL/ARTS ACTIVITIES BIBLE STUDIES/SPEAKER SERIES MUSICAL/ARTS PROGRAMS, PERFORMANCES WEDDINGS AND RECEPTION < 200, ON AVG 50 TO 100 SPRING/SUMMER GARDENING - INDIVIDUALS SEASONAL RECREATIONAL PROGRAMS AND CHURCH SPORTS	INTERFAITH ORGANIZATION MEETINGS NON PROFIT/COMMUNITY FUNDRAISER OR GATHERING ARTS/SERVICE/SOCIAL JUSTICE MEETINGS - EX. ARTS FOR HEALING, PURA VIDA, NEXT GENERATION NEPAL, NEW CANAAN CARES OPEN LIBRARY/BOOKS ON FAITH AND SOCIAL JUSTICE - INDIVIDUALS COLLECTION OF FOOD PANTRY ITEMS - INDIVIDUALS BLOOD DRIVES/COMMUNITY SERVICES AS APPROPRIATE
SUNDAY	CHURCH SERVICES SUNDAY SCHOOL AFTER CHURCH ADULT EDUCATION PROGRAMS AFTER CHURCH FELLOWSHIP/RECREATION CHURCH MINISTRY MEETINGS/COUNSELING BIBLE STUDIES BAPTISMS	*PRIMARILY CHURCH USAGE*
OTHER	FUNERALS AND MEMORIALS HOLIDAY AND SPECIAL SERVICES AND EVENTS SPECIAL NEEDS PROGRAMS FOR CHILDREN NURSERY SCHOOL, FUTURE OPTION AS OTHER CHURCHES OFFER	

Brewing Co. v. Commissioner of Revenue, 326 N.W.2d 642 (Minn. 1982), *Pabst Brewing Co. v. Department of Revenue*, 130 Wis.2d 291, 387 N.W.2d 121 (1986).

The defendant, however, points to the Uniform Division of Income for Tax Purposes Act (UDITPA). Although Connecticut has not adopted UDITPA completely and is not a signatory to the Multistate Tax Compact (MTC), the regulations issued by the Multistate Tax Commission are, nevertheless, a proper aide in the construction of General Statutes §12-218 since its language is identical to that of section 16(a) of the UDITPA.

Under MTC Reg. 1V.16(a).(3), P-H All States Guide ¶662, where the purchaser picks up the goods either in its own trucks or by a common carrier hired by the purchaser, at a particular location, then the delivery is deemed to have taken place at that location. J. Hellerstein, *State Taxation*, ¶9.17[1] at 584-88 (1983).

Hellerstein further discusses the reason for this rule as being one of simple and inexpensive taxpayer compliance and administration by the taxing authorities. When the products are picked up in this state and are taken under the control of the purchaser, their ultimate destination whether within this state or without would be difficult if not impossible to follow. ¶9.17[1](a) P. 587.

The interpretation by the MTC appears to this court to be both logical and sound.

Any considerations as to the place of passage of title appears to be irrelevant. The tax in this case is not a "sales tax" but a "gross receipts" tax. The case of *New England Yacht Sales v. Commissioner*, 198 Conn. 624, 504 A.2d 506 (1986), would therefore bear no application.

This court further can find no logical meaning for the words "regardless of the f.o.b. point or other conditions of the sale" in General Statutes §12-218 to support the plaintiff's position that the statute applies only to purchasers whose business and customers are within this state. It appears to this court that these words were clearly placed in the statute to deal with sales wherein the products went out of the state to such purchasers and would be meaningless if they were to apply only to purchasers permanently located within this state.

This court is of the opinion that the defendant Commissioner has established that the statute intended to impose the tax on this plaintiff. The stipulated facts acknowledge that the plaintiff delivered the petroleum products to the purchaser within this state, either by their own vehicle or by common carrier. Title to the products passed in Connecticut. Clearly the sale was made in Connecticut. Nowhere does the statute say or imply that the statute does not apply to a purchaser whose business and customers are located outside this state.

The court further notes in construing the intent of the statute that it refers (in this instance) to sales of products within this state and then goes on to refer to services within the state, rents and royalties within the state, gains from sale of tangible assets within the state, *and all other receipts earned within the state*. (Emphasis added.)

It is apparent to the court that in using the words "within the state" in each of these phrases ending this portion of the statute with the catch-all words "and all other receipts earned within the state," the legislature intended to tax all such transactions that took place in Connecticut and created earnings for the taxpayer in Connecticut as did the transactions which are the subject of this appeal.

Conclusions of law reached by the administrative agency must stand if the court determines that they resulted from a correct application of the law to the facts found and could reasonably and logically follow from such facts. *Cos Cob Volunteer Fire Co. No. 1 Inc. v. FOIC*, 212 Conn. 100, 104 (1989).

Furthermore, the agency's practical construction of the statute, if reasonable, is "high evidence of what the law is." *Cos Cob Volunteer Fire Co. No. 1 v. FOIC, supra*, 106. The court also finds that, at least as it may be applied to the facts of this appeal, the statute is not ambiguous.

This court can also find no legislative history to corroborate the plaintiff's claim that the legislative change in 1982 was to clarify what already was existing law. On the contrary, the materials cited by the plaintiff indicate only that the legislature was aware that a tax would be imposed on sales where the product was destined for another state and decided to change the law. It must be presumed that the legislature would not act to change a statute where no change was needed. *Perille v. Raybestos-Manhattan Europe, Inc.*, 196 Conn. 529, 541, 494 A.2d 555 (1985). It is clear that a legislative determination was made not to tax such sales, and with this policy determination thus made, this court can interpret the statute as it previously existed to contain only a contrary legislative policy until the statute was so amended. *Aaron v. Conservation Commission*, 183 Conn. 532, 532, 441 A.2d 30 (1981), *State v. Poirier*, 19 Conn. App. 1, 3, A.2d (1989).

The plaintiff urges the court to adopt the view that the 1982 statutory amendment was a procedural and not a substantive change, thus making its effect retroactive in this case. It is true that if the amendment was in the nature of a classification, or merely procedural, its application would be retroactive. *Enfield Federal Savings & Loan Association v. Bissell*, 184 Conn. 569, 440 A.2d 220 (1981). This court has already determined that the amendment was not in the nature of a clarification. As to the claim that the change was procedural in nature, one need look only to the effect of the change in this case to conclude that the amendment was clearly substantive. Whether a transaction is taxable or not affects one's substantive rights and thus a legislative change must apply prospectively only. General Statutes §55-3. *Peck v. Jacquemin, supra.*

The court finds that the statutory construction aids cited are inapplicable in this instance. The rule requiring an ambiguous statute to be construed in favor of the taxpayer (see *Schlumberger Technology Corp. v. Dubno, supra*, 423) cannot be followed because, as previously explained, this court has determined that the statute is not ambiguous but follows a definite legislative policy (that has since been changed). Further, the statute is unambiguous as to the sale described in the stipulation of facts.

Secondly, the court recognizes the rule that the interpretation of a statute by an agency responsible for enforcing it is entitled to great deference. *Griffin Hospital v. Commission on Hospitals and Health Care*, supra, 512. There is no evidence, however, that the agency's construction of this statute is consistent or has any history of the interpretation urged by the defendant. *Schieffelin & Co. v. Department of Liquor Control*, 194 Conn. 165, 479 A.2d 1191 (1984), *appeal after remand*, 202 Conn. 405, 521 A.2d 566 (1987). *Schlumberger Technology Corporation v. Dubno, supra*, 423. This statutory rule of construction therefore is inapplicable to this case.

In conclusion, therefore, this court finds that the statutory construction made by the Commissioner is reasonable and correct and the tax imposed is properly due and owing.

Therefore, the plaintiff's appeal is dismissed. ■

East Windsor Sportsmen's Club

v.

Planning and Zoning Commission of the Town of East Windsor

ZONING, SPECIAL EXCEPTIONS AND PERMITS, AMENDMENTS - ADMINISTRATIVE LAW AND PROCEDURE, ABUSE OF DISCRETION

Appeal of zoning commission's decision on application for an amendment of special use permit to build storage shed adjacent to plaintiff's shooting range, where commission granted the application but included certain conditions modifying the existing special permit. Held, appeal sustained. The original grant was not conditioned on periodic review nor does the commission have the authority to restrict a preexisting use of undisputed legality. Even if the application to build the storage shed is considered as an application to expand the special permit, the commission had no authority to restrict the original use and such action is illegal.

COURT: Hartford-New Britain, at Hartford
DATE: July 10, 1989
DOCKET NO.: 0338696
JUDGE: Corrigan

This is an appeal from the defendant agency's decision on the plaintiff's application for an amendment of its special use permit to build a storage shed adjacent to its shooting range. The public hearing on the application was heard on September 1, 1987 and the hearing was continued to November 4, 1987 but was closed to the plaintiff as to public comment. On November 6, 1987 the agency granted the application with certain conditions which included the prohibition of hours of the Special Use Permit on Sundays during June, July and August and limited to 10 AM to 3 PM on Sundays, September through May, subject to change upon completion of plantings and other sound reduction measures.

The plaintiff complains that such action violates its due process rights and notice required under C.G.S. 8-3c, the decision was rendered beyond the time limited in C.G.S. 8-7d(a), and beyond its authority and made with vagueness, and without a statement of reasons pursuant to C.G.S. 8-7d.

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Notice is adequate if it fairly and sufficiently apprises those who may be affected, of the nature and character of the action proposed, so as to make possible intelligent preparation for participation in the hearing. *Shrobar v. Jensen*, 158 Conn. 202, 207.

The application of the plaintiff was for an amendment to the existing Special Use Permit to construct a 24 foot x 36 foot storage building on the applicant's property to provide storage and lavatory facilities at the club. The return of the defendant contains a copy of that application and a copy of the legal notice of the meeting for said application on September 1, 1987 as published in the *Journal Inquirer* on August 21, 1987 and August 28, 1987. This notice complies with the notice requirement of C.G.S. 8-7c.

It is, however, the contention of the plaintiff that such application and notice was not sufficient to alert the plaintiff that the Special Use Permit which was granted to it in 1982 was to be reopened at such hearing. Even though the published notice did not forecast the re-opening of the permit, the plaintiff was apprised of the intention of the defendant to do so by its letter of August 6, 1987. *Danseyar v. Zoning Board of Appeals*, 164 Conn. 325, 330.

II

The plaintiff claims that the provisions of C.G.S. 8-7d(a) requiring that the hearing on the application "shall be completed within thirty days after such hearing commences", and "all decisions on such matters shall be rendered within sixty-five days after completion of such hearing," have not been complied with. The minutes of the hearing before the defendant on September 1, 1987 demonstrate that the hearing was closed on that same day. The minutes of defendant's meeting on November 4, 1987 demonstrate a decision was made on the application that day. Where the language of the statute is clear and unambiguous, it is assumed that the words express the intent of the legislature. *Sutton v. Lopes*, 201 Conn. 115, 118. Those words employed are to be interpreted in their natural and usual meaning. *Harlow v. Planning & Zoning Commission*, 194 Conn. 187, 193. With that interpretation this court finds compliance has been made with C.G.S. §8-7d(a).

III

The terms "special exception" and "special permit" as used in C.G.S. §8-2 hold the same legal import and can be used interchangeably. *Summ v. Zoning Commission*, 150 Conn. 79, 87. C.G.S. §8-2 gives the zoning authority of each town the power to adopt regulations to grant special exceptions. The defendant herein was acting in 1982 under that authority as set out in what is now Section 10.7 of the East Windsor Zoning Regulations. Such a special permit allows a property owner to put his property to a use which the regulations expressly permit, and the conditions permitting the use must be found in the zoning regulations themselves. *Id.*, 87. To justify the grant of the special permit, it must appear from the record before the commission that the manner in which the applicant proposes to use the property satisfies all conditions imposed by the regulations. *Anastasi v. Zoning Commission*, 163 Conn. 187, 190-91. There is nothing in the record before the defendant that the 1982 grant was conditioned on periodic review nor is there anything in the grant of authority under C.G.S. §8-2 nor in the zoning regulation, particularly Section 10.7, which gives the defendant authority to restrict a preexisting use of undisputed legality. *Beckish v. Planning & Zoning Commission*, 162 Conn. 11, 15. Even if the application to build this storage building could be considered an application to expand the special permit as it was treated by the defendant, the authority to restrict the original use is absent from the record, and such action by the defendant is illegal. Further, there is nothing in the record that demonstrates that approval of the construction of the storage building will effect an increase in the noise level or the amount thereof.

IV

The provisions in C.G.S. §8-3 requiring the Board to "state upon the records the reason why such change is made" is directory only, so that failure to comply with it does not render the Board's action void. *Morningside Assn. v. Planning & Zoning Board*, 162 Conn. 154, 156. However, upon appeal, the trial court reviews the record before the board to determine whether it acted fairly or with proper motives or upon valid reasons in determining whether its action was arbitrary, illegal and in abuse of its discretion. *Anastasi v. Zoning Commission, supra*, 191. As indicated above this court finds that the defendant's action in modifying the special permit as to hours of firing was arbitrary, illegal and an abuse of discretion. Therefore the appeal is sustained and the matter remanded for action in accordance herewith. ■

Michael Weatherly v. Town Plan and Zoning Commission of Fairfield, et al.

COURT: Fairfield, at Bridgeport
DATE: July 21, 1989
DOCKET NO.: CV88-0248618
JUDGE: Zoarski

ZONING, SUBDIVISIONS - ADMINISTRATIVE LAW AND PROCEDURE, ABUSE OF DISCRETION - HIGHWAYS, ROADS AND STREETS

Appeal of denial for subdivision application where zoning commission found that subdivision would be inconsistent with the defendant's regulations as it would abut an existing street which is not 50 feet in width. Held, appeal sustained. C.G.S. §8-25 permits regulations relating to "proposed" streets that are to be developed as part of a subdivision, and does not authorize regulations to make provisions for existing roads, or to permit the commission to require a subdivision on an existing town highway to make provisions for its widening. Therefore, the regulation relied upon which relates to existing streets was improperly adopted and is illegal. In *Reed v. Planning and Zoning Commission*, 12 Conn. App. 153, the court held that a zoning commission, when reviewing a subdivision application that abuts a town road providing its sole access, may not deny the approval solely on the basis of the condition of the road no matter how inadequate its condition. The plaintiff's application conformed to the regulations, and the defendant had no discretion or choice but to approve the application without ordering the plaintiff to provide for the widening of the existing town road.