Groundbreaking News
Real Estate, Land Use & Environmental Issues
Volume IV / Issue 3
Fall 2006
Visit our website: www.pullcom.com
PULLMAN & COMLEY, LLC ATTORNEYS AT LAW

We Helped Build That!

Church Hill & Queen Commons

Newtown, Connecticut

By Richard Bowering

When Peter Wiehl decided to develop a long-dormant piece of prime real estate in the center of Newtown, he knew he would run up against a series of challenges – and he didn't have to think twice about whom to call to help him navigate them: Pullman & Comley had been representing his family's interests for more than 20 years. Wiehl's family purchased this two acre plot back in 1954, and over the years it was home to a gas station and a couple of restaurants. By the mid 1990s, though, the businesses had closed, and the buildings, which had fallen into disrepair, were knocked down. Since then, the property had remained vacant until the right idea came along.

This was no simple redevelopment. The property lies in the "Borough of Newtown," a political subdivision located within the Town of Newtown. The Borough has its own zoning commission and regulations ("Village District" zoning), which are much more restrictive and challenging than the town's own regulations. The zoning ultimately required three separate, smaller buildings instead of a single building, which accounts for its design as a mini-village, a streetscape within the village itself, at a remove from the main road.

Wiehl articulated his vision for the land (an architecturally appropriate mixed-use complex) after the town had rejected a proposal by a developer in 2003. He had been attending Village District zoning meetings for some time and had a good grasp of the Borough's concerns about development in general (chiefly, aesthetics and safety) and this site in particular (restoring it to vibrancy). Since the zoning regulations dictated the design, he hired Reese Owens, (of Halper Owens Architects, LLC). Owens was familiar with the potential complexities involved in Village District zoning through his involvement with a similar project in Washington, Connecticut (where he also sat on that town's Zoning Board of Appeals).

The site proposal initially consisted of three aspects: the site development plan, special exceptions to the Borough zoning regulations (including sidewalk placement, parking requirements and signage) and, ultimately, the Village District zoning approval itself.

"Sandy Campbell [of Pullman & Comley, LLC] wore many hats and did an amazing job in each of them," recalled Wiehl. "He worked with everyone from my family and me, to the town and borough officials, to the architect and contractors, to the banks to put this thing together. He interpreted everything for us and, in the end, there were no surprises." Well, maybe one: "Our largest retail client, Webster Bank, needed a drive through. Simple, right? On the contrary – at the last minute, we learned that we had to go back and reconfigure the whole thing. It had to be remote (not attached to the bank); it required a gable roof, and mammoth footings…somehow, Sandy was able to work with everyone and get this done, and without slowing the project down. And you know what? It looks great."

"This was Peter's first deal, and I'm confident it won't be his last," said Campbell. "He spent a lot of time in the trenches with us and had obviously done his homework. He handled his side of things like a pro, and it would have been hard to get this done on time without his input and legwork. His rapport with the town fathers and the personnel on the commissions was critical. On the Pullman & Comley side, Mike Proctor stepped in to handle the lease negotiations, Jim White's advice on key zoning issues was invaluable and Nancy Nouss-Brown was there for us when it came time for the financing

closing. This project was a great example of team work all around."

The grand opening for Church Hill & Queen was on August 23, 2006.

For additional information about this topic, please contact Charles K. "Sandy" Campbell Jr. (203-674-7940), Michael G. Proctor (203-330-2145) or James P. White Jr. (203-330-2132).

A Lot Line Revision May be Declared a Subdivision

By Charles K. Campbell Jr.

Your neighbor wants to build an addition to his house but, unfortunately, he can't quite meet the required side yard setback in the zone. So, he makes you a proposition: he'll pay you $5,000 to buy a little strip of your property so he can meet the setbacks.

One of the good things about your property is that it's a double lot, meaning that you have at least twice the minimum lot area for the zone. This is your retirement nest egg, and you count on being able to sell off a building lot without needing subdivision approval or, more importantly, having to comply with the requirement that 15 percent of the land in a subdivision must be set aside as open space.

You calculate that after the sale you'll still have just enough land left to make two legal building lots, and figure that selling the strip will be a simple lot line adjustment not requiring the town's approval. Should you do the deal? If you do, you may find that you have inadvertently fried your precious nest egg.

In most municipalities a subdivision is defined as the division of a tract of land into three or more parts. Thus, the first time a parcel is divided, often referred to as a "free throw," no approval is necessary because only two pieces have been created. However, further dividing either of those pieces in the future would create a third parcel, and subdivision approval would then be required.

The courts have held that minor changes in the boundaries between two lots that do not create a new lot are mere lot line adjustments that do not qualify as divisions under the subdivision regulations. Here, you reason, if you sell the strip of land to your neighbor, no new lot is created and thus this wouldn't count as your free throw. That means that you can still divide your remaining land without subdivision approval. Right? Not according to a recent Superior Court decision.

In that case, an owner's building encroached slightly onto a neighbor's property. To cure the encroachment, the neighbor agreed to sell him a strip of land. This not only allowed the owner to cure the encroachment, but also enabled him to build a large addition to his business. The court observed that if the sale had been merely to resolve the building encroachment, it might have constituted a lot line adjustment. However, because it also allowed the owner to expand his building, the judge found it to be a division for purposes of the subdivision regulations.

What happens if a court makes a similar ruling after you've sold that strip and taken a nice vacation with the $5,000 purchase price? When you try to sell your remaining building lot, you're told that you have to first get subdivision approval. You're also told that, once you set aside the required 15 percent for open space, you don't have enough land for two lots. Your nest egg just got fried.

The moral to the story? Think long and hard, and seek good legal advice, before agreeing to any neighborly lot line adjustments.

For additional information about this topic, please contact Charles K. Campbell Jr. at 203-674-7940 or at ccampbell@pullcom.com.

Connecticut Gun Club Dodges Environmental Bullet

By Christine Collyer

A Connecticut private gun club's recovery and recycling of its bullets precluded a citizen's group from maintaining a contamination claim against it under the Resource Conservation and Recovery Act (RCRA). In *Simsbury - Avon Preservation Society , LLC v. Metacon Gun Club, Inc.*, 2006 U.S. Dist. LEXIS 53466 (D. Conn. 2006), the plaintiffs, a citizen's group and its individuals, sued the defendant, a private gun club, claiming that the defendant's operation, which was located near both a state park and river, resulted in contamination. Specifically, the plaintiffs' claims were that the bullets left behind on the range constituted "solid waste" and, therefore, the defendant violated both Chapter IV of RCRA, which pertains to open dumping of solid waste, and Chapter VII of RCRA, which pertains to the

imminent hazard caused by solid waste.

The defendant moved to dismiss the plaintiffs' RCRA claims on the ground that its bullets did not constitute solid waste as defined under RCRA. Relying on a 2001 EPA manual, the defendant argued that because it engaged in regular recovery and recycling of its bullets, the bullets could not be considered solid waste. The 2001 EPA manual provided that lead shot did not constitute solid waste nor could it be considered an imminent hazard if recovered on a regular basis. Relying on this manual, the defendant provided evidence that it had recovered and recycled its bullets on a regular basis for the past ten years.

In rendering its decision on August 2, 2006, the District Court relied on the 2001 EPA manual and found that because the defendant engaged in the regular recovery and recycling of the bullets that the bullets could not be considered solid waste under RCRA. The District Court thus dismissed the plaintiffs' RCRA claims.

For additional information on this topic, please contact Christine Collyer at 860-424-4329 or at ccollyer@pullcom.com.

Corporate Scandals Force Changes in Environmental Accounting

By Diane W. Whitney

The Sarbanes-Oxley Act, passed by Congress to reform the way corporations report their financial dealings, also has an effect on how environmental matters are reported. In combination with a July 2004 report from the Government Accountability Office and an interpretation by the Financial Accounting Standards Board, known as FIN 47, businesses now have to account for environmental liabilities they previously frequently ignored.

A typical reporting situation might involve a manufacturing company that closed an unneeded plant and has no real plans for its future. The plant, an older facility, probably has all the problems common to older buildings, such as asbestos and lead paint, and may also have soil and groundwater contamination by metals and solvents used there for decades, long before such substances were regulated. Unable to sell the plant because of these problems and unwilling to finance the high cost of remediation, companies in the past commonly ignored such an asset. That is no longer permissible.

Now a company must include in its financial reporting the estimated liability attributable to the asset. If a hard estimate is not possible, a reasonable estimate must be produced. In addition to reporting clean-up estimates, the cost of compliance with environmental laws must be reported. In the case of CERCLA, RCRA and air and water regulation, the costs can be very high; many corporations have had to restate previously issued financial reports to comply with the new requirements. The Securities and Exchange Commission has announced its intention to take enforcement action against companies determined to be lax in their attention to these requirements.

There is a great deal of concern with the standards required for environmental reporting. Some affected companies believe that the standards are not sufficiently clear and fear that a business making an honest, good faith effort to comply may be found in violation. An instructive survey on this issue has been conducted by The Brattle Group, which is available by contacting them at www.brattle.com or 617-864-7900.

For additional information on this topic, please contact Diane W. Whitney at 860-424-4330 or at dwhitney@pullcom.com.

Editor's Notes

Christopher P. McCormack was recently listed by *New York Magazine* as among New York area's Best Lawyers for 2006 for his work in environmental law.

Lee D. Hoffman was appointed to the Connecticut General Assembly's Brownfields Task Force and the Connecticut Department of Environmental Protection's Remediation Standard Regulation (RSR) External Advisory Committee.

Hoffman also moderated and presented at the Bridgeport Regional Business Council's Breakfast Seminar Series entitled "Brownfields Development in the Bridgeport Region: Facing the Issues; Getting it Done" on **September 27, 2006**.

James P. White Jr.
Editor

PULLMAN & COMLEY, LLC ATTORNEYS AT LAW

Visit our website: **www.pullcom.com**

A Tradition of Excellence and Innovation

850 Main Street
Bridgeport, CT 06604
Phone: (203) 330-2000
Fax: (203) 576-8888

170 Mason Street
Greenwich, CT 06830
Phone: (203) 618-4408
Fax: (203) 618-4422

90 State House Square
Hartford, CT 06103
Phone: (860) 424-4300
Fax: (860) 424-4370

300 Atlantic Street
Stamford, CT 06901
Phone: (203) 324-5000
Fax: (203) 363-8659

253 Post Road West
Westport, CT 06880
Phone: (203) 254-5000
Fax: (203) 254-5070

50 Main Street
White Plains, NY 10606
Phone: (914) 682-6895
Fax: (914) 682-6894

Visit our website: www.pullcom.com

Volume IV / Issue 3
Fall 2006

Groundbreaking News

Real Estate, Land Use & Environmental Issues

PRSRT STD
U.S. POSTAGE
PAID
MILFORD, CT
PERMIT NO. 46

PULLMAN & COMLEY, LLC ATTORNEYS AT LAW 850 MAIN STREET P.O. BOX 7006 BRIDGEPORT, CT 06601-7006