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Week of April 29

Welcome to CT Law of the Land

Developments in the law which can impact the state and municipal agency approval process for land use applications in Connecticut happen on almost a daily basis. These can range from important court decisions, to legislative changes, all of which can dramatically impact the approval and review process. On this page we will try to highlight some of those changes that might be of interest to our clients and prospective clients. We invite you to check back regularly to receive potentially important tips.

- AC35464 - Yorgensen v. Chapdelaine

In this new Appellate Court decision, the plaintiff was issued a building permit to construct a barn, but town officials thereafter also observed grading adjacent to the wetlands and issued a cease and desist order. The plaintiff claimed the work on her property was exempt from the wetlands regulations as a farming activity. The Inlands Wetlands Commission (“IWC”) responded that she still had to file an application with a plan, showing the location of the wetlands and the planned activity and then it would decide if her activity was exempt. When the plaintiff did not respond with a plan, the IWC upheld the cease and desist order. Instead of filing an appeal of the IWC’s ruling, the plaintiff brought a declaratory judgment action, claiming the IWC had no jurisdiction over her activities. The IWC then commenced an enforcement action and the lawsuits were consolidated. On appeal, the issue was whether the plaintiff could bring a declaratory judgment action or whether that should have been handled by an appeal from the agency’s decision.

This decision reaffirmed that in Connecticut, the first arbiter of jurisdiction over a wetlands lies with the local inland wetlands commission itself, not with the courts. The property owner should have submitted a plan to the IWC as it had requested, for it to determine whether her operations were exempt under § 22a-40(a). It is not for a court in the first instance to consider whether or not property is considered farming for the purposes of C.G.S. § 22a-40(a).

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Accordingly, a party cannot file a declaratory judgment action to circumvent the primary jurisdiction of an inland wetlands commission. The proper way to vindicate a legal position is not to disobey the orders, but rather, to challenge them on appeal.

The facts and holdings of any case may be redacted, paraphrased or condensed for ease of reading. No summary can be an exact rendering of any decision, however, so interested readers are referred to the full decisions. The docket number of each case is a hyperlink to the Connecticut Judicial Department online slip opinion. ©2014 Pullman & Comley, LLC. All Rights Reserved.

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