FST CV 14-5014294 S	: SUPERIOR COURT
KAREN A. MURPHY and KATHLEEN A. MURPHY	: JUDICIAL DISTRICT OF STAMFORD/NORWALK
V.	: AT STAMFORD
ZONING BOARD OF THE CITY OF STAMFORD	: NOVEMBER 16, 2016

MEMORANDUM OF DECISION

This is an appeal from the adoption by the Stamford zoning board of an amendment to the text of the zoning regulations by revising the definition of building height by adding a new paragraph which would apply to residential properties located within the official Coastal Boundary Map of the City of Stamford.[1] The amendment was proposed by Richard W. Redniss, a land use consultant, for direct application to property of Susan Cullman and John Kirby located at 74 Saddle Rock Road which abuts Long Island Sound and is located within the Coastal Boundary.

The plaintiffs are Kathleen A. Murphy individually and as administratrix of the estate of Karen A. Murphy[2] who owns property at 68 Saddle Rock Road which abuts 74 Saddle Rock Road. The evidence at trial showed that Kathleen A. Murphy's property abuts property which benefits from the amendment and that she has owned the property at all times since the zoning board acted

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[1] The amendment provides as follows:

"Where a residential building is to be built, altered or reconstructed in order to comply with the Minimum Elevations Standard of Article III, Section 7.1 Flood Prone Area Regulations, and such building is located fully or partially within the Coastal Boundary as defined in Article III, Section 7(T) Coastal Area Management Regulations, building height may be measured from the Base Flood Elevation applicable to the residential building, provided that the resulting height of the building measured from average grade is not more than five (5) feet greater than the maximum building height permitted in the applicable Zoning District."

[2] Karen A. Murphy died during the pendency of this appeal and while Kathleen A. Murphy was appointed administratrix of her estate and substituted as a plaintiff, Kathleen Murphy is now the sole owner of the property.

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to the date of trial. She is therefore statutorily aggrieved. *Goldfeld* v. *Planning & Zoning Commission*, 3 Conn. App. 172 (1985). The co-defendant, Richard W. Redniss was added as a party defendant pursuant to C.G.S. § 8-8(g) as he was the person who petitioned the board for the amendment.

The plaintiff has briefed the following claims in support of her assertion that the zoning board acted illegally: (1) the zoning board did not discuss or vote on the changes made to the text of the amendment by the planning board; (2) Richard W. Redniss was an improper applicant for the amendment; (3) the zoning board failed to include sufficient reasons for the amendment; (4) the zoning board failed to meet mandatory time limits for processing the application; (5) the zoning board approved a text change which the planning board never acted on; (6) the zoning board approved the amendment by a vote that was numerically insufficient.

STANDARD OF REVIEW

"We have often articulated the proper, limited scope of judicial review of a decision of a local zoning commission when it acts in a legislative capacity by amending zoning regulations. "[T]he commission, acting in a legislative capacity, [has] broad authority to adopt the amendments." *D & J Quarry Products, Inc.* v. *Planning & Zoning Commission*, 217 Conn. 447, 450 (1991). In such circumstances, it is not the function of the court to retry the case. Conclusions reached by the commission must be upheld by the trial court if they are reasonably supported by the record. This legislative discretion is wide and liberal, and must not be disturbed by the courts "unless the party aggrieved by that decision establishes that the commission acted arbitrarily or illegally." *Burnham* v. *Planning & Zoning Commission*, 189 Conn. 261, 266 (1983). Courts will

not interfere with these local legislative decisions unless the action taken is clearly contrary to law or in abuse of discretion. *Malafronte* v. *Planning & Zoning Board*, supra, 209-10 (Alternate citations omitted.) *Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc.* v. *Planning & Zoning Commission*, 220 Conn. 527, 542-544 (1991)

The Zoning Board Did Not Discuss Or Vote On The Changes Made To The Text.

This is a two part challenge to the zoning board's approval. The first part seems to assert that the zoning board is legally required to discuss any changes which the planning board makes to any amendment which is referred to it. Under Section C6-40-10 of the Stamford City Charter all amendments to zoning regulations must be referred to the planning board for approval before the zoning board may act on the amendment.[3] The second part apparently refers to the absence in the record of any specific vote on the particular changes which the planning board made. The record reveals that the planning board approved the amendment subject to the deletion of the requirement of a special exception allowing an additional height over five feet which was contained

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[3] Section C6-40-10 reads as follows:

C6-40-10. Referral of Proposed Amendments to the Regulations or Zone Boundaries to Planning Board.

Any proposed amendments to the Zoning Regulations or zone boundaries or changes thereof shall be referred to the Planning Board for a report at least thirty days prior to the date assigned for a public hearing to be held thereon. The failure of the Planning Board to report prior to or at the hearing shall be taken as approval of such proposals. A statement of the vote of the Planning Board, approving, disapproving, or proposing a modification of such proposal shall be publicly read at any public hearing held thereon. The full report of the Planning Board regarding such proposal shall include the reasons for the Board's vote thereon and shall be incorporated into the records of any public hearing held thereon. A proposal disapproved by the Planning Board may be adopted by the Zoning Board by a two-thirds vote of the Zoning Board. Upon request to the Planning Board by either the applicant or the opponent, a meeting shall be held by the Planning Board with such applicant and/or opponent before it shall render a decision. (Referendum 11-4-1969)

in the version which the zoning board sent to the planning board.[4] The planning board also specified "that Zoning Board make every effort to contact the Board of Representative members most affected by this amendment with the request that they notify their constituents."

The section of the plaintiff's brief which is devoted to this point is barely a page long, is conclusory and contains no analysis. "We repeatedly have stated that [w]e are not required to review issues that have been improperly presented to this court through an inadequate brief. . . . Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly. . . . Where a claim is asserted in the statement of issues but thereafter receives only cursory attention in the brief without substantive discussion or citation of authorities, it is deemed to be abandoned. (Citations omitted; internal quotation marks omitted.) *Merchant* v. *State Ethics Commission*, 53 Conn. App. 808, 818 (1999). These same principles apply to claims raised in the trial court." (Alternate citation omitted.) *Connecticut Light & Power Co.* v. *Dept. Of Public Utility Control*, 266 Conn. 108, 120 (2003).

Additionally, the court notes that neither the Stamford zoning regulations nor the General Statutes require that a zoning board engage in any measure of discussion before it approves an amendment to the regulations. The court is aware of no case law and the plaintiff has cited none which supports her position. On the contrary, the court notes that the minutes of the meetings held by the zoning board on May 27, July 7, 21 and 28 of 2014 reflect broad discussion of the

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[4] The text of the proposed amendment as it was sent to the planning board reads as follows: "Where a single family home within a single-family residence district and within the Coastal Boundary is to be built or altered in order to meet the minimum elevation standard, as described in Section 7.1 B-31, building height may be measured from the base flood elevation as described in Section 7.1-B-2. Where the resultant building height is more 5 (five) feet greater than would otherwise be allowed by paragraphs (a) or (b) above, the proposed height shall be authorized by special exception approval of the Zoning Board."

amendment.

Standing of Richard W. Redniss

As stated at the outset, the application for the amendment was filed by Richard W. Redniss. The plaintiff asserts that Redniss was ineligible to make such an application because he did not own property in the City of Stamford at the time. Section C6-40-8 of the Zoning Regulations provides as follows:

"Sec C6-40-8. - Applications for Amendments to Zoning Regulations, Other Than Zoning Map, After Effective Date of the Master Plan. After the effective date of the Master Plan, any Stamford property owner or environmental agency, Department, Board or official may file a written application with the Zoning Board for an amendment to the Zoning Regulations, other than the Zoning Map. Such application shall be scheduled for at least one public hearing to be held within sixty days from the date said application was filed, upon notice as hereinafter provided. The Zoning Board shall not hear any application or applications relating to the same amendment, or substantially the same amendment, more than once in a period of twelve months unless withdrawn on request of the Board on its terms and conditions. If any applicant or applicants either withdraws or postpones an application or applications to the Zoning Board before the scheduled date of public hearing, said application or applications shall not be rescheduled for public hearing within ninety days following the public hearing date from which said application or applications were withdrawn or postponed. Each applicant, upon filing an application pursuant to this Section, shall pay a filing fee in such amount as may be prescribed by the Zoning Board and shall leave name and address with the Secretary of the Board. A copy of the decision of the Zoning Board, signed by the Secretary or Chairperson of the Board, shall be sent to the applicant by registered mail at the time

of the official publication of such decision. (S.A. No. 619, 1953; Referendum 11-4-1969; Referendum 11-3-1987)" (Emphasis added.)

"Under Connecticut law, a party applying to a planning and zoning commission must have a sufficient interest in the subject property to have standing to apply" to that commission. *Richards* v. *Planning & Zoning Commission*, 170 Conn. 318, 321-22 (1976). "[T]he standard for determining whether a party has standing to apply in a zoning matter is less stringent" than the standard that applies to a determination of whether a party is aggrieved. *RYA Corp.* v. *Planing & Zoning Commission*, 87 Conn. App. 658, 663 (2005). In the present case the issue is not whether the applicant had a sufficient interest in the property owned by Culman & Kirby but rather whether the applicant satisfied the requirements set forth in Section C6-40-8 of the City Charter.

The testimony of Richard W. Redniss at trial clearly established that he owned no real property of record in Stamford at the time that the application was filed. The application indicates that while the application was signed and sworn to by Richard W. Redniss in his individual capacity, the body of the application form recites that the applicant's name was: "Richard W. Redniss (22 First Street Corporation)." Additionally, on the line which calls for the location of the property owned by the applicant, the response was "22 First Street." Redniss further testified that he and his brother are the sole shareowners of 22 First Street Corporation, that that corporation owns the property at 22 First Street in Stamford, that he has filed numerous applications with the Stamford zoning agencies in the past in the same manner, that these agencies have always accepted the applications and that in each instance he was authorized by his brother and therefore the corporation to do so. In the present case, not only did the zoning board not raise any issue concerning its jurisdiction to process the application to completion, but the record is bereft of any

claim by the plaintiff who attended the hearing at which the amendment was adopted that it was without jurisdiction for this reason.

"We have said that modern procedural concepts "regard with disfavor the failure, whether because of a mistake of law, inattention or design, to object to errors occurring in the course of a trial until it is too late for them to be corrected, and thereafter, if the outcome of the trial proves unsatisfactory, the assignment of such errors as grounds of appeal." *Fletcher* v. *Planning & Zoning Commission*, 158 Conn. 497, 567-08 (1969). The plaintiff claims that the application should not have been considered by the board because of this "procedural defect." The plaintiff makes no claims and the record agrees that the plaintiff did not challenge on procedural grounds at any time the right of the zoning board to proceed to consider this application.

RYA Corporation v. *Planning & Zoning Commission,* supra, is factually similar in many significant respects. In that case the zoning regulations required that the applicant be a "record owner or subdivider." While *RYA Corp.* was not a record owner or record subdivider, the record owner consented in writing to the filing of the application. In the present case Redniss made it clear that 22 First Street Corporation had ongoing consent for many years from both shareowners to file any manner of application for zoning relief in the City of Stamford and in fact has done so on many occasions. As in *RYA*, the authorization is not necessarily specific to the particular property involved but the evidence was clear that the corporation here implicitly agreed (though not in writing) to have Redniss act as its agent in his individual capacity. *RYA Corp.* v. *Planning & Zoning Commission*, Id. at 667. The court is not required to read the application narrowly or in an overly technical manner. Id. at 668. The property owner requirement of the regulation was thus satisfied.

Finally, the court notes that in Section 8-8(g) the legislature has singled out the "person who petitioned the board" for service of process as long as that petitioner had his "rights, duties or privileges determined therein," thereby giving party status to a petitioner without first requiring him to be a property owner. Indeed, the plaintiff makes no claim that such was not the case with respect to the petitioner in this case.

Failure Of Zoning Board To Include Sufficient Reasons.

The plaintiff argues that the transcripts of the public hearing and zoning board's deliberations disclose that the zoning board gave insufficient reasons for approving the amendment. It is well settled that when a zoning board fails to give reasons for its action or if its reasons are inadequate, the trial court must search the record to determine whether a basis exist for the action taken. . . . [i]n searching the record, the trial court may rely on any reason culled from the record which demonstrates a real or reasonable relationship with the general welfare of the community in concluding that the board's decision should be upheld. Nor is it appropriate for a reviewing court to attempt to glean such a formal, collective statement from the minutes of the discussion by commission members prior to the commission's vote. Thus, we regard this case as governed by the well settled principle of judicial review of zoning decisions that where the commission has failed to state its reasons, the court is obligated to search the record for a basis for its action." *Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc.* v. *Planning & Zoning Commission*, supra at 545-546, n.15.

It is apparent from an examination of the record that while the zoning board did not articulate a collective reason or reasons for the amendment, there is ample evidence that the amendment was based on at least one reason which is reasonably related to the general welfare of

the community as required by Section C-6-40-1 of the Stamford City Charter. [5]

Exhibit 15 which is a letter from the planning board to the zoning board reveals that the amendment was a response to the desire of the Stamford Board of Representatives (municipal legislative body) to develop a "global solution" to allow additional height in areas affected by FEMA (Federal Emergency Management Act) and City requirements to raise homes in the Coastal Boundary one foot above base flood elevation. Additionally, a staff report from the Stamford Land Use Bureau (Exhibit 18) contains a clear rationale for the appropriateness, indeed necessity, for the regulation of the elevation of residential buildings in order to protect against coastal flooding. The report in part states that the amendment: "would provide limited relief to residential buildings to encourage buildings to be elevated above the Base Flood Elevation without sacrificing any zoning

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[5] Sec. C6-40-1. - Powers and Duties of Zoning Board.

The Zoning Board is authorized to regulate the height, number of stories and size of buildings and other structures; the percentage of the area of the lot that may be occupied; the size of yards, courts and other open spaces; the density of population and the location and use of buildings, structures and land or trade, industry, residence or other purposes; and the height, size, location and character of advertising signs and billboards. Said Board may divide the City into districts of such number, shape and area as may be best suited to carry out the purposes of this Chapter; and within such districts, it may regulate the erection, construction, reconstruction, alteration or use of buildings or structures and the use of land. All such regulations shall be uniform for each class or kind of buildings or structures throughout each district, but the regulations in one district may differ from those in another district, shall be made in accordance with a comprehensive plan and shall be designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population and to facilitate the adequate provision for transportation, water, sewerage, schools, parks and other public requirements. Such regulation shall be made with reasonable consideration as to the character of the district and its peculiar suitability for particular uses, made with reasonable consideration as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the City.
(S.A. No. 619, 1953; Referendum 11-7-1995)

rights. The building height relief is directly related to the depth of flooding on each individual property, not to exceed an increase of five (5) feet. This appears to be an appropriate and measured response to climate change and expected increases in coastal flooding, that will encourage compliance with Flood Prone Area Regulations and provide an adaptation response to coastal flooding as recommended in the Master Plan. . . . . this text amendment appears appropriately designed, consistent with the Stamford Master Plan and will provide a comprehensive solution to all properties impacted by coastal flooding."

And finally, Norman Cole, the Land Use Bureau Chief for the City testified at the meeting of July 21 that the amendment was designed: "to keep people from, as it was testified, Greenwich allowed people to continue to tier higher, and higher with fill and then put the house on top of that and measure from there. We say you take the existing land elevation and you can't alter that by more than three feet. . . . The measurement has to be taken from the average grade around the foundation of the house. And it can't be more than 3 feet above the average grade if you haven't done any fill."

The plaintiff criticizes this because the amendment does not require that the building be raised off of the ground as if on piers. This claim misses the point. As explained in the discussion portion of Exhibit 18, "building height relief is directly related to the depth of flooding on each individual property." Thus it is reasonable to infer from the allowance of greater building height that more living space will be devoted to the higher levels of the building rather than the lower level, thus protecting lives and property. The same section of exhibit 18 indicates that other municipalities have addressed flood protection in the same way. The court concludes that such a purpose is reasonably and rationally related to one of the principal purposes of zoning as set forth

in Charter Section C6-40-1. See footnote 5.

No Public Hearing Within Sixty Days.

As an additional ground for reversal the plaintiff asserts that the zoning board's action was invalid because it failed to comply with the terms of Section C6-40-8 of the City Charter which requires that: "Such application shall be scheduled for at least one public hearing to be held within sixty days from the date said application was filed. The record shows that the application for the text amendment was filed on April 30, 2014 but the public hearing was not held until July 7, 2014 more than sixty days after the filing. In *Winslow* v. *Zoning Board of Appeals*, 143 Conn. 381, 387-388 (1956) our Supreme Court determined that Stamford's sixty day public hearing requirement for zoning amendments is directory not mandatory, giving the following analysis: "Nor are we impressed with the claim that if the board originally acquired jurisdiction when the petition was filed on July 30, 1954, it lost that jurisdiction because no hearing was had until December 7, 1954. Section 553.1 of the charter sets out the procedural steps for handling and disposing of petitions to amend the regulations. 26 Spec. Laws 1236. It provides, among other things, that a "petition shall be scheduled for at least one public hearing to be held within sixty days from the date [the] petition was filed." That the provision for a public hearing is mandatory is undoubtedly correct. The public are entitled to express to the board their disapproval of any proposal which, if adopted by the legislative body of the city, would affect them and their property interests. If the sixty-day requirement is also mandatory, the claim under discussion would have merit. We are satisfied, however, that it is directory. Legislative provisions designed to secure order, system and dispatch in proceedings are ordinarily held to be directory where, as here, they are stated in affirmative terms or, to express it differently are unaccompanied by negative words. *International Brotherhood* v.

Shapiro, 138 Conn. 57, 67; *Nielsen* v. *Board of Appeals on Zoning*, 129 Conn. 285, 287; 50 Am. Jr. 51, § 29. "Failure of the board to comply with the sixty-day requirement did not destroy its jurisdiction to amend the ordinance." (Alternate citations omitted.)

Since the issue here does not involve notice, the failure of the zoning board to hold a hearing within 60 days must be deemed directory and noncompliance does not invalidate the board's action. The cases which the plaintiff have cited do not contradict this result. On the contrary, there are cases which have ruled that similar time limits imposed by General Statutes on action by a zoning agency are not mandatory. See e.g., *Leo Fedus & Sons Construction Co.* v. *Zoning Board of Appeals*, 225 Conn. 432 (1993).

The Zoning Board Approved An Amendment Which Was Textually Different From That On Which The Planning Board Acted.

A. The Text

As set forth in footnote 3, the Stamford City Charter requires that a proposed amendment to the zoning regulations be referred to the planning board for a report prior to action thereon by the zoning board. The plaintiff maintains that the version of the amendment on which the planning board acted on June 10, 2014 was textually different from the version which the zoning board approved on July 28, 2014 because the text which the planning board approved applied only to single family residences (see footnote 4.) whereas the text which the zoning board approved applies to all residential buildings within the coastal boundary (see footnote 1). Additionally, the plaintiff argues that the zoning board amended the proposal by including two conditions, namely: (1) removal of the last sentence pertaining to special exceptions by the Zoning Board for additional height over five feet; and (2) that the Zoning Board make every effort to contact the Board of

Representatives members most affected by this amendment with the request that they notify their constituents.

When at trial it became apparent that the record as it then stood was hopelessly unclear as to the precise wording which was before the planning board on June 10, 2014, the zoning board was prompted to file a motion for permission to supplement the record (#146). In the absence of an intelligible recording of the testimony before the planning board on that date the court took testimony from David Woods, Principal Planner for the City who was cross-examined by the plaintiff. After hearing further argument the court issued the following ruling:

"In support of the motion the court heard the testimony of David Woods, Principal Planner for the City of Stamford whose responsibility it was to prepare the agenda of the Planning Board.. The evidence was compelling that the particular text that the Planning Board acted on was the same text that the Zoning board adopted on July 28, 2014. Thus, the court finds that it is not only necessary for the equitable disposition of this appeal that the record be supplemented in this manner but that it is essential that a material ambiguity be clarified. So ordered."

The plaintiff's claim to the contrary is rejected. The court accepts Mr. Woods' testimony that the confusion in the record was generated by the fact that in preparing a transmittal memorandum to the planning board for Norman Cole, the Land Bureau Chief's signature, he erroneously used the term "single family" in the caption (record Ex. 12). The error was repeated at the June 10 meeting when the chairperson (TD) read into the record the erroneous reference to "single family residence" (see Ex. G, p. 9 attached to motion to supplement record.) Mr.Woods' testimony corroborated the testimony of Norman Cole who testified at a hearing held by the court for the same purpose on July 27, 2016. It is also substantiated by the minutes of the meeting of the

planning board of May 27, 2014 which reflects the use of the words "residential building" and not "single family home." The fact that "single family home" was referred to in the June 12, 2014 memorandum from the chairperson of the planning board to the zoning board reflects that the error was perpetuated.

B. The Conditions

Since the court has concluded that the planning board did not approve a version of the amendment which differed textually in its coverage (single family home v. residential building) from the version approved by the zoning board, there remains to be determined whether the planning board's deletion of the special exception requirement for additional height over five feet constituted a disapproval of the proposal within the meaning of Sections 6-40-10 of the City Charter. The result of the change was two fold. First, it eliminated the possibility that the height of a residential building in a flood prone area might exceed a limit of five feet in excess of the height otherwise permitted in the zoning district in which the property is located.[6] The second is that the change eliminates the need for a special exception for any exceedence of the height limit.

The plaintiff posits that this change constitutes disapproval of the proposal because it was not approved by the planning board in the exact language of the referral from the zoning board. Such a position ignores the express language of the Charter provision which expressly contemplates a proposed modification of the proposal by the planning board. "Where a statute or regulation does not define a term, it is appropriate to focus upon its common understanding as expressed in the law and upon its dictionary meaning." *Metropolitan District* v. *Barkhamstead*, 199 Conn. 294, 301

[6] For example, in single family zones the maximum height ranges from thirty to thirty-five feet (zoning regulations P. 3-3, 4). Under the amendment the building could reach thirty-five to forty feet as of right but not forty to forty-five feet by special exception.

(1986). Webster's New World Dictionary, 2d Coll. Ed. at 914 defines "modify" in several clearly similar ways as follows: 1. to change or alter; esp., to change, slightly or partially in character, form, etc. 2. to limit or reduce slightly; moderate / to *modify* a penalty 3. **Gram.** to limit the meaning of; qualify." A modification differs from a disapproval for the obvious reason that in enacting Section 6C-40-10 the legislature envisioned three separate and distinct possibilities, viz: approval, disapproval or modification and for this reason the deletion made by planning board cannot be deemed to be a disapproval. Finally, the planning board recognized its action on the proposal as an approval with conditions [7] when it used that language in its transmittal of its action to the zoning board.

The second condition did not constitute a modification, an approval, or disapproval but an expression of the board's desire to disseminate and publicize the text change to the members of the Board of Representatives so that the legislators would be able to inform their constituents who own property within the Coastal Boundary of the adoption of the change. The plaintiff treats this as if it were a condition precedent to the effectiveness of the amendment. No such interpretation is warranted. On the other hand, the record reflects that the Land Use Bureau Chief instructed the staff on July 2, 2014 to send to affected legislators copies of the staff report which contains the text change and to advise them of the public hearing that the zoning board had scheduled for July 7, 2014. . . . "it must be presumed that public officials have performed their statutory duties, in the

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[7] By analogy, under G. S. Section 8-26 where a commission may "approve, modify and approve or disapprove" a subdivision, a conditional approval is not a prescribed course of action available to a planning commission and thus a conditional approval is a failure to act which results in automatic approval of the subdivision. *109 North LLC* v. *Planning Commission*, 111 Conn. App. 219 (2008). If this rule were applied to the present, the conditional approval granted by the planning board would constitute "a failure to report" and therefore would be deemed an approval, thus obviating the need for a two-thirds vote.

absence of substantial evidence to the contrary. *Bowman* v. *1477 Central Avenue Apartments, Inc.*, 203 Conn. 246, 254-55, 524 (1987). "Public officers, acting in their official capacity, are presumed, until the contrary appears, to have acted legally and properly." *Brookfield* v. *Candlewood Shores, Estates, Inc.*, 201 Conn. 1, 6, 513 (1986). (Alternate citations omitted.) *Beechwood Gardens Tenant's Association* v. *Department of Housing*, 214 Conn. 505, 515 (1990) Not only is there a lack of substantial evidence to the contrary but there is no evidence whatsoever that the zoning board failed to carry out this condition. There is a presumption that public officials entrusted with specific public functions related to their jobs properly carry out their duties. *Beechwood Gardens Tenants' Assn.* v. *Department of Housing*, 214 Conn. 505, 514-515 (1990).

Finally, the court notes that the record shows that contrary to the plaintiff's claim that the amendment was specifically tailored to Cullman & Kirby, the land use staff estimated that four hundred to five hundred houses would be affected by it.

The Numerical Vote

The plaintiff contends that because the action of the planning board was a disapproval of the proposed amendment as referred to it by the zoning board, a two-thirds vote of the zoning board was required and because the record shows that the final vote by the zoning board was two in favor, one against and one abstention, the amendment failed. The plaintiff argues that even if the planning board's action was a modification and not a disapproval, the applicable special acts are silent on the number of votes required for a zone change. Plaintiff therefore concludes that the void created by this silence is filled by Section 8-3(b) of the General Statutes which as stated above, requires a majority of all the members of a zoning board to vote for a zoning change and since the zoning board has five members, a two:two:one vote failed to pass the amendment. The plaintiff does not

dispute that the City has not adopted the planning and zoning provisions of the General Statutes, see *Sheridan* v. *Planning Board*, 159 Conn. 1, 4 (1969) or that the special act is silent as to the number of votes required for an amendment to the zoning regulations. The plaintiff has offered no authority to support its claim that Section 8-3(b) applies to Stamford. The defendant zoning board argues that Section 8-3(b) does not apply and that the two:two:one vote was sufficient to carry the proposal because all of the powers and duties of the zoning board are found in the Stamford Charter (Special Acts). The court agrees with the zoning board.

This court was confronted with a similar issue in *Twin Lakes, Inc.* v. *Zoning Board of Appeals*, 1991 WL 86232 (1991). Although that case involved the number of affirmative votes necessary to grant an application to amend a special exception, the analysis is applicable here. Curiously, in that case the Stamford Zoning Board of Appeals argued that Section 8-7 of the General Statutes was applicable, thus requiring a concurring vote of four members" for approval of such an application. The plaintiff argued that because Stamford has not adopted the provisions of Chapter 124 of the General Statutes regarding zoning, Section 8-7 does not apply in the absence of such adoption. In response, this court stated:

"As the Supreme Court stated in the leading case of *Sheridan* v. *Planning Board*, 159 Conn. 1, 4 (1969) With the exception of certain provisions contained in Chapters 124 and 126 of the General Statutes . . . . planning and zoning in Stamford are governed by 26 spec. laws, 1128, no. 619, hereinafter referred to as the Stamford Charter (1953), rather than by the General Statutes". The court went on to state that "General Statutes § 8-10 provides that General Statutes §§ 8-8 and 8-10 shall govern appeals from the final zoning authority of any municipality whether or not such municipality has adopted the provisions of Chapter 124 of the General Statutes . . . ." *Id.* at 11. In

contrast, "the provisions of § 8-7 do not apply . . . to any municipality which has not adopted the general enabling act provided in § 8-1. *Puskarz* v. *Zoning Board of Appeals*, 155 Conn. 360, 365 (1967)." The basis for this conclusion was expressed as follows: "Chapter 124 of the General Statutes § (§ 8-1-8-13) is a general zoning enabling act. 'Any municipality may by vote of its legislative body, adopt the provisions of this chapter and exercise through a zoning commission the powers granted hereunder.' § 8-1. We have construed this statute as requiring of the municipality's legislative body an affirmative act in which the intent to utilize the zoning provision of the general enabling act is expressed". *Id.* at 364. Therefore, because the zoning regulations contain no provision corresponding to the four-vote requirement of § 8-7 except where the planning board recommends denial, and because Stamford has failed to adopt the voting provision of § 8-7 by an affirmative act, the four-vote requirement of § 8-7 does not apply to Stamford special exceptions."

Unlike Section 8-10 of the General Statutes which mandates uniformity of the appeals procedure notwithstanding inconsistent Charter provisions or Special Acts or failure of a municipality to adopt the provisions of Chapter 124, neither Section 8-3(b) nor Section 8-3a(b) contain either a similar uniformity provision or are susceptible to an interpretation which would render them applicable to Stamford. Other statutory examples of local override in Chapter 124 are found in Sections 8-3(g)(1)(last sentence), 8-3(g)(2)(last sentence), 8-3(h) and 8-3(k)(last sentence). Similarly, our Appellate Court has determined that the notice provisions of Section 8-3 do not apply to Stamford, *Hall* v. *Planning Board*, 2 Conn. App. 49, 50 (1984). This court cannot read into statutes by the process of interpretation provisions which are not expressed in them. "Courts must apply statutes as they find them, whether or not they think that the statutes might be improved by the inclusion of other or additional provisions." *Burke* v. *Board of Representatives*, 148 Conn. 33,

43 (1961). There is a presumption in statutory construction that the legislature intended to create one consistent body of law. *Keough* v. *Bridgeport*, 137 Conn. 53, 59 (1982). No word in a statute should be treated as superfluous or insignificant. *State* v. *Roque*, 190 Conn. 143, 150 (1983). Express inclusion of the Special Act municipalities in the coverage of some actions of the General Statutes is an implied exclusion of them in others which do not indicate expressly that they apply. Inclusio unius est exclusio alterius.

Other principles of statutory construction support the conclusion that Section 8-3(b) does not apply to Stamford. "Legislative intent is not to be found in an isolated sentence. The enactment must be examined in its entirety and its parts reconciled and made operative so far as possible." *Garbarty* v. *Norwalk Jewish Center, Inc.* , 148 Conn. 376, 382. "When construing a statute our fundamental objective is to ascertain and give affect to the apparent intent of the legislature . . . in other words, we seek to determine, in a reasoned manner the meaning of the statutory language as applied to the facts of the case, including the question of whether the language actually does apply." . . . *Friezo* v. *Friezo,* 281 Conn. 166, 181 (2007)

Section 8-3(b) mandates a majority vote "except as otherwise provided in this chapter." Under Section 8-1, the provisions of Chapter 124 only apply to those municipalities whose legislative bodies have adopted its provisions. Thus the legislature has preserved the home rule prerogatives of municipalities such as Stamford to conduct their zoning business pursuant to Special Acts of the legislature. It was the manifest intent of the legislature to exempt from the 8-3(b) voting requirement any municipality which did not embrace it by legislatively adopting the provisions of Chapter 124.

Since the court has determined that a majority vote of all the members of the zoning board

was not necessary to pass the amendment, the court must now decide whether the two:one:one vote was legally sufficient.

The parties further agree that the zoning board consists of five members, that a quorum for the conduct of business is three members and that four members were present[8] at the July 28, 2014 meeting which acted on the amendment. The plaintiff relies heavily on the trial court decision of *Thompson Savings Bank* v. *Zoning Commission*, 2000 WL 264293 (2000) in which the court invalidated the action of the Waterbury Zoning Commission which approved a zone change by a vote of two in favor and one abstention. The court reasoned that although three members who were in attendance constituted a quorum, Section 8-3(b) mandated that a majority vote of the commission be cast for a zone change thus requiring three affirmative votes. It is noteworthy that the opinion makes no mention of an applicable special act or charter provision similar to that which exists in Stamford. This decision therefore is inapposite simply because Section 8-3(b) applied in the absence of a special act to the contrary.

With agreement that a quorum was present at the zoning board meeting, the plaintiff argues that in applying Section 8-3(b) a majority of the board means that three affirmative votes were necessary for passage and the abstention vote cannot be counted as an affirmative vote, citing *Green Falls Associates, LLC* v. *Zoning Board of Appeals*, 138 Conn. App. 481, 490-491 (2012). *Green Falls* is clearly distinguishable from the present case because "when a statute specifically requires a number of affirmative votes an abstention is not counted with the majority" (emphasis added). As noted above in Stamford, no statute specifically requires a number of affirmative votes because

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[8] Although five members actually attended the meeting one member did not attend the public hearing and the board decided to disqualify her vote.

the Special Act is silent and Section 8-3(b) does not apply. On the contrary, the court concludes that *Ghent* v. *Zoning Commission*, 220 Conn. 584, 597-599 (1991) provides the appropriate guidance. In that case the Waterbury Zoning Commission was created by Section 3001 of the City Charter which provided that the zoning commission "Shall consist of five resident electors." The commission had under consideration, at a duly called meeting, an amendment to the zoning regulations the effect of which was to prohibit multi-family dwellings in certain commercial zones. When the commission voted on the amendment, only four members were serving because of an unfilled vacancy. At the particular meeting at the which the amendments were adopted, one of the four members of the commission was absent. The three remaining commissioners voted to approve the amendments. The plaintiff appealed claiming that the vote was invalid because by the failure to have a full complement of five commissioners, the votes were numerically insufficient to pass the amendments. The court held: "In the absence of legislative restriction, the general rule is that a committee or commission performing such functions as those exercised by the zoning commission in this case can take valid action at a meeting of which all members have proper notice and at which a majority are present." *Strain* v. *Mims*, 123 Conn. 275, 281 (1937). "Words purporting to give a joint authority to several persons shall be construed as giving authority to a majority of them." General Statutes § 1-1 (h). "[A]lthough vacancies occur by death or resignation, if a majority survives or remains there is a sufficient number to constitute a quorum, otherwise, there is not." 4 E. McQuillin, supra § 13.30. A board may act as long as there exists a quorum equal to a majority of all the actual members of the board. *Lee* v. *Board of Education*, 181 Conn. 69, 83-84 (1980)." (Alternate citations omitted.)

The significance of this case is that Section 8-3(b) was on the books at the time and yet the

court found that the Waterbury Charter, by containing no numerical voting requirement, permitted approval of a change in the zoning regulations by the majority vote of a quorum. This rule has been followed in our trial courts. In *U-Haul of Connecticut* v. *Planning & Zoning Commission*, 12 Conn. L. Rptr. No. 11, 367, 369 (1994) the court recognized that in "the absence of a controlling statute, the rule in this state is that where a quorum of an agency is present, a majority of the votes actually cast is sufficient even though the number of votes is less than a quorum, provided there are sufficient number of members present, whether voting or not, to constitute a quorum."

Applying these principles to the facts of the present case, the absence of any limitation on the number of votes required for approval of an amendment to the zoning regulations, the vote of two in favor, one against with one abstention was sufficient to produce passage of the amendment. With this conclusion it is unnecessary to reach the issue of whether the abstention should have counted as an affirmative vote or to determine whether the planning board referral provision is mandatory or directory.

The appeal is dismissed.

BY THE COURT

A. WILLIAM MOTTOLESE, J.T.R.

Decision entered in accordance with the foregoing. All counsel & self-represented parties of record notified 11/16/16
Catherine Cerrigan
Admin Clerk