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Buttermilk Farms decision links municipal leverage in subdivision applications

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One of the more persistent issues in Connecticut land use law is the extent to which a town may require a developer to make "off-site" improvements as a condition to approval of a subdivision application. Although some questions still remain, the state's Supreme Court's June 30 decision in the Buttermilk Farms, LLC case provides some long overdue guidance.

The permissible scope of review of a subdivision application by a town's planning commission has long been acknowledged to be limited to "the land being subdivided". For many years, since the Property Group decision in the early 1990s, it has been generally acknowledged that the relevant statute (Section 8-25 of the Connecticut General Statutes) does not permit a commission to require "off-site" improvements unless there is a reasonable and necessary need for such improvements resulting from the proposed development application.

The question that was raised in that case, but remained unanswered, was whether the commission had the authority to condition its approval of the subdivision application on the developer's widening of a public street abutting the proposed subdivision. Other cases had suggested that, where no subdivision roads were proposed to be built which would intersect with existing town roads, a developer could not be forced to improve an existing abutting public highway.

In Buttermilk Farms, the developer proposed a five-lot residential subdivision in the town of Plymouth. All of the lots would have frontage on Lane Hill Rd. Whether or not Lane Hill Rd. was an existing town road was a subject of debate during the proceedings, but it was described as paved, but in poor condition, and as a narrow, winding road with steep slopes. The pavement in the area of the subdivision was approximately 30 ft. in width and the right-of-way was acknowledged to be a total of 50 ft. in width, measured from the center line.

Because of the condition of the existing road, the commission found that sidewalks would be necessary to ensure the health, safety and welfare of future residents. The sidewalks were to be installed within the 50 ft. municipal right-of-way and not on the property owned by the developer. The subdivision application was ultimately denied because the applicant failed to show the requested sidewalks on their plan.

The applicant appealed the denial to the Superior Court. There, the analysis focused on the subdivision regulation which required sidewalks to be installed along the entire frontage of the subdivision. After carefully reading the language of the subdivision enabling statute, the court reviewed prior case law and concluded that the regulation requiring the installation of sidewalks was valid because it was reasonably related to the functions of the commission pertaining to health and safety of the public.

The developer appealed the trial court's ruling to the Connecticut Supreme Court, which reached an entirely different conclusion. Picking up the issue left open by Property Group in 1993, the Buttermilk

Farms court started its review by noting that the jurisdiction of the commission was strictly limited to that which was granted by statute and that such regulations should not be extended by construction or implication beyond what the plain language provides. After listing the specific grants of power contained in the statute, the court concluded that "none of those enumerations reasonably can be interpreted to confer upon the commission the authority to require the installation of sidewalks on an existing road that abuts a proposed subdivision".

This conclusion was based, in part, on the court's finding that the statutory phrase "the land to be subdivided" could not reasonably be interpreted to include abutting streets or other areas outside of the boundaries of the proposed subdivision. The court conceded that the commission did have the authority under the health and safety language to require the installation of sidewalks and other health and safety measures within the boundaries of the proposed subdivision.

Further, the court found that the health and safety provisions of the subdivision statute must be read in conjunction with the existing statutory scheme relating to municipal responsibility over existing roads. Noting that the statutes unambiguously place the burden for the construction and maintenance of public highways on the towns, it held that it was unreasonable to read the general health and welfare language in the subdivision statute as a device for shifting that obligation to a private party. It also identified several other statutory provisions under which a town may assess private property owners for benefits and improvements, including sidewalks, which are constructed.

While future litigation will undoubtedly provide further guidance on the powers of a planning commission in the context of a subdivision application, Buttermilk Farms greatly limits the ability of a commission to require the developer to make improvements outside of the narrow confines of the property being subdivided.

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