Rec'd @ PH 1/6/14

Exhibits

In Opposition To

Zoning Board Appl. No. 2013-33

Zone Change From R-20 to RA-1

Saddle Rock Road

Materials Submitted during PH 1-6-2014

Submitted By:
Cacace, Tusch & Santagata
Counsel for Lillian Kraemer
46 Saddle Rock Road

ZB Appl. No. 2013-33
(Zone Change from R-20 to RA-1)

Property	Owner	Lot Size	House Size	Map Block Lot
68 Saddle Rock Road	Karen A. Murphy Kathleen A. Murphy	.99 ac	#1 -2,137 sf #2 -8,570 sf	146 25 3
74 Saddle Rock Road	John J. Kirby Jr. Susan R. Cullman	1.24 ac	14,072 sf	146 25 2
88 Saddle Rock Road	John J. Kirby Jr. Susan R. Cullman	.65 ac	10,273 sf	146 25 1
89 Saddle Rock Road	Steward Shanley Rachel Shanley	1.08 ac	8,744 sf	146 25 A
102 Saddle Rock Road	William W. Ward, Trustee	.98 ac	14,298 sf	146 25 6
107 Saddle Rock Road	Steven G. Chrust Sharon L. Chrust	1.16 ac	10,887 sf	146 25 1
123 Saddle Rock Road	Allen Silverman Eleonora A. Silverman	1.67 ac	8,177 sf	146 25 4

Nonconformities Resulting From Proposed Zone Change

Property	Owner	Lot Size	House Size	Map Block Lot
68 Saddle Rock Road	Karen A. Murphy Kathleen A. Murphy	.99 ac	#1 -2,137 sf #2 -8,570 sf	146 25 3
88 Saddle Rock Road	John J. Kirby Jr. Susan R. Cullman	.65 ac	10,273 sf	146 25 1
102 Saddle Rock Road	William W. Ward, Trustee	.98 ac	14,298 sf	146 25 6

A Zone Change Must:

(1) Be in accordance with the comprehensive plan; and

(2) Be reasonably related to the normal police power purposes enumerated in C.G.S. § 8-2.

First Hartford Realty Corporation v. Plan and Zoning Commission of Town of Bloomfield, 165 Conn. 533, 541 (1973).

Stamford's Comprehensive Plan is in:

(1) The Zoning Regulations; and

(2) The Zoning Map.

First Hartford Realty Corporation v. Plan and Zoning Commission of Town of Bloomfield, 165 Conn. 533, 542 (1973).

The Comprehensive Plan is:

"[A] general plan to control and direct the use and development of property in a municipality or in a large part thereof by dividing it into districts according to the present and potential use of the properties."

Damick v. Planning and Zoning Commission of Town of Southington, 158 Conn. 78, 83 (1969).

Inconsistencies with the Comprehensive Plan:

(1) Contrary to the purpose of the RA-1 zone stated in the Stamford Zoning Regulations (Art. III, Sec. 4-AA-1.1). "The purpose…is to set aside and protect areas which have been developed predominantly for single family dwellings on large lots in a rural setting."

(2) RA-1 districts are largely in North Stamford and Westover; and

(3) Result would be an increase in nonconformities.

"The controlling considerations in determining what action should be taken on a petition for a zoning change are the good of the community as a whole, and not the benefit to a particular individual or group of individuals, and whether the change falls within the requirements of a comprehensive plan…"

Ferndale Dairy, Inc. v. Zoning Comm'n of Town of Berlin, 148 Conn. 172, 175 (1961).

***MacKenzie v. Planning and Zoning Com'n of Town of Monroe*, 146 Conn. App. 406, 429-430 (2013).**

"The variance power exists to permit what is prohibited in a particular zone…In simple terms, the zoning commission acts as a land use legislature in enacting zoning requirements…By contrast, the zoning board of appeals is the court of equity of the zoning process… It is inevitable that a zoning regulation…will adversely affect individual rights in some cases. The essential purpose of a board of appeals is to deal with these cases by furnishing elasticity in the application of regulatory measures so that they do not operate in an arbitrary or confiscatory, and consequently unconstitutional manner…"

Connecticut Supreme Court Cases

165 Conn. 533
Supreme Court of Connecticut.

FIRST HARTFORD REALTY CORPORATION
v.
PLAN AND ZONING COMMISSION
OF the TOWN OF BLOOMFIELD.

Dec. 14, 1973.

Town plan and zoning commission, on its own motion, amended zoning map and changed zone of property from commercial to residential. Property owners appealed. The Court of Common Pleas, Hartford County, Hamill, J., sustained the appeal. The plan and zoning commission appealed. The Supreme Court, Bogdanski, J., held that evidence supported the finding of the commission that public safety and increased traffic required the rezoning, that it was immaterial that plan of development was never formally amended to incorporate recommendation of commercial study, that rezoning was in harmony with the comprehensive plan which took into account the suitability of the property for residential development and that the record did show that the zone change was reasonably related to the proper purposes of the police power.

Error: judgment set aside and case remanded with direction.

Attorneys and Law Firms

**492 *534 S. Frank D'Ercole, Hartford, for appellant (defendant).

Milton Sorokin, Hartford, with whom was Alexander A. Goldfarb, Hartford, for appellee (plaintiff).

Before *533 HOUSE, C.J., and SHAPIRO, LOISELLE, MacDONALD and BOGDANSKI, JJ.

Opinion

BOGDANSKI, Associate Justice.

The defendant, the plan and zoning commission of the town of Bloomfield, acting on its own motion, changed the zone classification of a forty-acre parcel of land owned by the plaintiff, First Hartford Realty Corporation, from business B-2 to residence R-15. From this action First Hartford appealed to the Court of Common Pleas, which *535 sustained the appeal. From the judgment rendered thereon, the commission has appealed to this court and Frist Hartford has filed a cross appeal.

[1] [2] The commission, in its appeal, and First Hartford, in its cross appeal, have assigned error in the refusal by the court to find certain material facts claimed to be admitted or undisputed, and in the finding of various facts without evidence. Since they have not been briefed, all but two of these assignments are treated as abandoned. State v. Grayton, 163 Conn. 104, 109, 302 A.2d 246, Maltbie, Conn.App.Proc. s 327. In the view that we take of this case, the two assignments of error which have been briefed are not material and we need not consider them. Practice Book s 628(c); Branford Sewer Authority v. Williams, 159 Conn. 421, 425, 270 A.2d 546. The remaining assignments of error challenge the conclusions reached by the court and its rulings on claims of law.

This appeal concerns a forty-acre tract of land located at the southwest corner of Wintonbury Avenue and Blue Hills Avenue in the town of Bloomfield. On June 14, 1956, the commission approved the application of a prior owner for a change of zone of this property from R-15 residential to B-2 business in order to permit the development of a shopping center. Ownership of the property has changed twice since the zone change, and since 1961 the tract has been owned by First Hartford, which purchased it for $428,000. The projected shopping center, however, has never been built.

In January, 1965, the commission adopted a new plan of development for the town of Bloomfield. This plan, the subject of a public hearing on October *536 1, 1964, depicted the plaintiff's forty-acre tract as residential. The explanation given for this classification was that the new map was designed to reflect the actual use and not the official zoning status of the land, and depicted this land as residential because there was then no commercial structure on it. It was further explained that the plan of development did not contain updated commercial development policies for land such as First Hartford's and that the plan would be amended by a commercial study soon to be completed.

The expected commercial study was published in July, 1965. It concluded that land zoned for commercial use in Bloomfield was greatly in excess of need and recommended that First Hartford's forty-acre tract be rezoned to residential. The commercial study was never formally incorporated into the plan of development.

On November 18, 1965, the commission held a public hearing to consider some of the recommendations of the commercial study, including the rezoning of property of First Hartford. First Hartford filed a written protest and offered testimony and evidence in opposition to the change. At the hearing the attorney for First Hartford told the commission that its property **493 was subject to a flood plain easement, a concededly erroneous statement. Because of this representation the commission sought and obtained additional information after the hearing regarding the existence of a flood plain easement. The commission also relied on a letter from the town assessor already in tis files concerning the valuation of the parcel if zoned R-15. This letter had not been introduced at the public hearing.

*537 On February 10, 1966, the commission changed the zoning classification of the land from B-2 business to R-15 residential for the following assigned reasons: '(1) the original zone change was adopted as the result of a specific petition for a shopping center in 1956; since nine years have gone by since the zone change, the very condition for which the zone change was granted has changed. (2) The Commission now for the first time has a comprehensive Commercial Study, completed in the summer of 1965, designating the amount of land needed in commercial zoning in Bloomfield. This study recommends that this parcel of land be rezoned to a residential use. (3) There is now a church directly across the street from this location which did not exist in 1965. Immediately adjacent to this location is a school, the Wintonbury Elementary School, which did not exist. A convalescent home is being constructed in the area. In addition to Christ the King Church, two additional churches, one a synagogue, have been located in this area. These are major changes in land usage within the area. (4) Sewers were not available at the time of the original zone change. Metropolitan district sewers are now available for residential uses. (5) A major factor which was a strong part of the Commission's decision was the concern for the public safety due to increased traffic and the problems that are the outgrow (sic) of this traffic on Blue Hills Avenue and on both Wintonbury Avenues. (6) A major shopping center located at this point is in direct conflict with the Regional Plan. Since 1956 the Wilson Shopping Center has been constructed and Bloomfield center has been enlarged. (7) The contour of this particular land under discussion is very nicely laid out for a subdivision. The Commission *538 finds that there are no flowage easements covering this property and it is suitable for R-15 development. (8) This decision is in conformity with the Comprehensive Plan of the Town.'

From this action First Hartford appealed to the Court of Common Pleas, which took additional evidence to supplement the record. The plaintiff was permitted to introduce evidence bearing on the issue of confiscation, the value of the land if zoned residential, and the danger of flooding, the level of the water table, drainage problems and soil conditions. First Hartford also challenged the action of the commission on the ground that it was improperly based upon the post-hearing evidence which First Hartford had not had the opportunity to rebut.

The court also heard evidence on the claim raised by the commission that the confiscation issue had been abandoned by stipulation of the parties. The court found the following facts: The original complaint, dated February 24, 1966, did include an allegation of confiscation. In March, 1966, the commission filed a 'Motion to Erase for Want of Jurisdiction of the Subject Matter' alleging that the plaintiff had failed to sign the writ of summons. The parties thereafter entered into a stipulation on May 6, 1966, in which, the court found, the parties 'agreed to waive all technical, procedural and other defects not germane to the issue of whether or not the Bloomfield Town Plan and Zoning Commission had sufficient grounds to effect a change of zone from Commercial to Residential.' At the same time, with the consent of the commission, First Hartford filed a 'Motion for a Substituted Complaint' and on May 9, 1966, amended its complaint, deleting, inter *539 alia, the allegation of confiscation. Five years later, however, First **494 Hartford again amended its complaint and reinserted the allegation of confiscation.

The trial court concluded that the reception and use by the commission of the post-hearing evidence was illegal, but found that this illegality had been waived at trial by counsel for First Hartford; that the stipulation of May 6, 1966, had been 'entered into for the purpose of obtaining a waiver of the defendant's claim of a jurisdictional defect in return and as consideration for deletion by the plaintiff of certain allegations from the complaint, including that of confiscation'; and that the zone change 'was not confiscatory in that it did not deprive the plaintiff of the use of its property for any reasonable purpose.' But the court nonetheless concluded that the rezoning 'was not a reasonable regulation under the police power,' was not justified by 'any new or changed conditions,' 'was arbitrary, illegal and in abuse of its discretion,' 'was not in accord with the comprehensive plan' and had 'no reasonable basis in the record.'

In this court the commission contends that the trial court erred in concluding that the zone change could not be sustained on the record before it and that the reception of post-hearing evidence was illegal. In the cross appeal, First Hartford asserts that the court erred in concluding that the stipulation barred it from raising the issue of confiscation, that the zone change was not confiscatory and that it had waived the illegality of the reception of the post-hearing evidence.

[3] [4] The conclusions of the trial court as to the stipulation are tested by the finding. Barnini v. Sun Oil Co., 161 Conn. 59, 63, 283 A.2d 217. The court's conclusion *540 that by the terms of the stipulation of May 6, 1966, First Hartford agreed not to press its allegation of confiscation in exchange for the withdrawal by the commission of its claim of a procedural defect, is reasonably supported by the finding summarized above. Once a known right is waived, 'the waiver cannot be withdrawn even if subsequent events prove the right waived to have been more valuable than had been anticipated.' Jenkins v. Indemnity Ins. Co. of North America, 152 Conn. 249, 258-259, 205 A.2d 780, 785. Since we agree with the trial court on the effect of the stipulation, we need not review its conclusion that the zone change was not confiscatory.

[5] [6] In rezoning the property in question, the commission acted as a legislative body. DeMeo v. Zoning Commission, 148 Conn. 68, 75, 167 A.2d 454; Burke v. Board of Representatives, 148 Conn. 33, 38, 166 A.2d 849. We have said on many occasions that courts cannot substitute their judgment for the wide and liberal discretion vested in local zoning authorities when they have acted within their prescribed legislative powers. Morningside Assn. v. Planning & Zoning Board, 162 Conn. 154, 163, 292 A.2d 893; Dooley v. Town Plan & Zoning Commission, 154 Conn. 470, 478, 226 A.2d 509; DeMeo v. Zoning Commission, supra. 'The courts allow zoning authorities this discretion in determining the public need and the means of meeting it, because the local authority lives close to the circumstances and conditions which create the problem and shape the solution.' Cameo Park Homes, Inc. v. Planning & Zoning Commission, 150 Conn. 672, 677, 192 A.2d 886, 889. Courts, therefore, must not disturb the decision of a zoning commission unless the party aggrieved by that decision *541 establishes that the commission acted arbitrarily or illegally. Morningside Assn. v. Planning & Zoning Board, supra; Stiles v. Town Council, 159 Conn. 212, 219, 268 A.2d 395; Dooley v. Town Plan & Zoning Commission, supra, 154 Conn. at 478-479, 226 A.2d 509; DeMeo v. Zoning Commission, supra.

[7] The test of the action of the commission is twofold: (1) The zone change must be in accord with a comprehensive plan. General Statutes s 8-2. **495 Sunn v. Zoning Commission, 150 Conn. 79, 87, 186 A.2d 160, and (2) it must be reasonably related to the normal police power purposes enumerated in s 8-2:[1] Sunn v. Zoning Commission, supra, 91, 186 A.2d 160; see also 'The Connecticut Law of Zoning,' 41 Conn.B.J. 262, 272.

[1] Section 8-2 of the General Statutes states, in pertinent part, that zoning regulations 'shall be designed to lessen congestion in the streets; to secure safety from fire, panic, flood 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 facilite the adequate provision for transportation, water, sewerage, schools, parks and other public requirements.'

[8] "A comprehensive plan has been defined as a general plan to control and direct the use and development of property in a municipality or a large part thereof by dividing it into districts according to the present and potential use of the properties." Sunn v. Zoning Commission, supra, 87, 186 A.2d, 164. The requirement of a comprehensive plan is generally satisfied when the zoning authority acts with the intention of promoting the best interests of the entire community. Morningside Assn. v. Planning & Zoning Board, supra, 162 Conn. at 162, 292 A.2d 893.

[9] [10] The commercial study of 1965 recommended a retrenchment in zoning for commercial uses and *542 specifically recommended that the plaintiff's land be rezoned. The study stated that the section of Bloomfield in which this property is located 'is made up of a wide variety of uses, including a large part of the existing and proposed South Industrial Park, but it is essentially a residential area, and the problems of commercial development along Blue Hills Avenue cannot be separated from the problems of residential quality and deterioration.' It is evident that the commission was concerned about the impact of further commercial development on the community. It is immaterial that the plan of development was never formally amended to incorporate the recommendation of the commercial study in accordance with General Statutes s 8-23. For the plan of development, properly called a 'master plan' to distinguish it from the comprehensive plan zoning authorities are required to follow; Mott's Realty Corporation v. Town Plan & Zoning Commission, 152 Conn. 535, 538, 209 A.2d 179; is, in any event, merely advisory so far as zoning is concerned. Faubel

v. Zoning Commission, 151 Conn. 202, 207, 224 A.2d 538. The comprehensive plan is to be found in the scheme of the zoning regulations themselves. Stiles v. Town Council, supra, 159 Conn. at 227, 268 A.2d 395; Dooley v. Town Plan & Zoning Commission, supra, 154 Conn. at 473, 226 A.2d 509.

[11] First Hartford claims that its property was not rezoned in accordance with a comprehensive plan because the commission did not consider the suitability of the tract for residential development. Several of the reasons which the commission cited in support of the zone change bear on the propriety of the residential classification: the nearby presence of a school, a convalescent home, and three churches; the recent availability of sewers for residential use, and the good contour of the land for purposes of *543 a subdivision. moreover, the commercial study pointed out the residential character of the locality and noted that much of the residential development there was relatively old and in the smallest residential lot zones. On this record we cannot say that the rezoning was not in harmony with a comprehensive plan which took into account the suitability of the plaintiff's property for residential development.

[12] [13] [14] Nor can we agree with the trial court that the record does not show that the zone change was reasonably related to the proper purposes of the police power. Where a zoning authority has stated its reasons for a zone change, in accordance with General Statutes s 8-3, the **496 reviewing court ought only to determine whether the assigned grounds are reasonably supported by the record and whether they are pertinent to the considerations which the authority was required to apply under the zoning regulations. DeMaria v. Planning & Zoning Commission, 159 Conn. 534, 540, 271 A.2d 105. The zone change must be sustained if even one of the stated reasons is sufficient to support it. Zygmont v. Planning & Zoning Commission, 152 Conn. 550, 553, 210 A.2d 172.

[15] [16] Among the reasons which the commission assigned were the need to cut back on the amount of land zoned for commercial use and 'the concern for the public safety due to increased traffic.' Where the zoning authority acts to limit the amount of commercial development in the best interests of the community as a whole and in accordance with a comprehensive plan, the requirement of s 8-2 that zoning regulations be designed to promote the general welfare, 'with a view to . . . encouraging the most appropriate use of land' throughout the community, *544 is satisfied. Samp Morta Lake Co. v. Town Plan & Zoning Commission, 155 Conn. 310, 231 A.2d 649. Moreover, the commission's concern for public safety and traffic problems is amply supported by the record. There was evidence that the construction of a large regional shopping center on the plaintiff's forty-acre tract would result in a serious traffic overload on Blue Hills Avenue, an important arterial highway, and that this avenue was already 'operating at double' its practical capacity. One of the proper purposes of zoning enumerated in s 8-2 is to 'lessen congestion in the streets.' We need not review the other reasons given by the commission, because we find that two of the assigned reasons were sufficiently supported by the record and are clearly within the purposes contemplated by s 8-2.

[17] The commission also recited the existence of changed conditions to justify its action. First Hartford denies their existence and claims that the zone change cannot stand in their absence. A zoning authority must be free to modify its regulations whenever time, experience, and responsible planning for contemporary or future conditions reasonably indicate the need for a change. Malafronte v. Planning & Zoning Board, 155 Conn. 205, 209, 230 A.2d 606; Pierrepont v. Zoning Commission, 154 Conn. 463, 468-69, 226 A.2d 659. 'A legislative body is not necessarily bound by the rule which prohibits administrative boards, such as a zoning board of appeals, from reversing earlier decisions without a change in circumstances. . . . The discretion of a legislative body, because of its constituted role as a formulator of public policy, is much broader than that of an administrative board, which serves a quasi-judicial function. Thus, although we have said that a zoning commission should not ordinarily alter *545 the classification of a certain area in the absence of changed conditions, it is clear that this rule, which is a restriction on the principle of legislative discretion, will only be applied in those rare instances where the zoning amendment is patently arbitrary. A less strict rule would require the court to exercise a legislative judgment.' Malafronte v. Planning & Zoning Board, supra.

In summary, we conclude that the record reasonably supports the zone change in this case and that action of the commission was not arbitrary, illegal, or an abuse of its discretion.

[18] The remaining contentions raised in the cross appeal concern the propriety of the reception by the commission of post-hearing evidence and the trial court's conclusion that the plaintiff waived its right to challenge the use of that material. Even if the reception of the post-hearing evidence was illegal-a question we do not decide-it was at most harmless error because the action of the commission is adequately

supported by assigned reasons not based on the allegedly tainted evidence. **497 Zygmont v. Planning & Zoning Commission, supra. The subsequent evidence regarding flood problems was merely cumulative; moreover, its use was induced by the admittedly erroneous representation of the plaintiff's attorney. The letter of the town assessor regarding the value of the plaintiff's tract under the R-15 classification related to the issue of confiscation, which was stipulated out of the case.

There is error, the judgment is set aside and the case is remanded with direction to dismiss the appeal.

In this opinion the other judges concurred.

Parallel Citations

338 A.2d 490

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148 Conn. 172
Supreme Court of Errors of Connecticut.

FERNDALE DAIRY, INC., et al.
v.
ZONING COMMISSION
OF the TOWN OF BERLIN.

March 14, 1961.

Proceeding on appeal from a town zoning commission's denial of a petition for a zoning change to permit business use in a residence zone. The Court of Common Pleas in Hartford County, Sidor, J., rendered judgment dismissing the appeal and the plaintiffs appealed. The Supreme Court of Errors, Murphy, J., held that the commission's denial of the change until the planning commission defined a planned business zone did not amount to abdication of its function or constitute any error.

No error.

Attorneys and Law Firms

*172 **269 Valentine J. Sacco, Hartford, with whom were Jerome I. Walsh, Hartford, and, on the brief, George H. Hamlin, Kensington, for appellants (plaintiffs).

*173 James F. Dawson, New Britain, for appellee (defendant).

Before BALDWIN, C. J., and KING, MURPHY, MELLITZ and SHEA, JJ.

Opinion

MURPHY, Associate Justice.

The plaintiffs are the owners of property at the apex of a triangle formed by the junction of Chamberlain Highway and High Road in the town of Berlin. The plaintiffs' property comprises 9.63 acres and is in a residence A zone, the highest zoning classification in the town. Berlin Zoning Ordinance § 1 (1954). In 1958, the plaintiffs filed an amended petition with the defendant for a change of the zoning of their property and that of the adjoining Alling property, 1.4 acres, to business. The Alling property, together with a strip of the plaintiffs' property, forms the base of the triangle. The petition was denied. Upon appeal to the Court of Common Pleas, the action of the defendant was sustained. The plaintiffs have appealed to this court.

The tip of the plaintiff's property is occupied by a gasoline station which is a nonconforming use, since it was in operation prior to the adoption of zoning in Berlin. Land on the west side of Chamberlain Highway, opposite the upper section of the triangle, is zoned for business. This stretch is 830 feet in length and is occupied by a milk distributing plant and dairy bar. All the other property in the immediate vicinity is zoned for residential use.

At the public hearing conducted by the defendant on October 8, 1958, the plaintiffs offered the testimony of a market research consultant and that of a landscape architect and town planner. The president of the named plaintiff also testified. The gist of their testimony was that the land is a large swampy area surrounded by heavily traveled roads; that the water level is rather high; and that the bottom land is silty and spongy and it would be *174 unpractical to use it for building purposes without a pile type of foundation. Their conclusion was that the land was unsuitable for residential use but could be developed into a neighborhood shopping center and that its highest and best use was for business. Practically all the owners of property in the neighborhood, including the Allings and the owners of two parcels adjoining the plaintiffs' property on the base of the triangle, opposed the change of zone. The owners of the two parcels had originally sought a change of zone for their properties and had joined with the plaintiffs in the petition, but they withdrew their request before the hearing. The amended petition was thereupon filed. The opponents argued that additional shopping facilities in the vicinity were not needed; that only the plaintiffs would benefit by the change; that a school was to be constructed **270 nearby to which the pupils would travel on foot; that traffic, additional to the heavy traffic now on the surrounding roads, would be a hazard; and that proper drainage of the area presented a serious problem. They also pointed out that the site had been considered for a park and that it was not in the public interest to change the zoning of it.

Berlin also has a planning commission; it adopted a generalized land-use plan for the town on June 2, 1958. This plan called for four planned business zones, one of which would be on Chamberlain Highway presumably in the general vicinity of the plaintiffs' property. The planning commission held a meeting two days before the public hearing on the plaintiff's petition but did not define a planned business zone or develop specific recommendations for the plaintiffs' location.

In executive session, two of the members of the defendant indicated their belief that the area was *175 suitable for either residential or business use. The members of the defendant voted unanimously to deny without prejudice the plaintiffs' request for a change of zone until the planning commission defined the planned business zone. This action was in accord with the suggestion of the chairman of the planning commission, made at the public hearing.

[1] [2] [3] Upon the record before it, the defendant could have decided the plaintiffs' petition upon its merits without the ameliorating effect of the 'without prejudice' proviso. The controlling considerations in determining what action should be taken on a petition for a zoning change are the good of the community as a whole, and not the benefit to a particular individual or group of individuals, and whether the change falls within the requirements of a comprehensive plan for the use and development of property in the municipality or a large part of it. Kuehne v. Town Council, 136 Conn. 452, 461, 72 A.2d 474. The determination of what the public interest required was within the discretion of the defendant; Wade v. Town Plan & Zoning Commission, 145 Conn. 592, 595, 145 A.2d 597; and the trial court will not interfere with the decision of a zoning commission unless it is shown that its action was arbitrary, illegal or unreasonable. Florentine v. Town of Darien, 142 Conn. 415, 423, 115 A.2d 328. The burden of proving that was upon the plaintiffs. Longo v. Board of Zoning Appeals, 143 Conn. 395, 399, 122 A.2d 784.

[4] [5] [6] [7] Considerable emphasis was laid by the plaintiffs, both in brief and argument on the claim that the action of the defendant in denying the petition without prejudice until the planning commission defined the planned business zone amounted to an abdication by the defendant and a surrender of its function to the planning commission. We do not share *176 this view. It appears to us that the defendant took the action it did in order to permit the plaintiffs to renew their petition without waiting twelve months in accordance with General Statutes § 8-3. The action of the defendant in denying an application without prejudice should not be encouraged. In a proper case it could conceivably raise a question whether the matter is appealable. See Varanelli v. Luddy, 130 Conn. 74, 80, 32 A.2d 61. The action of the defendant is reviewed in the light of the record as it was developed before the defendant. In Levinsky v. Zoning Commission, 144 Conn. 117, 122, 127 A.2d 822, we pointed out in a general manner the difference in the functions of zoning and planning commissions. That co-ordination between the two separate bodies would be desirable, as well as beneficial to the municipality, is indicated by the action of the legislature in providing that the functions of both commissions may be exercised by a single commission. General Statutes § 8-4a. Municipal planning is designed to promote, with the greatest efficiency and economy, the co-ordinated development of the municipality and the general welfare and prosperity of its people. The aim of municipal planning is to secure the uniform and **271 harmonious growth of villages, towns and cities. Zoning is concerned primarily with the use of property. Kiska v. Skrensky, 145 Conn. 28, 32, 138 A.2d 523; Purtill v. Town Plan & Zoning Commission, 146 Conn. 570, 572, 153 A.2d 441. While the defendant could have acted independently of the planning commission, its approach to the problem indicates a sincere desire to give due consideration to the advisory suggestions to be found in the master plan. Error can hardly be predicated upon such a situation under the circumstances in this case. Attention is directed *177 to § 5 of Public Act No. 614 of the 1959 session, now General Statutes § 8-3a, which provides for referral to the planning commission of proposed zoning regulations, boundaries or changes thereof and for a report thereon before action is taken by the defendant. This provision emphasizes the legislative determination that co-operation between the two commissions should react to the benefit of the town.

There is no error.

In this opinion the other judges concurred.

Parallel Citations

169 A.2d 268

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