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August 16, 2021

Carson Fincham
Chair, Zoning Board of Appeals of the Town of Ridgefield
400 Main Street
Ridgefield, CT 06877

**RE: No. 21-019, Appeal of The Giardini Limited Partnership and Pierandri Realty LLC
63 Prospect Street**

Dear Mr. Fincham:

This firm represents Paul N. Jaber and Suzanne Jaber, the owners and residents of property located at 12 Sunset Lane, Ridgefield, Connecticut, which property directly abuts the property which is the subject of this appeal.

We submit this letter for the Board's consideration as to the effect of the Governor's Executive Orders on the expiration date of the site plan at issue in this appeal (the "Site Plan"). We concur with the determination of the zoning enforcement officer that there is no effect, and as such, the Zoning Permit was properly revoked.

It should be evident by now to all involved in this proceeding that, with multiple attorneys filing what amount to legal briefs, the question presented to this board involves a novel and complex question of statutory interpretation. While zoning boards of appeals are routinely tasked with interpretation of the zoning regulations and the application of those regulations to a specific set of facts, the task presented here is generally left to the courts.

Accordingly, this board's course of action is clear – uphold the decision of the Town's zoning enforcement officer. This will have the effect of preserving the *status quo* until the question of law has been resolved by the courts.

Legal representation for property owners, municipalities and developers.

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Should this Board decide to delve into statutory construction and analysis of the legislative intent necessary to resolve this question, it must follow the well-established rules of statutory construction. In particular, the Board must consider the relationship between the special legislation known as Public Act 20-7 § 18 (the “Special Legislation”), General Statutes § 8-3 (m) (“Section 8-3 (m)”) and the Governor’s Executive Orders, particularly Executive Order 7JJ (3), Executive Order 11 and Emergency 12B (collectively, the “Executive Orders”).

In construing statutes, General Statutes § 1-2z requires that the text of the statute itself and its relationship to other statutes is considered first. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute is not to be considered.

Accordingly, the property owners’ attempts to handwave away the initial clause of the Special Legislation must fail. That clause states:

“Notwithstanding the provisions of subsection (m) of section 8-3 of the general statutes, ...”

Special Legislation § 18. This language plainly and unambiguously severs any relationship between the Special Legislation and Section 8-3 (m), with the result that the expiration of the Site Plan is, as of the effective date of the Special Legislation, governed solely by the Special Legislation and not by any provision of Section § 8-3 (m). Since the Executive Orders only apply to the “Covered Laws”, and the Special Legislation is not a “Covered Law”, the Executive Orders do not provide any guidance to the question of whether the Site Plan has expired.

It must be noted that the Executive Orders were initially promulgated on May 6, 2020, and Public Act 20-7 was passed by the legislature on September 30, 2020 (by the House) and October 1, 2020 (by the Senate). “The legislature is presumed to be aware and to have knowledge of all existing statutes and the effect which its own action or nonaction may have on them.” *Achillion Pharmaceuticals, Inc. v. Law*, 291 Conn. 525, 535 (2009)

The Special Legislation created this unique framework to govern the expiration of the Site Plan, a framework which was specifically sought out by the property owners. So long as certain conditions were met (all necessary building permits have been issued and construction has commenced), the Site Plan would last indefinitely, without expiration.

Having severed the Special Legislation from Section 8-3 (m), it might fairly be asked, what did the legislature intend should happen if the property owners failed to meet the stated conditions? The property owners would like the answer to this question to be that the legislature intended this unique framework to simply disappear, and allow the expiration of the Site Plan to be governed by Section 8-3 (m). This answer belies the tenets of statutory construction.



“We cannot speculate upon any supposed intention not appropriately expressed in the language of the act itself or restrict the ordinary import of the words therein used.” *Mad River Co. v. Town of Wolcott*, 137 Conn. 680, 688 (1951)

In applying the tenets of statutory construction, the expression of one thing is the exclusion of another. “[W]here express exceptions are made, the legal presumption is that the legislature did not intend to save other cases from the operation of the statute. *Felician Sisters of St. Francis of Connecticut, Inc. v. Historic Dist. Commission of Town of Enfield*, 284 Conn. 838, 851, (2008).

The Special Legislation makes provision for one express exception to the expiration framework of Section 8-3 (m), but made no provision for other exceptions. Thus, having secured Special Legislation to extend the Site Plan indefinitely, and having failed to meet the specific conditions of that Special Legislation, the property owners may not argue for the existence of yet another, unstated exception and thereby obtain a second bite at the apple.

Had the legislature intended to provide a fallback option from the Special Legislation framework to the statutory expiration scheme expressed in General Statutes § 8-3 (m) in the event that the property owners failed to meet the conditions set forth in the special legislation, it could very well have done so. *See Felician Sisters, supra*, at 852.

The final requirement of statutory construction expressed in General Statutes § 1-2z is that the interpretation not yield absurd or unworkable results. At the time the legislature adopted the Special Legislation, the expiration date of the Site Plan under the Section 8-3 (m) framework was May 15, 2021. The Special Legislation obviously altered the framework for expiration to provide for an indefinite duration of the Site Plan, so long as the two conditions were met by May 15, 2021, a date which was seven (7) months in the future - an eminently reasonable proposition. This deadline was decided upon by the legislature with full knowledge of the state of emergency and the existence of the Executive Orders which likely extended the expiration date for Site Plans governed by Section 8-3 (m).

The legislature (and the property owners) made a choice to opt out of this framework in favor of a unique framework with no expiration. They should be held to that choice.

The property owners failed to meet the conditions of the Special Legislation by (a) obtaining the required building permits or (b) commencing construction, and as such, the April 9, 2021 Zoning Permit was properly revoked.



Should you have any questions, please feel free to give me a call.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Peter S. Olson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Peter S. Olson