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Via Hand Delivery

May 21, 2013

Hon. Mary Glassman
First Selectman
Town of Simsbury
933 Hopmeadow Street
Simsbury, CT 06070

Re: **Issues Regarding Neighboring Horse-Related Activities on East Weatogue Street in Simsbury, Connecticut**

Dear First Selectman Glassman:

This firm represents Mark Sullivan, who resides at 52 East Weatogue Street, in Simsbury's only historic district. We write as he has serious concerns with the use of land next to him made by Mrs. Patricia Hyppa, who is an adjoining neighbor.

We have analyzed various aspects of issues pertaining to the horse-related activities of Mrs. Hyppa, on her property known as 42 East Weatogue Street.

WETLAND ISSUES

Although Mrs. Hyppa's horse-related activities may constitute farming under the Zoning Regulations of the Town of Simsbury ("Zoning Regulations") and Conn. Gen. Stat. § 22a-40(a)(1), allowing for an exemption under the Inland Wetlands and Watercourses Act ("IWWA"), the grading or filling of wetlands and watercourses which she has done is still not allowed without a wetland permit. *Red 11 v. Conservation Comm'n of Fairfield*, 117 Conn. App. 630, 650 (Conn. App. Ct. 2009).

Except as otherwise specifically defined, the words "agriculturè" and "farming" shall include cultivation of the soil, dairying, forestry, raising or harvesting any agricultural or horticultural commodity, including *the raising, shearing, feeding, caring for, training and management of livestock, including horses . . .* The term "farm" includes farm buildings, and accessory buildings thereto, nurseries, orchards, ranges, greenhouses, hoopouses and other temporary structures or other structures used primarily for the raising and, as an



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incident to ordinary farming operations, the sale of agricultural or horticultural commodities.

Nevertheless, the applicant bears “the burden of establishing its entitlement to the farming exemption[.]” *Red 11*, 117 Conn. App. at 650.

Importantly, a local commission does not lose jurisdiction over the filling or grading of wetlands even if the activity involves farming. *Id.*; *Yorgensen v. Chapdelaine*, 2011 Conn. Super. LEXIS 3150, at *17 (Conn. Super. Ct. 2011) (defendants’ grading, rock and tree stump removal, and loam filling of wetlands was not permitted, as of right, even if it is directly related or preparatory to the defendants’ operations of pastures, grazing and horse riding areas or other farming activities.”). The Connecticut Appellate Court made this clear in *Red 11 v. Conservation Commission of Fairfield*, 117 Conn. App. 630, 650 (Conn. App. Ct. 2009), which is attached.

To our knowledge Mrs. Hyypa does not have a wetland permit from the Simsbury Conservation Commission to grade or fill but she has done both on her property and caused damage to Mr. Sullivan’s property. There appears to be a strong possibility that a filled swale has broken out and may be under the center of the riding ring. Mr. Sullivan has photos of this situation.

ZONING ISSUES

Mrs. Hyypa’s property would be considered a “farm” under the Zoning Regulations if it indeed composed of what we submit must be five “contiguous” acres as:

A tract of land containing **five (5) acres or more**, used **in part or wholly** for agricultural purposes, excluding fur ranching, pig farming, slaughter houses, and fertilizer manufacture. A farm may include premises used for the keeping of livestock and other domestic animals when permitted by these Regulations.

Zoning Regulations, Art. IV(B) (bold added). If Mrs. Hyypa’s property qualifies as a farm, it is permitted in this R-40 zone because farms are permitted in all residential zones,¹ “provided that the storage of fertilizer and manure, and all buildings except

¹ In addition, agricultural purposes do not count as subdivision under the Simsbury subdivision regulations:



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dwellings shall be located at least one hundred (100) feet from any lot line.” *Id.* at Art. VII(B)(1). At this point, Mrs. Hyyppa cannot use her property for race tracks for horses. *Id.* at Art. VI(A) (2012) (prohibited uses include “race tracks for horses or dogs whether conducted for profit or as a non-profit operation.”). This, we submit, is not much of a limitation.

If Mrs. Hyyppa’s use of her land does not qualify it as a farm, her ability to have horses on her lot would be limited. Keeping domestic animals is permitted in all residential zones, but “[i]n no case may the following schedule be exceeded unless the use qualifies as a farm:”

- a. Horses are permitted – “provided the parcel contain at least 3 acres and no more than 2 such animals are kept, and no storage of manure or accessory buildings be located closer than 100 ft. from any property line, stream, or watercourse.”

Id. Art. VII(B)(6)(a) (italics added).

The new additions to Mrs. Hyyppa’s lot that create the irregularly shaped parcel evidently were made to meet the 5-acre requirement needed to be considered a farm under the Zoning Regulations. However, there is some evidence to suggest that there is a public right of access through her land. That right of way may or may not constitute a sufficient deduction from the five acre threshold to undermine her effort to secure a five-acre parcel. That research has not yet been fully completed. If she or anyone has a farm with five or more acres in Simsbury, the number of animals allowed on it is unlimited. This raises a number of health concerns and other issues that should be addressed.

REQUESTS

Even if Mrs. Hyyppa has the requisite five (5) acres and could be considered a farm, we respectfully request that she not be allowed to operate it as such until and unless

SUBDIVISION – The division of a tract of land into three or more parts or lots made subsequent to the initial adoption of subdivision regulations (10/6/41) by the Commission for the purpose, whether immediate or future, of sale or building development *expressly excluding development for municipal, conservation, or agricultural purposes and includes re-subdivision.*

Simsbury Subdivision Regulations § 5, p. 6 (italics added).



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she obtains a wetlands permit from the Simsbury Conservation Commission for filling and grading she has already done or may still do.

Mr. Sullivan also requests that the Town consider a zoning moratorium until new zoning regulations can be put in place to define what is or is not a commercial horse farm and to provide additional protections. We note that her land is also in the historic district and it is worrisome that she may intend to create a commercial use in this historic district. On behalf of Mr. Sullivan, we submit that commercial horse farms should not be allowed in historic districts.

We request that other immediate changes to the text of the Zoning Regulations to regulate horse farms be enacted. Even if the use of her property as a horse farm is allowed to stay, it should be limited by requiring permit approvals or conditioning the use—such as by limiting the hours of operation, number of horses, prohibiting loud speakers, and requiring screening or buffers between the horse farms and adjacent residential parcels. We have provided samples from other municipal zoning codes relating to commercial and non-commercial horse farms, specifically from Portland and Weston.

CONCLUSION

We appreciate your consideration of the information we are providing and of Mr. Sullivan's requests. Although Mr. Sullivan has immediate concerns as the adjoining landowner, he respectfully submits that better regulation of horse farms throughout Simsbury is appropriate and needed.

Sincerely,



Brian R. Smith

Attachment

cc w/attachment: Mark Sullivan



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980 A.2d 917 (Conn.App. 2009)

117 Conn.App. 630

RED 11, LLC

v.

CONSERVATION COMMISSION OF the TOWN
OF FAIRFIELD et al.

No. 29092.

Court of Appeals of Connecticut.

October 20, 2009

Argued March 18, 2009.

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[Copyrighted Material Omitted]

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J. Christopher Rooney, with whom was Anne D. Peterson, New Haven, for the appellant (plaintiff).

Noel R. Newman, with whom, on the brief, was Annmarie P. Briones, Fairfield, for the appellees (named defendant et al.).

Patricia A. Horgan, assistant attorney general, for the appellee (commissioner of environmental protection, defendant in the first and second appeals).

Thomas J. Donlon, with whom was Edward V. O'Hanlan, Stamford, for the appellee (Wilmington Trust Company, defendant in the first and second appeals, intervenor in the third appeal).

DiPENTIMA, GRUENDEL and LAVERY, Js.

DiPENTIMA, J.

[117 Conn.App. 632] In this case, we address the limitations of the statutory farming exemption to town inland wetlands regulations. The plaintiff, Red 11, LLC, doing business as Twin Oak Farms, appeals from the judgments of the trial court dismissing the administrative appeals from the decisions of the named defendant, the conservation commission of the town of Fairfield (commission), [1] to uphold three cease and desist orders. On appeal, the plaintiff claims that the court improperly (1) dismissed its appeals because the commission lacked jurisdiction to uphold the cease and desist orders, (2)

dismissed the appeals because it misinterpreted the statutory limitations on the farming exemption contained in General Statutes § 22a-40(a)(1) and (3) determined that there was sufficient evidence to [117 Conn.App. 633] support the commission's decisions upholding the issuance of the cease and desist orders. We disagree and, accordingly, affirm the judgments of the trial court.

The following factual and procedural history provides the background for understanding the claims raised on appeal. On May 11, 2001, Salvatore K. DiNardo obtained an eighteen acre parcel of land located at 1159 Redding Road in Fairfield. DiNardo then conveyed title to the plaintiff, a limited liability company of which DiNardo is the managing member and

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principal. The property contains three distinct wetlands and watercourse areas: the Redding Road area, the vernal pool and the Rider's Lane area. In September, 2001, Edward Jones, a wetlands compliance officer, issued a cease and desist order advising DiNardo to stop activities on the property that were impacting wetlands and watercourses.

The commission held a show cause violation hearing on September 20, 2001, at which DiNardo stated that he intended to create a farm on the property. Pursuant to § 22a-40(a)(1) and § 4.1.a of the Fairfield inland wetlands and watercourses regulations (Fairfield regulations),[2] farming activities in wetlands and watercourses are permitted expressly as of right. The [117 Conn.App. 634] commission continued the matter for one month to afford DiNardo time to submit a plan of his proposed activities pursuant to § 4.4 of the Fairfield regulations.[3]

The matter returned to the commission on October 18, 2001. Raymond Rizio, an attorney, appeared on behalf of the plaintiff and DiNardo. Rizio emphasized that the property would be used as a farm. He further represented that although he did not agree that the commission had the authority to condition such requirements, the plaintiff would install silt fencing and mulch around the disturbed areas to stabilize the land. Rizio further stated that if the plaintiff decided to pursue installation of a culvert and weir, it would return at a future date to seek approval from the commission. Rizio also agreed that, upon notice, the plaintiff would make the property available for inspection.

The commission issued a declaratory ruling that "the proposed farming activities, as set forth in the plan submitted by ... DiNardo, excluding those areas where a culvert and weir are to be installed, were allowed as of right, and did not require a wetland permit, and the vernal pool cannot be filled in." The commission also removed

the cease and desist order with " the request that the property owner honor the

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stipulations [117 Conn.App. 635] made this evening, including the stipulation whereby he agreed to install silt fencing to stabilize the area." On October 22, 2001, the commission sent a letter to DiNardo detailing the terms of its decision.

By a letter dated July 2, 2003, Marisa Anastasio, a wetlands compliance officer, issued another cease and desist order to the plaintiff. This letter acknowledged the October, 2001 declaratory ruling but alleged that the plaintiff had engaged in filling, piping, draining and excavating regulated wetlands and watercourses without a permit in violation of various sections of the Fairfield regulations. It also alleged that the plaintiff's representatives had denied access to the property [4] so that observations of the property had been undertaken from adjacent properties and by helicopter surveillance.

The commission held a hearing on August 7, 2003. Following Anastasio's presentation, representatives for the plaintiff countered that the actions were permissible as farming activity. The commission found that the violations on the site, such as filling, draining and piping of regulated wetlands and watercourses, had and continue to have a significant and adverse impact on regulated wetlands and watercourses on and off the property. Accordingly, the commission sustained the cease and desist order dated July 2, 2003.

The plaintiff filed an appeal to the Superior Court, arguing that the commission improperly sustained the cease and desist order. The plaintiff also argued that the commission violated its right to due process by denying it the ability to rebut the evidence and legal argument presented by the intervenors, Wilmington Trust Company (Wilmington) and James Caserta and Diane Caserta. [5] On December 15, 2003, the court [117 Conn.App. 636] ordered the matter remanded to the commission to allow the plaintiff the opportunity to present rebuttal evidence. The commission opened the rebuttal hearing on March 4, 2004, and continued the matter until March 25, 2004. The commission modified its earlier findings with respect to a perimeter stone wall, but otherwise continued the existing cease and desist order on March 29, 2004. The plaintiff then filed a second appeal to the Superior Court claiming that the commission acted arbitrarily, capriciously, unlawfully and in abuse of its discretion by sustaining the March 29, 2004 cease and desist order.

Anastasio issued a third cease and desist letter, dated June 16, 2004, as a result of violations " existing on [the plaintiff's] property above and beyond those violations listed in the [March 29, 2004 cease and desist order]." Specifically, the letter alleged that the following activities had occurred on the plaintiff's property: (1) the

use of wetlands soil for grading along the western part of the property; (2) the filling and grading of wetlands on the western part of the property; (3) excavation of wetland soil for the creation of a ditch through the Redding Road areas, resulting in additional drainage and diversion of water into the storm sewer pipe system; (4) discharge of silted water and mud as a result of the failure to install sedimentation and erosion controls; (5) the removal of additional vegetation; (6) grading throughout the property using wetlands soils; and (7) earth moving of large wetlands soil stockpile near the Redding Road areas. This letter further indicated that on May 6, 2004, the plaintiff had agreed to submit a performance bond and

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confirm an environmental site monitor and that these obligations had not been met.

After a hearing, the commission adopted the proposed findings of fact set forth in Anastasio's letter, added certain requirements to the proposed corrective measures and affirmed the violations as listed in the [117 Conn.App. 637] June 16, 2004 letter. The plaintiff filed a third appeal to the Superior Court, again arguing that the commission acted arbitrarily, capriciously, unlawfully and in an abuse of its discretion in issuing the July 2, 2004 cease and desist order.

The court consolidated the three appeals and issued three memoranda of decision on April 4, 2007, dismissing the plaintiff's appeals. With respect to the first two appeals, stemming from the July, 2003 and March, 2004 cease and desist orders, the court determined that the record supported the conclusion that regulated activities, such as the filling, draining and piping of the wetlands and watercourses had occurred on the property without a required permit. The court further concluded that these activities did not fall within the farming exception set forth in § 22a-40 and § 4.1 of the Fairfield regulations. As to the July, 2004 cease and desist order, the court stated that the record supported the commission's determination that regulated activities, " such as earth moving, excavating, filling, grading, draining and vegetation removal had occurred on the property despite the imposition of the March 29, 2004 cease and desist order. In addition, the record evidence indicates that ongoing work continued on the property during May and June, 2004, and [that] no site monitor confirmation or performance bond had been submitted, despite the representation made at the May 6, 2004 site visit." The plaintiff then filed a petition to appeal to this court, which was granted on July 27, 2007.[6]

[117 Conn.App. 638] I

The plaintiff first claims that the court improperly dismissed its appeals because the commission lacked jurisdiction to uphold the cease and desist orders.

Specifically, it argues that because the commission issued a declaratory ruling in October, 2001, the plaintiff's proposed farming activities were exempt from regulation under the Inland Wetlands and Watercourses Act (act); General Statutes §§ 22a-36 through 22a-45; and therefore outside the jurisdiction of the commission. We are not persuaded by the plaintiff's jurisdictional argument.

At the outset, we identify the proper standard of review. "Whether the trial court properly concluded that the commission had jurisdiction over the activities proposed by the plaintiff involves a legal question involving statutory interpretation, over which our review is plenary." *AvalonBay Communities, Inc. v. Inland Wetlands Commission*, 266 Conn. 150, 158-59, 832 A.2d 1 (2003).

The purpose of the act "is contained in General Statutes §§ 22a-36 through 22a-45, inclusive.... Under [General Statutes] §§ 22a-42 and 22a-42a, any municipality, acting through its legislative body, may authorize or create a board or

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commission to regulate activities affecting the wetlands and watercourses located within its territorial limits and any such board or commission is authorized to grant, deny or limit any permit for a regulated activity." *Connecticut Fund for the Environment, Inc. v. Stamford*, 192 Conn. 247, 249-50, 470 A.2d 1214 (1984). "[W]e are mindful that the [act] rests upon a specific legislative finding that [t]he inland wetlands and watercourses of the state of Connecticut are an indispensable and irreplaceable but fragile natural resource with which the citizens of the state have been endowed, and that [t]he preservation and protection of [117 Conn.App. 639] the wetlands and watercourses from random, unnecessary, undesirable and unregulated uses, disturbance or destruction is in the public interest and is essential to the health, welfare and safety of the citizens of the state. General Statutes § 22a-36. Accordingly, the broad legislative objectives underlying the [act] are in part to protect the citizens of the state by making provisions for the protection, preservation, maintenance and use of the inland wetlands and watercourses by minimizing their disturbance and pollution ... [and by] protecting the state's potable fresh water supplies from the dangers of drought, overdraft, pollution, misuse and mismanagement by providing an orderly process to balance the need for the economic growth of the state and the use of its land with the need to protect its environment and ecology in order to forever guarantee to the people of the state, the safety of such natural resources for their benefit and enjoyment [and for the benefit and enjoyment] of generations yet unborn. General Statutes § 22a-36.... In order to accomplish these objectives, it is the public policy of the state to require municipal regulation of activities affecting the wetlands and watercourses within the territorial limits of the various municipalities or districts.

General Statutes § 22a-42(a)." (Internal quotation marks omitted.) *Queach Corp. v. Inland Wetlands Commission*, 258 Conn. 178, 193-94, 779 A.2d 134 (2001); see also *Mario v. Fairfield*, 217 Conn. 164, 168, 585 A.2d 87 (1991). Our Supreme Court has described the purpose underlying the act as remedial. *Windels v. Environmental Protection Commission*, 284 Conn. 268, 297-98, 933 A.2d 256 (2007); see also R. Fuller, 9 Connecticut Practice Series: Land Use Law and Practice (3d Ed.2007) § 11:1, p. 331 (" [t]he net effect ... has been that the wetlands statutes have been liberally construed").

We now turn to the text of the relevant statutes. General Statutes § 22a-32 provides in relevant part that [117 Conn.App. 640] "[n]o regulated activity shall be conducted upon any wetland without a permit...." Section 22a-40 sets forth certain exceptions from § 22a-32. Specifically, it provides in relevant part: "The following operations and uses shall be permitted in wetlands and water courses, as of right: (1) Grazing, farming, nurseries, gardening and harvesting of crops and farm ponds of three acres or less essential to the farming" (Emphasis added.) General Statutes § 22a-40(a); see also R. Fuller, *supra*, § 11:4, at pp. 336-37.

Our Supreme Court expressly has indicated that exceptions to statutes are to be strictly construed and that those who claim the benefit of such exceptions have the burden of proving that they come within the limited class for whose benefit it was established. *Conservation Commission v. Price*, 193 Conn. 414, 424, 479 A.2d 187 (1984); see also R. Fuller, *supra*, § 11:4, at p. 337. We are mindful, however, that the exemptions from wetlands regulations contained in § 22a-40(a) cannot be interpreted in such a manner that would render them meaningless. See *Knapp v. Inland Wetlands Commission*, 7 Conn.App. 283, 285, 508 A.2d 804 (determination that exemption

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permitting construction of residence did not include right to construct septic system was improper), cert. denied, 200 Conn. 807, 512 A.2d 230 (1986).

The General Assembly has established certain limitations of the farming exemption. "The provisions of this subdivision shall not be construed to include road construction or the erection of buildings not directly related to the farming operation, relocation of watercourses with continual flow, filling or reclamation of wetlands or watercourses with continual flow, clear cutting of timber except for the expansion of agricultural crop land, the mining of top soil, peat, sand, gravel or similar material from wetlands or watercourses or the purposes of sale...." General Statutes § 22a-40(a)(1). Our [117 Conn.App. 641] Supreme Court has observed, with respect to the residential housing exemption from wetlands regulation, "a clear trend in the legislature's treatment of wetlands regulation: the inclusion of properties within the regulatory scheme by the narrowing

of blanket exemptions from regulatory oversight." *Paupack Development Corp. v. Conservation Commission*, 229 Conn. 247, 251, 640 A.2d 70 (1994).

" When construing a statute, [o]ur fundamental objective is to ascertain and give effect 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.... In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. 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 shall not be considered.... The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation." (Internal quotation marks omitted.) *Buttermilk Farms, LLC v. Planning & Zoning Commission*, 292 Conn. 317, 328, 973 A.2d 64 (2009); see also *Unistar Properties, LLC v. Conservation & Inland Wetlands Commission*, 293 Conn. 93, 105-106, 977 A.2d 127 (2009). Guided by these principles, we now address the plaintiff's specific claim that once the commission determined in 2001 that the proposed farming activities were considered as of right uses of the wetlands, it lacked any further jurisdiction over the property.

The following additional facts are necessary for our discussion. The commission held a show cause violation hearing on October 18, 2001. At that hearing, Rizio, [117 Conn.App. 642] the plaintiff's representative, agreed to install silt fencing around the disturbed area and to provide access to the property to staff members of the commission. Philip Meiman, a member of the commission, inquired whether the vernal pool would remain or be replaced with a wetlands nursery. Rizio responded that the plaintiff had the right to put in a wetlands nursery. Another member of the commission, Frank Rice, indicated that he believed that the vernal pool could not be filled in and that the vernal pool needed to remain as such. Finally, a discussion between two members of the commission, Chairman Charles Jankovsky and Gary Weddle, revealed that they believed that the vernal pool could not be filled in. Notably, there was no discussion regarding filling or reclamation of wetlands or watercourses.

In *Wilkinson v. Inland Wetlands & Watercourses Commission*, 24 Conn.App. 163, 167, 586 A.2d 631 (1991), we stated

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that an inland wetlands and watercourses commission " must be given the first opportunity to determine its jurisdiction." See also *Canterbury v. Deojay*, 114

Conn.App. 695, 708, 971 A.2d 70 (2009) (whether planting of blueberry bushes is considered farming pursuant to § 22a-40 must first be determined by local commission). In the present case, the commission determined in 2001 that the plaintiff had established that it would engage in farming activities that did not require a permit pursuant to § 22a-40(a)(1). This declaratory ruling, however, did not serve to deprive the commission of jurisdiction for all matters with respect to this property. The July 2, 2003 letter from Anastasio alleged, inter alia, that the plaintiff engaged in reclamation of the vernal pool, caused sedimentation of off-site wetlands and watercourses, installed a storm sewer system, caused the discharge of polluted water from the storm sewer system, and filled and drained the Redding Road and Rider's Lane areas. These topics [117 Conn.App. 643] were not part of the 2001 proceedings or the declaratory ruling issued by the commission. Simply put, the violations alleged in the Anastasio letter in July, 2003, had not been considered or decided by the commission in October, 2001. Therefore, the plaintiff's argument that following the issuance of the 2001 declaratory ruling the commission lacked jurisdiction over the subsequent activities on the property is without merit.

II

The plaintiff next argues that the court improperly dismissed its appeals because it misinterpreted the statutory limitations on the farming exemption contained in § 22a-40(a)(1). Specifically, it argues that the filling or reclamation [7] limitation to the farming exemption applies only to wetlands and watercourses with continual flow and therefore is not applicable to the plaintiff's property. We are not persuaded.

At the outset, we note that the plaintiff and Wilmington disagree as to the proper standard of review. The plaintiff, relying on *Connecticut Light & Power Co. v. Dept. of Public Utility Control*, 266 Conn. 108, 116, 830 A.2d 1121 (2003), argues that a broader standard should be applied because at issue is the interpretation of § 22a-40(a)(1). Wilmington counters that the issue is the application of § 22a-40(a)(1) to the facts of the present case and therefore a more deferential standard should be utilized. We agree with the plaintiff.

Generally, we review the actions of an agency under a deferential standard of review. Specifically, we consider whether, in light of the evidence, the agency acted unreasonably, arbitrarily, illegally or in abuse of its discretion. [117 Conn.App. 644] *King's Highway Associates v. Planning & Zoning Commission*, 114 Conn.App. 509, 514, 969 A.2d 841 (2009). The construction of a statute, however, presents a question of law for a reviewing court. *North Haven v. Planning & Zoning Commission*, 220 Conn. 556, 561, 600 A.2d 1004 (1991). Accordingly, we employ the broader plenary standard of review. *AvalonBay Communities, Inc. v. Zoning Commission*, 280 Conn. 405, 413, 908 A.2d 1033

(2006). Last, we note that "[i]t is for the courts, not administrative agencies, to expound and apply governing principles of law."

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(Internal quotation marks omitted.) *King's Highway Associates v. Planning & Zoning Commission*, *supra*, at 514, 969 A.2d 841.

At issue in the present case is whether the limitation to the farming exemption prohibiting the filling or reclamation applies to all wetlands or those wetlands with continual flow. We conclude that this claim presents a question of pure law, and therefore the broader standard of review applies. Accordingly, we apply the plenary standard of review. See *Mailhot v. Commissioner of Motor Vehicles*, 54 Conn.App. 62, 64, 733 A.2d 304 (1999). We are mindful, however, that "[o]ne claiming the benefit of an exception under a statute has the burden of proving that he comes within the limited class for whose benefit it was established.... Exemptions are to be strictly construed." (Citation omitted.) *Aaron v. Conservation Commission*, 183 Conn. 532, 549, 441 A.2d 30 (1981); see also *Gay & Lesbian Law Students Assn. v. Board of Trustees*, 236 Conn. 453, 473-74, 673 A.2d 484 (1996); *Conservation Commission v. Price*, *supra*, 193 Conn. at 424, 479 A.2d 187.

As we previously stated, when construing a statute, our fundamental objective is to ascertain and give effect to the intent of the legislature. See *Buttermilk Farms, LLC v. Planning & Zoning Commission*, *supra*, 292 Conn. at 328, 973 A.2d 64. Pursuant to § 1-2z, we begin with the text of the statute. See *Aspetuck Valley Country Club, Inc. v. Weston*, 292 Conn. 817, 824, 975 A.2d 1241 (2009). Section 22a-32 provides that no regulated activity shall [117 Conn.App. 645] be conducted upon any wetland without a permit. General Statutes § 22a-38(13) defines "' [r]egulated activity' " as " any operation within or use of a wetland or watercourse involving removal or deposition of material, or any obstruction, construction, alteration or pollution, of such wetlands or watercourses, but shall not include the specified activities in section 22a-40" (Emphasis added.) As we previously noted, § 22a-40(a)(1) permits farming activities as of right in wetlands and watercourses. The statute, however, also places limits on this farming exemption and does not allow, *inter alia*, for the " filling or reclamation of wetlands or watercourses with continual flow...." General Statutes § 22a-40(a)(1). The plaintiff argues that the phrase " with continual flow" applies to both wetlands and watercourses.[8] Accordingly, it maintains that it was entitled to conduct filling or reclamation of the Redding Road and Rider's Lane areas.

" Generally, courts presume that ' or' is used in a statute disjunctively unless there is clear legislative intent to the contrary." 1A J. Sutherland, *Statutory Construction* (6th Ed. Singer 2002) § 21:14; cf. *D'Occhio v.*

Connecticut Real Estate Commission, 189 Conn. 162, 170, 455 A.2d 833 (1983). Our Supreme Court has stated that "[w]hen a list is joined by the disjunctive

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' or,' as this one is, common usage strongly suggests that each item in the list be read to be separated by ' or,' not ' and.' " [117 Conn.App. 646] *Cantonbury Heights Condominium Assn., Inc. v. Local Land Development, LLC*, 273 Conn. 724, 737, 873 A.2d 898 (2005). Given the clear legislative intent, as set forth in § 22a-36, of protecting wetlands and the instruction from our Supreme Court that exceptions from statutes are to be strictly construed; see *Conservation Commission v. Price*, *supra*, 193 Conn. at 424, 479 A.2d 187; we are not persuaded that we should construe the word " or" to mean " and" with respect to § 22a-40(a)(1). We also note that the act, on numerous occasions, uses the language " wetlands and watercourses," further indicating the legislature's intent of using " or" in the disjunctive. (Emphasis added.)

Additionally, in *Ruotolo v. Inland Wetlands Agency*, 18 Conn.App. 440, 558 A.2d 1021, cert. denied, 212 Conn. 807, 563 A.2d 1356 (1989), this court discussed the question of whether the phrase " with continual flow" applies to both wetlands and watercourses. In *Ruotolo*, the plaintiff sought to create a farm pond and a nursery partially situated in wetlands. *Id.*, at 441, 558 A.2d 1021. A dispute between the plaintiff and the local wetlands agency ensued, and the plaintiff appealed to the Superior Court. *Id.*, at 446, 558 A.2d 1021. The court determined that the local agency's actions were void ab initio because it had lacked jurisdiction. *Id.*, at 446-47, 558 A.2d 1021. This court reversed the Superior Court's conclusion regarding the local agency's jurisdiction. *Id.*, at 449, 558 A.2d 1021.

In *Ruotolo*, we noted that after remand it would have to be determined " [w]hether the plaintiff is permitted to carry on his activities as he has apparently planned to do...." *Id.*, at 450, 558 A.2d 1021. The plaintiff's application indicated that he sought to reclaim wetlands, which required a permit, and to relocate a watercourse, " which may also require a permit, depending upon whether it is a watercourse with continual flow." (Emphasis added.) *Id.* It is clear, therefore, that we previously have read the " with continual flow" language [117 Conn.App. 647] of § 22a-40(a) to apply only to watercourses and not to wetlands. See also *Esposito v. Inland Wetlands Commission*, Superior Court, judicial district of New Haven, Docket Nos. CV-99-0427367-S, CV-99-0431238-S, CV-99-0431720-S, 2000 WL 1058594 (July 17, 2000), (27 Conn. L. Rptr. 537).[9] We conclude, therefore, that the court properly interpreted § 22a-40(a)(1).

III

The plaintiff next argues that the court improperly determined that there was sufficient evidence to support the commission's decisions upholding the issuance of the cease and desist orders. Specifically, it claims that, with respect to the Rider's Lane, Redding Road and vernal pool areas, there was insufficient evidence to support

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the cease and desist orders. We disagree.

" We begin with a review of the well established parameters of the substantial evidence test. It is widely accepted that, [i]n reviewing an inland wetlands agency decision made pursuant to [its regulations], the reviewing court must sustain the agency's determination if an examination of the record discloses evidence that supports any one of the reasons given.... The evidence, however, to support any such reason must be substantial; [t]he credibility of witnesses and the determination of factual issues are matters within the [117 Conn.App. 648] province of the administrative agency.... This so-called substantial evidence rule is similar to the sufficiency of the evidence standard applied in judicial review of jury verdicts, and evidence is sufficient to sustain an agency finding if it affords a substantial basis of fact from which the fact in issue can be reasonably inferred.... The reviewing court must take into account [that there is] contradictory evidence in the record ... but the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence...." (Internal quotation marks omitted.) *River Bend Associates, Inc. v. Conservation & Inland Wetlands Commission*, 269 Conn. 57, 70, 848 A.2d 395 (2004); see also *Finley v. Inland Wetlands Commission*, 289 Conn. 12, 38, 959 A.2d 569 (2008).

We further note that " [t]he party challenging the agency decision has the burden to show that substantial evidence does not exist in the record as a whole to support the agency's decision." (Internal quotation marks omitted.) *Fanotto v. Inland Wetlands Commission*, 108 Conn.App. 235, 239, 947 A.2d 422, cert. granted on other grounds, 289 Conn. 908, 957 A.2d 869, cert. denied, 289 Conn. 909, 957 A.2d 869 (2008). In the context of the present case, the plaintiff bears the burden of showing that its activities fell within the ambit of the farming exemption. See *Conservation Commission v. Price, supra*, 193 Conn. at 424, 479 A.2d 187; *Aaron v. Conservation Commission, supra*, 183 Conn. at 549, 441 A.2d 30.

At the August 7, 2003 show cause violation hearing, Anastasio began by stating that " [s]ignificant and adverse alterations have taken place to wetlands and watercourses on this site." She also mentioned that she and her staff had been denied access to the site and, as a result, the documentation of violations had occurred [117 Conn.App. 649] from off-site observations. As to the Rider's Lane wetlands, Anastasio presented photographs

showing that it had been filled in completely, likely with off-site soil. James Caserta and Diane Caserta stated that they had observed the soil from the Rider's Lane wetlands being excavated. Michael Klein, a soil scientist, noted that the Rider's Lane wetlands " are gone." Following an August 12, 2003 site visit, Anastasio again concluded that the Rider's Lane wetlands had been filled completely and cited truck tracks and soil piles as evidence. Given that the farming exemption does not allow for the reclamation of wetlands, we conclude that there was substantial evidence in the record to support the commission's decision to uphold the cease and desist order with respect to the Rider's Lane area.

We also agree that the cease and desist order as to the Redding Road wetlands also was supported by substantial evidence. At the August 7, 2003 hearing, Anastasio informed the commission that this area had been drained using a storm sewer system of pipe, plastic lining and concrete manholes and then filled with soil. James Caserta and Diane Caserta stated that muddy water that had been pumped

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from the plaintiff's property ran into their pond. The evidence revealed that the dark, rich organic soil that had been present was replaced by " hardpan soil." The plaintiff's activities constituted regulated activities in a wetlands and required a permit. Accordingly, the commission's decision to uphold the cease and desist order was supported by substantial evidence.[10]

[117 Conn.App. 650] Last, we turn to the vernal pool. During the August 7, 2003 hearing, Anastasio stated that the vernal pool had been drained via a trench dug from the pool to the Redding Road area. Following her discussion with DiNardo, when Anastasio indicated that such action could be considered the reclamation of a wetland, the trench was dammed and the vernal pool excavated and expanded in both size and depth to create the farm pond. Anastasio provided photographs in support of her statements regarding the conversion of the vernal pool to the farm pond. At the March 25, 2004 show cause violation hearing, Anastasio indicated that changes to the vernal pool were the result of a planned course of action. She also noted that, as a result of the increased dimensions of the farm pond, its biological function had been changed significantly.

The plaintiff argues that § 22a-40(a)(1) specifically provides that a farm pond of three acres or less is permitted as of right. It ignores, however, the language requiring that such farm ponds must be " essential to the farming operation...." General Statutes § 22a-40(a)(1). The plaintiff bore the burden of establishing its entitlement to the farming exemption, specifically, that the farm pond of three acres or less was essential to the farming operation. The commission did not make such a determination. See *Canterbury v. Deojay, supra*, 114

Conn.App. at 709-10, 971 A.2d 70. Robert Sonnichsen, a professional engineer, opined that irrigation water " was going to be critical" to the farming operations. He did not indicate, however, that the replacement of the vernal pool with the farm pond was *essential* to the operation, merely that irrigation would be needed. In other words, there was no evidence that water from another source could not have been used rather than converting the vernal pool. Additionally, the commission was free to reject Sonnichsen's testimony. See [117 Conn.App. 651] *Pelliccione v. Planning & Zoning Commission*, 64 Conn.App. 320, 331, 780 A.2d 185, cert. denied, 258 Conn. 915, 782 A.2d 1245 (2001)

A farm pond falls within the § 22a-40(a)(1) exemption only if the commission made the determination that it was essential to the farming activity. The commission did not make that determination. Accordingly, the plaintiff failed to sustain its burden of establishing that its activities fell within the ambit of § 22a-40(a)(1). As a result, the transformation of the vernal pool to the farm pond required a permit. The commission's decision to uphold the cease and desist orders, therefore, was proper.

The judgments are affirmed.

In this opinion the other Judges concurred.

Notes:

[1] Marisa Anastasio, a wetlands compliance officer for the town of Fairfield, also was named as a defendant in all three of the plaintiff's appeals. The commissioner of environmental protection was a defendant in the first and second appeals only.

[2] General Statutes § 22a-40(a) provides in relevant part: " The following operations and uses shall be permitted in wetlands and watercourses, as of right:

" (1) Grazing, farming, nurseries, gardening and harvesting of crops and farm ponds of three acres or less essential to the farming operation, and activities conducted by, or under the authority of, the Department of Environmental Protection for the purposes of wetland or watercourse restoration or enhancement or mosquito control. The provisions of this subdivision shall not be construed to include road construction or the erection of buildings not directly related to the farming operation, relocation of watercourses with continual flow, filling or reclamation of wetlands or watercourses with continual flow, clear cutting of timber except for the expansion of agricultural crop land, the mining of top soil, peat, sand, gravel or similar material from wetlands or watercourses for the purposes of sale...." The language of § 4.1.a of the Fairfield regulations essentially tracks the language of § 22a-40(a).

[3] Section 4.4 of the Fairfield regulations provides: " To carry out the purposes of this section, any person proposing to carry out a permitted or nonregulated operation or use of wetland or watercourse, that may disturb the natural and indigenous character of the wetland or watercourse, shall, prior to commencement of such operation or use, notify the [commission] on a form provided by it, and provide the [commission] with sufficient information to enable it to properly determine that the proposed operation and use is a permitted or nonregulated use of the wetland or watercourse. The [commission] or its designated agent shall rule that the proposed operation or use is a permitted or a nonregulated use or operation or that a permit is not required. Such ruling shall be in writing and shall be made no later than the next regularly scheduled meeting of the [commission] following the meeting at which the request was received. The designated agent for the [commission] may make such ruling on behalf of the [commission] at any time."

[4] Anastasio stated that she visited the site in August, 2002, and had been denied access.

[5] Wilmington is also a defendant in two of the appeals.

[6] Two days Before oral argument in this matter, this court received a letter from Wilmington referring to Practice Book § 67-10, citing and discussing several authorities not mentioned in its brief. The plaintiff filed a letter objecting to Wilmington's submission as noncompliant with § 67-10. We take this opportunity to remind counsel of the purpose behind that rule. As noted in the official 2009 commentary to the rule, that purpose is to bring to the court's attention " significant authority that was genuinely unknown to the party at the time of the preparation of the brief or at oral argument." Practice Book § 67-10, commentary. It is not an opportunity to file a supplemental brief.

[7] " Reclamation" has been defined as " [m]aking land fit for cultivation, as by draining swamps ... or irrigating arid land." Ballentine's Law Dictionary (3d Ed.1969); see also Webster's Third New International Dictionary (" the act or process of restoring to cultivation").

[8] The terms " wetlands" and " watercourses" are defined in the act. " General Statutes § 22a-38(15) defines wetlands as *land*, including submerged land ... which consists of any of the *soil types* designated as poorly drained, very poorly drained, alluvial, and floodplain.... Watercourses are defined as rivers, streams, brooks, waterways, lakes, ponds, marshes, swamps, bogs, and all other *bodies of water*, natural or artificial, vernal or intermittent, public or private, which are contained within, flow through or border upon this state or any portion thereof.... General Statutes § 22a-38(16). We note that these pivotal definitions, which apply throughout the act, are narrowly drawn and limited to physical characteristics." (Emphasis in original; internal quotation

marks omitted.) *AvalonBay Communities, Inc. v. Inland Wetlands Commission*, *supra*, 266 Conn. at 162-63, 832 A.2d 1.

[9] The plaintiff argues that the discussion of continual flow in *Ruotolo* constitutes nothing more than dicta, which is not binding. We disagree. " Dictum includes those discussions that are merely passing commentary ... those that go beyond the facts at issue ... and those that are unnecessary to the holding in the case.... As we have previously recognized, however, *it is not dictum when a court of [appeal] intentionally takes up, discusses, and decides a question germane to, though not necessarily decisive of, the controversy* Rather, such action constitutes an act of the court which it will thereafter recognize as a binding decision." (Citations omitted; emphasis added; internal quotation marks omitted.) *Middletown Commercial Associates Ltd. Partnership v. Middletown*, 53 Conn.App. 432, 435, 730 A.2d 1201, cert. denied, 250 Conn. 919, 738 A.2d 657 (1999).

[10] The plaintiff argues that the Redding Road area was both a wetlands *and* a watercourse. It maintains that because there was no evidence of continual flow, the farming exemption applied. This argument is unavailing because the plaintiff acknowledges the Redding Road area to be a wetland. Accordingly, the filling of this area requires a permit, as the filling of a wetland is not part of the farming exemption. See General Statutes § 22a-40(a)(1). The Redding Road area's possible classification as a watercourse does not change this analysis.

TOWN OF PORTLAND

ZONING REGULATIONS



PORTLAND PLANNING AND ZONING COMMISSION

Effective Date: November 9, 2007

See Table 11.4.3 for Revision Date

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ARTICLE 2: DEFINITIONS

Home Agriculture: The production, principally for use or consumption of the property owner, of plants, animals or their products and for sales to others where such sales are incidental. ←

Home-Based Business Related Terms – See Section 9.6 Home Occupations and Home Offices

Hotel: A building, designed and used primarily for temporary occupancy by transients, which provides or offers accommodations for compensation for 7 or more persons exclusive of employees living on the premises, and which may provide rooms for public assembly and may include the serving of food.

Improvement: Any change or alternation to the existing conditions of a site for the purpose of complying with these Regulations or rendering the site more suitable for development and/or habitation. As used in these Regulations, improvements include but are not limited to: construction and installation of roadway, paved streets, curbs, gutters, sidewalks, utilities, street signs, monuments, shade trees, drainage facilities, erosion and sedimentation control measures, fire ponds, sewer and water systems, buildings, earth filling or removal, seeding, and grading.

Infill Development: The development of new housing or other buildings on scattered vacant sites.

Inland Wetlands Agency: The agency acting as the Portland Inland Wetlands and Watercourse Agency.

Inspection: The periodic review of sediment and erosion control measures as shown on the certified plan.

Institution, Health Care: A hospital; health care facility for the handicapped, mental health facility; alcohol or drug treatment facility; an infirmary operated by an educational institution for the care of students enrolled and faculty and employees of such institution; and hospitals operated by any state agency for the care and treatment of tuberculosis, mentally ill or mentally retarded persons. Any multi-family dwelling with units designed for a particular population that requires on-site staff shall be considered an institution.

Kennel: The keeping, boarding, breeding, raising, showing, or training of 4 or more animals over 6 months old, limited to dogs and cats as a business.

Kennel Private: The keeping, breeding, raising, showing, or training of 4 or more animals over 6 months old, limited to dogs and cats, for personal enjoyment of the owner or occupants of the property, and for which commercial gain is not the primary objective.

Laundry (Laundering), Commercial: A laundry that services only business and commercial customers, such as hospitals and factories, and does not perform on-premises dry cleaning services. Self-service laundromats and retail laundries are specifically excluded from this definition.

Livestock: Grazing animals kept either in open fields or structures, including, but not limited to, cattle, horses, donkeys, sheep, goats, llamas and alpacas. ←

ARTICLE 2: DEFINITIONS

Recycling Facility: An industrial use, conducted in a fully enclosed structure, which is involved in removing certain items from construction and demolition debris and/or reducing the volume of such debris. Items removed from the waste stream are to be shipped elsewhere for re-use or processing. Items to be removed from the waste stream are: asbestos, glass, metals, paper products, wood, tires and dirt. The above items may be reduced in volume by means of bailers, compactors, grapples, shredders and chippers in order to prepare the material for transportation to secondary markets. Volume reduction does not allow the use of incinerators or other resource recovery facilities, composting or pulverizing. All other recycling facilities are prohibited as specified in Section 6.2.5 Industrial Zones: Prohibited Uses. Such a facility shall be differentiated from a "junkyard" as herein defined. A "junkyard" shall not be considered a recycling facility as defined in these Regulations. A recycling facility as herein defined shall be utilized by commercial contractors only. Such a facility shall not be utilized and/or accessible by the general public.

Retail Business: A commercial enterprise, a company that is engaged in on site stocking and sales of commodities in small or large quantities to the ultimate consumer.

Retail Establishment: The occupied space devoted to a single retail business.

Road: See Street Related Terms.

Sediment: Solid material, either mineral or organic, that is in suspension, is transported, or has been moved from its site of origin by erosion.

Sign: See Section 8.4 Signs.

Site Development Plan: That part of a development plan which clearly defines all buildings, parking areas, driveways and walkways, utilities, drainage facilities, landscaping and other site improvements.

Soil: Any unconsolidated mineral or organic material of any origin.

Soil Erosion and Sediment Control Plan: A scheme that minimizes soil erosion and sedimentation resulting from development and includes, but is not limited to, a detailed map and narrative.

Soils Map: The officially adopted soils classification of the Town of Portland as prepared by the Middlesex County Soil Conservation District and the Department of Agriculture, Soil Conservation Service.

Special Event: Bazaar, carnival, farmers market, cruise night, or similar activities.

Special Flood Hazard Area: The land in the flood plain subject to a one (1) percent or greater chance of flooding in any given year. The Special Flood Hazard Area contains all "A" and "A1"- "A30" Zones as designated on the Flood Insurance Rate Maps, dated 1978, and as revised; and contains all land within the Flood Plain Zone as a designated on the official Town of Portland "Zoning Map".

Stable: Any building or enclosed area used for the housing, feeding or caring of one or more horses. ←

Stable, Commercial: A stable where horses are kept for profit or gain, including but not limited to, the boarding of horses, riding instruction programs or the renting of horses. ←

Stable, Non-commercial: A stable used solely for horses owned by the resident-occupant. ←

State Health Code: The Public Health Code adopted by the Public Health Council pursuant to CGS Section 19-13, as amended.

ARTICLE 3 GENERAL REQUIREMENTS

Section 3.1 Accessory Buildings

3.1.1 General

Except as provided below and as provided for buildings accessory to farming or agricultural use, detached accessory structures must meet all setbacks as required in Article 4 Residential Zones, Article 5 Business Zones and Article 6 Industrial Zones.

- A. No accessory building shall be erected prior to the erection of the main building on said lot, except that this shall not prohibit the completion and possible occupancy of an accessory building before the completion of the main building then under construction on the same lot. Barns for agricultural purposes, but specifically not for the keeping of horses or animals (as defined in Section 9.7.1.A) may be erected on a property three (3) or more acres in size as a primary use.
- B. A building attached to a main building by structural members, excluding a fence or wall not over 6 feet above the ground shall be considered an integral part of the main building.

3.1.2 Sheds

- A. Sheds that are less than 12 feet in average height, 200 square feet or less in size, and not used for human habitation, keeping of animals, for storage of motor vehicles, or for permitted home occupations, shall be located in accordance with the following minimum setbacks:

Zone	Minimum distance from shed to street	Permitted Side Yard	Permitted Rear Yard
RR	100 ft.	10 ft.	10 ft.
R-25	75 ft.	5 ft.	5 ft.
R-15	65 ft.	5 ft.	5 ft.
R-10	55 ft.	5 ft.	5 ft.

- B. A maximum of 1 shed is permitted under the provisions of Section A above. All other sheds must comply with paragraph C below or Article 4 Residential Zones, Article 5 Business Zones or Article 6 Industrial Zones as applicable.
- C. Sheds on corner lots shall be a minimum of 75 feet from the street.

ARTICLE 4: RESIDENTIAL ZONES

Table 4.1 Permitted Uses Residential Zones				
P = permitted by right in the zone		SP = permitted only by special permit		
S = permitted subject to approval of a Site Plan		N = not permitted in the zone		
Special Permit approval is required for any site or structure identified on the Historic Resources Plan located within the Town of Portland Plan of Conservation and Development. See Regulation Section 10.6				
Permitted Use	R-10	R-15	R-25	RR
Outdoor Recreation Facilities and uses other than facilities and uses of the Town of Portland	SP	SP	SP	SP
Post Offices	SP	SP	SP	SP
Public Utility Buildings: No service yard or outside storage of supplies	SP	SP	SP	SP
Radio and TV Towers: Minimum Setback distance from any property line shall be greater than the height of tower.	SP	SP	SP	SP
Roadside stands for sale of farm produce and products accessory to the farm on which the stand is located; maximum floor area of stand shall be 400 sq. ft.	N	N	P	P
Schools, Nursery Schools, Day Care Centers, Colleges, and Universities ⁵	SP	SP	SP	SP
Stable, Commercial (See Section 9.9)	N	N	SP	SP
Stable, Non-Commercial (See Section 9.8)	N	N	P	P
Wind Energy Generating System	N	N	N	SP

Notes to Table 4.1 Permitted Uses Residential Zones

¹ In 6 or fewer rooms, where stays are limited to a maximum of 30 consecutive days

² Certain types of Home Occupations require a special permit. See Section 9.6 Home Occupations and Home Offices

³ Minimum lot area is 3 acres; no animals to be kept in any building or enclosure within 150 feet of any property line; no use shall create offensive odors, noise, or unsightly appearance off the lot.

⁴ Including accessory uses such as marine offices, gasoline pumps for boating uses, boat and engine repair, marine store serving those people using and visiting the marina area.

⁵ Including schools for instruction in music, art, dance, drama, physical education, vocational training, and instruction related to the handicapped

Section 4.2 Residential Area, Density & Dimensional Requirements

4.2.1 Area, Height, Coverage, Setback and Density Requirements

Table 4.2.1 Area, Height, Coverage, Setback and Density Requirements										
Zone	Min Area	Min Width	Min Depth	Max Stories	Max Height	Max % Lot Coverage	Min Front Yard	Min Side Yard	Min Rear Yard	Density
RR	1 Acre	150'	200'	2 ½	35'	12%	50'	25'	50'	.73
R-25	25,000 sq. ft.	125'	150'	2 ½	35'	15%	40'	15'	40'	1.20*
R-15	15,000 sq. ft.	100'	125'	2 ½	35'	20%	30'	10'	30'	N/A

ARTICLE 9: SPECIAL REGULATIONS

4. Buildings for housing medium and large animals shall be located at least 100 feet from any property line.
5. Manure piles shall be located at least 100 feet from any property line and screened from abutting properties.
6. The keeping of all types of pigs or swine is prohibited less than 300 feet from a property line and on a lot less than five (5) acres in size.

9.7.4 Exemptions

The following animals are specifically exempt from this regulation: Dogs, cats, and other customary indoor pets that are kept as companions and housed with human occupants, and no more than three (3) rabbits when kept on a property having a residential use.

Section 9.8 Horses for Personal Use

- A. Only occupants of a dwelling in an RR, R-25 or FP Zone may be permitted to keep horses for their personal use on the property provided the following standards or conditions are met:
1. The horses must be owned by the resident-occupants and not for direct or indirect gain.
 2. There shall be one (1) acre as the minimum size lot for the first horse being kept and an additional one-half acre for each additional horse, but there shall not be more than three (3) horses.
 3. Stable manure must not create a health hazard to the community in general or to the persons in the surrounding neighborhood from an air, drainage and water pollution standpoint.
 4. Adequate fencing must be installed and maintained to reasonably contain the horses within the property and shall conform to section 9.15.
 5. No building or other structure shall be located less than 100 feet from the street, side or rear lot lines.
 6. The use of temporary buildings or trailers for the stabling of horses in excess of fifteen (15) days is prohibited. There shall be no storage of supplies outside of permanent buildings.
 7. The area shall be landscaped to harmonize with the character of the neighborhood. The land shall be maintained to not create a nuisance as determined by the Commission. The manure storage area shall be screened and located so as not to be unsightly nor create offensive odors off the premises.
 8. There shall be no external floodlighting that transmits outside of the property from where it originates and no light shall be permitted which is considered objectionable due to brightness or intensity

Section 9.9 Commercial Stables

- A. Land, buildings, and other structures in an RR, R-25 or FP Zone may be used for the following after granting of a special permit by the Commission: commercial stables, riding academies, livery and boarding stables, animal and convalescent stables, rental and hacking

ARTICLE 9: SPECIAL REGULATIONS

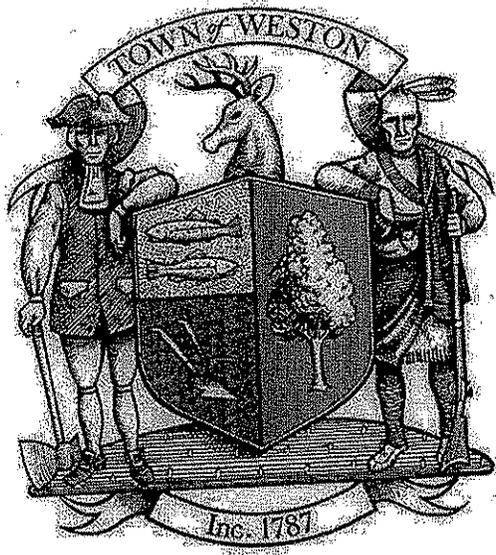
stables, breeding stock farms, and private club riding stables. The following standards or conditions shall be met before a special permit is granted:

1. The barns, riding rings, corrals, and accessory facilities shall be contained within a parcel or contiguous parcels of land consisting of at least 10 acres.
2. Sufficient off-street parking facilities shall be provided to accommodate all users and visitors to the property, including spectators, for horse shows or other equestrian events. The roads for entering and leaving the property shall be located or placed in such a manner so as not to create pedestrian or vehicular traffic hazards on public streets or highways.
3. Stable manure shall not create a health hazard to the community in general or to the persons in the surrounding neighborhood from an air, drainage and water pollution standpoint. The stabling of horses shall conform to all State and local laws, regulations and codes.
4. Sanitary facilities shall be provided for workers, patrons and visitors in accordance with State and Local health requirements for normal operations as well as for horse shows and similar activities.
5. Adequate fencing shall be installed and maintained to reasonably contain the horses within the property and shall conform to Section 9.15 Walls and Fences.
6. Fire control facilities and/or structures for the barns, buildings, and other amenities used for normal operations as well as for horse shows and similar activities shall be approved by the Town Fire Marshal.
7. The use of Public Address Systems is prohibited.
8. No part of any building, riding ring, corral, or manure storage area used for or in conjunction with the operation shall be located less than 100 feet from the street, side or rear lot lines.
9. The use of temporary buildings or trailers for the stabling of horses in excess of 15 days is prohibited.
10. The premises shall be landscaped to harmonize with the character of the neighborhood. The land shall be maintained so as not to create a nuisance. The manure storage area shall be screened and located so as not to be unsightly or create offensive odors off the premises.

Section 9.10 Motor Vehicle Sales, Repair and Related Uses

9.10.1 Location Requirements

- A. Any establishment proposing to sell new or used vehicles, repair vehicles to include auto body shops, or dispense at retail motor vehicle fuels shall meet the following Locational requirements. No vehicle entrance to or exit from the lot containing the use may be located within 500 feet, as measured along public streets, of any vehicle entrance to:
 1. Any school giving regular instruction at least 5 days a week 8 months or more a year;
 2. Any hospital maintaining at least 15 beds for patients;
 3. Any public gathering facility with a legal capacity of at least 300 persons; or
 4. A public library, or public playground or park.



**ZONING REGULATIONS
OF THE
TOWN OF WESTON**

As amended to September 23, 2011

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Planning and Zoning Commission and shown on the Town Plan of Development map. Dwelling use on the same property is permitted by an additional two acres shall be required for the dwelling. The dwelling and lot must meet all the requirements of the Zoning Regulations.

B. Coverage: A minimum rectangle shall be contained within the lot of 170 feet by 200 feet. Minimum road frontage shall be 170 feet or 50 feet on a turnaround or 25 feet on a flag lot. Building coverage shall not exceed 15% of the site area nor shall the sum total of land covered with buildings and parking including driveways) be permitted to exceed 30% of the site area. Single access driveway shall be permitted.

C. Setbacks and Parking: Minimum setback of all principal structures, equipment and facilities and land uses shall be 100 feet on the front line, sidelines and back lot lines. Minimum parking setback shall be 100 feet from the front line 100 feet from the side lines and back lot line. Minimum required parking space shall be one (1) space per teacher or employee.

D. Buffer Area: A buffer area shall be required along all lot lines of at least 30 feet in depth and contain evergreen planting of such type, height, spacing and arrangement as will screen the activity, equipment and facilities. A wall or fence of location, height, design and materials approved by the Commission as providing equivalent screening, may be substituted for all or part of the required planting. (Amended 2/1/84)

E. Additional Requirements: Maximum intensity of use and/or membership limit shall be eight (8) students per acre. Maximum building height shall be 35 feet, 2 ½ stories. Sale of products or materials shall be restricted to only those products or materials which are customarily incidental to the principal use as determined by Special Permit. Dwelling use on the same lot is permitted. If such use is conducted within the dwelling or in a non-dwelling, requirements set forth by the State Health Department shall be met. (Amended 8/18/04)

341.6 Riding Stable or Academy. The Commission may issue a Special Permit for the operation of a Riding Stable or Academy on the following terms and conditions (Amended 5/26/11):

A. Location: All such uses shall be permitted only on a minimum lot area of five (5) acres and only in locations fronting on, or having direct and convenient access to a major or collector road as determined by the Planning and Zoning Commission and shown on the Town Plan of Development Map.



B. Coverage: A minimum rectangle shall be contained within the lot of 300 feet by 300 feet. Minimum road frontage shall be 200 feet and there shall be dual access to the public road. Building coverage shall not exceed 10% of the site area nor shall the sum total of land covered with buildings and parking (including driveways) be permitted to exceed 30% of the site area.

C. The Setbacks and Parking: No structure, riding ring, corral, manure pit used for or in conjunction with the operation, shall be located in a manner that any part thereof shall be less than 150 feet from the nearest line of any road, street or highway abutting the property or any side and rear boundary line. Minimum parking setback shall be 150 feet from the front line and 150 feet from the side lines and back lot line. Minimum required parking space shall be as by Special Permit for the event but with a minimum of two (2) parking spaces per horse. A parking plan shall be required showing the location and dimensions of proposed parking area, the type of surface to be used, provisions for storm drainage and other improvements to limit water run-off, the location of the access road or roads. The provisions for traffic control, parking and handling of large horse vans during the conduct of horse shows shall be made by the applicant.

D. Buffer Area: A buffer area shall be required along all lot lines of at least 50 feet in depth and contain evergreen planting of such type, height, spacing and arrangement as will screen activity on the lot from neighboring areas. A wall or fence of location, height, design and materials approved by the Commission as providing equivalent screening may be substituted for all or part of the required planting. (Amended 2/1/84)

E. Additional Requirements: Maximum intensity of use and/or membership limit shall be restricted to four horses per acre. Maximum building height shall be 30 feet. Sale of products or materials shall be restricted to only those products or materials which are customarily incidental to the principal use as determined by Special Permit. Dwelling use on the same property is permitted, but an additional two acres shall be required for the dwelling and all requirements for the dwelling and lot must meet the zoning regulations. No horse shall be housed in any part of a building used as a residence. The use of temporary buildings or trailers for the stabling of horses in excess of fifteen days is prohibited. There shall be no storage or supplies outside of permanent buildings. Stable manure must not create a health hazard from an air and water pollution standpoint to the community in general or the persons inhabiting or using the surrounding acreage and therefore the stabling of horses shall conform to all regulations of local and State Health Authorities. Adequate fencing must be installed and maintained to reasonably contain the horses within

the property. The use of public address systems, the conduct of the instruction of riders, training of horses and the spectator participation in competitions should be modulated and continuously controlled in order to avoid becoming a nuisance to surrounding neighbors.

341.7 Municipal Uses on Lots owned by The Town of Weston. (Added 1/17/08) The Commission may issue a Special Permit for municipal uses on lots owned by the Town of Weston on the following terms and conditions (Amended 5/26/11):

A. Applicability: This Section 341.7 shall apply to uses engaged in by the Town other than:

1. uses in which the Town is engaged on a particular Lot as of the effective date of this Section provided that no intensification of such pre-existing uses shall be permitted except in conformity with this Section.
2. ordinary maintenance and repair of pre-existing structures provided that no intensification of any pre-existing non-conformity shall be permitted except in conformity with this Section;
3. rental of single-family dwellings for income, limited to one dwelling per Lot and otherwise in conformity with these Regulations;
4. construction, maintenance, improvement and replacement of roads, bridges, or drainage facilities except insofar as such work is otherwise required in connection with an application submitted under this Section.

B. Location: All Town uses shall be permitted only on a minimum lot area of three (3) acres and only in locations fronting on, or having direct, safe and convenient access to a major or collector road as determined by the Planning and Zoning Commission and shown on the Town Plan of Development map.

C. Coverage: A minimum rectangle of 170 feet by 200 feet shall be contained within the lot. Minimum road frontage shall be 200 feet and there shall be dual access to the public road. Building coverage shall not exceed 20% of the site area nor shall the sum total of land covered with buildings, and parking (including driveways) be permitted to exceed 30% of the site area.

D. Setbacks: Minimum setback for all structures shall be 100 feet from the Front line, sidelines and back lot line. Minimum setback for any

Farming: Farming shall include the use of a lot, either as a principal or accessory use, for the purpose of producing agricultural, horticultural, floricultural, vegetable and fruit products of the soil, and shall include the raising of horses, and other domestic farm animals. Riding academies, livery stables, animal kennels, the breeding, raising or habitation of fur bearing animals, pigs and goats, commercial poultry farms, stands for the sale of produce or the commercial processing of the products of the farm, shall not be included.

Fence: A structure for enclosing, dividing or screening. This includes traditional fencing, masonry or stone walls, pillars and gates related thereto. (Amended 6/16/03)

Fire Station: A facility primarily used by a fire/rescue organization to house fire suppression, rescue, and/or emergency medical response apparatus and equipment. The term "Fire Station" shall include Customary Accessory Uses including, but not limited to, (i) training and fitness, (ii) administration, and (iii) social functions. (Added 5/26/11)

Floor Area: The sum of the gross internal horizontal area of the several floors of the building, but not including attached or built-on garages, porches or terraces, unfinished rooms, or unfinished floor area having a clear head room of less than seven (7) feet. (Amended 10/30/86)

Frontage: The extent of a lot along a road as defined therein.

Home Occupation: Artistic and professional pursuits operated from a Dwelling. (Added 5/26/11)

Limited Home Occupation: A Home Occupation engaged in by no more than one (1) individual who is not an Occupant of such Dwelling. (Added 5/26/11)

Lot: A parcel of land devoted or to be devoted to a particular use, or occupied or to be occupied by a building or buildings, together with any required open spaces, and having frontage on a road as defined herein.

Lot Area: The total horizontal area included within lot boundaries.

Lot, Corner: A lot on two or more intersecting roads or lanes. (Amended 3/1/92)

Lot, Depth: The horizontal distance between the front and rear lot lines measured perpendicular to the mean direction of the front lot line.

Lot, Front*: That lot area extending across the full width of a lot and lying between the front lot line and the nearest line of the building.

Lot, Line: A property line bounding a lot as defined herein.

may be improved by natural walking trails, parking facilities, picnicking facilities, map and informational kiosks and similar unenclosed improvements, and shall include, but is not limited to, community gardens. The term "Park" shall include Customary Accessory Uses. (Added 5/26/11)

Parking Area: An off-street area containing one or more parking spaces, with passageways and driveways appurtenant thereto.

Parking Space: An off-street space available for the parking of one motor vehicle on a transient basis.

Place of Worship: An establishment where a group of people performs acts of religious study, honor, or devotion. The term "Place of Worship" shall include Customary Accessory Uses. (Added 5/26/11)

Playground: Land dedicated and held in perpetuity for recreational uses, for the benefit of the public in general improved with outdoor equipment and facilities for play, recreation, and sports and shall include, but is not limited to, children's play areas and basketball courts. The term "Playground" shall include Customary Accessory Uses. (Added 5/26/11)

Private School: A kindergarten, primary or secondary school furnishing a comprehensive curriculum of academic instruction similar to that of a public school.

Public Land shall mean any piece or parcel of land wholly owned by the Town of Weston. (Added 9/23/11)

Public Way: Any public or private road, street or lane. (Amended 6/16/03)

Regulated Home Occupation: A Home Occupation engaged in by more than one (1) individual who is not an Occupant of such Dwelling. (Added 5/26/11)

Riding Stable or Academy: An establishment where horses are kept for riding, driving or stabling for compensation, or are kept incidental to the operation of a club, association, ranch or similar establishment. 

Road: Any road, street, highway, avenue, lane or way dedicated to movement of vehicles and pedestrians, and which is shown on a subdivision plan approved by the Commission or is on a map filed in the Office of the Town Clerk prior to March 1, 1956 or is a State or Town Road, but not including private driveways or rights-of-way.

Road Line: A property line dividing a road and a lot. See also definition of "Lot Line, Front."

Sign: Any structure or part thereof, or any device attached thereto or painted thereon, or any material or things, illuminated or otherwise, which displays or includes any numeral,