PATRICIA GARRISON *v.* PLANNING BOARD OF THE CITY OF STAMFORD ET AL.
(AC 20900)

Lavery, C. J., and Schaller and Flynn, Js.

Argued June 1—officially released October 16, 2001

Counsel

Brenden P. Leydon, for the appellant (plaintiff).

James V. Minor, assistant corporation counsel, for the appellees (defendants).

Opinion

LAVERY, C. J. The plaintiff, Patricia Garrison, appeals from the judgment of the trial court dismissing her appeal from the decision by the defendant planning board of the city of Stamford (board) denying her subdivision application.[1] On appeal, the plaintiff claims that (1) the court improperly affirmed the board's denial of her application on the basis of an anticipated zoning use violation that was not inherent in the application as submitted, (2) the court improperly refused to consider her challenges to the validity of land use regulations because they were not brought in a declaratory judgment action, (3) the Stamford zoning regulations

are void for vagueness and (4) the zoning regulations constitute an excessive fine. Because we agree with the plaintiff's first claim, we reverse the judgment of the trial court.

The following facts and procedural history are necessary for a proper consideration of the plaintiff's claims. The plaintiff is the owner of improved real property at 925 Long Ridge Road in Stamford. The building on the property has been leased to Coldwell Banker as a real estate office for a substantial period of time. On January 25, 1999, the plaintiff filed with the board an application for a subdivision of the subject property into three lots. The board held a public hearing on the application on May 25, 1999, and subsequently voted unanimously to deny the application on June 1, 1999. The reason given by the board in its letter notifying the plaintiff of the denial was ''existing flagrant and specific zoning violations which would be intensified'' by the subdivision.

The zoning use violation was that the real estate office expanded beyond the permitted accessory use of a real estate office to a residence. There has been a long-standing dispute with the city over that violation. The plaintiff had obtained a variance in 1982 to have not more than eight nonresident persons be employed as brokers. Evidence introduced at the public hearing showed that there were thirty-seven brokers who are nonresidents. That was a violation of § 19.2.2 of the zoning regulations, which provides that any grant of a variance is deemed to grant only the particular use and that any changes in the approved plan that materially affect an approved variance shall require further approval of the board.

The plaintiff thereafter appealed from that decision to the Superior Court. Following a one day trial, the court dismissed the appeal, finding that ''the planning board lacked the authority pursuant to General Statutes § 8-26 to approve the application because the subject property has outstanding zoning violations.'' The plaintiff thereafter applied to this court for certification to appeal, which was granted. This appeal followed.

The plaintiff claims that the trial court improperly upheld the planning board's denial of her subdivision application on the basis of a claimed or anticipated zoning use violation that was not inherent in the application as submitted, where no regulation authorized the denial of a subdivision application on such a basis. We agree and accordingly reverse the judgment of the trial court.

''At the outset, we note that the [board] acted in its administrative capacity. *Reed* v. *Planning & Zoning Commission*, 208 Conn. 431, 433, 544 A.2d 1213 (1988). As such, it has *no discretion or choice* but to approve a subdivision if it conforms to the regulations adopted for its guidance.'' (Emphasis added; internal quotation

marks omitted.) *Paige* v. *Town Plan & Zoning Commission*, 35 Conn. App. 646, 657, 646 A.2d 277 (1994), rev'd on other grounds, 235 Conn. 448, 668 A.2d 340 (1995); see also *RK Development Corp.* v. *Norwalk*, 156 Conn. 369, 375–76, 242 A.2d 781 (1968); *Forest Construction Co.* v. *Planning & Zoning Commission*, 155 Conn. 669, 674–75, 236 A.2d 917 (1967). ''In the context of review of subdivision applications, [p]roceedings before planning and zoning commissions are classified as administrative.'' (Internal quotation marks omitted.) *Property Group, Inc.* v. *Planning & Zoning Commission*, 226 Conn. 684, 696–97, 628 A.2d 1277 (1993).

The principal issue in this appeal is whether the planning board acted within its authority when it denied the plaintiff's subdivision application on the basis of alleged, existing zoning use violations on that part of the property occupied by Coldwell Banker. The defendant claims that § 8-26 precludes the board from approving a proposed subdivision where the property proposed to be subdivided has existing zoning use violations. We disagree.

General Statutes § 8-26 provides in relevant part: ''[N]othing in this section shall be deemed to authorize the commission to approve any such *subdivision or resubdivision* which conflicts with applicable zoning regulations. . . .'' (Emphasis added.)

It is well settled that one of the primary guides for interpreting a statute, indeed the first guide to be consulted, is the language of the statute itself. See, e.g., *Taravella* v. *Stanley*, 52 Conn. App. 431, 439, 727 A.2d 727 (1999), *Keeney* v. *Fairfield Resources, Inc.*, 41 Conn. App. 120, 131, 674 A.2d 1349 (1996). The interpretation of the language often has led our Supreme Court to choose between the interpretations of a statute contended for by the parties on the basis of rules of English grammar. See, e.g., *Gonsalves* v. *West Haven*, 232 Conn. 17, 22, 653 A.2d 156 (1995) (statutory definition must be read in light of ''ordinary rules of English grammar and sentence structure''); *Glastonbury Volunteer Ambulance Assn., Inc.* v. *Freedom of Information Commission*, 227 Conn. 848, 852, 633 A.2d 305 (1993) (reading statute ''in the light of ordinary rules of English grammar and sentence structure'').

Applying the ordinary rules of English grammar and sentence structure to § 8-26, the clause, ''which conflicts with applicable zoning regulations,'' has as its antecedent not ''the property,'' as the defendant would have it, but ''any such subdivision or resubdivision.''

In addition, our courts have had occasion to interpret § 8-26, including the provision at issue here regarding a municipality's authority to reject a subdivision plan that conflicts with applicable zoning regulations. In *Krawski* v. *Planning & Zoning Commission*, 21 Conn. App. 667, 672, 575 A.2d 1036, cert. denied, 215 Conn.

814, 576 A.2d 543 (1990), we noted that our function is ''to decide whether the commission correctly determined that *this subdivision application* contains an existing violation of the town zoning regulations. . . . A commission may legally base subdivision application denials on zoning violations '*inherent in the plan itself as submitted*' . . . .'' (Citations omitted; emphasis added.) Accordingly, we reversed the trial court's judgment sustaining the plaintiff's appeal in *Krawski* because the ''violations are *apparent on the face* of the submitted subdivision plan.'' (Emphasis added.) Id., 673.

In *Federico* v. *Planning & Zoning Commission*, 5 Conn. App. 509, 500 A.2d 576 (1985), we clearly stated the proper application of the provision of § 8-26 at issue here: ''These regulatory and statutory requirements must be read to concern zoning violations *inherent in the plan itself as submitted* and not . . . use violations. Such requirements relate to subdivisions plan which *in and of themselves* would violate zoning regulations. Examples of such conflicts include approval of a subdivision plan involving one-half acre lots in a one acre zone, or approval of a plan for a residential subdivision in an industrial area which prohibited such use.'' (Emphasis added.) Id., 515.

We stated in *Federico* that only zoning violations that are inherent in the plan as submitted may be a basis for denying the subdivision application. The defendant's claim that the zoning violations in this case are inherent in the application as submitted is further undercut by the comments of the defendant's own zoning enforcement officer on the plaintiff's application. After reviewing the subdivision application, he stated in a letter to the planning board: ''This *property* has outstanding zoning violations upon it which should be corrected prior to the granting of any subdivision or building permits.'' (Emphasis added.) That statement plainly indicates that the zoning enforcement officer's concerns, mirrored by the planning board, were not about the subdivision plan itself, but were geared toward having the outstanding zoning violations corrected. That statement by the zoning enforcement officer, who is charged with ensuring that the city's zoning regulations are adhered to by property owners, demonstrates that the city's concerns were not with the actual subdivision, but with remedying a previously existing zoning use violation in a portion of the property that was sought to be subdivided.

The defendant also points to an opinion of the city's law department, the multiple listing service document concerning the property and evidence of traffic problems because of the use violation as further support for its decision to deny the plaintiff's subdivision application. Although the concerns raised by the city clearly are valid, and we do not here endorse the plaintiff's

apparent continuing violation of the zoning regulations, they do not permit the city to use the separate subdivision plan approval process as a lever to get the plaintiff to abate her zoning violations.

In further support of its denial of the plaintiff's subdivision application, the defendant includes in its brief several quotations from the public hearing that took place to consider the subject subdivision application. Although those quotations are replete with references to the existing zoning violations on the property, the existence of which the plaintiff does not here contest, the defendant does not make reference to any testimony about zoning violations distinctly inherent in the subdivision application. The absence of any complaints about what *would* happen if the subdivision application were granted, which is proper to consider when deciding whether to approve such an application, combined with the multitude of complaints about the present situation, indicates that the city's complaints are with the existing situation, not with the proposed subdivision plan.

The statute permitting a planning board to disapprove a subdivision application that conflicts with applicable zoning regulations cannot be used to justify a planning board's action in disapproving a subdivision application that, although not itself in conflict with applicable zoning regulations, is proffered by a landowner who often has been in conflict with existing zoning use regulations. As this court and our Supreme Court often have stated in acting on appeals involving subdivision applications, the planning board's responsibilities are purely ministerial—if the applicable requirements are complied with, the application must be approved. The defendant here is attempting to engraft the additional requirement of the absence of prior zoning use violations onto the statutory requirements. That it cannot do. The existing use violation is not a violation of zoning regulations that is contemplated by § 8-26 to defeat the subdivision application. The application itself does not contain an existing zoning violation on its face, as is contemplated by § 8-26.

Finally, we note that our decision here, that the city cannot reject a subdivision application on the basis of existing zoning violations, where the violations are not inherent in the application, does not leave the city without a remedy for the alleged flagrant zoning violations being committed by the plaintiff. General Statutes § 8-12[2] provides a number of ways that a city can punish flagrant zoning scofflaws: Cease and desist orders, fines and, even in certain cases, imprisonment. The zoning enforcement officer did not use any of those statutory tools, which are available to abate the zoning violations of which the city now complains. Those tools do not, however, include denial of an otherwise lawful subdivision application.

The judgment is reversed and the case is remanded

with direction to sustain the plaintiff's appeal from the defendant's denial of her application for a subdivision.

In this opinion FLYNN, J., concurred.

[1] The plaintiff's complaint also named as individual defendants the town clerk and the chairman of the planning board, pursuant to General Statutes § 8-8. We will use "defendant" to refer only to the planning board.

[2] General Statutes § 8-12 provides in relevant part: "If any building or structure . . . or land has been used, in violation of any provision . . . of any bylaw, ordinance, rule or regulation made under authority conferred [by this chapter], any official having jurisdiction, in addition to other remedies, may institute an action or proceeding . . . to restrain, correct or abate such violation or to prevent the occupancy of such building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises. Such regulations shall be enforced by the officer . . . designated therein, who shall be authorized to cause any building, structure, place or premises to be inspected and examined and to order in writing the remedying of any condition found to exist therein or thereon in violation of any provision of the regulations made under authority of the provisions of this chapter or . . . to issue, in writing, a cease and desist order to be effective immediately. The owner or agent of any building or premises where a violation of any provision of such regulations has been committed or exists, or the lessee or tenant of an entire building or entire premises where such violation has been committed or exists . . . shall be fined not less than ten nor more than one hundred dollars for each day that such violation continues . . . . Any person who, having been served with an order to discontinue any such violation, fails to comply with such order within ten days after such service . . . or continues to violate any provision of the regulations . . . shall be subject to a civil penalty not to exceed two thousand five hundred dollars, payable to the treasurer of the municipality. . . ."