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WILLIAM W. TAYLOR *v.* PLANNING AND ZONING COMMISSION OF THE TOWN OF WESTPORT ET AL.
(AC 45252)

Alvord, Prescott and Suarez, Js.

Syllabus

The plaintiff, who owns an unimproved lot of land in the town of Westport, appealed to the trial court from the decision of the defendant planning and zoning commission denying his application for a site plan and a special excavation and fill permit. Prior to the hearing on his application, the commission informed the plaintiff that the application was incomplete and requested that the plaintiff consent to an extension for the hearing date. In response, the plaintiff's attorney filed a memorandum with attached supplemental and revised documents with the commission one day before the scheduled hearing that set forth the reasons why she believed the application was complete. At the hearing, the commission stated that it had not reviewed the memorandum and denied the plaintiff's request to be heard regarding the completeness of the application, and it ultimately denied the application without prejudice on the basis that it was incomplete. Following a hearing, the court rendered judgment denying the plaintiff's appeal, from which the plaintiff, on the granting of certification, appealed to this court. *Held* that the trial court improperly denied the plaintiff's appeal because, under the particular circumstances of this case, the commission's failure to provide the plaintiff with an opportunity to establish a record as to why his application was complete deprived him of his right to fundamental fairness: after scheduling the plaintiff's application for a hearing, the commission became aware that the completeness of the application was in dispute, thus, the commission was required to provide the plaintiff with an opportunity to be heard on the completeness of his application at the public hearing; moreover, in order for an appellate court to review a planning and zoning commission's decision to deny an application on the ground that the application is incomplete, a record as to why the application was incomplete must be established so that the record may be reviewed; furthermore, here, the record of the hearing before the commission, including commission members' acknowledgements that closing the hearing was unfair and certain intemperate remarks by commission members, demonstrated that the plaintiff did not receive a dispassionate consideration of his application or that the commission's decision was made reasonably and fairly after a full hearing; accordingly, the plaintiff was entitled to a hearing on his application.

Argued February 2—officially released April 11, 2023

Procedural History

Appeal from the decision of the named defendant denying the plaintiff's applications for a site plan and special excavation and fill permit, brought to the Superior Court in the judicial district of Stamford-Norwalk and tried to the court, *Hon. Taggart D. Adams*, judge trial referee; judgment denying the plaintiff's appeal, from which the plaintiff, on the granting of certification, appealed to this court. *Reversed*; *judgment directed*; *new hearing*.

Laurel Fedor, for the appellant (plaintiff).

Peter V. Gelderman, for the appellees (defendants).

Opinion

PRESCOTT, J. In this certified zoning appeal, the plaintiff, William W. Taylor, appeals from the judgment of the Superior Court denying his appeal from the decision of the defendant Planning and Zoning Commission of the Town of Westport (commission),[1] denying his 2019 site plan and special excavation and fill permit applications.[2] The principal issue in this certified appeal is whether the court improperly concluded that the commission did not deprive the plaintiff of fundamental fairness by preventing him from being heard on whether his application was sufficiently complete such that it should be adjudicated on its merits. We reverse the judgment of the court because, under the circumstances of this case, the commission was required to provide the plaintiff with an opportunity to be heard on whether his application was complete at the public hearing on his application, prior to denying it for incompleteness.

The following facts and procedural history are relevant to our resolution of this appeal. The plaintiff owns an unimproved lot of land at 715 Post Road East in Westport (property). In 2014 and 2018, the plaintiff submitted site plan and special excavation and fill permit applications to the commission seeking its approval to build an office building on the property. In an effort to obtain the commission's approval of the 2014 and 2018 applications, the plaintiff sought and received the approval of the building design from Westport's architectural review board and also obtained the necessary zoning variances from Westport's zoning board of appeals. The plaintiff, however, ultimately withdrew his 2014 and 2018 applications to the commission.

On April 11, 2019, the plaintiff submitted to the commission the site plan and special permit for excavation and fill application that is the subject of the present appeal. The plaintiff's 2019 application sought the commission's approval to build a 4220 square foot office building with 22 parking spaces on the property.[3] The plaintiff did not seek any additional or new approvals from the architectural review board or obtain new zoning variances for his 2019 application. The application was scheduled to be heard before the commission on June 20, 2019.[4] The plaintiff retained an attorney, Laurel Fedor, to represent his interests in the application process.

Following the submission of the application, but prior to the hearing, Cindy Tyminski, the deputy planning and zoning director for Westport, emailed Fedor on June 4, 2019, and informed her that the application was "not ready to appear" before the commission because it was incomplete. Tyminski stated that the application was incomplete because it required new variances from the zoning board of appeals, an updated traffic report to supplement the original report that was completed

approximately five years earlier, a drainage report, a new approval from the architectural review board so that the board could review the modifications in the site plan in relation to the building's design, and revisions to the intended tree plantings to conform with the dictates of Westport's tree board. Tyminski requested that the plaintiff consent to an extension for the application's hearing date so that the application could be completed.[5]

Rather than consent to an extension, that same day, Fedor emailed Mary Young, Westport's planning and zoning director. Fedor informed Young that Tyminski had requested that the plaintiff consent to an extension in order for him to complete the application prior to it being heard. Fedor expressed her opinion that the application was complete. Fedor explained to Young in her email that the plaintiff had previously obtained the required zoning variances and architectural review board approval, the site plan had not changed since the variances and approval were obtained, the drainage report had been submitted with the plaintiff's application on April 11, 2019, the intended tree plantings on the site plan had been revised, and "[t]he traffic study was updated in 2017." Finally, Fedor stated that, for these reasons, the plaintiff wished to have the application heard, as originally scheduled, on June 20, 2019.[6]

On June 13, 2019, Tyminski distributed a memorandum to the commission regarding the plaintiff's application. Tyminski's memorandum to the commission stated that "[t]he public hearing should not be closed until all the outstanding issues are addressed. The commission may also consider a denial as the application is incomplete." In concluding that the application was incomplete, Tyminski cited the "outstanding issues" in the application that she had brought to Fedor's attention previously in her June 4, 2019 email.

After receiving a copy of Tyminski's memorandum, Fedor responded by filing[7] her own memorandum that set forth the reasons why she believed the application was complete and attached supplemental and revised documents to it. Fedor's memorandum was received one day before the scheduled hearing on the application. Fedor's arguments in her memorandum as to why the plaintiff's application was complete were the same arguments Fedor set forth in her email to Young. In her memorandum, Fedor first argued that the plaintiff did not need to obtain new zoning variances for his application because the site plan application had not been modified since the original variances were obtained in 2014 and 2018. In response to Tyminski's statement in her memorandum that the site plan had been modified because, unlike in the 2014 and 2018 site plans, the 2019 site plan required the removal and reconstruction of a large retaining wall on the property, Fedor argued that the site plan filed on April 11, 2019, contained a typo-

graphical error. Fedor said that a revised site plan was attached to her memorandum and that it showed that there would be "no removal or reconstruction of [the] existing concrete retaining walls." Fedor next argued that a new approval from the architectural review board should not be required because the building's design in the site plan had not changed since the architectural review board approved it in 2014. Fedor also argued that the intended tree plantings in the site plan had been revised to conform with the tree board's requirements, that the traffic report had been "updated" in 2017 and that all of this supplemental information was attached to the memorandum. She also stated that a drainage report was attached to the memorandum and previously had been submitted with the application on April 11, 2019.

On the day of the hearing, Tyminski sent an updated memorandum to the commission. Tyminski informed the commission that "additional information and revised plans" had been submitted by Fedor the day before and that these new materials pertaining to the application had not been reviewed by planning and zoning staff members. She concluded in her June 20, 2019 memorandum that "the public hearing should not be closed until all the outstanding issues in the staff report AND supplemental report are addressed. The applicant may consider withdrawing and resubmitting after the variance and [architectural review board] approvals are received. The comission may also consider a denial as the application is incomplete."

The hearing on the application was opened on June 20, 2019, as scheduled. Fedor was present at the hearing. Immediately after opening the hearing, Paul Lebowitz, the commission chairman, told Fedor, "I don't want to hear this right now." Lebowitz explained that he did not approve of the manner in which Fedor had handled the application, particularly because she submitted a revised site plan the day before the hearing. Lebowitz told Fedor, "So what I'm going to give you is a choice, because that's what we do here. We may continue this. [Or] [y]ou may withdraw it." Fedor replied that the plaintiff would not withdraw his application and asked for an opportunity to be heard, specifically requesting fifteen minutes. Lebowitz quickly cut her off and stated, "No, no. I'm sorry. In reference to what I just addressed. Not in reference to your application. In reference to what I've asked you regarding either continue or withdraw." Fedor attempted to address the completeness of the application, but Lebowitz denied her the opportunity to be heard further on the application. Lebowitz then asked, "Any other commissioners want to weigh in on this?"

Commission member Chip Stephens[8] stated that the application should not be considered. Specifically, Stephens stated: "This commission, most of the people

sitting here have been through this three other times and [it has been] rejected three times because of the location, because of problems and for us to spend time that is very valuable tonight and any other time, to have your application come in in pieces at the tail end [and] for you to have treated the staff in the manner you have, bringing things in reluctantly, late and everything else, I find it wrong that this commission even move forward. We [do not] have the documents that were requested. We have a new state statute that requires when applications like this are changed quite a bit that they return to the [zoning board of appeals]. I believe [you have] been told that repeatedly by [Tyminski]. . . . I think that this commission should close this issue and then move on."

Al Gratrix, another commission member, also stated that, in his view, the application was incomplete and that the commission should not be holding a hearing on it. Stephens made a motion to close the hearing, and Gratrix seconded the motion. The commission unanimously voted to close the hearing before Fedor had the opportunity to respond to the commission's position that the application was incomplete or to present evidence in support of her position.

Following the public hearing, the commission met three times to deliberate publicly on the application. The first meeting took place on July 11, 2019, at which time Lebowitz expressed his position that, "out of fairness," the commission should provide the plaintiff another opportunity to withdraw the application. Lebowitz stated that he did not want to "short circuit any applicant." He further explained: "I [do not] like to have any applicant on any application, regardless of whether we like them, [do not] like them, like the application, [do not] like the application. . . . Regardless of whether [we have] seen the applicant before on this site, I [do not] ever want to . . . turn to an applicant and before they say one word I say to them that I move to close. . . . [B]ecause it is an unheard application, I should have instead of saying closed, I should have said continued. Go away."

Lebowitz's opinion that the commission acted unfairly by prematurely closing the hearing was a point of contention among the commission members. Stephens, who did not agree with Lebowitz, moved to deny the application immediately, rather than provide the plaintiff with an additional opportunity to withdraw it. Stephens stated: "We voted to close [the hearing] because [the plaintiff and Fedor] stomped on the staff. The staff told them to do certain things [to] which they totally said no, [we are] not going to do it. [We are] not going to go to the [zoning board of appeals] no matter what you said, in their face. They would not provide information that was needed and we have considered this property three—at least three other times, I believe,

in my tenure, which is a very troubled property. And instead of, in your words, just a few minutes ago, being contrite or helpful, or [cooperative] they completely gave the staff holy hell for asking for everything that was needed and decided. [Fedor] sat there and you gave her plenty of opportunity to come back, to withdraw or to get it right. She looked at you, [Lebowitz], and said no, [I am] going to do this. . . .

"You did mention, you said I hate as a person to turn down something that, you know, we [did not] like the person. The person's fine. Everybody has their right to build in this town. You have a right as a landowner to do whatever you want if you can get it by the commission. [This person] was egregious. [This person] was confrontational. [This person] would not listen to our chairman, who repeatedly . . . [asked] would you like to withdraw or would you like to change this, and the answer was no. I will remind you that on the day of that application [Fedor] threw a bunch of crap at us that was crap. We [could not] even, you know, work on that stuff. So, no, I totally disagree. I think we should have had a resolution tonight."

All other members who voiced an opinion immediately agreed with Stephens that the application should be denied. Even Lebowitz, who did not immediately agree that the application should be denied, described one of the plaintiff's previous applications as a "shit show . . . . It was horrible. The site is horrible. Everything's horrible. . . . And, quite frankly, the way we were treated by the applicant was horrible. No question about all of those things. You're absolutely a hundred percent right." Stephens also used a strong expletive to describe one of the plaintiff's previous applications.[9]

Stephens moved to deny the application. That motion was seconded by commission member Catherine Walsh. Walsh later stated: "I want to deny her, get her out and have her come back." After the motion to deny the application was seconded, but before a vote on the motion was taken, Lebowitz told the commission that he was concerned that there was no basis on which the application could be properly denied. Lebowitz initially opined that, because a hearing had not been held, there was no evidence in the record. Lebowitz stated: "Based on what though? We [did not] have any testimony. [W]e [did not] hear [from Fedor]. . . . The first thing out of my mouth when she got up was. . . I berated her for dumping on our staff . . . . I stopped her cold. She never got a chance to say anything other than the word no, which was when I asked her. So, in other words, [there is] no record of testimony. [There is] no reading in of the staff report. We never went through any of the materials . . . ." After further discussion and a brief recess, the commission members, including Lebowitz, agreed that the application materials and memoranda regarding the application were in the record

because the hearing had been opened.[10] Lebowitz ultimately stated that there were "a lot of good reasons for a denial."

During this July 11, 2019 deliberation session, the commission unanimously voted to deny the plaintiff's application. The commission decided that a resolution formally denying the application would be drafted and then it would be reviewed at the next deliberation session. Prior to ending the session, Young advised the commission: "I do think [it is] good for the record, if you find yourself in a similar situation, to at least give a token five minutes to an applicant at the podium to either dig their grave further, giving more reasons for denial. But to dismiss someone who sat there for hours for the opportunity to be heard then say we [do not] want to hear you [does not] look well—"

The plaintiff's application was briefly discussed again at a deliberation session on July 18, 2019. Young told the commission that she intended to have the town attorney review the resolution denying the plaintiff's application prior to the commission voting on it.

The final deliberation session on the application was held on July 25, 2019. At the outset, Lebowitz stated that the town attorney had advised the commission to deny the application without prejudice because it was incomplete. Stephens strongly disagreed and stated that the application should be denied with prejudice. A heated discussion ensued. Following further discussion, Stephens begrudgingly agreed to deny the application without prejudice stating: "Wait till this person comes back. And I'm not reading this. I'm not giving them—" The commission reviewed the resolution and unanimously voted to deny the application without prejudice. The commission's reasons for its denial were grounded in the incompleteness of the application and the commission's need for more information and time to determine whether the application should be approved.[11]

The plaintiff appealed from the commission's denial of his application to the Superior Court, claiming that the commission (1) deprived him of a full and fair hearing on the application, (2) was biased against his application and, (3) arbitrarily denied the application. Following a hearing, the court denied the plaintiff's appeal. The court concluded that the commission's denial of the plaintiff's application without prejudice was well within its authority and that substantial evidence supported the commission's decision, particularly in light of the fact that the plaintiff submitted a "revised proposal" on June 19, 2019, which the planning and zoning staff was unable to review before the hearing. To support its conclusion, the court found that the plaintiff was "clearly in a hurry to obtain comission approval" and that "the record [did] not provide specific reasons for the applicant's rush, and particularly [did] not sup-

port why a revised plan submitted on June 19, 2019, had to be approved by the full comission on June 20, without input and analysis from its staff." The court also was unpersuaded by the plaintiff's claim that the commission violated his rights by failing to provide him with an opportunity to be heard on his application because the court found that the claim was "unsupported by any citation to authority." The plaintiff filed a petition for certification to appeal, which we granted. This appeal followed.

On appeal, the plaintiff claims that the court improperly (1) concluded that the commission did not violate the principles of fundamental fairness by depriving him of an opportunity to be heard on his application, (2) concluded that substantial evidence supported the commission's decision, and (3) failed to conclude that the application was complete. We conclude that the court improperly denied the plaintiff's appeal because, under the particular circumstances of this case, the commission's failure to provide the plaintiff with an opportunity to establish a record as to why his application was complete deprived him of his right to fundamental fairness. Because that issue is dispositive of the present appeal, we do not reach the plaintiff's remaining claims.

We begin by setting forth the relevant legal principles, including our standard of review. When a planning and zoning commission acts on an application for a special permit or site plan, it acts in an administrative capacity, and it must determine whether the applicant's proposed use is one that satisfies the standards set forth in existing zoning regulations and statutes. See *Priore* v. *Haig*, 344 Conn. 636, 653, 280 A.3d 402 (2022) (when acting on special permit application, commission acts in administrative capacity and it must determine whether application meets standards set forth in zoning regulations); *Pansy Road, LLC* v. *Town Plan & Zoning Commission*, 283 Conn. 369, 375, 926 A.2d 1029 (2007) ("[w]hen reviewing a site plan application, a planning commission similarly acts in an administrative capacity and may not reject an application that complies with the relevant regulations").

A planning and zoning commission may deny an application because it fails to provide the required information pursuant to the applicable zoning regulations. See *Friedman* v. *Planning & Zoning Commission*, 222 Conn. 262, 267–69, 608 A.2d 1178 (1992). "Where an administrative agency denies an application and gives reasons for its action, the question on appeal is whether the evidence in the record reasonably supports the agency's action, and the court cannot substitute its judgment as to the weight of the evidence for that of the agency." R. Fuller, 9A Connecticut Practice Series: Land Use Law and Practice (4th Ed. 2015) § 33.3, p. 272. Accordingly, in order for an appellate court to review a planning and zoning commission's decision to deny

an application for which the reason given for its denial is that the application is incomplete, a record as to why the application is incomplete must be established so that the record may be reviewed.[12]

Section 44 of the Westport Zoning Regulations provides in relevant part: "For all uses requiring a Special Permit or Site Plan, a complete application shall be submitted on Westport Planning and Zoning forms together with . . . the following information." Westport Zoning Regs., § 44-1. "The applicant shall obtain a written report indicating recommendations, preliminary approvals, final approvals or disapprovals from any of the following agencies having jurisdiction over the application . . . ."[13] Id., § 44-2.1. "A storm drainage analysis shall be required for any project containing . . . twenty (20) or more parking spaces in a new or expanded parking lot . . . ." Id., § 44-2.4. "A traffic impact analysis submitted by a recognized traffic engineer shall be required . . . ."[14] Id., § 44-2.5.

"[Although] proceedings before zoning and planning boards and commissions are informal and are conducted without regard to the strict rules of evidence . . . they cannot be so conducted as to violate the fundamental rules of natural justice. . . . Fundamentals of natural justice require that there must be due notice of the hearing, and at the hearing no one may be deprived of the right to produce relevant evidence or to cross-examine witnesses produced by his adversary . . . . Put differently, [d]ue process of law requires that *the parties involved have an opportunity to know the facts on which the commission is asked to act . . . and to offer rebuttal evidence*." (Citation omitted; emphasis added; internal quotation marks omitted.) *Megin* v. *Zoning Board of Appeals*, 106 Conn. App. 602, 608–609, 942 A.2d 511, cert. denied, 289 Conn. 901, 957 A.2d 871 (2008).

"In determining whether a land use commission has violated an applicant's right to fundamental fairness, [w]e generally employ a deferential standard of review to [its] actions . . . . [C]ourts are not to substitute their judgment for that of the board, and . . . the decisions of local boards will not be disturbed as long as honest judgment *has been reasonably and fairly made after a full hearing*. . . . Judicial review of administrative process is designed to assure that administrative agencies act on evidence which is probative and reliable and act in a manner consistent with the requirements of fundamental fairness. . . . Further, we have repeatedly emphasized that [n]eutrality and impartiality of members are essential to the fair and proper operation of . . . [zoning] authorities. . . . In reviewing the challenged conduct of public officials, fairness and impartiality are fundamental." (Citations omitted; emphasis added; internal quotation marks omitted.) *Barry* v. *Historic District Commission*, 108 Conn. App.

682, 704–705, 950 A.2d 1, cert. denied, 289 Conn. 942, 959 A.2d 1008 (2008), and cert. denied, 289 Conn. 943, 959 A.2d 1008 (2008).

"The question of whether the board violated the plaintiff's right to fundamental fairness in [an] administrative proceeding presents a question of law . . . ." (Internal quotation marks omitted.) Id., 705. "When . . . the [Superior Court] draws conclusions of law, [the scope of our appellate] review is plenary and we must decide whether its conclusions are legally and logically correct and find support in the facts that appear in the record." (Internal quotation marks omitted.) *Andrews* v. *Planning & Zoning Commission*, 97 Conn. App. 316, 319, 904 A.2d 275 (2006).

We begin by noting that the court's memorandum of decision is unclear as to whether the court reviewed the merits of the plaintiff's claim regarding his right to be heard on his application or whether it declined to review that claim because it was inadequately briefed. We construe the memorandum of decision as concluding that the court was not persuaded by the merits of the plaintiff's claim because, in its view, he had failed to cite *persuasive* authority.[15] Moreover, for the reasons we discuss further, we conclude that the court improperly held that, under the particular circumstances of this case, the plaintiff was not deprived of his right to fundamental fairness.

The defendants argue that "there was no reason to hear from the applicant where the application was incomplete." The purpose of requiring a hearing to be held on a zoning application, however, is to afford interested parties the opportunity to present their views to the commission as to how it should decide an application. See *Clifford* v. *Planning & Zoning Commission*, 280 Conn. 434, 443, 908 A.2d 1049 (2006). In the present case, the commission, having scheduled the plaintiff's application for a hearing, became aware that the completeness of the application was in dispute and that this was the main issue that needed to be resolved prior to the hearing being closed. The commission opened the hearing and stated, for the record, its view that the application was incomplete. But the commission prohibited the plaintiff from addressing that concern.[16] Given these factual circumstances, the commission was required to provide the plaintiff with an opportunity to be heard on the completeness of his application at the public hearing.

Our conclusion that the commission deprived the plaintiff of his right to fundamental fairness is further supported by the commission's discussion of the plaintiff's application at the deliberation hearings that followed. Lebowitz recognized the inherent unfairness in closing the hearing without providing the plaintiff with a full opportunity to be heard and initially stated that, because the plaintiff was deprived of this opportunity,

he did not think there was a basis on which the commission properly could deny the application. Young also acknowledged that it was unfair to close the hearing. She advised the commission that, in the future, it should refrain from depriving an individual who "sat for hours for the opportunity to be heard" from receiving their "token five minutes." Despite these concerns, other members disagreed with the notion that the application had been handled unfairly. Rather than focusing solely on the purported incompleteness of the current application to support their position, the commission members justified the closing of the hearing by stating that the plaintiff "stomped on the staff," "gave the staff holy hell," "was egregious," "was confrontational," and that "on the day of the application [Fedor] threw a bunch of crap at [them] that was crap." Furthermore, the members commented on the plaintiff's previous applications, stating repeatedly that they were a "shit show," and "horrible."[17] Accordingly, even a deferential review of the commission's actions leads us to conclude that the plaintiff did not receive a dispassionate consideration of his application or that the commission's decision was made reasonably and fairly after a full hearing at which the plaintiff was allowed to address the dispute over whether his application was complete.[18]

We reverse the judgment of the Superior Court and remand with direction to sustain the plaintiff's appeal and to order the commission to hold a hearing on the plaintiff's application.

In this opinion the other judges concurred.

[1] The town of Westport was also named as a defendant in the underlying action. The original amended complaint contained seven counts against the defendants. The court granted the defendants' motion to strike counts two through seven of that amended complaint, which were primarily brought against the town of Westport. The plaintiff pleaded over, removing counts two through seven, leaving the first count as the sole remaining count of the plaintiff's complaint.

[2] The plaintiff was required to submit both a site plan application and an application for a special permit for excavation and fill. These applications, however, were processed together as application #19-020. Therefore, we refer to the 2019 site plan and special permit applications together as the plaintiff's application.

[3] There is a dispute between the parties as to the extent to which the plaintiff's 2019 application differed from his 2014 and 2018 applications. This dispute, however, does not affect our resolution of this appeal.

[4] According to General Statutes § 8-3c, the commission was required to hold a public hearing on the application for a special permit, in accordance with General Statutes § 8-7d. Pursuant to § 8-7d, a hearing must be held within sixty-five days after the commission's receipt of the application, unless the petitioner or applicant consents to an extension of this period. According to § 43-5.1 of the Westport Zoning Regulations, the commission was required to consider the special permit and site plan together at the same public hearing because the special permit was dependent on the approval of the site plan. The parties do not dispute that a hearing on the application was required and had been scheduled pursuant to § 8-7d.

[5] Pursuant to General Statutes § 8-7d, the applicant may consent to an extension of the hearing date for an application.

[6] Young responded to Fedor's email, stating: "Both [Tyminski] and I offer suggestions in the spirit of facilitating all our applicants to a successful hearing, but ultimately the choice is the applicant's whether to take our advice or leave it. Your application will remain scheduled for our June 20 [public hearing] as you are declining to [consent to] an extension and provide

us with the requested materials."

[7] The memorandum was addressed to Tyminski and the commission members and stamped "received" on June 19, 2019.

[8] Chip Stephens is also known as Ronald F. Stephens.

[9] Specifically, Stephens said it was: "Clustered. A 'CF.' "

[10] The resolution denying the plaintiff's application states that the planning and zoning staff notified the commission that the plaintiff had submitted a memorandum with supplemental and revised materials attached to it on June 19, 2019, but that there was inadequate time to review them prior to the June 20, 2019 public hearing. Therefore, we conclude that the commission reviewed Tyminski's June 13, 2019 and June 20, 2019 memoranda but did not review Fedor's June 19, 2019 memorandum and the supplemental and revised materials attached to it.

[11] Specifically, the resolution cited the following reasons for denial: "(1) The application as submitted was incomplete. (2) More information is needed to confirm that this application conforms to all applicable zoning standards. (3) More information is needed to determine whether the application conforms to § 32-8.5 [of the Westport Zoning Regulations] that requires the commission [to] consider impacts to the public, health, safety, and welfare associated with the proposed excavation and fill activities. (4) More information is required to determine whether the application conforms to the special permit standards contained in § 44-6 [of the Westport] Zoning Regulations that requires in part, that the project may not have a significant adverse effect on [the] safety in the streets nor [cause] unreasonable traffic congestion in the area, nor interfere with the pattern of highway circulation. (5) More information is required to determine whether the application conforms to the legislative intent defined in § 1 of the [Westport] Zoning Regulations that requires in part, that the [commission] administer the Westport Zoning Regulations to promote health, safety, and general welfare. (6) The site plan application for development of the property is contingent upon approval of the special permit for excavation and fill activities that has not yet been granted. (7) More time is needed for [planning and zoning] staff to verify the applicant's claim that [the] revised plans submitted on [June 19, 2019] do not require further review by the zoning board of appeals and architectural review board. (8) An updated traffic safety and operations peer review needs to be conducted of the application and revised plans as authorized pursuant to § 43-6.4 of the [Westport] Zoning Regulations as the town of Westport does not have a traffic engineer on staff."

[12] An applicant should be permitted to create a record that includes the applicant's argument as to why their application is not incomplete. Otherwise, a court would be unable to review fairly a planning and zoning commission's denial of an application on the grounds of incompleteness. The defendants conceded as much at oral argument. In the present case, the record contains the application that was submitted by the applicant, as well as the statements made by the commission members reflecting the reasons why they voted to deny the application. The consequence of the commission having denied the applicant the right to present evidence and arguments that were contrary to the commission's view that the application was not complete, however, is that such contrary evidence and arguments are not part of the record before this court. Because appellate review of a planning and zoning decision is confined to matters in the record, a planning and zoning commission's deprivation of an applicant's right to be heard with respect to the completeness of an application may thereafter thwart an applicant's ability to demonstrate on appeal that the commission improperly denied an application on the ground of incompleteness. Stated otherwise, prohibiting an applicant from presenting evidence and argument before the commission may unfairly insulate an erroneous ruling from review.

[13] The agencies from which approval may be required include the zoning board of appeals, architectural review board, and tree board. See Westport Zoning Regs., § 44-2.1.

[14] General Statutes § 8-3 (g) (1) provides in relevant part: "The zoning regulations may require that a site plan be filed with the commission or other municipal agency or official to aid in determining the conformity of a proposed building . . . with specific provisions of such regulations. . . . A site plan may be modified or denied only if it fails to comply with requirements already set forth in the zoning . . . regulations. . . ."

[15] To the extent that the court's holding was based on its conclusion that the plaintiff failed to adequately brief the claim, we note that, in the plaintiff's brief before the Superior Court, the plaintiff made similar arguments to those presented to this court on appeal. The plaintiff cited relevant and

pertinent authority in support of his claim that fundamental fairness required that he have an opportunity to be heard on his application.

[16] As previously discussed, Fedor filed a memorandum on June 19, 2019. That memorandum set forth the plaintiff's argument that his application was complete. Attached to the memorandum were revised and supplemental documents that related to the application. The record reflects that the memorandum and attached documents were not reviewed by the commission members prior to denying the application on the basis that it was incomplete. See footnote 10 of this opinion.

[17] Fundamental fairness requires both that a full and fair opportunity to be heard is provided and that commission members are neutral and impartial when deciding whether to approve zoning applications. See *Barry* v. *Historic District Commission*, supra, 108 Conn. App. 705. Based on certain commission members' intemperate remarks that suggest an absence of neutrality or impartiality toward the plaintiff and his application, on remand, and upon an appropriate motion, some members of the commission should consider recusing themselves.

[18] In his principal brief and at oral argument before our court, the plaintiff argued that his site plan and special permit application should be automatically approved, presumably pursuant to General Statutes § 8-3 (g) (1). Section 8-3 (g) (1) provides in relevant part: "Approval of a site plan shall be presumed unless a decision to deny or modify it is rendered within the period specified in section 8-7d. . . ." We disagree with the plaintiff that his site plan application and special permit application must be automatically approved under the circumstances of this case, in which the critical question to be reviewed is whether the plaintiff ever filed a complete application. To apply § 8-3 (g) (1) to an application that is or may be incomplete would be nonsensical.