AGGRIEVEMENT AND STANDING IN LAND USE APPEALS

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Introduction

"The terms 'aggrievement' and 'standing' have been used interchangeably throughout most of Connecticut jurisprudence. . . . Although these two legal concepts are similar, they are not, however, identical." *Gladysz v. Planning & Zoning Commission*, *infra.* If you are *aggrieved*, then you have *standing* to bring the appeal. Aggrievement is established if there is a possibility, as distinguished from a certainty, that some legally protected interest . . . has been adversely affected." (Internal quotation marks omitted). *Huck v. Inland Wetlands and Watercourses Agency*, 203 Conn. 525, 530 (1987) quoting *O'Leary v. McGuinness*, 140 Conn. 80, 83 (1953). You could have standing without being aggrieved only if you are a "party". You may lack "standing" because the cause of action is not one which you are authorized to bring. "Standing" is the right to raise the legal and factual issues before the court so that they may be adjudicated and implicates the court's subject matter jurisdiction. *Mystic Marinelife Aquarium, Inc. v. Gill*, 175 Conn. 483, 509 (1978). Standing is essential to subject matter jurisdiction. *D. S. Associates v. Planning and Zoning Commission*, 27 Conn. App. 508, 511 (1992).

I. Standing to bring an administrative appeal to Superior Court of a municipal Land Use Decision.

To invoke the judicial review of a municipal land use decision, the plaintiff must have standing. Standing is achieved by (1) being an aggrieved party in fact or at law or (2) being a party to the proceeding. See below re Conn. Gen. Stats. §§ 22a-19 and 22a-19a.

A. Aggrievement In Fact or Classical Aggrievement

Aggrievement created by judicial decisions which define persons with a sufficient interest in the outcome to litigate zealously and fully. Both Conn. Gen. Stats. §22a-43 and 8-8 state that a "person" may bring an appeal, so does that mean that *multiple* persons cannot? That claim rejected in *Mingo v. East Lyme Conservation Commission*, Docket No. CV-08-4007998 (J. D. of New London, April 25, 2008, Abrams, J.)

1. Planning/Zoning:

This includes actions by a planning commission, zoning commission, combined planning and zoning commission, or zoning board of appeals. Governed by Conn. Gen. Stats. § 8-8(a)(1), the definition of "aggrieved person".

The fundamental test for determining [classical] aggrievement encompasses a well-settled

> twofold determination: first, the party claiming aggrievement must successfully demonstrate a specific personal and legal interest in the subject matter of the decision as distinguished from a general interest, such as is the concern of all the members of the
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> community as a whole. Second, the party claiming aggrievement must successfully establish that the specific personal and legal interest has been specifically and injuriously affected by the decision.

Harris v. Zoning Commission, 259 Conn. 402, 410 (2002). See, also, *Primerica v. Greenwich Planning and Zoning Commission*, 211 Conn. 85, 92-93 (1989).

The owner of property within a zone affected by a text amendment affecting that zone is aggrieved. *Harris, supra; Wilson v. Zoning Commission*, 30 Conn. L. Rptr. 181 (July 23, 2001, Superior Court, J. D. of New London at New London); *Compformio v. Greenwich Planning & Zoning Commission*, 32 Conn. L. Rptr. No. 2, 55 (June 10, 2002, Superior Court at Stamford); but see *Stauton v. Madison Planning and Zoning Commission*, 271 Conn. 152 (2004). This is true for an "overlay zone" as well as a conventional zone, at least where the value of the property is affected. *Hall v. Planning and Zoning Commission of Newtown*, 28 Conn. L. Rprtr. No. 17, 621 (March 5, 2001). The holder of an easement for access to a lake has standing to appeal a variance granted to the owner of the fee simple interest. *Ashwillet Beach Association v. North Stonington ZBA*, Docket No. CV 05 4102262 (J. D. of New London at Norwich, April 7, 2006, Jones, J.).

No one has standing to appeal a <u>failure or refusal</u> to act (as with zoning or other code enforcement). *P.R.I.C.E., Inc. v. Canterbury*, Docket No. 93-0047479 (Superior Court, J. D. of Windham at Putnam, March 21, 1995, Potter, J.); *Bradley Air Parking v. Town of Windsor Locks*, 1990 WL 265737 (Conn. Super. J. D. of Hartford/New Britain at Hartford, Stengel, J.); *Pierotti v. Palladino*, 1994 WL 43451 (Conn. Super., February 3, 1994, J.D. of Stamford/Norwalk at Stamford, Lewis, J.) Same if it is the planning and zoning commission which decides not to enforce. *Gordon v. Zoning Board of Appeals of Easton*, 31 Conn. L. Rptr. No. 5, 159 (2-11-02). Same result for a Building Inspector, *West Haven Academy of Karate v. Town of Guilford,* 28 Conn. L. Rptr. No. 2, 53 (November 13, 2000). Enforcement or non-enforcement is a discretionary function of local government, and a municipality cannot be compelled, even by contract, to commence enforcement action against a violation. *Oygard v. Town of Coventry*, 30 Conn. L. Rptr. No. 7, 252 (October 1, 2001). Query whether the same rule would apply where the agency declined to act on an application due to claimed procedural flaws. *Town of Preston v. Department of Social Services*, 32 Conn. L. Rptr. No. 4, 133 (June 24, 2002) (Ruling under APA: State agency refused to act on application, claiming application was vague/ambiguous. Held that remedy was application for Mandamus, not administrative appeal).

There is apparently no standing for third parties to appeal a decision to enter into a stipulation in a pending appeal. *Brookridge District Association v. Planning & Zoning Commission of Greenwich*, 259 Conn. 607 (2002); *Torrington v. Zoning Commission*, 261 Conn. 759 (October 15, 2002) (Absent bad faith or collusion, no standing to intervene to challenge stipulated judgment.) And no standing to appeal a recommendation by a planning and zoning commission under Conn. Gen. Stats. § 8-24 for a public works project. *Fort Trumbull Conservancy, LLC v. Planning and Zoning Commission*, 32 Conn. L. Rptr. No. 7, 247 (July 15, 2002).

No standing to appeal a municipal demolition order, issued per Conn. Gen. Stats. § 29-266(a). *Schultz v. Building Board of Appeals of Town of East Hartford*, 32 Conn. L. Rptr. No. 7, 260 (July 15, 2002).

Intervention in a pending appeal: While an abutting owner is Statutorily aggrieved and can appeal the *approval* of an application that they oppose, the Statute is silent about whether the abutter has standing to appeal a *denial*. The weight of case law indicates that allowing intervention by an abutter in the case of a denial is discretionary with the court. See the excellent discussion in *Walker v. Branford Planning & Zoning Commission,* 50 Conn. L. Rptr. No. 18, 654 (January 10, 2011, Corroadino, J.T.R.); see also *301 Eagle Street, LLC v. Zoning Board of Appeals*, 52 Conn. L. Rptr. No. 5, 187 (September 19, 2011) (intervention by abutter to defend commission denial allowed).

2. Inland Wetlands and Watercourses: Governed by Conn. Gen. Stat. § 22a-43: Can still have classical aggrievement. See discussion above.

Dissenting members of a wetlands agency who voted on a regulation amendment lack standing to appeal that amendment. *Munhall v. Inland Wetlands Commission*, 221 Conn. 46, 51 (1992). Presumably, the same rule would apply for planning or zoning commission members.

3. Pending Appeals. *Daylor CT Properties, LLC v. Town of North Stonington,* 32 Conn. L. Rptr. No. 13, 483 (August 26, 2002): Pending appeal: neighbor could intervene in developer's appeal of conditions imposed by the commission because, if not for the conditions imposed, neighbor could and would have appealed the approval. See cases under "Settlement" section by Robert A. Fuller, Esq. For similar holding in a wetlands appeal, see *Wissinger v. Matthies*, 7 Conn. Ops. 1367 (Dec. 3, 2001) (Foley, J.).

B. Aggrievement At Law, or Statutory Aggrievement

Aggrievement created by Statute, not by judicial decisions. If you satisfy the Statutory criteria, you have standing. Period. "Statutory aggrievement exists by legislative fiat, not by judicial analysis of the particular facts of the case." *Lewis v. Planning & Zoning Commission*, 62 Conn. App. 284, 288 (2001), citing *Cole v. Planning and Zoning Commission*, 30 Conn. App. 511, 514-515 (1993) (amendment to allow saw mills affects owners within, or within 100 feet of, the subject zone even though no sawmill application filed yet).

1. Planning/Zoning:

Per Conn. Gen. Stats. § 8-8(a)(1), persons "owning land that abuts or is within a radius of one hundred feet of any portion of the land involved in the decision of the board." Statutory Aggrievement is based on being within 100 feet of the property involved in the challenged activity, not the activity itself. *City of Hartford v. Town of West Hartford*, 32 Conn. L. Rptr. No. 19, 695 (October 7, 2002). Compare to an Inland Wetlands and Watercourses appeal (below), where Conn. Gen. Stats. § 22a-43(a) uses the phrase "owning or occupying land." Does this mean that "occupying" land is not enough for a zoning appeal, but *is* enough for a wetlands appeal? Note the issue of an easement versus fee simple ownership that arose in the context of a UAPA appeal, *Citizens Against Overhead Powerline Construction v. Connecticut Siting Council*, 51 Conn. L. Rptr. No. 23, 882 (8-1-2011) (owner of property subject to utility easement lacked standing to appeal activity that was within the scope of the easement.)

Note also that the 100-foot distance need not be in Connecticut to confer standing, *Mordechai Abel v. Planning & Zoning Commission of New Canaan*, 297 Conn. 414 (2010) (owner of property in New York has standing if that property is within 100 feet of the subject property.)

As a general rule, the statute defines "Aggrieved person" as including "any officer, department, board or bureau of the municipality charged with the enforcement of any order, requirement or decision of the board." Conn. Gen. Stat. § 8-8 (a)(1). Therefore, a Zoning Enforcement Officer has standing to appeal Zoning Board of Appeals decision on an appeal of his/her decision. *Bouvier v. Zoning Board of Appeals of Town of Monroe*, 28 Conn. Sup. 278, 283 (1969). Note, the *Bouvier* case appears to allow Zoning Enforcement Officers to appeal all decisions of Zoning Boards of Appeal, even variances. Recently, however, Judge Maloney has decided two East Hartford cases where the body charged with enforcement of the regulations, in this case, the Planning and Zoning Commission, appealed the granting of a variance. In both instances, he held that the Commission lacked standing. *East Hartford Planning and Zoning Commission v. Zoning Board of Appeals, Town of East Hartford*, 02-CBAR-1211, CV 01 0808097 S, Judicial District of Hartford at Hartford, May 17, 2002; *East Hartford Planning and Zoning Commission v. Zoning Board of Appeals, Town of East Hartford*, 02-CBAR-1212, CV 01 0804348 S, Judicial District of Hartford at Hartford, May 17, 2002. Judge Maloney specifically found the holding of *Bouvier* to be too broad. The East Hartford decisions were not appealed, so a final determination by an appellate-level court will need to wait some time longer. See *Caruso v. Meriden Zoning Board of Appeals*, 51 Conn. L. Rptr. No. 23, 876 (8-1-2011) (zoning enforcement officer and director of planning and statutorily aggrieved parties to appeal a ZBA decision.)

Husband cannot bring *pro se* appeal of zoning decision for property in his wife's name, even though he was a beneficiary under a revocable trust that included that land. *Mucha v. Hamden Zoning Board of Appeals*, 50 Conn. L. Rptr. No. 9, 334 (October 25, 2010).

There are special rules for floating zones, which are adopted into the zoning *text*, but not initially depicted on the zoning *map*. The possible zone "floats" over the municipality until an applicant seeks to "land" the zone in a particular location. The general rules seems to be that if the floating zone floats over the entire municipality, no single property owner can be aggrieved until it lands and they can prove aggrievement at that location. *Schwartz v. Board of Alderman*, 278 Conn. 500 (2006.) On the other hand, if the floating zone is restricted to particular areas, persons within those areas, or within 100 feet of them, can be statutorily aggrieved. *Hayes Family Ltd. Partnership v. Planning & Zoning Commission*, 98 Conn. App. 213, 222 n.9 (2006), cert. den., 281 Conn. 903 (2007;) *Douglas v. Planning & Zoning Commission*, 127 Conn. App. 87 (2011.)

2. Inland Wetlands and Watercourses

Governed by Conn. Gen. Stat. § 22a-43: Note that for wetlands appeals, it is not 100 feet, but ninety (90) feet, and it is "any person owning or occupying land which abuts or any portion of land or is within a radius of ninety feet of *the wetland or watercourse involved in* any regulation, order, decision or action . . ." (Emphasis added). Therefore, a person owning or occupying land along the Connecticut River could, theoretically, be aggrieved by a decision of the Suffield Inland Wetlands and Watercourses Commission along the River. There is conflicting case law on this interpretation at the Superior Court level: *Wysocki v. Ellington Inland Wetlands Agency/Conservation Commission*, 29 Conn. L. Rptr. No. 4, 141 (April 23, 2001) (land within 90 feet upstream or downstream of affected watercourse are

aggrieved); *Hathaway v. Orange Inland Wetlands Commission*, 3 Conn. L. Rptr. 426 (1991) (implies that party must own land within 90 feet of the portion of the wetland or watercourse affected by the order, decision or action of the commission). Note also that the Commissioner of the Connecticut Department of Environmental Protection is a party designated to have standing to appeal.

Recipient of a cease & desist order can appeal to Superior Court even if the decision was not published. *Newberry Road Enterprises, LLC v. East Windsor Inland Wetlands & Watercourses Agency,* 50 Conn. L. Rptr. No. 3, 101 (September 13, 2010).

3. Mootness Claims

For mootness based on passage of a General Statute, see, generally, *Commissioner of Correction v. Freedom of Information Commission*, 129 Conn. App. 425 (2011).

Re challenge to conditions of approval, see *Kobyluck Bros., LLC v. Planning and Zoning Commission*, 51 Conn. L. Rptr. No. 19, 696 (7-4-2011) (applicant challenged conditions of approval, one of which said that if any were violated, special permit would be void; condition allegedly violated, so commission moved to dismiss appeal as moot since permit was void already; held no, court retains jurisdiction to consider validity of the conditions being appealed.)

II. Status as a party without aggrievement

A. Parties set forth by Statute

As noted above, the Commissioner of the Connecticut Department of Environmental Protection is a party having standing in any local Inland Wetlands and Watercourses decision, per Conn. Gen. Stats. § 22a-43(a).

B. Parties by intervention, Conn. Gen. Stats. §§ 22a-19 (environmental) and 22a-19a (historic)

We now know that a person who files a Notice of Intervention per Conn. Gen. Stats. § 22a-19 (and, by implication, Conn. Gen. Stat. § 22a-19a) has standing to file an appeal. *Branhaven Plaza, LLC v. Inland Wetlands Commission*, 251 Conn. 269, 276, n.9 (1999). Intervention cannot expand the jurisdiction of the agency, so no standing to appeal decisions based on considerations outside that agency's jurisdiction. *Nizzardo v. State Traffic Commission*, 259 Conn. 19 (2002) (State Traffic Commission has no environmental authority and cannot acquire any just because an intervention is filed.) Presumably the same rules would apply to Conn. Gen. Stats. § 22a-19a for historic interventions.

Note that preemption issues may prevent standing to challenge based on environmental grounds: *Burton v. Dominion Nuclear Connecticut, Inc.*, 300 Conn. 532 (2011) (plaintiff lacked standing to challenge, under Conn. Gen. Stats. § 22a-16, radioactive discharge of nuclear power plant because such emissions are preempted by Federal law).

Note that for zoning text or map amendments, an intervenor can only raise environmental, not procedural irregularities (but see *Diamond 67, LLC* below for contrary holding re a stipulated judgment), and must

somehow demonstrate that the mere changing of the zoning text or map constitute "conduct" that is "reasonably likely to have the effect of unreasonably polluting, impairing, or destroying the public trust in the air, water, or other natural resources of the state." Conn. Gen. Stats. §22a-19(a). This has proven to be a difficult burden. *Pond View, LLC v. Planning & Zoning Commission*, 288 Conn. 143 (2008.) This burden is especially difficult for floating zones. *Douglas v. Planning & Zoning Commission,* 127 Conn. App. 87 (2011.)

The intervenor can intervene in a *judicial* proceeding under Conn. Gen. Stats. §22a-19. What if intervenor intervenes in an administrative appeal after it is pending, and the original plaintiff(s) withdraws the appeal? One Superior Court says that intervenor has standing to continue the appeal. *Federer v. Inland Wetlands Commission of the Town of Washington*, 50 Conn. L. Rptr. No. 14, 519 (December 6, 2010).

For a complex situation involving an intervention in two related actions, see *Diamond 67, LLC v. Planning & Zoning Commission*, 117 Conn. App. 72; and, after remand, 127 Conn. App. 634 (2011).

III. Establishing Aggrievement in an Appeal

A. Pleading Aggrievement/Standing

The basis for aggrievement must be stated in the complaint. *Harris v. Zoning Commission*, *supra*, p. 409. It is not enough to merely prove it at trial. However, it is not necessary to recite the magic words that the plaintiff is aggrieved as long as the complaint contains sufficient *facts* to establish aggrievement. *Corsini v. Guilford Planning & Zoning Commission*, 49 Conn. L. Rptr. No. 14, 508 (6-14-2010, Corradino). Compare to *Wucik v. Planning & Zoning Commission*, 113 Conn. App. 502 (2009) where the plaintiff pled that it was aggrieved without any supporting factual allegations; held, failure to adequately plead aggrievement.

Could an appeal commenced by a plaintiff lacking standing be saved by substituting a party who did have standing per Conn. Gen. Stats. §52-109? Held yes, but it was a foreclosure case, not a land use appeal. *J.E. Robert Company v. Signature Properties, LLC*, 51 Conn. L. Rptr. No. 1, 4 (2-28-2011.)

B. Proving Aggrievement/Standing

May be at time of trial, but may also be earlier where defendant files a Motion to Dismiss per Conn. Gen. Stats. § 8-8(i). That Motion triggers plaintiff's "burden of proving his or her standing". A comparable provision is found at Conn. Gen. Stats. § 22a-43(b) for Inland Wetlands and Watercourses appeals.

1. Proving the facts of Aggrievement at the time of trial or hearing

Proof of aggrievement is "an essential prerequisite to the court's jurisdiction of the subject matter of the appeal". *Gladysz v. Planning and Zoning Commission of Town of Plainville*, 256 Conn. 249. 256 (2001); *R & R Pool & Home, Inc. v. Zoning Board of Appeals*, 43 Conn. App. 563, 568 (1996). Standing cannot be waived. *Id.* The standard for aggrievement is "rather strict". *Id.*, p. 257. Aggrievement cannot be established based on the record because a person does not become aggrieved until after the

board has acted. *Fox v. Zoning Board of Appeals of City of Stamford*, 146 Conn. 665, 667 (1959). The Court must hear actual testimony. *Campformio v. Greenwich Planning and Zoning Commission*, 02-CBAR-0851, CV 99 0170237 S, Judicial District of Stamford/Norwalk at Stamford, April 19, 2002.

That testimony must establish that the plaintiff was aggrieved throughout the entire course of the appeal. *Goldfield v. Planning and Zoning Commission of Town of Greenwich*, 3 Conn.App. 172, 176-177 (1985); *Crawford v. Ledyard ZBA,* 51 Conn. L. Rptr. No. 15, 560 (6-6-2011.) A plaintiff having sufficient interest when the appeal is taken can lose the interest by conveyance of the interest prior to trial. *Town of Southbury v. American Builders, Inc.*, 162 Conn. 633, 634 (1972). Where there is a gap in ownership or the interest upon which aggrievement is predicated, aggrievement is lost. *Goldfeld* at 177. However, an expired purchase agreement may suffice if both parties treat it as remaining in force. *Bethlehem Christian Fellowship, Inc. v. Planning and Zoning Commission of Morris*, 58 Conn. App. 441 (2000) (distinguishing *Goldfeld* because that involved an <u>option</u> agreement, not a <u>purchase</u> agreement). See also, *Green Falls Associates, LLC v. Montville ZBA*, 51 Conn. L. Rptr. No. 2, 75 (March 17, 2011) where purchase contract had expired before zoning application, but there was no "time is of the essence" clause and parties did later close on the property. Compare to *JZ, Inc., Dunkin Donuts v. Planning & Zoning Commission*, 119 Conn. App. 243 (2010), where agreement had expired by its terms; and also *Optiwind v. Goshen PZC,* Docket NO. LLI-CV-08-4007819-S (whether agreement was a "lease" and if it had expired.)

Two Superior Court cases indicate that in an affordable housing appeal under Conn. Gen. Stats. § 8-30g, the plaintiff may present evidence that conditions of approval have a "substantial adverse impact" on the viability of the affordable housing project if there was no evidence concerning such impact on the record. *Saranor Aparatments v. Planning & Zoning Board of Milford*, 1997 WL 746385 (Conn. Super., 1997); *Caserta v. Milford Planning & Zoning Board*, Docket No. CV 010507693S (Conn. Super. at New Britain, 2001).

The parties cannot, by stipulation, confer jurisdiction on the Court. *Hughes v. Town Planning and Zoning Commission of Town of North Haven*, 156 Conn. 505, 509 (1968). It is not necessary to provide certified copies of a deed as long as the plaintiff testifies to ownership of land sufficient to confer aggrievement. *Wilson v. Zoning Commission*, *supra*.

Mere generalizations and fears are insufficient to establish aggrievement. *Walls v. Planning and Zoning Commission*, 176 Conn. 475, 478 (1978). Aggrievement is established if there is a possibility, as distinguished from a certainty, that some legally protected interest has been adversely affected. *Huck v. Inland Wetlands and Watercourses Commission*, 203 Conn. 525, 530 (1987); *Pomazi v. Conservation Commission*, 220 Conn. 476, 483 (1991).

As association can have standing, but only if its individual members would have standing on their own. *Alliance to Preserve Somers Center, Inc., v. Zoning Commission of Town of Somers*, 7 Conn. Ops. 945 (August 20, 2001) (Sullivan, J.) (none of the members of the plaintiff corporation could prove either classical or statutory aggrievement, hence the association was not aggrieved and lacked standing).

Typical pattern of testimony at aggrievement hearing:

"I am the [plaintiff/officer of the plaintiff/etc.] and I am the [owner, by virtue of a deed/contract

purchaser by virtue of this agreement/etc.]. I had this interest at the time that the original application was filed and have maintained it continuously throughout this proceeding through today.

2. Proving the facts necessary to support a claim of intervention

Where there is a Conn. Gen. Stats. § 22a-19 intervention, the intervenor must prove actual adverse impacts for the challenged decision "and not merely under some hypothetical set of facts as yet unproven". *Queach Corporation v. Inland Wetlands Commission*, 258 Conn. 178, 190 (2002). Cited to support finding of lack of aggrievement where plaintiffs challenged a zoning text change based on traffic impacts for development for which no application had even been filed. *Stauton v. Madison Planning and Zoning Commission, supra*, p. 395.

IV. Standing to File an Administrative Application

This topic is far less clear than the preceding. The Statutes are silent. The Supreme Court has said that the test to establish standing before an administrative agency is "less stringent" than before a Court. *Gladysz, supra*, p. 257.

A. Ownership/Control of the Subject Property

Some local regulations actually state, expressly, that the applicant must either own the subject property or have some form of written permission from the owner to file such an application. However, in many cases the Regulations are silent, and the only indication is a signature line on the application form for "owner" or "owner's representative".

See *Gladysz v. Planning and Zoning Commission of Town of Plainville*, 256 Conn. 249 (2001) concerning whether the applicant has a sufficient interest in property to allow it to apply for a permit. Essentially, as the *Gladysz* court explained, standing tests whether the applicant is the true party at interest. A partnership applied for a subdivision for land they did not own but would be developing. The commission approved the subdivision with conditions. The partnership appealed the conditions. Abutters appealed the approval generally citing the fact that the partnership did not have an ownership interest. The eventual result of which was that two separate superior court judges ruled separately that the partnership had standing to apply for the permit but not aggrievement to appeal the conditions: Judge Handy ruled that the partnership's failure to demonstrate any legal interest in the property left it without aggrievement to appeal the imposition of the challenged conditions. However, Judge McWeeny was not bound by Judge Handy's decision on aggrievement for his ruling on whether the partnership had standing to file the application and could properly find that the partnership had adequate standing to file the application thereby overruling the neighbors' appeal. The Supreme Court found that this apparent inconsistency was perfectly correct.

See also, *Richards v. Planning and Zoning Commission of Town of Wilton*, 170 Conn. 318 (1976),the Wilton Board of Ed applied to build a storage area for school buses, a bus maintenance facility and equipment, even though it did not own the land. The land was owned by the "Town of Wilton" and designated for municipal use. The *Richards* court framed the following question:

The issue, then, is whether the Wilton board of education, although not the titleholder to the

> property, possesses a sufficient interest in it and in the granting of the special permit to constitute the legal interest required to make the present application.

Richards at 321.

That is the heart of what it means to have *standing*. To elaborate further, the court stated:

> Whether the applicant is in control of the property, whether he is in possession or has a present or future right to possession, whether the use applied for is consistent with the applicant's interest in the property, and the extent of the interest of other persons in the same property, are all relevant considerations in making that determination.

Richards at 323 - 324.

Since the zoning regulations did not require the applicant to be the owner, and the Town was not contesting the Board's right to apply, and the Board was charged with providing transportation for its students, the Court held that the Board had standing. A school bus parking lot was close enough to a school use for the court's purposes. Query: What if the Regulations *did* require actual ownership or consent of the owner?

B. Zoning Board of Appeals: Appeals of decision of Zoning Enforcement Officer within 30 days.

Conn. Gen. Stats. § 8-7 provides that an aggrieved party may appeal the decision of a Zoning Enforcement Officer to the local Zoning Board of Appeals within thirty (30) days of the issuance of such decision, unless the Board, by resolution, adopts some other time period. For the recipient of the order, the thirty-day period obviously commences upon receipt. But what about a neighbor? There is no requirement to publish notice of Certificate of Zoning Compliance or other permits or decisions made by a Zoning Enforcement Officer. In *Munro v. Zoning Board of Appeals of Branford*, 261 Conn. 263 (August, 2002), the Supreme Court held that the thirty-day period could not commence until the aggrieved party receives actual notice (in that case, when construction commences). The impact which this decision has on finality of Zoning Enforcement Officer decisions is considerable, affecting financing of almost every land development. Note the different result where the plaintiff did have notice of the decision and still waited more than thirty days before filing an appeal. *Hoffer v. Zoning Board of Appeals of Town of Oxford*, Docket No. CV 00-0071916S (Conn. Super., J.D. of Ansonia/Milford at Derby, 2002). PA 03-144 amended Conn. Gen. Stats. §8-3(f) and 8-7 to allow (but not require) recipients of a Certificate of Zoning Compliance to publish a notice thereof and trigger the 30-day appeal period.

Certificate of Zoning Compliance issued at the Certificate of Occupancy stage can only challenge the compliance of the building as constructed with the buildings as approved at the building permit stage; cannot challenge the compliance of the building as compared to the original approval, which issue was determined when the Certificate of Zoning Compliance was issued at the Building Permit stage. *Langmoor v. Zoning Board of Appeals of Barkhamstead*, 33 Conn. L. Rptr. No. 1, 34 (October 21, 2002)

C. Does standing to invoke the local administrative process require standing to invoke a subsequent judicial appeal?

Example of an appeal of the decision of a Zoning Enforcement Officer to the Zoning Board of Appeals: Suppose the Zoning Enforcement Officer issues a permit for an activity on Blackacre. The owner of Whiteacre, located across town, seeks to file an appeal of that permit to the Zoning Board of Appeals. Regardless of the Board's decision on the merits, Whiteacre would not have standing to appeal the Board's decision except for his status as the "applicant" in the appeal. Does Whiteacre have standing to file the appeal to the Board when he is neither statutorily nor factually aggrieved? Does Whiteacre have standing to file an appeal of the Board's decision when he is neither statutorily nor factually aggrieved by the underlying permit merely because he filed the original appeal with the Board?

Similar situation in *Gladysz*, discussed above.

D. Other standing issues before administrative agency:

1. Corporations: Apparently, the rule that a corporation cannot appear *pro se* in court does not apply to administrative proceedings where a corporate officer can represent his/her corporation. *Briteside, Inc. v. Department of Health*, 31 Conn. L. Rptr. No. 5, 162 (February 11, 2002).

2. Out of town speakers: Except in the case of intervenor, there is no case law about non residents of the municipality having "standing" to *speak* at public hearing. My recommendation: It's all one country so let non residents speak and avoid an appealable issue of first impression.

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amended November 18, 2002; November 20, 2002; amended September 8, 2010; amended November 29, 2010 to add several cases; amended January 17, 2011 to add *Walker* case. Updated April 21, 2011 to add *Douglas* and related floating zone cases. Updated June 7, 2011 to add *Burton* case. Rev. August 15, 2011 to add *Commissioner of Corrections* and *Kobyluck Bros.* Cases. Rev. September 2, 2011. Rev. November 9, 2011 to add *301 Eagle Street, LLC*, *Diamond 67, LLC* and *Abel.*