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Grannis Island Co., Inc. v. City of New Haven, No. CV000445887S, 2002 WL 230912 (Conn. Super. Ct. Jan. 23, 2002)

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properly had subject matter jurisdiction. Cases requiring exhausting administrative remedies were overruled.

Further, the trial court's unreasonable impairment definition as "something more than de minimus," would force defendants to claim lack of alternatives as a sole affirmative defense. CEPA compliance instead determines the proper standard. Because minimum flow statutes were not designed solely to protect fish and wildlife, they were proper factors in establishing unreasonable impairment, consistent with CEPA's statutory scheme.

Waterbury further established a prescriptive easement against Washington. Waterbury's conduct was sufficiently open and visible for the statutory period to give the Washington notice that flow diminished by diversions adverse to the Washington's rights. The easement's scope however, was for the trial court to determine on remand, with reference to the 1893 and 1921 agreements. The trial court's remedy was inadequate because it was based on a faulty, unreasonable impairment definition and denied relief for Waterbury's contractual breach.

Robert Lykos

Grannis Island Co., Inc. v. City of New Haven, No. CV000445887S, 2002 WL 230912 (Conn. Super. Ct. Jan. 23, 2002) (affirming a city planning commission's denial of a proposed regrade plan because the petitioner did not support the plan with sufficient evidence and the plan was inconsistent with the Connecticut Coastal Management Act).

Grannis Island Co. ("Grannis") owned property in New Haven, bordered by tidal wetlands and property owned by New Haven Land Trust ("NHLT"). Previously, the New Haven Water Authority ("NHWA") owned the adjacent property where Grannis stored construction materials. Subsequently, NHWA conveyed their property to NHLT. Upon acquiring ownership, NHLT requested Grannis remove the stored materials from their property. Consequently, Grannis decided to "regrade and fill 4.6 acres of upland on [its] property" in order to store their construction materials. To attain permission for the regrade, Grannis applied to the New Haven City Plan Commission ("Commission") for a coastal site plan review and a soil and erosion control permit. After a hearing, the Commission denied Grannis' application. Grannis appealed the application denial to the Superior Court of Connecticut.

At issue before the court was whether the record supported the Commission's decision to deny Grannis' application. The court affirmed the Commission's decision based on the following factors: (1) there was insufficient evidence regarding the spatial relationship between the proposed regrade and the tidal wetlands border; (2) the description of the regrade plan was insufficient; (3) Grannis failed to

identify and mitigate potential adverse impacts of the regrade; and (4) the Commission identified conflicts between the goals of the Connecticut Coastal Management Act ("CCMA") and the regrade when discussing open space in relation to Grannis' property.

First, the court addressed the Commission's conclusion there was insufficient information showing the spatial relationship between the regrade area and the tidal wetland border. During the Commission's hearing on Grannis' application, a letter from the Connecticut Department of Environmental Protection ("DEP") stated the DEP could not define the boundary of tidal wetlands on the subject property. Thus, the court found the DEP letter supported the Commission's conclusion.

Second, the court discussed the Commission's conclusion that the project's description was insufficient. While Grannis submitted a letter showing proposed sediment and erosion controls, it did not show these measures on the regrade plan nor did Grannis establish where on the property they would place the measures. Hence, the court affirmed the Commission's decision that the description was insufficient.

Third, the court addressed the Commission's conclusion that Grannis failed to identify and mitigate potential adverse impacts of the regrade. Specifically, Grannis introduced no evidence of plans to mitigate the effects of rainwater washing over construction materials stored on their property. Consequently, the court upheld the Commission's conclusion that Grannis failed to mitigate adverse impacts.

Fourth, the court evaluated whether the Commission based its denial of Grannis' application on a desire for the property to become open space. The Commission initiated a zoning ordinance amendment process to re-designate open space areas no later than November 1, 2000, twenty-one days after the Commission denied Grannis' application. The newly proposed zoning ordinance map labeled Grannis' property as open space. If the Commission rezoned Grannis' property to open space, then storage of construction materials would be a non-conforming use. Further, the Commission acknowledged open space was consistent with New Haven's "future land use plan" and the Commission supported the NHLT acquiring property in the area where Grannis' property was located. While the court found the evidence could support a conclusion that the Commission based its denial of Grannis' application on a desire for the property to become open space, the court found it was more reasonable the Commission was identifying conflicts between the regrade and the goals of the CCMA. For the above reasons, the court found the record supported the Commission's conclusion.

Heather Chamberlain