

9-1-2002

Delmar Assocs., Inc. v. Monroe Planning & Zoning Comm'n, No. CV010509213S, 2002 WL 1816338 (Conn. Super. Ct. July 2, 2002)

Adriano Martinez

Follow this and additional works at: <https://digitalcommons.du.edu/wlr>



Part of the [Law Commons](#)

Custom Citation

Adriano Martinez, Court Report, Delmar Assocs., Inc. v. Monroe Planning & Zoning Comm'n, No. CV010509213S, 2002 WL 1816338 (Conn. Super. Ct. July 2, 2002), 6 U. Denv. Water L. Rev. 231 (2002).

This Court Report is brought to you for free and open access by the University of Denver Sturm College of Law at Digital Commons @ DU. It has been accepted for inclusion in Water Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

Delmar Assocs., Inc. v. Monroe Planning & Zoning Comm'n, No. CV010509213S,
2002 WL 1816338 (Conn. Super. Ct. July 2, 2002)

Delmar Assocs., Inc. v. Monroe Planning & Zoning Comm'n, No. CV010509213S, 2002 WL 1816338 (Conn. Super. Ct. July 2, 2002)

(holding that a corporation applying to develop low-cost housing is aggrieved when a town Planning and Zoning Commission denies the application without providing specific harms to aquifers, streams, and other aspects of community character or the probability that the harms will occur).

Delmar Associates ("Delmar"), acquired two parcels of land totaling approximately 23.8 acres from two 1998 deeds in Monroe, Connecticut. Delmar owned these parcels without interruption and without conveying the land to a third party from 1998 to 2002. It filed three applications to approve the creation of an affordable housing project called Castle Wood. They applied to (1) amend Monroe's zoning regulations by adding a new Design Housing Opportunity ("DHO") district; (2) rezone the 23.8 acres associated with Delmar's proposal to the DHO district; and (3) seek approval for the development of the residential unit. Less than one percent of Monroe's housing consisted of affordable housing.

The Town of Monroe Planning and Zoning Commission ("Commission") denied Delmar's three applications. The Commission based their decision on the following five concerns: aquifer and stream protection, wastewater disposal, preservation of community character, blasting, and reduction of open space.

The Superior Court of Connecticut conducted a plenary review of the records in support of the Commission's denial of Delmar's applications. The court held that the Commission arbitrarily denied the applications and abused its discretion. The court reversed the Commission's denial of the applications and gave revisions and modifications. The court determined the outcome by looking at whether the Commission based their denial on a substantial public interest. The review process consisted of two parts: (1) weighing the public interest against Monroe's need for affordable housing, and (2) whether reasonable modifications could be made to the application permitting approval.

The Commission expressed concern about converting areas near a stream into impermeable surfaces. The high-density surfaces could result in less water penetrating and recharging the groundwater system and an increase in the pollutants entering streams. The court stated that concerns about pollutants entering streams and the recharging of groundwater systems are public interests in need of protection. However, it noted the lack of a reasonable basis that the Commission's denial of the applications will protect this public interest. The court pointed to the absence of evidence in the record of specific harm and the possibility that the harm will occur to reverse the denial of the application on the impermeable argument. It also declared that the Commission provided no evidence of the lack of reasonable

modifications.

The court reiterated that the Commission must consider other permitting and regulatory agencies' actions when protecting the public interest. For example, the Commission expressed concern about the proposed septic tank having a designed flow of 13,950 gallons a day. The Commission noted that larger septic systems have more potential for heavy impact than individual septic systems. The court pointed to the fact that the State Department of Environmental Protection must approve, permit, and regulate every septic tank with a capacity exceeding 5,000 gallons a day.

The court acknowledged that all five concerns constituted public interest in need of protection. Upon a scrupulous review of the record, it also determined that the Commission had no reasonable basis to conclude that the denial of Delmar's applications would protect these public interests. Mere possibility of harm would not be enough to validate a denial, but rather the record must contain evidence of the potential harm and the probability that such harm will occur.

Adriano Martinez

IDAHO

N. Snake Ground Water Dist. v. Gisler, 40 P.3d 105 (Idaho 2002)

(affirming denial of water district's challenge of special master's conclusions regarding a decree of a water right and awarding attorney fees).

The North Snake River Ground Water District ("NSGWD") appealed the decision of the Fifth Judicial District Court of the Snake River Basin Adjudication ("SRBA") to the Supreme Court of Idaho concerning the Bradley and Linda Gisler's ("Gisler") water right decree. The court affirmed Gisler's decree, stating that the NSGWD failed to follow the procedures required by the Idaho statute for challenging a right.

Under Idaho law, a time-sensitive process exists for both claiming a water right and challenging that right. A claimant files a water right claim, after which the Idaho Department of Water Resources ("IDWR") investigates the claim and issues a director's report, to which any interested party may file objections or responses. The claimant may then contest the report by utilizing a streamlined, non-judicial process known as the "standard form five" ("SF5") process, or by referral to a special master, who issues a recommendation. Subsequently, a party may file a motion to alter or amend, which the special master will review and rule upon. The special master's final decision may be challenged and reviewed by the SRBA district court,