

# Real Estate Law Alert

## Legislative Response To *Munroe* Decision

A recent Connecticut Supreme Court decision and the legislative response to that decision mean that property owners who seek and obtain certificates of zoning compliance must now take an additional step to insure that their permits are final and beyond appeal. A certificate of zoning compliance (essentially a finding by a town's zoning enforcement officer that a construction project will be in compliance with the town's zoning regulations) is typically required before a building permit can be issued, and a building permit is typically required whenever there is new construction or modification to an existing building or structure.

As not everyone necessarily supports every building project, Conn. Gen. Stat. 8-7 states that an aggrieved person can appeal a zoning official's orders (such as the issuance of a certificate of zoning compliance) to a town's zoning board of appeals within thirty days (assuming the town's zoning regulations do not set their own limit). In *Munroe v. Zoning Board of Appeals of Town of Branford* 261 Conn. 263 (2002), the Connecticut Supreme Court ruled that the thirty day appeal period runs not from the *issuance* of a certificate of zoning compliance, but from the date the appellant received *notice* of the issuance. This created quite some uncertainty for permit applicants, whether they be commercial construction managers and general contractors or weekend warriors hankering to get started on that addition to the garage, because most towns' zoning regulations do not call for any notice or publication of a certificate of zoning compliance (unlike the more involved and complicated special permits, site plan approvals and variances). Neighbors and other potentially aggrieved persons might not receive "notice" of the decision until they saw the truck delivering construction materials or heard the thwack of hammers. Under the rationale of *Munroe*, in theory at least, an applicant could receive his building permit, order and receive his materials, begin or even complete construction, only to have the whole project called into question when a neighbor who opposes the construction comes back from vacation or six-month sabbatical and receives "notice" of the project's permits and approvals.

The State legislature has appreciated the uncertainty the *Munroe* decision created for permit applicants. On June 26, 2003, Governor Rowland signed a bill titled accurately and innocuously enough, "An Act Concerning Notice of Zoning Decisions". Effective October 1, 2003, Public Act No. 03-144 amends two zoning statutes, §§ 8-3(f) and 8-7. Section 8-3(f) has been modified to state that the officer who issues the certificate of zoning compliance,

shall inform the applicant for any such certification that such applicant may provide notice of such certification by either (1) publication in a newspaper having substantial circulation in such municipality stating that the certification has been issued, or (2) any other method provided for by local ordinance. Any such notice shall contain (A) a description of the building, use or structure, (B) the location of the building, use or structure, (C) the identity of the applicant, and (D) a statement that an aggrieved person may appeal to the zoning board of appeals in accordance with the provisions of section 8-7, as amended by this act.

Section 8-7, which authorizes aggrieved persons to appeal an order to a town's zoning board of appeals within thirty days (or the time limit set by the town's zoning regulations), now specifies when and how the appeal period is determined.

Such appeal period shall commence for an aggrieved person at the earliest of the following: (1) Upon receipt of the order, requirement or decision from which such person may appeal, (2) upon the publication of a notice in accordance with subsection (f) of section 8-3, as amended by this act, or (3) upon actual or constructive notice of such order, requirement or decision.

These changes provide some certainty as to when the appeal period commences for a successful applicant concerned about appeal from aggrieved persons (i.e. actual or constructive notice) and also create a "safe harbor" for permit applicants, allowing applicants through newspaper publication to achieve some confidence that a permit will

# Real Estate Law Alert (continued)

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be final and beyond appeal from traveling or otherwise uninformed yet aggrieved persons once the appeal period has passed from the date of publication. The downside of this new statutory mechanism is that while it delivers some certainty, it also suggests publication of a notice that practically invites appeal, and may in fact induce someone who didn't appreciate his or her aggrieved status to act.

It is an irony of this legislation that special permits, variances and zone changes, all zoning decisions that could have quite significant and unexpected consequences for persons affected by the decisions, statutorily require newspaper publication but without the statement that an aggrieved person can appeal the decision. Public Act No. 03-144, in contrast, essentially proclaims aggrieved persons' rights to appeal, even though the decisions it applies to (the issuance of certificates of zoning compliance) are simply determinations of whether a use or structure complies with the zoning regulations. The public hearing date (and applicable appeal period) for a more complex project or controversial use needing site plan or special permit approval will have come and gone before a certificate of zoning compliance is ever issued.

Also unresolved at this point are the consequences of a defect in a newspaper notice. While the zoning enforcement officer is required to inform an applicant of his option to publish newspaper notice, it will be the applicant's responsibility to produce the notice. It would seem that a notice that somehow fails to fulfill one of the four points itemized in the revised Section 8-3(f) could still provide constructive notice. Still, a court may strictly construe 8-3(f) and negate the "safe harbor" effect entirely.

Certificates of zoning compliance are a relatively ministerial matter, and so long as a project does in fact conform to the zoning regulations and the zoning regulations were properly interpreted and applied, the grounds for appeal should be limited. Nevertheless, applicants will want to weigh the costs and risks of publishing notice of their certificate of zoning compliance (including the risk that the publication itself may instigate appeals) against the chances that an aggrieved person at an unknown point in the future will file an appeal that unsettles a construction schedule, disrupts business or personal plans, or even threatens the entire construction project itself.

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