NO. CV 10 601 27 93 S	:	SUPERIOR COURT
NEW ENGLAND PRAYER CENTER, INC.	:	J.D. OF FAIRFIELD
VS	:	AT BRIDGEPORT
PLANNING & ZONING COMMISSION	:	DECEMBER 13, 2012

MEMORANDUM OF DECISION

This is an appeal from the decision of the defendant Easton Planning & Zoning Commission (commission), granting, with conditions, the special permit of the plaintiff, the New England Prayer Center, brought to the Superior Court in the judicial district of Fairfield. Neighboring property owners Christopher Michos, Amalia Michos and Colleen Adriani are intervening defendants (intervening defendants).

The court has carefully reviewed the record, listened to the trial of this matter held on May 10, 2012, and considered the briefs of the parties. For the following reasons, the appeal is sustained and the case remanded for further proceedings consistent with this decision.

I

FACTS

The record reflects the following factual and procedural background. On May 18, 2010, the plaintiff submitted a special permit application to the commission, seeking to establish a place of worship on land that it leased from the town of Easton. (Return of Record [ROR], Exhibit [Exh.] 24.) At its meeting of August 23, 2010, the commission approved the plaintiff's special permit application subject to eleven special conditions, enunciated in a "Resolution of Approval." (ROR, Exh. 56.) The plaintiff now appeals the commission's decision, challenging five of the commission's special conditions.[1] The intervening defendants filed a motion to intervene on June 8, 2011, which was granted by the court on September 6, 2011.

On November 15, 2011, the plaintiff filed its appeal brief. The plaintiff argues that their application, as made, complies with the substantive requirements of the Easton zoning regulations (regulations), the special conditions appealed from were not required in order to bring the application into compliance, the regulations do not contain any provisions which form a proper

[1] The five challenged special conditions are as follows:

"1. Provide a Conservation Easement over the 100-year flood plain area of the Mill River designed to protect the natural vegetation and ecology of the area as recommended on the adopted Town Plan of Conservation and Development. A limited trail easement may be included within the Conservation Easement as desired by the Prayer Center.

2. Activities conducted at the Prayer Center shall be limited to Prayer Center functions and other non-profit events sponsored by the Prayer Center.

3. The maximum attendance at each event shall be limited to 300 persons and not more than 30 staff or presenters.

4. All parking and loading on the site shall be limited to the spaces provided for such as shown on the site plan, and there shall be no parking off-site.

6. Outdoor activities at the amphitheater shall be without objectionable sound amplification; i.e. of low volume directed only toward the building. Outdoor activities shall not extend beyond 11:00pm." (ROR, Exh. 56.)

basis for the imposition of the special conditions, the special conditions imposed are not consistent with the commission's past actions with regard to the approval of other Easton churches and places of worship and that numerous aspects of the special conditions appealed from are unduly vague and do not provide a specific enforcement standard. The plaintiff further argues that the application of zoning regulations to restrict religious uses raises concern over the possible infringement of its constitutional rights guaranteed by the Free Exercise Clause of the First Amendment and in violation of the Religious Land Use and Institutionalized Person Act (RLUIPA).

The commission filed its trial brief on January 25, 2012. The commission argues that the conditions it imposed were lawful and the commission was duly authorized under General Statutes § 8-2[2] and regulations § 7.2.3[3] to impose conditions of approval. Additionally, the commission posits that the conditions were in accordance with the plaintiff's proposed plans for

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[2] General Statutes § 8-2 (a) provides in relevant part: "The zoning commission of each city, town or borough is authorized to regulate, within the limits of such municipality, the height, number of stories and size of buildings and other structures; the percentage of the area of the lot that may be occupied; the size of yards, courts and other open spaces; the density of population and the location and use of buildings, structures and land for trade, industry, residence or other purposes . . . and the height, size and location of advertising signs and billboards. . . . All such regulations . . . may provide that certain classes or kinds of buildings, structures or uses of land are permitted only after obtaining a special permit or special exception from a zoning commission, planning commission, combined planning and zoning commission or zoning board of appeals, whichever commission or board the regulations may, notwithstanding any special act to the contrary, designate, subject to standards set forth in the regulations and to conditions necessary to protect the public health, safety, convenience and property values. . . ."

[3] Regulations § 7.2.3 provides: "The Commission may attach such conditions to any approval as are necessary to assure compliance with all applicable standards and requirements under these Regulations."

the property and description of its proposed use. The commission asserts that § 7.2.1[4] of the regulations contains general conditions and standards which gave the commission discretion to impose the conditions and that each of the conditions added to the approval of the plaintiff's application was reasonable and supported by substantial evidence in the record. The commission proposes that the plaintiff's proper option is to return to the commission to seek a modification of any condition it deems burdensome.

The original return of record was filed on September 9, 2011. A supplemental return of record was filed on September 29, 2011. The court held a trial on May 10, 2012. A second supplemental return of record was filed on August 23, 2012. Other facts and arguments are set forth herein as needed.

II

JURISDICTION

Appeals from decisions of a planning and zoning commission to the Superior Court are governed by General Statutes § 8-8 which provides in relevant part: "(b) . . . [A]ny person aggrieved by any decision of a board, including a decision to approve or deny . . . a special permit or special exception pursuant to [section] 8-3c, may take an appeal to the [s]uperior [c]ourt for the judicial district in which the municipality is located . . . ." "A statutory right to appeal may be taken advantage of only by strict compliance with the statutory provisions by which it is

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[4] Regulations § 7.2.1 provides in relevant part: "The Commission may approve the application and issue a special permit provided it finds that all of the following conditions and standards have been met . . . B. The location and scope of the use, the nature and intensity of the operations involved in or conducted in connection with it, the size of the site in relation to it, and the location of the site with respect to street providing access to it, are such that it will be in harmony with the appropriate and orderly development of the neighborhood in which it is located. . . ."

created." (Internal quotation marks omitted.) *Cardoza* v. *Zoning Commission*, 211 Conn. 78, 82, 557 A.2d 545 (1989).

A

Aggrievement

"[P]leading and proof of aggrievement are prerequisites to a trial court's jurisdiction over the subject matter of an administrative appeal. . . . It is [therefore] fundamental that, in order to have standing to bring an administrative appeal, a person must be aggrieved." (Citation omitted; internal quotation marks omitted.) *Bongiorno Supermarket, Inc.* v. *Zoning Board of Appeals*, 266 Conn. 531, 537-38, 833 A.2d 883 (2003). "Aggrievement presents a question of fact for the trial court and the party alleging aggrievement bears the burden of proving it." Id., 538-39. "Two broad yet distinct categories of aggrievement exist, classical and statutory." *Pond View, LLC* v. *Planning & Zoning Commission*, 288 Conn. 143, 156, 953 A.2d 1 (2008). "[E]ither type will establish standing, and each has its own unique features." *Soracco* v. *Williams Scotman, Inc.*, 292 Conn. 86, 92, 971 A.2d 1 (2009).

"Classical aggrievement . . . requires an analysis of the particular facts of the case in order to ascertain whether a party has been aggrieved and, therefore, has standing to appeal." *Fleet National Bank's Appeal from Probate*, 267 Conn. 229, 242 n.10, 837 A.2d 785 (2004). "Classical aggrievement requires a two part showing. First, a party must demonstrate a specific, personal and legal interest in the subject matter of the decision, as opposed to a general interest that all members of the community share. . . . Second, the party must also show that the agency's decision has specially and injuriously affected that specific personal or legal interest." (Internal

quotation marks omitted.) *Moutinho* v. *Planning & Zoning Commission*, 278 Conn. 660, 665, 899 A.2d 26 (2006).

"Statutory aggrievement exists by legislative fiat, not by judicial analysis of the particular facts of the case. In other words, in cases of statutory aggrievement, particular legislation grants standing to those who claim injury to an interest protected by that legislation." *Pond View, LLC* v. *Planning & Zoning Commission*, supra, 288 Conn. 156. Thus, under § 8-8 (a) (1),[5] "any person 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" is statutorily aggrieved.

In the present case, the plaintiff argues that it has a lease of and is currently in possession of the subject property, and that this status demonstrates a specific personal and legal interest in the subject of the decision appealed from. It argues that it also has an option to purchase the property and that this status also establishes aggrievement. The plaintiff's president, Dan Blaze, testified at trial as to a lease and option agreement dated May 28, 2008, with extensions beyond its two-year term, and that the option remains in good force and effect. The defendants do not challenge the plaintiff's aggrievement. Therefore the court finds, as it has previously determined at the time of the trial, that the plaintiff is aggrieved and has standing to prosecute this appeal.

B

Timeliness and Service of Process

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[5] General Statutes § 8-8 (a) (1) provides in full: "'Aggrieved person' means a person aggrieved by a decision of a board and includes any officer, department, board or bureau of the municipality charged with enforcement of any order, requirement or decision of the board. In the case of a decision by a zoning commission, planning commission, combined planning and zoning commission or zoning board of appeals, 'aggrieved person' includes any person 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."

Section § 8-8 (b) provides that "[an] appeal shall be commenced by service of process in accordance with subsections (f) and (g) of this section within fifteen days from the date that notice of the decision was published as required by the general statutes." Section § 8-8 (f) states in relevant part: "Service of legal process for an appeal under this section shall be directed to a proper officer and shall be made as follows . . . (2) For any appeal taken on or after October 1, 2004, process shall be served in accordance with subdivision (5) of subsection (b) of [section] 52-57. Such service shall be for the purpose of providing legal notice of the appeal to the board and shall not thereby make the clerk of the municipality or the chairman or clerk of the board a necessary party to the appeal." General Statutes § 52-57 (b) provides in relevant part that "[p]rocess in civil actions against the following-described classes of defendants shall be served as follows . . . (5) against a board, commission, department or agency of a town, city or borough, notwithstanding any provision of law, upon the clerk of the town, city or borough, provided two copies of such process shall be served upon the clerk and the clerk shall retain one copy and forward the second copy to the board, commission, department or agency . . . ."

In the present case, the commission's decision was published in the Easton Courier on August 26, 2010. (ROR, Exh. 55.) The marshal's return attests that he served the Easton town clerk two copies of process on September 10, 2010, fifteen days later. Accordingly, the court finds this appeal to be timely and that service of process was proper.

III

DISCUSSION

"[A] special exception allows a property owner to use his property in a manner expressly permitted by the local zoning regulations. . . . Nevertheless, special exceptions, although

expressly permitted by local regulations, must satisfy [certain conditions and] standards set forth in the zoning regulations themselves as well as the conditions necessary to protect the public health, safety, convenience and property values [as required by General Statutes § 8-2]. . . . Moreover, [the court has] noted that the nature of special exceptions is such that their precise location and mode of operation must be regulated because of the topography, traffic problems, neighboring uses, etc., of the site. . . . [The court] also [has] recognized that, if not properly planned for, [such uses] might undermine the residential character of the neighborhood. . . . Thus, [the court has] explained that the goal of an application for a special exception is to seek permission to vary the use of a particular piece of property from that for which it is zoned, without offending the uses permitted as of right in the particular zoning district."[6] (Internal quotation marks omitted.) *Cambodian Buddhist Society of Connecticut, Inc.* v. *Planning & Zoning Commission*, 285 Conn. 381, 426-27, 941 A.2d 868 (2008). "When considering an application for a special exception, a zoning authority acts in an administrative capacity, and its function is to determine whether the proposed use is expressly permitted under the regulations, and whether the standards set forth in the regulations and statutes are satisfied." (Internal quotation marks omitted.) *Martland* v. *Zoning Commission*, 114 Conn. App. 655, 661, 971 A.2d 53 (2009). "The [plaintiff shoulders] the burden of demonstrating that the commission acted improperly." *Gevers* v. *Planning & Zoning Commission*, 94 Conn. App. 478, 483, 892 A.2d 979 (2006).

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[6] "The terms special permit and special exception are interchangeable." (Internal quotation marks omitted.) *Trumbull Falls, LLC* v. *Planning & Zoning Commission*, 97 Conn. App. 17, 20, 902 A.2d 706, cert. denied, 280 Conn. 923, 908 A.2d 545 (2006).

"[B]efore the zoning commission can determine whether the specially permitted use is compatible with the uses permitted as of right in the particular zoning district, it is required to judge whether any concerns, such as parking or traffic congestion, would adversely impact the surrounding neighborhood. . . . Connecticut courts have *never* held that a zoning commission lacks the ability to exercise discretion to determine whether the general standards in the regulations have been met in the special permit process." (Emphasis in original; internal quotation marks omitted.) *Martland* v. *Zoning Commission*, supra, 114 Conn. App. 661-62. "Generally, it is the function of a zoning board or commission to decide within prescribed limits and consistent with the exercise of [its] legal discretion, whether a particular section of the zoning regulations applies to a given situation and the manner in which it does apply. The [Appellate Court and] trial court [have] to decide whether the board correctly interpreted the section [of the regulations] and applied it with reasonable discretion to the facts. . . . In applying the law to the facts of a particular case, the board is endowed with a liberal discretion, and its action is subject to review by the courts only to determine whether it was unreasonable, arbitrary or illegal. . . . Although it is true that the zoning commission does not have discretion to deny a special permit when the proposal meets the standards, it does have discretion to determine *whether* the proposal meets the standards set forth in the regulations." (Citations omitted; emphasis in original.) *Irwin* v. *Planning & Zoning Commission*, 244 Conn. 619, 627-28, 711 A.2d 675 (1998).

"If, during the exercise of its discretion, the zoning commission decides that all of the standards enumerated in the special permit regulations are met, then it can no longer deny the application. The converse is, however, equally true. Thus, the zoning commission can exercise its discretion during the review of the proposed special exception, as it applies the regulations to

the specific application before it. . . . If, in denying the special permit, the zoning commission construed the special exception regulations beyond the fair import of their language, then the zoning commission acted in an arbitrary and illegal manner." (Citations omitted.) *Irwin* v. *Planning & Zoning Commission*, supra, 244 Conn. 628-29. "[O]n factual questions . . . a reviewing court cannot substitute its judgment for that of the agency." (Internal quotation marks omitted.) *Martland* v. *Zoning Commission*, supra, 114 Conn. App. 662. "A special permit may be denied only for failure to meet specific standards in the regulations, and not for vague or general reasons." (Internal quotation marks omitted.) *Bethlehem Christian Fellowship* v. *Planning & Zoning Commission*, 73 Conn. App. 442, 465, 807 A.2d 1089, cert. denied, 262 Conn. 928, 814 A.2d 379 (2002).

"In granting a special exception, the board may, in a proper case, impose a condition but only where it is warranted by the regulations." *Parish of St. Andrew's Church* v. *Zoning Board of Appeals*, 155 Conn. 350, 354, 232 A.2d 916 (1967). "When acting upon a special permit, the commission is authorized to impose conditions necessary to protect public health, safety, convenience and property values based on § 8-2 of the General Statutes. The conditions imposed must be in accordance with the comprehensive plan found in the zoning regulations and their general purpose. The board can grant a special permit if all the requirements of the ordinance have been satisfied and the applicant is willing to comply with conditions which the board can impose. While the cases refer to conditions to protect the public interest as a concept in approving special permits, this subject is not widely discussed. . . . The type of conditions authorized by [section] 8-2 depend upon the specific application before the agency. These additional conditions are to allow the granting of special permits, not to invent reasons to turn

them down." 9 R. Fuller, Connecticut Land Use Law and Practice (3d Ed. 2007) § 5:3, pp. 183-84. "While the special permit cases do not discuss the type of conditions which the agency may consider in satisfying § 8-2, other cases suggest that the agency cannot deny a special permit application which meets the criteria in the agency's existing regulations." Id., § 5:4, p. 184.

"[C]onditions attached to a special permit are not per se invalid. Rather, their validity must be determined on a case-by-case basis. A key determinant in whether a condition to a special permit is valid is that condition's relationship to the action sought by the applicant." *Kobyluck* v. *Planning & Zoning Commission*, 84 Conn. App. 160, 171, 852 A.2d 826, cert. denied, 271 Conn. 923, 859 A.2d 579 (2004). "Conditions imposed by a zoning board of appeals must be expressed with sufficient clarity to inform the applicant of the limitations upon the use of the land, and to protect nearby owners. Thus, conditions have been held to be ineffectively expressed where they limited use in terms of the applicant's verbal statements to the board. Conditions that are too vague, or not clearly articulated are found to be void. To be enforceable, conditions must be expressed in sufficiently definite terms to enable the permit holder, adjacent landowners, and all interested parties to know what is required of the permit holder." (Internal quotation marks omitted.) *Anatra* v. *Zoning Board of Appeals*, 127 Conn. App. 125, 135-36, 14 A.3d 386 (2011).

In *Farmington* v. *Viacom Broadcasting, Inc.*, 10 Conn. App. 190, 196, 522 A.2d 318, cert. denied, 203 Conn. 808, 525 A.2d 523 (1987), the court stated that "[w]here it appears that a local zoning authority has made an honest judgment [that] has been reasonably and fairly exercised after a full hearing, courts should be cautious about disturbing the decision of the local authority. . . .[The court] will not substitute [its] discretion for the actions of a local zoning agency."

(Citation omitted; internal quotation marks omitted.) Id. One of the issues in that case was "whether the trial court erred in concluding that the plaintiff [commission] had authority to require that the defendant dismantle its standby broadcast tower as a condition of granting the defendant's special exception for the construction of a new, taller broadcast tower . . . ." (Internal quotation marks omitted.) Id., 191. The court found that "[a]s the commission has the statutory authority to grant special exceptions only if certain requirements relating to safety and aesthetics are met, the commission could reasonably have granted a special exception for a new broadcast tower on the condition that the defendant remove the standby tower." Id., 196. In *Farmington*, the court cited to *Lurie* v. *Planning & Zoning Commission*, 160 Conn. 295, 278 A.2d 799 (1971), which held that "a zoning commission had the authority reasonably to condition the grant of a special permit upon certain on and off-site changes and improvements by the applicant and by other town agencies not under the commission's control." Id., 194. "[T]he [*Lurie*] court noted that [General Statutes] § 8-2 permitted local zoning authorities to impose certain standards and conditions on the use of property when the public interest required it." (Internal quotation marks omitted.) Id., 195.

A

Traffic Considerations

First, the court will address the appropriateness of evaluating traffic considerations in this case. The plaintiff argues in its brief and at trial that conditions three[7] and four[8] are traffic-based,

[7] "The maximum attendance at each event shall be limited to 300 persons and not more than 30 staff or presenters." (ROR, Exh. 56.)

[8] "All parking and loading on the site shall be limited to the spaces provided for such as shown on the site plan, and there shall be no parking off-site." (ROR, Exh. 56.)

as they articulate limitations on attendance and parking. The plaintiff contends that under Connecticut law, offsite traffic considerations do not pertain to applications for special permits unless the regulations at issue explicitly permit such inquiry. The plaintiff is thus arguing that the third and fourth conditions attached to its special permit application should be eliminated due to their traffic-based nature. The commission contends that there is no attempt to talk about offsite traffic in this situation, but rather the conditions are based on what the plaintiff represented to the commission for onsite considerations.

In *Friedman* v. *Planning & Zoning Commission*, 222 Conn. 262, 266, 608 A.2d 1178 (1992), our Supreme Court stated that "[past decisions] serve to illuminate two propositions with respect to the role of traffic considerations in weighing site plan applications. First, the language of a given zoning regulation may, by its textual content, limit the scope of the use of traffic considerations. Second, once a zoning authority establishes that a particular use within a zone is permitted, e.g., an office building or a church, a conclusive presumption arises that such a use in general, does not adversely affect the traffic within the zone. Neither of these tenets, however, precludes an examination into the special traffic consequences of a given site plan when the applicable zoning regulations permit it." Id.

Here, it is not clear that the regulations permit the commission to examine offsite traffic considerations. Indeed, the challenged conditions themselves do not mention anything about offsite traffic considerations. While restrictions on number of people and parking could theoretically implicate offsite traffic concerns, the commission does not make a traffic-based argument as to either condition. On the contrary, with regard to the third condition in particular, the commission even states in its trial brief that "this particular condition pertains to *onsite*

conditions, not offsite." (Emphasis in original.) The court takes the commission's arguments at face value and will not impute meaning that is not there, and will proceed to address the plaintiff's appeal of the special conditions imposed on its special permit via an examination of the record. Accordingly, the court will not consider these grounds as to conditions three and four.

B

Standard of Review

In the present case, the commission issued a decision to the plaintiff on August 30, 2010, that included its findings and listed the special conditions, five of which are now at issue. (ROR, Exh. 56.) The commission did not state reasons why it included the special conditions. Id. "[A] commission's failure to state on the record the reasons for its actions . . . renders appellate review more cumbersome, in that the trial court must search the entire record to find a basis for the commission's decision." (Internal quotation marks omitted.) *Graff* v. *Zoning Board of Appeals*, 277 Conn. 645, 670, 894 A.2d 285 (2006). "In appeals from administrative zoning decisions, the commission's conclusions will be invalidated only if they are not supported by substantial evidence in the record." (Internal quotation marks omitted.) *Heithaus* v. *Planning & Zoning Commission*, 258 Conn. 205, 221, 779 A.2d 750 (2001). "The settled standard of review of questions of fact determined by a zoning authority is that a court may not substitute its judgment for that of the zoning authority as long as it reflects an honest judgment reasonably exercised. . . . The court's review is based on the record, which includes the knowledge of the board members gained through personal observation of the site . . . or through their personal knowledge of the area involved." (Internal quotation marks omitted.) *Timber Trails Associates* v. *Planning & Zoning Commission*, 99 Conn. App. 768, 783, 916 A.2d 99 (2007).

"Substantial . . . evidence is that which carries conviction. It is such evidence as a reasonable mind might accept as adequate to support a conclusion. It means something more than a mere scintilla and must do more than create a suspicion of the existence of the fact to be established." (Internal quotation marks omitted.) *Raczkowski* v. *Zoning Commission*, 53 Conn. App. 636, 641, 733 A.2d 862, cert. denied, 250 Conn. 921, 738 A.2d 658 (1999). "This so-called substantial evidence rule is similar to the sufficiency of the evidence standard applied in judicial review of jury verdicts, and evidence is sufficient to sustain an agency finding if it affords a substantial basis of fact from which the fact in issue can be reasonably inferred. . . . [I]t must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury. . . . The corollary to this rule is that absent substantial evidence in the record, a court may not affirm the decision of the board." (Internal quotation marks omitted.) *Martland* v. *Zoning Commission*, supra, 114 Conn. App. 663. "The United States Supreme Court, in defining substantial evidence in the directed verdict formulation, has said that it is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. . . . The reviewing court must take into account [that there is] contradictory evidence in the record . . . but the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence . . . ." (Internal quotation marks omitted.) *Samperi* v. *Inland Wetlands Agency*, 226 Conn. 579, 588, 628 A.2d 1286 (1993).

In *Martland* v. *Zoning Commission*, supra, 114 Conn. App. 667, the court held that "the requirement of [a] restoration condition [on the plaintiffs' special permit application] was

improper," because the record did not reveal substantial evidence to support the imposition of the condition. Id. The restoration condition instructed the plaintiffs to restore, after excavation, all disturbed areas above water level to a comparable condition prior to excavation. Id., 658. The court stated that upon "review of the entire record . . . the evidence pertaining to [a] berm [in existence before excavation] as a noise buffer is not substantial because it is not supported by anything other than speculation and conjecture on the part of those objecting to the plaintiffs' proposed activities. . . . Neither [witness] indicated any type of expertise that would buttress their lay opinion on the berm's ability to buffer the surrounding areas from noise. Their statements relating to the change in noise if the berm was not restored amount to speculation and a general, unsubstantiated concern. . . . There was no scientific data comparing the noise levels of the area with the berm in its present and proposed conditions. . . . Even if we assume arguendo that the noise level would increase as a result of the changes to the berm, the record is devoid of any evidence indicating how much of a noise increase would be permissible before the public health, safety, convenience or property values would be impacted." (Citations omitted). Id., 665-66. The court also found that "there [was] nothing to support the claim that [the berm] acted as a vegetative buffer [either]." Id., 668.

C

Application

1

The first condition imposed by the commission on the plaintiff states: "Provide a Conservation Easement over the 100-year flood plain area of the Mill River designed to protect the natural vegetation and ecology of the area as recommended on the adopted Town Plan of

Conservation and Development. A limited trail easement may be included within the Conservation Easement as desired by the Prayer Center." The plaintiff argues that it does not object conceptually to the conservation easement but wants to maintain the historic use of a picnic area contained on the property within the contemplated conservation easement area and to further ensure that conservation easement would not preclude allowance for pedestrian walking trails along the length of the river abutting the plaintiff's property so as to provide proper access to the river for recreational fishing as the plaintiff has done in the past. The plaintiff also argues against any attempt to create unrestricted public access due to concerns with security and trespass. The plaintiff contends that the commission did not provide a specific draft conservation easement supplementing this condition and unless or until it does so, the condition is unduly vague and unenforceable.

The commission counters that the actual drafting of such an easement would not occur simultaneously with the commission's resolution of approval, but rather at a later date, with the assistance of legal counsel. The commission posits that the plaintiff would have ample time to review and comment on such a draft at the appropriate time. The commission contends that the condition is standard and reasonable.

A review of the record reveals the following evidence. At the July 12, 2010 public hearing of the commission, neighbor Chris Miles stated: "I heard talk about public access to the property and I was not, I did not hear anything about particular easements that were clearly established for public access to the property, whether or not the town will be given an easement so people may fish or walk along the river bank or use the property in other ways and given that may, that is, one of the intended benefits of this type of development, should you decide to

approve it, I would like to see some actual enforceable access for the town residents that, if in fact, it is determined that it is something beneficial that we can . . . benefit as townspeople, actually use the property." (Supplemental Return of Record [SROR], Exh. 58, PZC Transcript 7/12/10, p. 43.) In response to Miles, the plaintiff's attorney, John Fallon, stated: "The Conservation Commission is studying the issue as part of their ongoing hearing process, conservation easements and potential public access." (Id.)

In Attorney Fallon's opening statement to the commission at the August 9, 2010 public hearing of the commission, he stated that "it is our intention as we have indicated with Trout Unlimited to work with them very very affirmably and constructively to make sure that programs with regard to access to the river for recreational fishing are maintained. We have even had very positive conversations with them in terms of participation in some of their educational programs that they conduct with regards to the river. Our concern with regard to unbridled public access relates to questions in security with regard to the property. The Blazes, who owned the property and resided at the property for many decades, know firsthand the difficulty that has arisen with regard to maintaining proper and safe access and proper and safe control of the property. We worry greatly about an unbridled public access with a parking lot or parking area that instead of becoming a parking area for supervised and monitored programs and access to the river for recreational fishing or other passive recreational activities could become a late night haven for gatherings and so on and so forth and we have really experienced in the past and have tried to police on our own so we hope you would not impose a public access requirement because we just do not think that is productive or necessary in order to accomplish the environmental and recreational goals that we all want to accomplish." (SROR, Exh. 59, PZC Transcript 8/9/10, p.

3.) Attorney Fallon submitted to the commission that Trout Unlimited was "sensitive to [the plaintiff's] concerns and considerations about just a public access easement that could allow anybody for any [reason] on the property." (Id., p. 5.) The commission's chairman, Robert Maquat (commission's chairman), replied: "Very general." (Id.) Attorney Fallon stated: "Our goal though is not to be exclusive with regard to the property, I just want to emphasize that, but we want to be inclusive with regard to the fishermen and other legitimate community activities that can enjoy the river resources but we do ask you, however, not to impose a general public access easement because of our concerns." (Id., p. 7.)

Additionally, Attorney Fallon stated: "We prefer not to have a public access easement, a documented public access that tries to define who and when and how we come on the property. What we would rather do is and suggest to you is that in terms of the primary focus movement, constituencies of interest with regard to that access, that being Trout Unlimited and the recreational fishermen that they represent, we have engaged in a very close dialogue. . . . There is no public access easement in place with regard to the shoreline now and yet it is a rich resource for recreational fishermen and that is because of the Blazes in their ownership of the property for so many decades has seen to that. We would like to maintain that status quo because we are afraid if we start to codify a public access, you know, we may limit it in such a way that would be unfair to others and may open it up in such a way that will raise concerns that we sincerely have about security and safety." (SROR, Exh. 59, PZC Transcript 8/9/10, pp. 23-24.)

In a document entitled "Additional remarks read by Fred Zarrilli, NEPC Board Member and President," dated August 9, 2010, the plaintiff states, regarding public access: "As we have already presented, we intend to operate the property in a manner that is welcoming of all.

However we do not intend for this to be taken to mean that we intend to offer broad public access or public easement per se in the legal sense that may be applicable to public parks and the like. As a general matter, [the plaintiff's] programs and ministry is available to all and enjoyment of the grounds will be widely available to [the plaintiff's] attendees, within reasonable and customary guidelines and limitations. We view this as consistent with what one would find at churches and house of worship generally. Consistent with this, we expect and require that [the plaintiff's] rights and privileges of ownership and operation of the property are the same as those applicable generally to churches and houses of worship." (ROR, Exh. 42.)

At the August 23, 2010 commission meeting, the commission's chairman stated: "You know, when the conservation easement language is drafted, this is when we would take this up. The way we word this sentence, a limited trail easement may be included within the conservation easement as desired by the prayer center. What I envision is that you folks come back to us perhaps during the language of that conservation easement and we can address it then, rather than trying to drill down, too specific, now, where, frankly, we do not completely understand your needs and yet I think you understand where we are coming from." (SROR, Exh. 60, PZC Transcript 8/23/10, p. 5.) The commission discussed aspects of this condition, and the commission's chairman again stated that he thought "these are all things that we will deal with, when the construction of the conservation easement, is front and center. . . . I think, from a planning function, we can address that from a planning standpoint at that time." (Id., p. 6.)

The parties agree that the terms of an easement have not yet been established and are, accordingly, unknown because they do not exist. Thus, the court finds this condition of approval "too vague [and] not clearly articulated" because it is not "expressed in sufficiently definite terms