

NO. NNH-CV-16-6061972-S

SUPERIOR COURT

AUTUMN VIEW LLC, STATEWIDE  
CONSTRUCTION CORPORATION,  
AND VICKI IMPERATO

JUDICIAL DISTRICT  
OF NEW HAVEN

v.

EAST HAVEN PLANNING AND  
ZONING COMMISSION

~~JANUARY~~, ~~2022~~FEBRUARY 2023

**JOINT MOTION FOR APPROVAL OF SETTLEMENT AND  
ENTRY OF JUDGMENT IN ACCORDANCE WITH STIPULATION**

Pursuant to General Statutes § 8-8(n) and Practice Book § 14-7B(i), plaintiffs Autumn View LLC, Statewide Construction Corporation, and Vicki Imperato (collectively referred to hereinafter as the "Plaintiffs"); and defendant East Haven Planning and Zoning Commission, hereby move for (1) court approval of a settlement of this appeal for the reasons set forth below; and (2) entry of judgment in accordance with the stipulation set forth below.

I. FACTS ON WHICH THIS MOTION IS BASED.

1. Plaintiff Autumn View LLC ("Autumn View") is a Connecticut limited liability corporation with an office at 445 Foxon Road, North Branford, Connecticut 06471.

2. Plaintiff Statewide Construction Corporation is a Connecticut corporation, with a principal place of business at 445 Foxon Road, North Branford, Connecticut 06471.

3. Plaintiff Vicki Imperato, a resident of North Branford, Connecticut, is the managing member of plaintiff Autumn View LLC, the president of plaintiff Statewide Construction Corporation.

4. Collectively, the Plaintiffs are the owner of approximately 17 acres located at 92, 100, 110, 118, 126, 180, and 242 Strong Street, East Haven.

5. The East Haven Planning and Zoning Commission ("Commission") is the agency designated by the Town of East Haven to receive, process, and act upon applications for zoning regulation amendments, zone changes, site plan approvals, and requests for extensions of site plan approvals in the Town of East Haven.

6. On February 7, 2007, the Commission approved a Planned Elderly Zoning District development plan for the subject property, for a 51-unit, age-restricted, residential development on 14 acres, and including a stormwater drainage system designed by the applicant's engineer and reviewed and approved by the Town Engineer.

7. In December 2012, while reserving its approval and rights under the 2007 plan, the plaintiffs filed an application with the Commission for a zoning regulation amendment, rezoning of the 17 acres, and a 105 planned unit development plan on 17 acres, not age-restricted, but with a 30 percent set aside of units for low and moderate income households in compliance with General Statute § 8-30g.

8. The § 8-30g application was denied in March 2013, and then resubmitted to the Commission three weeks later, with several plan revisions and a reduction in unit count to 102.

9. The revised plan was denied in June 2013, and appealed to Superior Court, and transferred to the Hartford Land Use Docket, with rights to the 2007 approval still reserved. Docket No. HHD (LND)-CV-13-6043869 (Super. Ct., 2014).

10. In December 2014, the Superior Court (The Hon. Marshall K. Berger, Jr. hereinafter referred to as "Judge Berger") issued a Memorandum partially sustaining the appeal, but remanding for further analysis of stormwater management.

11. During 2015 and 2016, the Plaintiffs further revised their 2012 development plan to improve stormwater management, resulting in a reduction in density to 98 units.

12. Meanwhile, on December 9, 2015, Autumn View submitted a letter to the Commission requesting a five (5) year extension of the 2007 approved site plan, pursuant to General Statutes § 8-3(m).

13. At its March 2, 2016 meeting, the Commission approved a text change to Section 48 of the Town of East Haven Zoning Regulations relating to stormwater management. The effective date of the text changes was March 17, 2016.

14. The Commission discussed Autumn View's 2007 extension plan request at its April 6, 2016 meeting and voted to approve the five (5) year extension request but with the following condition: "[No] building permits issued until a new updated drainage plan based on the current storm-water management regulations [effective March 17, 2016] provided to the [Town] engineer for any and all drainage then approved by the town engineer."

15. The Plaintiffs appealed this action (*Autumn View LLC, et al. v. East Haven Planning and Zoning Commission*, Docket No. NNH-CV16-6061972-S) to this Court, alleging that the condition attached to the extended site plan was *ultra vires*, arbitrary, illegal, and an abuse of the Commission's discretion.

16. In September 2016, the plaintiffs, while still reserving their rights in the 2007 plan, continued with their pursuit of the 98 home planned unit development plan, with an updated and revised stormwater plan as directed by the Superior Court's December 2014 decision and remand.

17. In January 2017, the Commission denied the 98 unit plan, which denial the plaintiffs appealed to Superior Court (continued as Docket No. HHD (LND)-CV-13-6043869-S).

18. On July 24, 2017, Judge Berger sustained the appeal and ordered the regulation amendment, zone change, and site plan approved, with certain conditions of approval as contained in correspondence dated December 8, 2016 from professional engineer Geoffrey L. Jacobson to Alfred J. Zullo, the Commission's then counsel.

19. After certification of an appeal, the Appellate Court on September 24, 2019 affirmed the trial court decision, 193 Conn.-App. 18, after which the Supreme Court denied further review.

20. In 2020, with the 2007 plan still reserved and the 2016 extension on appeal, and the 98 unit affordable housing plan approved, the Plaintiffs initiated efforts to arrive at a compromise development plan.

21. On September 2, 2020, the Commission approved the zoning regulation amendment, zone change, and site plan that governed and permitted the 98 unit development plan, which approvals had been directed by the Court (Judge Berger) in its December 23, 2014 and July 24, 2017 decisions in the matter of *Autumn View, LLC, et al. v. East Haven Planning and Zoning Commission*, bearing Docket No. HHD (LND)-CV13-6043869-S. Specifically, the Commission voted to approve:

- a. Plaintiffs' application to amend the East Haven Zoning Regulations to create a Mixed Income Housing District (MIHD) in accordance with the resubmitted draft amendments to the Zoning Regulations dated March 27, 2013;
- b. Plaintiffs' application to rezone the properties at 92, 100, 110, 118, and 126 Strong Street from R-3 to MIHD and 180 and 242 Strong Street from PEFD to MIHD; and
- c. Plaintiffs' site plan application for the aforesaid properties revised through December 8, 2016 with the conditions of approval contained in Geoffrey L. Jacobson's December 8, 2016 correspondence to Alfred J. Zullo, Esquire, which does include the Town Engineer confirming the development's compliance with Mr. Jacobson's correspondence.

22. In April 2021, the Plaintiffs filed an application with the Commission for a regulation amendment that would allow a reduced development, with a density reduction from 98 units to 69 units, to be developed as a planned unit development, with no age restriction or affordable component.

23. The commencement of the public hearing on this regulation amendment in June 2021, as a new application, led to further discussions between the parties aimed at resolving questions and uncertainty among the Commission members regarding the action directed by the Court; the site-specific regulation; the proposed multiple-step approval process; the relationship of the 2021 application to the 2016 conditional approval of the 2007 site plan extension; and the best way to resolve all pending matters in a single settlement.

II. SECTION 8-8(n) MOTION FOR APPROVAL OF SETTLEMENT AND ENTRY OF JUDGMENT IN ACCORDANCE WITH STIPULATION.

24. Based on the foregoing, the parties at this time move under General Statutes § 8-8(n) and Practice Book § 14-7B(i) for approval of a settlement as described below, and entry of judgment in accordance with the stipulation as described below.

25. The Commission hereby adopts the revised zoning regulation amendment, "Planned Unit Development District," attached as Exhibit A to this motion, intending that it supersedes and replaces the former MIHD zoning of the subject property and the regulation amendment at § 30A adopted on September 2, 2020. Thus, the previously adopted § 30A shall be deleted and the new § 27A as set forth in Exhibit A attached hereto shall be added to the Zoning Regulations.

26. The Commission hereby rezones the 14.75 acres, consisting of 180 and 242 Strong Street, as more particularly described in a metes and bounds description attached hereto as Exhibit B, from MIHD to Planned Unit Development District, and shown on a survey map, Exhibit C, attached. A Site Layout Plan illustrating the development intended by the adoption of Exhibit A is attached hereto as Exhibits D and E.

27. The Commission hereby rezones 3+/- acres, consisting of 92, 100, 110, 118, and 126 Strong Street, as more particularly described in a metes and bounds description attached as Exhibit F, from MIHD to R-3, and shown on a survey map, Exhibit G, attached.

28. The mutual intention of the parties is that upon the Commission's adoption of the above-referenced regulation amendment and rezoning as shown in Exhibits A, B, C, and D and such Commission actions becoming final and unappealable through the approval of this settlement and entry of judgment, the Plaintiffs shall move under § 8-8(n) and P.B. § 14-7BG) to withdraw this 2016 appeal; shall relinquish all claims, rights, and approvals arising from the 2007 PEFD (51 unit development plan) shall relinquish all claims, rights, and approvals arising from the 98 unit/C.G.S. § 8-30g development plan; and shall relinquish all claims, rights, and approvals arising from the Commission's September 2, 2020 action.

29. The parties filed the proposed regulation amendment Exhibit A, along with maps. The Commission published notice of its consideration of this Stipulation in a newspaper of general circulation on ~~December~~February 9, 2021-2023 advising interested members of the public that they could appear and offer public comment on same at its ~~regular~~special meeting held on ~~January~~February 15, 2022-2023. In addition, prior thereto, for the Commission's regular meeting held on February 1, 2023, discussion of the status of the proposed Stipulation appeared on the meeting agenda and the scheduling of the February 15, 2023 meeting for receipt of public comment on the Stipulation, inter alia, was announced. After review and consideration and all public comment received, the Commission voted at its \_\_\_\_\_, 2023 \_\_\_\_\_ meeting to authorize undersigned counsel for the Commission to execute the Stipulation on its behalf.

30. This Stipulation will be recorded on the East Haven land records following entry of judgment in accordance therewith by the Court in the above-captioned action.

31. **Non-Admission of Liability.** The entry by the parties into this Stipulation shall not be construed as an admission of liability of any party hereto.

32. **No Representation.** Each party hereto acknowledges that no other party or any agent or attorney of any other party, or any other person, firm, corporation, or any other entity has made any promise, representation or warranty whatsoever, express or implied, not contained

herein concerning the subject matter of this Stipulation to induce the execution of this instrument, and each signatory hereby acknowledges that he, she or it has not executed this instrument in reliance on any promise, representation or warranty not contained in this Stipulation.

33. **Counterparts.** This Stipulation may be executed in separate counterparts, each of which shall be deemed to be a fully executed original as to all parties that have executed any one or more of those separate counterparts. The execution of this Stipulation and the transmission thereof by facsimile or electronic (e-mail) shall be binding on the party signing and transmitting same by facsimile or electronic (e-mail) fully and to the same extent as if a counterpart of this Stipulation bearing such party's original signature had been delivered. Notwithstanding the foregoing, the parties shall exchange original counterparts of the Stipulation promptly following execution hereof.

34. **Binding Effect.** This Stipulation shall be binding upon and inure to the benefit of the parties hereto, and each and all of their heirs, personal representatives, successors, and assigns.

35. **Construction.** This Stipulation shall be construed without regard to the party or parties responsible for its preparation and shall be deemed as having been prepared jointly by the parties hereto. Any ambiguity or uncertainty existing herein shall not be interpreted or construed against any party hereto. This Stipulation shall be construed as a whole according to its plain meaning.

36. **Entire Agreement.** This Stipulation, together with Exhibits and attachments hereto constitutes the entire agreement of the parties and supersedes all prior or contemporaneous agreements, discussions, or representations, oral or written, with respect to the subject matter hereof, and each of the parties hereto states that he/she/it has read each of the paragraphs hereof and that he/she/it understands the same and understands the legal obligations created thereby.



37. **Notices.** Any notices given or required to be given under this Stipulation shall be in writing and delivered either personally or via certified mail, or via commercial overnight courier and by electronic (e-mail) mail as follows:

- a. Any notice given to the Plaintiffs shall be sent simultaneously to the following addresses:

~~Timothy Hollister~~Bernard  
~~Pellegrino, Esq. Hinckley~~  
~~Allen~~The Pellegrino Law Firm  
~~20 Church Street~~475 Whitney Avenue  
~~Hartford, CT 06103-1221~~New  
Haven, CT 06511  
~~thollister@hinckleyallen.com~~BP  
~~@pellegrinolawfirm.com~~

- b. Any notice to the Commission shall be sent to the following address:

Jennifer Coppola, Esq.  
Ciulla & Donofrio, LLP  
127 Washington Avenue  
North Haven, CT 06473  
JCoppola@CD-LLP.com

Joseph Budrow  
Planning and Zoning Administrator  
And Zoning Enforcement Officer  
Town of East Haven  
250 Main Street  
East Haven, CT 06512  
[jbudrow@townofcathavenct.org](mailto:jbudrow@townofcathavenct.org)

Notices delivered personally or by overnight mail, shall be deemed given when received, as well as electronic (e-mail) messages. Notices delivered by mail shall be deemed given three (3) business days after mailing. Parties may change their address for notices in a notice given pursuant to this paragraph.

38. **Power and Authority to Execute.** Each party hereto represents and warrants that it has the full power and authority to execute, deliver and perform this Stipulation, that each individual signing on behalf of a party has been duly authorized by that party to execute this Stipulation on its behalf, and

that no claims being released under the terms of this Stipulation have been assigned, sold, or otherwise transferred to any other entity.

39. **Advice of Counsel.** Each of the parties has had the benefit of the advice of counsel of its own choice in the negotiating, drafting and execution of this Stipulation, and the language in all parts of this Stipulation is a product of the efforts of all parties and their respective counsel.

40. **No Duress.** The parties acknowledge that they have entered into this Stipulation freely and voluntarily, with the advice of counsel, and without duress.

THE PLAINTIFFS -  
AUTUMN VIEW LLC, STATEWIDE  
CONSTRUCTION CORPORATION,  
AND VICKI IMPERATO

By \_\_\_\_\_

~~Timothy S. Hollister~~ Bernard A. Pellegrino  
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Attorney

THE DEFENDANT -  
PLANNING AND ZONING  
COMMISSION OF TOWN OF EAST HAVEN

By \_\_\_\_\_

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Firm Juris No. 412770  
Its Attorney

**EXHIBIT A**

AMENDMENTS TO ZONING REGULATIONS OF EAST HAVEN TO  
CREATE A NEW PLANNED UNIT DEVELOPMENT ("PUD") DISTRICT

- I. Amend ARTICLE II DISTRICT REQUIREMENTS, SECTION 21  
DISTRICTS to add:

Planned Unit Development      PUD

- II. Amend ARTICLE II DISTRICT REQUIREMENTS, SECTION 23  
PURPOSE OF DISTRICTS to add Section 23.25, as follows:

Planned Unit Development District

This district is designed to increase economic diversity of housing types in East Haven by encouraging the development of single-family homes in a planned unit development.

- III. Amend ARTICLE II DISTRICT REQUIREMENTS by establishing a new  
Section as Section 27A as follows:

**SECTION 27A: PLANNED UNIT DEVELOPMENT (PUD) DISTRICT**

**27A.I Purpose:** Planned Unit Development Districts may be established by the Commission on a parcel or parcels in accordance with the procedures, standards and conditions herein specified when necessary and appropriate for the following purpose:

**27A.1.1** To permit tracts of land to be developed, redeveloped and improved as design units for family housing in a diverse community. Such tracts of land shall comply with the following Regulations:

**27A.2 Site Area and Characteristics**

**27A.2.1** Be currently zoned Mixed Income Housing (MIH) District;

**27A.2.2** Be currently undeveloped;

**27A.2.3** Have a total parcel size, when combined, of no fewer than twelve (12) and no more than fifteen (15) acres;

**27A.2.4** Have frontage and points of ingress and egress on Strong Street;  
and

**27A.2.5** Have access to public sewers and water supply.

### **27A.3 Uses Permitted by Site Plan Approval**

**27A.3.1** Single family residential dwellings in a common interest ownership community with a total density of not more than five (5) residential units per gross acre.

### **27A.4 Site Development Standards**

**27A.4.1** Earth materials excavation and removal:

**27A.4.1.2** The provisions of Section 31 requiring approval of a temporary special exception for excavation, clearing, grading, filling, material removal, blasting, and related activities shall not apply to necessary operations in connection with the construction or improvements and the changing of contours in an approved PUD conducted in accordance with the construction and grading plans in a site plan approved by the Commission under these PUD Regulations.

**27A.4.1.3** Such site work may include the temporary stockpiling of material on the site and removal of excess excavated materials not required for on-site reuse.

**27A.4.1.4** Such site work shall not include the operation of a quarry on the property.

**27A.4.1.5** Although no temporary special exception is required, the excavation, clearing, grading, filling, material removal, blasting, and related activities conducted pursuant to site plan approval for a PUD shall nonetheless meet the following standards of:

- a.** The bonding requirements of Section 31.4.5 of the Regulations;

- b. Standards and conditions of Section 31.5 of the Regulations; and
- c. Provisions of Section 31.6 of these Regulations relating to inspections and periodic inspections.

**27A.4.2** Sediment and erosion control:

**27A.4.2.1** The site plan shall comply with Section 47 of these Regulations.

**27A.4.3** Stormwater management:

**27A.4.3.1** The site plan shall comply with Section 48 of these Regulations.

**27A.5 Building Bulk and Coverage**

**27A.5.1 Lot-Related Standards** (for parcels combined for PUD)

Maximum building coverage as a percent of combined parcel area	20 percent
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Maximum combined building coverage, parking, driveway as a percent of combined parcel area	35 percent
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**27A.5.2 Principal Building Standards**

Maximum height	35 feet
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Maximum stories	2 stories
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Minimum setback from road curb	24 feet
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Minimum setback from rear property line	30 feet
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Minimum setback from side property line	15 feet
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Minimum distance between dwelling units	15 feet
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## 27A.6 Site Plan Standards

### 27A.6.1 Streets and Driveways:

27A.6.1.1 Internal roadways and entrances/exits for the development shall be:

27A.6.1.1.1 Twenty-six (26) feet wide;

27A.6.1.1.2 Surfaced with Class I and Class II asphalt, each course being an inch and a half (1 ½”);

27A.6.1.1.3 Laid out so as to prevent traffic hazards and nuisances; and

27A.6.1.1.4 On-street parking on all internal roadways shall be limited to one (1) side of the roadway only and appropriate signage shall be posted providing notice of this restriction.

### 27A.6.1.2 Driveways shall be:

27A.6.1.2.1 Twenty (20) feet wide; and

27A.6.1.2.2 Be surfaced with Class II Asphalt.

27A.6.1.3 Outdoor lighting shall be provided and maintained at all access points to streets and elsewhere where required for the safety of vehicular or pedestrian traffic.

### 27A.6.1.4 Sidewalks shall:

27A.6.1.4.1 Have a minimum width of five (5) feet plus a 0.5 foot concrete curb;

27A.6.1.4.2 Be provided on one side of each internal roadway;

27A.6.1.4.3 Be concrete, ~~provided that curbs may be Class II asphalt instead of concrete;~~

27A.6.1.4.4 Have crosswalks located where deemed necessary by the Commission in its discretion; and

**27A.6.1.4.5** Have handicapped accessible ramps at all crosswalks.

**27A.6.2 Parking:**

**27A.6.2.1** Each dwelling unit shall have a one-car or two-car garage.

**27A.6.3 Utilities:**

**27A.6.3.1** All PUD developments shall be served by municipal sanitary sewers and public water supply; and

**27A.6.3.2** Utilities, including, but not limited to, electric, telephone, gas, water, and sanitary sewers shall be located underground, except that, for PUD units with direct driveway access onto public highways, utilities may be located overhead.



**EXHIBITS B THROUGH G  
TO BE UPDATED**