

Fahey & Landolina, Attorneys LLC

A Connecticut Limited Liability Company

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Charles Karno
Office of the Town Planner
Town of Ledyard
741 Colonel Ledyard Road
Ledyard, CT 06339

Re: 40 Chriswood Trace, Ledyard

Dear Charlie:

Recently you forwarded to me a letter from Attorney Harry Heller to Mr. Dalton. The letter involves the proposed division of a parcel of land located at 40 Chriswood Trace. In that letter, Attorney Heller makes the argument that, despite the property being located in the R-60 Zone, the parcel should be permitted to be divided in accordance with the R-40 Regulations.

Based upon my review of the letter, the 1987 subdivision plan referred to in the letter, the current zoning regulations and applicable state law, it is my opinion that the parcel, if divided, must conform to the regulations presently applicable to the R-60 Zone.

My understanding of the applicable facts are as follows:

1. In 1987 the Planning Commission approved a multi-lot subdivision known as "Chriswood III Resubdivision".
2. The subdivision was approved under the Cluster Residential Development (Section 3.6 of the then existing regulations).
3. Under the Cluster Regulations once certain conditions were met (i.e. 15% open space dedication, community water system) the developer was entitled to a density bonus. It is my understanding that this density bonus permitted the developer to use the R-40 area requirements to size the lots despite the fact that the property was located in the R-60 Zone.

4. At the time, John and Ethel Watson owned a parcel of land abutting the subdivision.
5. Once Chriswood Trace was constructed, the Watson parcel had frontage along this new road.
6. The Watson parcel, although "shown" on the Chriswood Trace plan, was not part of the approved plan. Unless I am mistaken the area of the parcel was not used to calculate the open space requirement.
7. The present owner of the parcel would like to divide the parcel and use the "density bonus" applicable to the subdivision in 1987.

Generally speaking, when any parcel is developed it must conform to those Zoning Regulations in existence at the time of its development. This general rule holds true for the subdivision or division of land. CGS § 8-26a provides an "exception" to this general rule however. The statute provides that lots in subdivisions are not required to conform to changes in Zoning Regulations made subsequent to the approval of the subdivision. This section also provides that construction on a vacant lot shown on an approved subdivision or re-subdivision plan is not required to conform to changes in the Zoning Regulations made subsequent to the approval of the subdivision plans.

I am not aware of any other statutory protection for subdivision lots. This statute does not appear to apply to Watson parcel.

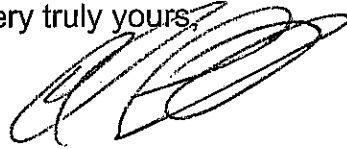
First, while the Watson property is "shown" on the 1987 subdivision plan, it is shown only as an abutting parcel. The Watson parcel was not surveyed or made part of the subdivision plan. This is clear as the parcel is not given a lot number nor are the boundaries of the parcel "closed" to form a surveyed lot. It is my opinion that the sole purpose of showing the parcel is to establish the parcel as abutting land. Consequently, the lot is not a "lot or lots shown on the subdivision or re-subdivision plan" as that phrase is used in CGS § 8-26a. There are at least twenty abutting parcels shown on the 1987 plan. I can't imagine that any of these parcels are entitled to the density bonus applicable in 1987 simply because the lot owners names appear on the subdivision plan.

Attorney Heller also comments that the Cluster Residential Development Regulations have not been revoked despite their apparent replacement with the Conservation Subdivision Regulations. I cannot find any reference in the current regulations to the prior Cluster Regulations. You have also indicated that this prior section no longer exists. I can only assume that this section was written out of the regulations. I'm not sure what else a Commission should do to "revoke" a regulation it no longer considers viable or useful.

Accordingly, since the Watson property is not part of the 1987 subdivision it is not entitled to the density bonus provided at the time. The parcel's "inclusion" on the 1987 plan is there for the same reason twenty other adjacent properties are shown, surveys always show abutting parcels. Therefore, it is my opinion that any development upon, or division of, the Watson parcel must conform to the regulations presently in effect.

If you have any questions regarding this matter do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Carl T. Landolina', written in a cursive style.

Carl T. Landolina

CTL:nb