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The Municipal Group at Murtha Cullina is pleased to provide clients and friends with information about topics of interest to municipal law.

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CONNECTICUT SUBDIVISIONS: CERTAIN MANDATORY OFF-SITE IMPROVEMENTS ARE NO LONGER AN ACCEPTABLE CONDITION OF DEVELOPMENT

By: Kari L. Olson

Many Connecticut towns have adopted subdivision regulations that require, either explicitly or implicitly, off-site improvements as a condition of approval. Such conditions routinely have included improvements to public roads leading to a proposed development (e.g., widening, drainage basins, etc.) in addition to those roads contained within the project site. The Connecticut Supreme Court recently invalidated some of these conditions in the case of Buttermilk Farms, LLC v. Planning and Zoning Commission of the Town of Plymouth. At issue in the Buttermilk Farms case was the denial of a subdivision application because the developer refused to include off-site sidewalks in its subdivision plan.

The proposed Buttermilk Farms subdivision consisted of five residential lots, each of which directly abutted and had access to an existing road: Lane Hill Road. The subdivision plans did not propose the construction of any new roads either within the subdivided lands or that would intersect with Lane Hill Road. Upon receipt of the application, the commission informed the developer that, as a condition of approval, it would require the installation of sidewalks outside of the boundaries of the proposed subdivision and along the shoulder of Lane Hill Road. Because the developer refused, the application was denied. On appeal, the trial court concluded that the sidewalk condition was permissible given the commission's general authority to enact regulations to protect the health and safety of the public and the Town's existing regulation requiring that sidewalks be installed on the subdivision side of any abutting existing street.

The developer appealed the trial court's decision claiming that the imposition of such a condition exceeded the commission's statutory authority as set

forth in Connecticut General Statutes § 8-25. In that appeal, the Supreme Court focused on the express language of Section 8-25, which, it concluded, grants authority to commissions to impose the requirement of such off-site improvements only in those areas where there is an intersection between a proposed street and "existing or proposed principal thoroughfares." The Court concluded that, absent such an intersection, Section 8-25 limits the authority of a commission to regulate "the land to be subdivided" only. In light of its interpretation, the Supreme Court deemed invalid the Town's regulation requiring off-site improvements to an existing public road that abuts a subdivision when no intersection with that road is intended. The Supreme Court's decision was bolstered by its recognition of the "broader statutory scheme" imposing upon municipalities the responsibility for maintaining and improving existing public roads.

In an important footnote, the Supreme Court limited its decision in Buttermilk Farms to a commission's authority to adopt regulations relating to off-site improvements involving existing public roads. In doing so, the Court recognized that the commission may have the authority to require off-site improvements "when such improvements are necessary to create harmony between proposed roads and existing thoroughfares, and any other circumstances that are consistent with the language of the statute and our case law interpreting it."

What does all of this mean? As a result of the decision in Buttermilk Farms, the validity of many existing subdivision regulations is called into question. In order to avoid

costly litigation, a careful analysis of present subdivision regulations is recommended. An appropriate review should not be limited simply to whether your regulations require improvements in the absence of intersections, but rather, must also encompass an examination of all off-site improvement conditions to determine whether they are in accord with statutory authority and existing case law.

CL&P'S PROPOSED POLE ATTACHMENT AGREEMENTS

By: **Dwight A. Johnson**

In mid-January of this year, The Connecticut Light and Power Company ("CL&P") forwarded to many Connecticut municipalities a 23-page "Standard Form Pole Attachment Agreement" that CL&P requested each municipality to sign and return prior to the end of the month. We advised municipalities who contacted us not to execute the agreement at this time.

For many years CL&P delegated management of its utility poles to The Southern New England Telephone Company, also known as AT&T Connecticut ("AT&T"). As of February 1, 2010, however, AT&T has decided that it no longer will act as CL&P's agent for handling third-party pole attachments. CL&P states that it is therefore necessary for it to enter into its own pole attachment agreements with municipalities.

For most Connecticut municipalities, the proposed agreement is unnecessary, as most municipalities do not utilize utility poles for municipal communications wiring or other equipment. For those few municipalities that do utilize utility poles, the agreement should be substantially revised before being executed. Among other things, the agreement is one-sided and would impose fees that appear to be excessive.

The terms of the proposed CL&P agreement are currently the subject of a pending proceeding before the Connecticut Department of Public Utility Control ("DPUC"). The Connecticut Conference of Municipalities and several individual municipalities have intervened in the DPUC proceeding for the purpose of challenging CL&P's proposed form of agreement. We are monitoring this proceeding. In the interim, we are recommending that municipalities not execute the agreement forwarded to them by CL&P. If a municipality is currently making use of utility poles owned by CL&P or expects to do so in the near future, it should contact its attorneys for further discussion.

FLOOD PLAIN REGULATIONS

By: **Alfred E. Smith, Jr.**

Last fall the Federal Emergency Management Agency ("FEMA") presented municipalities in which flood plains are located with new preliminary Flood Insurance Rate Maps ("FIRM"). Those maps are scheduled to become effective in November 2010. In order for those municipalities to remain eligible for participation in the National Flood Insurance Program ("NFIP"), they must adopt revised regulations that meet or exceed minimum federal standards prior to the effective date of the new FIRM in November 2010. The revised regulations must

also meet the new minimum state floodplain management requirements contained in federal regulations. In January, the Connecticut DEP sent letters to these municipalities outlining required and optional revisions to municipal Flood Hazard Regulations in order to meet the minimum state and federal requirements.

We have reviewed the CTDEP's proposed required and optional revisions. Because many of these revisions must be made to comply with minimum standards, the regulations must be adopted and there is little room for variation. That said, it is worth reviewing the proposals carefully to be sure that these changes do not trigger the need for changes in other parts of the regulations or to determine if they can be tailored for your particular situation. These proposed changes would be subject to the usual requirements for new regulations, including notice and public hearing. In addition, however, the CTDEP letter includes a request that CTDEP be provided a copy of the proposal one month in advance of the hearing.

As part of our work for municipal clients, we have prepared proposed revisions to their Flood Hazard Area Regulations, and we would be pleased to assist you in this effort.

If you have any questions or would like more information on any of these topics, please contact the authors; Kari Olson at 860-240-6085, Dwight Johnson at 860-240-6024 or Al Smith at 203-772-7722.

This newsletter is one of a series of publications by Murtha Cullina LLP and should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult your own lawyer concerning your own situation and any specific legal questions you may have.

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