DOCKET NO. LND CV-11-6038947-S	:	SUPERIOR COURT
SADDLE RIDGE DEVELOPERS, LLC, ET AL.	:	LAND USE LITIGATION DOCKET
V.	:	AT HARTFORD
EASTON PLANNING AND ZONING COMMISSION, ET AL.	:	JANUARY 25, 2016

DOCKET NO. LND CV-11-6038949-S	:	SUPERIOR COURT
SADDLE RIDGE DEVELOPERS, LLC, ET AL.	:	LAND USE LITIGATION DOCKET
V.	:	AT HARTFORD
EASTON CONSERVATION COMMISSION, ET AL.	:	JANUARY 25, 2016

MEMORANDUM OF DECISION

I

This matter consists of two appeals: one affordable housing appeal; *Saddle Ridge Developers, LLC* v. *Easton Planning & Zoning Commission*, Superior Court, land use litigation docket at Hartford, Docket No. LND CV-11-6038947-S, and the related inland wetlands appeal; *Saddle Ridge Developers, LLC* v. *Easton Conservation Commission*, Superior Court, land use litigation docket at Hartford, Docket No. LND CV-11-6038949-S. On July 12, 2010, the plaintiffs, Saddle Ridge Developers, LLC; Silver Sport Associates LP (Silver Sport); and Marolyn Stone

129.00
132.00

(collectively, Saddle Ridge) filed an affordable housing application[1] to construct 105 townhouses on an approximately 124.7 acre parcel of land in Easton. (Return of Record [ROR], Item 35.) The northeast portion of the site is currently used as a horse farm with forty-one horses. (ROR, Item 35, tab 2; Item 121, appendix [appx.] A, p. 1.) According to Saddle Ridge, about 64 percent of the parcel would be undisturbed or set aside as open space under its proposed development. The parcel is bounded by Sport Hill Road, Silver Hill Road, Cedar Hill Road, and Westport Road and is currently zoned for single-family homes on three acre minimum lots. (ROR, Item 7; Item 35, tab 4.)

Eight wetland pockets constitute a total of 28.2 acres on the property running from the northwest to the southeast where a six acre pond falls within the 100 year flood hazard area as defined by the Federal Emergency Management Agency (FEMA). (ROR, Item Inland Wetland [IW][2] 4, tab 5, pp. 33-34; Item IW 57, p. 3; Item IW 115, p. 3.) Horse trails and farm roads cross the wetlands, but Saddle Ridge argues that the wetlands would be undisturbed by its proposed development with the

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[1] Saddle Ridge filed multiple applications: (1) a petition to amend the Easton zoning regulations by adding a new "Housing Opportunity Development (HOD) District"; (2) an application to rezone the parcel to the HOD district; 3) a petition to amend the Easton plan of conservation and development and zoning map accordingly; (4) an application to subdivide the property into ten lots; (5) an application for site plan approval for the construction of 105 townhouses on the site; and (6) an application to amend the Easton subdivision regulations to exempt a "set aside development" from certain open space requirements. (Return of Record [ROR], Item 249, pp. 1-2.) The court refers to them collectively as the affordable housing application.

[2] In order to differentiate between the return of record items, this court adds the designation "IW" to the record items from the inland wetlands appeal.

exception of an approximately 5000 square foot road crossing in "Wetland 1B." (ROR, Item IW 4, tab 5, pp. 34-47.) Run off discharges into the wetlands and then drains about 1.4 miles to the east to Easton Lake Reservoir and about two miles to the west to the Aspetuck Reservoir. (ROR, Item IW 4, tab 11, pp. 151-55; Item IW 115, p. 3.) The entire property lies within the watershed areas for both which are the "main supply sources for the Aquarion Water Company system on which over 400,000 water consumers depend daily for potable, safe drinking water." (ROR, Item IW 4, tab 11, pp. 151-55; Item 8; Item 93, p. 2.)

The affordable housing application, filed pursuant to General Statutes § 8-30g, sets aside 30 percent of the townhouses as affordable.[3] (ROR, Item 35, tab 2.) This original affordable housing application proposed 105 two-bedroom townhouses in thirty-two buildings containing two to four townhouses and used the stormwater management system approved in 2009 for development of twenty-one mansions.

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[3] General Statutes § 8-30g (a) (1) defines an "affordable housing development" as "a proposed housing development which is (A) assisted housing, or (B) a set-aside development." General Statutes § 8-30g (a) (6) defines "set-aside development" as "a development in which not less than thirty per cent of the dwelling units will be conveyed by deeds containing covenants or restrictions which shall require that, for at least forty years after the initial occupation of the proposed development, such dwelling units shall be sold or rented at, or below, prices which will preserve the units as housing for which persons and families pay thirty per cent or less of their annual income, where such income is less than or equal to eighty per cent of the median income. In a set-aside development, of the dwelling units conveyed by deeds containing covenants or restrictions, a number of dwelling units equal to not less than fifteen per cent of all dwelling units in the development shall be sold or rented to persons and families whose income is less than or equal to sixty per cent of the median income and the remainder of the dwelling units conveyed by deeds containing covenants or restrictions shall be sold or rented to persons and families whose income is less than or equal to eighty per cent of the median income."

(ROR, Item 35, tab 2, pp. 2-3; Item 141, tab 2, p. 1.) Some of the proposed buildings would be located in part of the footprint of the previously approved mansions. (ROR, Item 179.)

The public hearing was opened on September 13, 2010, but was immediately continued to and held on September 27, 2010, October 18, 2010, October 25, 2010, November 8, 2010, November 22, 2010, and December 13, 2010. (ROR, Item 19; Item 50; Item 74; Item 106; Item 125; Item 144.) On October 18, 2010, the Coalition to Save Easton (coalition) filed a notice of intervention under General Statutes § 22a-19 (a) (1)[4] with the commission; (ROR, Item 58); and submitted evidence concerning environmental impairment. The defendant, the Easton planning and zoning commission (commission), denied the application on February 14, 2011. (ROR, Item 162.)

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[4] Section 22a-19 (a) (1) provides: "In any administrative, licensing or other proceeding, and in any judicial review thereof made available by law, the Attorney General, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity may intervene as a party on the filing of a verified pleading asserting that the proceeding or action for judicial review involves conduct which has, or which is reasonably likely to have, the effect of unreasonably polluting, impairing or destroying the public trust in the air, water or other natural resources of the state."

Pursuant to General Statutes § 8-30g (h),[5] Saddle Ridge filed a revised application on March 4, 2011, reducing the number of units from 105 to ninety-nine and making other modifications. (ROR, Item 177.) The commission conducted the public hearing on May 9, 2011, and May 16, 2011; (ROR, Item 228; Item 242); voted to deny the application on August 8, 2011; (ROR, Item 248); and published notice on August 11, 2011 in the Easton Courier. (ROR, Item 250.)

Saddle Ridge commenced this affordable housing appeal on August 25, 2011. In its appeal, it alleges that the denials of the affordable housing applications on February 14, 2011, and on August 8, 2011, were not supported by sufficient evidence in the record; not necessary to protect a substantial public interest; did not clearly outweigh the need for affordable housing; and could have been addressed by reasonable changes. On December 2, 2011, the coalition filed a motion to intervene in this action which was granted by the court, *Levine, J.T.R.*, on December 12, 2011. The commission filed an answer on June 1, 2012, and the return of record in paper format on June 4, 2012. On January 29, 2013, the commission and the coalition filed their briefs and Saddle Ridge filed its brief on June 13, 2013. A brief in reply was filed by the commission on July 30, 2013. The court heard the appeals on

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[5] Section 8-30g (h), in relevant part, provides: "Following a decision by a commission to reject an affordable housing application or to approve an application with restrictions which have a substantial adverse impact on the viability of the affordable housing development or the degree of affordability of the affordable dwelling units, the applicant may, within the period for filing an appeal of such decision, submit to the commission a proposed modification of its proposal responding to some or all of the objections or restrictions articulated by the commission, which shall be treated as an amendment to the original proposal. . . ."

September 8, 2015, and Saddle Ridge filed a supplemental brief on September 18, 2015.

In addition to the affordable housing application, Saddle Ridge applied on March 4, 2011, to the defendant in the inland wetlands appeal, the Easton conservation commission (agency), for either "a determination of no new regulated activities" or, in the alternative, a request to amend the previously approved January 13, 2009 permit for twenty-one mansions to the proposed affordable housing project. (ROR, Item IW 4.) A public hearing was held on April 26, 2011, May 10, 2011, May 24, 2011, and June 13, 2011. (ROR, Item IW 27; Item IW 46; Item IW 67; Item IW 93.) On May 12, 2011, the coalition filed notice of intervention under § 22a-19 with the agency. (ROR, Item IW 56.) The agency denied Saddle Ridge's application on July 12, 2011; (ROR, Items IW 114-15); and allegedly published notice of the denial in the Easton Courier on July 21, 2011.

Saddle Ridge commenced the appeal of the agency's decision on August 4, 2011. In Saddle Ridge's appeal, it alleges that the agency acted unlawfully and illegally in denying Saddle Ridge's application because the agency asserted jurisdiction over and denied the application based on activities outside of its jurisdiction and the upland review area; failed to render a decision based on substantial evidence in the record; ignored a previously issued wetlands permit; and never identified any new regulated activities. On December 2, 2011, the coalition filed a motion to intervene that was granted by the court, *Levine, J.T.R.*, on December 12, 2011. On June 1, 2012 the agency filed its answer, and it filed the

return of record in paper format on June 4, 2012. On July 17, 2012, it moved to supplement the record, and the court, *Cohn, J.*, granted the motion on July 18, 2012. On January 29, 2013, Saddle Ridge filed its brief and the agency and the coalition filed their briefs on June 13, 2013. Saddle Ridge filed a brief in reply on July 30, 2013. As previously mentioned, the court heard these two appeals on September 8, 2015.[6] On September 15, 2015, the agency filed a motion to supplement the record to which Saddle Ridge objected. Saddle Ridge also filed a supplemental brief on September 18, 2015. On October 7, 2015, the parties filed a stipulation regarding the motion to supplement the record.

II

Aggrievement

General Statutes § 8-30g (f), in relevant part, provides: "Any person whose affordable housing application is denied, or is approved with restrictions which have a substantial adverse impact on the viability of the affordable housing development or the degree of affordability of the affordable dwelling units in a set-aside development, may appeal such decision pursuant to the procedures of this section. . . ." Additionally, General Statutes § 22a-43 (a), in relevant part, provides: "[A]ny person aggrieved by any regulation, order, decision or action made pursuant to sections 22a-36 to 22a-45, inclusive, by . . . a district or municipality or any person owning or occupying land which abuts any portion of land within, or is within a

[6] Inasmuch as the record and the factual and legal issues were intertwined, the court and the parties agreed that the appeals would be heard together as essentially one appeal.

radius of ninety feet of, the wetland or watercourse involved in any regulation, order, decision or action made pursuant to said sections may, within the time specified in subsection (b) of section 8–8, from the publication of such regulation, order, decision or action, appeal to the superior court for the judicial district where the land affected is located . . . ."

On September 8, 2015, before this court, Huntley Stone, the manager of Saddle Ridge Developers, LLC, the general partner of Silver Sport, and the son of Marolyn Stone, introduced three deeds into evidence, to which the commission and the agency did not object. (Exhibits 1-3.) The deeds indicate that his mother, Marolyn Stone, and Silver Sport, were the owners of the property during the administrative stages through the time the appeals were heard and that Saddle Ridge Developers, LLC, is the contract purchaser and applicant in both matters. (ROR, Item 35; Item IW 1.)

"It is well established that a party may be aggrieved for purposes of appeal by virtue of its status as a property owner." *Handsome, Inc.* v. *Planning & Zoning Commission*, 317 Conn. 515, 527, 119 A.3d 541 (2015). As the property owners, Marolyn Stone and Silver Sport are aggrieved. See id., see also General Statutes § 22a-43 (a). Additionally, as Saddle Ridge Developers, LLC, is the applicant in both matters and appeals from the commission's and the agency's denials of its applications, it is aggrieved. See General Statutes §§ 8-30g (f) and 22a-43 (a).

III

The Affordable Housing Appeal

A

The Commission's Standard of Review

Review of an affordable housing appeal is governed by § 8-30g. General Statutes § 8-30g (g), in relevant part, provides: "Upon an appeal taken under subsection (f) of this section, the burden shall be on the commission to prove, based upon the evidence in the record compiled before such commission, that the decision from which such appeal is taken and the reasons cited for such decision are supported by sufficient evidence in the record. The commission shall also have the burden to prove, based upon the evidence in the record compiled before such commission, that (1) (A) the decision is necessary to protect substantial public interests in health, safety or other matters which the commission may legally consider; (B) such public interests clearly outweigh the need for affordable housing; and (C) such public interests cannot be protected by reasonable changes to the affordable housing development . . . . If the commission does not satisfy its burden of proof under this subsection, the court shall wholly or partly revise, modify, remand or reverse the decision from which the appeal was taken in a manner consistent with the evidence in the record before it."

"[I]n conducting its review in an affordable housing appeal, the trial court must first determine whether the decision from which such appeal is taken and the reasons cited for such decision are supported by sufficient evidence in the record. . . . Specifically, the court must determine whether the record establishes that there is

more than a mere theoretical possibility, but not necessarily a likelihood, of a specific harm to the public interest if the application is granted. If the court finds that such sufficient evidence exists, then it must conduct a plenary review of the record and determine independently whether the commission's decision was necessary to protect substantial interests in health, safety or other matters that the commission legally may consider, whether the risk of such harm to such public interests clearly outweighs the need for affordable housing, and whether the public interest can be protected by reasonable changes to the affordable housing development." (Citation omitted; internal quotation marks omitted.) *River Bend Associates, Inc.* v. *Zoning Commission*, 271 Conn. 1, 26, 856 A.2d 973 (2004). "The foregoing determinations present mixed factual and legal determinations, the legal components of which are subject to plenary review. . . . [T]he planning and zoning commission remains the finder of fact and any facts found are subject to the 'sufficient evidence' standard of judicial review." (Internal quotation marks omitted.) *Eureka V, LLC* v. *Planning & Zoning Commission*, 139 Conn. App. 256, 266, 57 A.3d 372 (2012).

"'[S]ufficient evidence' in this context . . . mean[s] less than a preponderance of the evidence, but more than a mere possibility. . . . [T]he zoning commission need not establish that the effects it sought to avoid by denying the application 'are definite or more likely than not' to occur, but that such evidence must establish more than a 'mere possibility' of such occurrence." *Christian Activities Council, Congregational* v. *Town Council*, 249 Conn. 566, 585, 735 A.2d 231 (1999). "[T]he statute does not impose on the commission a burden of proving facts as that concept is traditionally

understood in the fact-finding context. . . . Rather, the burden imposed by § 8-30g (g) (1) is akin to the burden imposed on a party who seeks to have a statute declared unconstitutional, which is a legal determination. . . . This burden is met not by proving facts to a given level of certainty, but by presenting persuasive legal and policy arguments." (Citations omitted.) *River Bend Associates, Inc.* v. *Zoning Commission*, supra, 271 Conn. 25 n.14.

B

The Affordable Housing Application

In 2009, the commission approved Saddle Ridge's proposed development of twenty-one mansions on the subject parcel. (ROR, Item 35, tab 2, p. 2.) Saddle Ridge subsequently chose to apply to develop the property differently - in the original affordable housing application, 105 townhouses in thirty-two buildings and in the amended affordable housing application, ninety-nine townhouses in thirty-one buildings containing two to four townhouses each. Saddle Ridge maintains that the affordable housing applications, even with the additional units and buildings, do not have a substantially different impact on the environmentally sensitive watershed areas than the plan for the twenty-one mansions. It thus cites the 2009 approval as support for its arguments in the current matter. The commission and the coalition counter that the 2009 proposal and the affordable housing applications are materially different with definite engineering defects and that existing state policy on aquifer and water quality protection warranted its denials of the affordable housing applications.

As the property is within the watersheds of the Aspetuck Reservoir and Easton Lake Reservoir; (ROR, Item 8; Item 93, p. 2.); state policy is relevant and frames the issue in this case: which of the two legislative policies controls - the need to protect public drinking water supplies and environmentally sensitive watershed areas or the need for affordable housing? Saddle Ridge argues that the need for affordable housing controls while the commission and the coalition assert that the water issues are paramount.

In 1989, the legislature commissioned a blue ribbon report on housing and on the land required to support residential development in Connecticut. (ROR, Item 60.) Prepared by the department of environmental protection (DEP),[7] the report recommended one housing unit per two acres in public water supply watersheds. (ROR, Item 60, p. 3.) In 1990, DEP reaffirmed the recommendation of a maximum of one unit per two acres to be accompanied by a site-by-site review. (ROR, Item 78, p. 7.) In 1993, several state agencies, including the DEP, the department of health services,[8] the office of policy and management together with the Regional Planning Agency Association of Connecticut, produced a guide for local officials. (ROR, Item 118.) The guide defined "watershed" as "a drainage area or basin in which all land and water areas drain or flow toward a central collector," and it stated that "[t]he entire watershed is the actual source of the supply." (ROR, Item 118, p. 1.)

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[7] DEP has since been consolidated with the department of energy and is now known as the department of energy and environmental protection (DEEP).

[8] The department of health services is now known as the department of public health.

The legislature adopted a state policy to protect drinking water in the Conservation and Development Policies Plan for Connecticut, 2005-2010 (C & D plan), which included a policy to "[g]uide intensive development away from existing and potential water supply watersheds and aquifers and consider the cumulative effects of incremental growth in state, regional, and local planning programs and regulations." (ROR, Item 91, appx. C, p. 82.) Indeed, the legislature has declared that the water resources policy, in relevant part, is: "(1) To preserve and protect water supply watershed lands and prevent degradation of surface water and groundwaters; (2) to protect groundwater recharge areas critical to existing and potential drinking water supplies . . . [and] (5) to prevent contamination of water supply sources or reduction in the availability of future water supplies . . . ." General Statutes § 22a-380. Additionally, it has stated, in relevant part, in General Statutes § 25-37a that "an adequate supply of pure water is and will always be essential for the health and safety and economic well-being of the state . . . ." (See also ROR, Item 91, appx. C, p. 80 ["[a]dequate supplies of potable water are necessary to protect public health and to continue economic growth"].) The protection of drinking water quality has thus been identified as a substantial public interest. See *Eureka V, LLC* v. *Planning & Zoning Commission*, supra, 139 Conn. 270-71.

On the other hand, Saddle Ridge touts the state policy of promoting affordable housing. As noted by our Supreme Court in *West Hartford Interfaith Coalition, Inc.* v. *Town Council*, 228 Conn. 498, 511, 636 A.2d 1342 (1994), "the statute's legislative history reveals that the key purpose of § 8-30g is to encourage and

facilitate the much needed development of affordable housing throughout the state." In describing the blue ribbon commission on housing's report and recommendations of February 1, 1989, the court stated that "[i] proposing this [appeals] procedure, the commission described the need to increase density allowances and to circumvent prohibitively costly zoning and subdivision requirements: 'Expanding the basis for an appeal gives would-be developers of affordable housing an opportunity to contrast specific zoning and low-density regulations or anti-growth practices, when encountered, with a community's need for affordable housing." (Emphasis omitted.) Id., 509-10. Moreover, "[a]s a remedial statute, § 8-30g must be liberally construed in favor of those whom the legislature intended to benefit." (Internal quotation marks omitted.) *Kaufman* v. *Zoning Commission*, 232 Conn. 122, 140, 653 A.2d 798 (1995).

Saddle Ridge argues that Easton has a great need for affordable housing[9]; its zoning regulations do not encourage affordable housing with just two zones - one acre and three acre residential; and its plan of conservation and development even states that the zoning regulations "tend to discourage new affordable housing applications." (ROR, Item 35, tab 12, p. 1; Item 238.) Saddle Ridge asserts that 162 acres are zoned for one acre lots within the watershed in Easton; (ROR, Item 231); and that the department of public health (DPH) has noted that the area has a low risk of

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[9] According to the department of economic and community development's 2008 affordable housing appeals list, Easton has only ten affordable units of its 2511 housing unit stock. (ROR, Item 35, tab 12b.)

contamination. (ROR, Item 119, appx. A.) In the commission's February 14, 2011 decision, which is incorporated into the August 8, 2011 decision, it notes:

" 6. In fact, Easton has addressed and continues to address the affordable housing issue. Despite the fact that approximately 89% of Easton's land area recharges public water supply reservoir and wells, and most of its terrain is not capable of sustaining intensive development, the Town encourages affordable housing within the natural constraints imposed by its land and lack of infrastructure. These are some basic challenges Easton faces in providing affordable housing, such as the lack of public sewers and the large percentage of the town on the public watershed.

"7. In September 1989, the Easton Town Meeting ratified the Regional Affordable Housing Compact for the Greater Bridgeport Region, establishing goals for such housing based on population. In February 1995, the Town Planning and Zoning Commission adopted regulations to authorize Affordable Accessory Apartments. (Zoning Regulations, Sec. 7.8.5) On July 1, 2007 the Planning and Zoning Commission adopted a comprehensive Town Plan of Conservation and Development which states the following policy (at page 96): "'In conformity with statutory mandate, and as limited by soil types, terrain, infrastructure capacity and water-supply watershed protection imperatives, explore means of increasing the availability of housing choice and economic diversity in housing such as public or private non-profit dwellings and "set aside" units in subdivisions.' (Chapter 4)

"8. Additionally, the adopted Town Plan recommends that a limited duration accessory apartment be allowed as a matter of right to any resident homeowner, subject to safe water supply and sewage disposal, and discontinuance if vacated. It is anticipated that this plan will contribute to meeting Easton's needs for more diverse and affordable housing and bring its total housing stock closer to the State's 10% affordability goal. (See Town Plan of Conservation and Development, 'Residential Development and Housing,' Chapter 11)." (ROR, Item 162, p. 12; Item 249, p. 2.)

With this background, Saddle Ridge compares the present application to its 2009 approval of "21 large luxury mansions . . . with a septic capacity of up to 10 bedrooms for a total of 210 bedrooms (the same as Saddle Ridge's 105 count home plan)" and asserts that "[t]he stormwater runoff would be managed by a series of stormwater basins substantially the same as the present plan." To the extent the property is currently home to forty-one horses, Saddle Ridge adds in its brief that the horses in fact produce a significant amount of manure, estimated to be 426 tons, which now finds its way into the wetlands and the water supply.

C

The Commission's Decision

On February 14, 2011, in a comprehensive twenty-three page decision, the commission denied the original application explaining that Saddle Ridge's 105 unit

proposal endangered the two reservoirs.[10]

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[10] The following excerpts are representative of the commission's findings:

"A. THE COMMISSION FINDS THAT SUBSTANTIAL PUBLIC INTERESTS IN HEALTH AND SAFETY EXIST WITH REGARD TO THIS APPLICATION WHICH THE COMMISSION MUST PROTECT. SPECIFICALLY, THE COMMISSION NEEDS TO PROTECT THE PUBLIC DRINKING WATER SUPPLY, WHICH IS THREATENED BY THIS APPLICATION, AND THIS SUBSTANTIAL PUBLIC INTEREST IN HEALTH AND SAFETY IS SUPPORTED BY SUBSTANTIAL EVIDENCE IN THE RECORD OF THIS PROCEEDING.

"1. The Commission finds that virtually the entire area, including the populations of Bridgeport, Fairfield, Stratford, Trumbull and Westport, are served by Aquarion Water Company. In addition, Aquarion Water Co. serves by regional interconnection the majority of the population during drought periods of Norwalk, Darien, New Canaan and Stamford. Aquarion Water Co. water mains also serve portions of Easton, Monroe, Redding, Ridgefield, Weston, Wilton and Shelton.

"2. The Commission finds that substantial public interests in health and safety, especially in regard to protection of the public drinking water supply for over 400,000 water consumers, in the communities stated above, exist with this affordable housing application which the Commission must protect, and that these interests are supported by substantial evidence in the record of this proceeding, summarized and highlighted herein, but more fully found in the full record of this proceeding.

"3. The Commission finds, notwithstanding the recognized need for affordable housing as noted in the State Policies Plan of Conservation and Development (Growth Management Principle #2, pp. 38-40), that the plans embodied in these applications would contravene other more significant principles of the adopted State Plan. These policies specifically advocate the protection of public water supply watersheds (Growth Management Principle #5, pp. 82 & 83), discouragement of water main extension into rural lands except where required to mitigate an existing pollution problem (Introduction and Overview, p. 7), encouragement of appropriate urban infill housing located for proximity to employment and transportation (Growth Management Principles #2, pp. 38 & 39), and discouragement of intensive development in rural areas not already supported by local infrastructure (Growth Management Principle #1, p. 21). (GHD Report of October 28, 2010, Appendix C, report to Commission by John Hayes, Consultant and Land Use Director, dated November 8, 2010; Commission Record: November 8, 2010, Items #1 and #3)

"4. The proposed Housing Opportunity Development District ('HOD') and

proposed development project ('The Development') greatly exceed well established and documented State of Connecticut standards for maximum allowable development density on public water supply watershed lands. The reports submitted in the record show that such standards are necessary to assure a safe drinking water supply for hundreds of thousands of water consumers. This public health and safety concern is of such fundamental importance to the whole population of nearby areas that it clearly outweighs the recognized need for affordable housing in such areas. Accordingly, the Commission cannot approve this application as presented with this proposed density.

"5. The State of Connecticut Conservation and Development Policies Plan for Connecticut 2005-2010 ('State Plan') was adopted by the General Assembly in 2005 and therefore constitutes an official statement of the public interest in conservation and development matters. The State Plan states that sources of drinking water must be continuously protected from intensive development because the 'cumulative impacts of continuing development on both existing and future water supply watersheds can result in deterioration of water quality,' and specifically recommends as a density guideline that water supply watersheds 'require minimum lot sizes of one dwelling unit per two acres of "buildable" area (excludes wetlands).' (State Plan, Growth Principle #5; GHD report to Planning and Zoning Commission, October 28, 2010, Commission Record 11/08/10, Item #1) The proposed application far exceeds this guideline.

"6. The State Plan, moreover, addresses the question of appropriate location for dense housing in these words: 'Support efforts to develop appropriate urban infill housing to make better use of limited urban land, and reduce pressure for outward suburban boundary housing development.' (State Plan, Growth Management Principle #2; John Hayes, Consultant and Land Use Director, memoranda to Planning and Zoning Commission (3) dated December 1, 2010, Commission Record 12/13/10, Items #1, #3 & #4)

"7. A letter from the State of Connecticut Department of Public Health (DPH), Drinking Water Section (DWS), dated September 13, 2010, by Eric McPhee, Supervising Environmental Analyst, addressed to the Chairman of the Planning and Zoning Commission in respect to DPH's 'Source Water Protection Review for Saddle Ridge Village, Easton,' confirmed the state density guidelines for public water supply watersheds of not more than one dwelling unit per two buildable acres and adds that 'The DWS believes, consistent with the state policy for the protection of drinking water supply watersheds, that development of this nature is best located outside of a public water supply watershed area.' (Commission Record, 9/27/10, Item #14) Documentation for the watershed protection maxim of restricting residential development density to no more than one dwelling unit per two acres of buildable area is set forth in the May 1989 'Report for the Blue Ribbon Commission on

Housing, on the Land Required to Support Residential Development in Connecticut' (copy, in part, sent to this Commission by the Connecticut Dept. of Environmental Protection, Commission Record, 10/18/10, Item #2; GHD report to Commission, October 28, 2010, Commission Record 11/8/10, Item #1)

"8. As required by the General Statutes, the applications were referred to the Greater Bridgeport Regional Planning Agency (GBRPA) for comment. GBRPA's response letter, dated August 27, 2010, states the Agency would not support the Saddle Ridge Village project 'due to potential impacts to the regional water supply.' (Commission Record 9/27/10, Item #12)

. . .

"11. Numerous defects in the design plans for Saddle Ridge Village have been identified by the Commission's consulting engineer. (Report to Town of Easton, Connecticut 'Technical Review and Presentation of Findings,' October 28, 2010, by GHD Inc., Gary A. Dufel, PE, BCEE, LEED AP, FASCE; 23 pages plus Appendices; Commission Record 11/8/10, Item #1) These defects pose an extraordinary risk to the natural environment and water quality of the drinking water watersheds on which the Saddle Ridge Village site is located. The Commission finds there are critical flaws in the applicant's plans which potentially jeopardize the health and safety of the general pubic which depends on the quality of the public water supply. In summary these defects are:

"• Cumulative impact of non-point pollution, insufficiently remediated, from overly intensive residential development would have a long-term impact on the environment (GHD report, pp. 2-5, p. 10);

"• Environmental impact will be from the site as a whole and cannot be managed effectively by individual lots (GHD report, p. 6);

"• A much greater impact on the land and natural resources of the site, than from the previously approved single-family-lot subdivision, as a result of proposed clear cutting, extensive earthwork, use of lawn products, and greater impervious area, will significantly lower the environmental quality of the site and adversely affect the integrity of the watersheds (GHD report, pp. 6 & 7);

"• Low Impact Development design has supplanted 'Best Management Practices as a more effective means of environmental protection, advocated for water supply watersheds by CT Department of Environmental Protection and not employed effectively in applicant's plans (GHD report, pp. 8 & 9);

"• Population of the site, with consequent direct impact on natural resources and water quality, would be dramatically greater from the Saddle Ridge Village plans, 180 to 260 persons, as compared to the previously approved single-family-homes subdivision, 85 to 100 persons (GHD report, p. 9);

"• Inadequate testing was performed for the stormwater basins (GHD report, p. 12);

"• Design of the hybrid stormwater detention and infiltration basins does not meet low-impact design standards nor comply with the CT DEP Stormwater Quality Manual, with the result that 20 per cent or more of pollutants in stormwater (depending on storm frequency) will be released directly to on-site wetlands with a consequent impact on the quality of water leaving the site. (GHD report, pp. 14-16)

"12. The Commission takes note of these clear words from its consultant:

"'The consequences of failure on the watershed lands and reservoirs would have environmental and health consequences that could be staggering in their scope and remedies. The Lower Density development already approved is the better method of developing this property while protecting the environmental resources on site.' (Report to Town of Easton, Connecticut, Saddle Ridge Development, by GHD, October 28, 2010, page 23; Commission Record 11/8/10, Item #1)

. . .

"14. The Commission cannot find that the applicant's engineer's responses meet the legitimate objections raised in the GHD report of October 28, 2010, and the intervenor's experts. In particular the application's failure to establish a sound management structure for its nine separate homeowner associations casts doubt on the Project's long-term viability for critical watershed protection. (GHD report of October 28, 2010, Findings - p. 23; Commission Record 11/8/10, Item #1)

"15. Because of the planned density of dwellings and septic systems on the development portion of the Saddle Ridge Village site, a 1.4-mile public water line extension is proposed to reach the site. However this extension is contrary to the public interest as expressed in the Conservation and Development Policies Plan for Connecticut 2005-2010, page 7, point '4') which states in part: '. . . The state's policy in public drinking water supply watersheds is to discourage the introduction of infrastructure for the purpose of accommodating new development. Exceptions may be allowed in certain instances where development has already occurred and added pollution controls are required to protect potable waters.' (GHD report appendix,

(ROR, Item 162.) On August 8, 2011, the commission considered the amended application and denied it as well. (ROR, Item 249.) Representative of its findings is the following: "'The density of this development significantly exceeds the State policies for density in public drinking water watershed lands, a policy that is based on an extensive literature search by a blue ribbon DEP panel, and adopted by the State of Connecticut Office of Policy and Management to protect the health and environment.

"'The reduction of 6 units while a positive direction in reduction in density does not make a meaningful change in the overall density of the site, hence does not make a meaningful change in our conclusion that this proposal exceeds State policies put in place to protect the health and the environment.'"[11] (ROR, Item 249, p. 5.)

October 28, 2010; Commission Record 11/8/10, Item #1)

. . .

"B. THE COMMISSION FINDS THAT THE POTENTIAL HARM PRESENTED BY THIS APPLICATION CLEARLY OUTWEIGHS THE NEED FOR AFFORDABLE HOUSING IN EASTON

"1. The Commission has balanced the need for 32 units of affordable housing in Easton versus the risks presented by this application to the over 400,000 users of the water supply. In weighing those competing goals, it is clear that the risk of potential harm clearly outweighs the need for affordable housing for the below reasons.

"2. The proposed Development, as presented in the Saddle Ridge Village application, plans, and response documents, all made part of the record, would pose a very serious and direct threat to the health and safety of more than 400,000 persons residing in nearby towns who require a safe public water supply, significantly supplied by the reservoirs and their supporting watershed areas, all of which are in the Town of Easton." (ROR, Item 162, pp. 3-8, 11.)

[11] Some of the commission's other findings were as follows:

"5. Findings of this Commission in respect to this Amended Application:

"(1) The Commission finds that a reduction in the proposed number of dwellings by six, from 105 (the original proposal) to 99, as now proposed, is an insignificant modification which fails to address the very substantial concerns about an excessive density of development on a public water supply watershed, as expressed in our February 14, 2011 original resolution and supported by extensive expert testimony and other evidence in records of both the original application and this amended application.

"In its report of May 9, 2011 to the Planning and Zoning Commission the State of Connecticut Department of Public Health, Source Water Protection Unit, Drinking Water Section, cited the State of Connecticut Conservation and Development Policies Plan 2005-2010 and noted the inconsistency of the amended Saddle Ridge plans with State policies for the protection of public drinking water supplies. It stated:

"'Saddle Ridge Developers has proposed to reduce the number of units from 105 to 99. This change has reduced the density of development of this project from 1.08 units per buildable acre to 1.03 units per buildable acre. This density still exceeds the general density guidelines of the Plan . . . require[s] minimum lots sizes of one dwelling unit per two acres of "buildable" area (excludes wetlands). This guideline has been developed to support the Plan's policy to Protect public health by meeting or exceeding state and federal drinking water standards for water supplies, by preventing the degradation of water supplies through the proactive protection of drinking water sources. . . .' Furthermore the report stated: 'Although the density of development of this project has been modified with this resubmission, it remains inconsistent with state policy for the protection of drinking water supply watersheds. The DWS believes that development of this nature is best located outside of a public water supply watershed area.' (Letter to Robert Maquat, Chairman, May 9, 2011, from Eric McPhee, Supervising Environmental Analyst; Record Item #10)

"A report on the amended Saddle Ridge application by Aquarion Water Company stated:

"'Aquarion was in strong opposition to the previous Saddle Ridge development application because it proposed a housing unit density of more than twice the maximum development density recommended appropriate for the protection of water quality and aquatic ecology within public drinking water supply watersheds. The current reapplication, with its minor reduction from 105 go 99 housing units, still proposes to develop this sensitive public drinking water supply area at twice the maximum recommended development plan for this location.' Aquarion further stated:

"'Because the development density of this revised proposal still conflicts with

fundamental principles of watershed protection and remains, consequently, contrary to the recommendations of the Connecticut Department of Public Health, the Connecticut Department of Environmental Protection, the Connecticut Office of Policy and Management and the Regional Planning Agency Association of Connecticut, the Aquarion Water Company Department of Watershed and Environmental Management strongly urges the Town of Easton not to approve this application.' (letter to Robert E. Maquat, Chairman, March 24, 2011, from Brian T. Roach, Supervisor, Environmental Protection; Record Item #7)

"The report on the amended Saddle Ridge plans by GHD, consulting engineer for the Town, dated May 9, 2011, made the point that the applicant's statement on the overall density of the project, 'now below one home per acre', does not agree with State density protocols for public water supply watershed because it fails to subtract out wetland areas. GHD stated that '. . . rather than using 104.459 acres, one should eliminate 19.279 acres, resulting in a site of 83.18 acres. With this adjustment the proposed density is about 1.2 homes per acre.' GHD's report further states:

"'The density of this development significantly exceeds the State policies for density in public drinking water watershed lands, a policy that is based on an extensive literature search by a blue ribbon DEP panel, and adopted by the State of Connecticut Office of Policy and Management to protect the health and environment.

"'The reduction of 6 units while a positive direction in reduction in density does not make a meaningful change in the overall density of the site, hence does not make a meaningful change in our conclusion that this proposal exceeds State policies put in place to protect the health and the environment.' (Report to Planning and Zoning Department, Attn. Mr. Robert Maquat, dated May 9, 2011, from GHD Inc., Gary A. Dufel, P.E., BCEE, LEED AP, Project Director: Record Item #23)

. . .

"(3) While widening of all proposed common driveway travelways to 24 feet, as shown on the amended Saddle Ridge plans, would assist emergency access to these densely grouped dwellings, the increase in paving area would likely contribute to stormwater impacts in the detention basins. GHD's May 9, 2011 report to the Commission noted:

"'We also alert you that the paved road surface details contain an underdrain pipe to take water from under the paved drives and direct it to the stormwater collection system. There appears to be an inconsistency here. If the engineer believes it is prudent to drain water from the roadway subbase, it must be assumed there is a fear that the underlying soils will not absorb this water. However the engineer is relying on this absorption in the permeable pavement locations. An engineering discussion on the intent and expectations would be useful.' (GHD; ibid, Record Item #23)

"In light of these facts, the Commission must conclude that the widening of proposed travelways, as shown in the amended application, may exacerbate public

health risks and stormwater and water quality concerns expressed in the Commission's original resolution of February 14, 2011.

. . .

"(8) Modifications made in the proposed 'Housing Opportunity Development District' (HOD) regulations provide that 'if site plan approval is sought concurrently with an application for zone change, the maximum density shall be further limited to the density requested on the site plan'. This provision would allow the HOD applicant to determine the maximum density for its project, within the ceiling limit of density specified by the HOD regulations, irrespective of site conditions, available infrastructure and other legitimate concerns.

"This provision is contrary to sound planning and responsible zoning and, is unacceptable. Moreover, the proposed HOD regulation retains a specified density limit of 2.5 'homes per gross acre of land', which constitutes an egregious violation of State standards for public water supply watershed acceptable densities. Adoption of this proposed density standard for the Saddle Ridge property of 124 acres would create a basis for an application for as many as 310 dwelling units (124 acres x 2.5), or more than six times the number of units which a prudent and safe density in accordance with the State watershed policies could allow. The Commission finds that, as revised, the HOD standards fail to protect the overriding public interest in safe drinking water and protection of the State's natural environment.

"6. The Commission hereby affirms the findings of its Original Resolution, that there remain substantial public interests in health and safety, as set forth in the Original Resolution, as discussed further herein, supported by substantial evidence in the record; the potential harm to health and safety presented by this Application, including the modifications, clearly outweigh the need for affordable housing; that the modifications made by the applicant do not satisfy the concerns raised by the Commission in the Original Resolution, and are not consistent with the standards and guidelines set forth in the State of Connecticut Conservation and Policies Plan for Connecticut (2005-2010) and the Town of Easton Plan of Conservation and Development, nor does it adequately protect the public interest in the drinking water supply; that the lower density modification suggested in the Original Resolution has not been achieved by the minimal deletion of six units; and that in all other respects the findings and conclusions in the Original Resolution are affirmed and incorporated herein.

"THE COMMISSION RESOLVES AS FOLLOWS:

"For the reasons set forth above, the amended application does not adequately address the substantial public interests which clearly outweigh the need for affordable

D

Analysis

The commission argues that *Eureka V, LLC* v. *Planning & Zoning Commission*, supra, 139 Conn. App. 256, supports the dismissal of Saddle Ridge's appeal. The commission asserts that its decision is supported by sufficient evidence in the record and that protection of a public supply watershed is a substantial public interest outweighing the need for affordable housing. It further acknowledges that the public interest could be protected by reasonable changes; however, Saddle Ridge's change from 105 units to ninety-nine was not reasonable. Saddle Ridge counters that its proposed development does not create a risk to the water supply, the alleged harm is a remote risk that does not clearly outweigh the need for affordable housing, and the commission could have made reasonable changes to address its concerns.

Eureka V is a case with similar facts to the present case.[12] In *Eureka V*, the applicant sought an affordable housing application to construct 509 units on a 153 acre parcel with sixty-seven acres located within the watershed for the Saugatuck Reservoir, a source of public drinking water. Id., 259-60. The same water company involved in the present case, Aquarion Water Company (Aquarion), and the DPH

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housing as set forth in the Original Resolution and as stated herein; it has not been modified adequately to reduce the density; and the modified application is DENIED for the reasons set forth in the Original Resolution; and the findings and resolutions in the Original Resolution are hereby affirmed." (Emphasis in original.) (ROR, Item 249, pp. 3-9.)

[12] The court notes that Saddle Ridge's counsel represented the developer in *Eureka V*.

submitted letters into the record recommending that the proposal be rejected because of the intensive land use and inconsistency with the C & D plan. Id., 261-62. The commission allowed a density of 1.9 units per acre while the developer sought to construct fourteen units per acre. Id., 261. New zoning provisions required that the proposed units be served by municipal sewer and water, but no sewer line could be constructed across the watershed area thereby precluding any development on the sixty-seven acres located in the watershed. Id. The applicant submitted a modified application reducing the density to 2.6 units per acre for a total of 389 units. Id., 262. The commission agreed to a density of two units per acre, but rejected a proposal for private septic systems and maintained its ban on any development in the watershed portion. Id., 263. The developer appealed, the trial court sustained much of the appeal, but it upheld the ban on development in the watershed portion because such a ban was necessary to protect the public's substantial interest in maintaining a safe public drinking water supply. Id., 263-64. The trial court "also upheld the [commission's] decision not to allow sewer lines to enter the watershed area or to permit private septic systems on watershed lands, again concluding that the possible

degradation of the public water supply provided a sound basis for such a decision."[13] Id., 264.

On appeal, the Appellate Court first noted, "The plaintiff cannot, and does not, dispute that the protection of public drinking water supplies is a legitimate public health and safety concern that the defendant properly considered in evaluating the plaintiff's applications. Any substantial risk to the public's legitimate interest in maintaining safe and healthy drinking water certainly could outweigh the need for affordable housing. . . . It is among the water resources policies of this state '(1) [t]o preserve and protect water supply watershed lands and prevent degradation of surface water and groundwaters; (2) to protect groundwater recharge areas critical to existing and potential drinking water supplies; (3) to make water resources conservation a priority in all decisions . . . (5) to prevent contamination of water supply sources or reduction in the availability of future water supplies . . . .' General Statutes § 22a-380." (Citation omitted; internal quotation marks omitted.) Id., 270-71. Similar to the present case, the commission received evidence from different experts concerning the impact of the proposed development on the reservoir. Id., 271. The

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[13] The trial court noted that the C & D plan "instructs agencies to recognize the finite nature of our natural resources and ensure that our activities neither deplete nor unduly damage such resources. . . . It further directs agencies to protect current and future drinking water resources from intensive development and potentially deleterious land uses. . . . In order to protect public health and prevent degradation of the State water supply, the State plan recommends that intensive development be guided away from existing and potential water supply watersheds and aquifers." (Citations omitted.) *Eureka V, LLC* v. *Ridgefield Planning & Zoning Commission*, Superior Court, judicial district of New Britain, Docket No. CV-08-4018175-S (October 20, 2010, *Cohn, J.*).

court noted that the commission gave more weight to the opinions expressed by the Aquarion representative, Brian Roach, who stated that, "any high density residential development on the watershed, such as that proposed by the plaintiff, had been shown 'to create significantly more adverse effects to water quality than those associated with less intensive, large-lot residential development.'. . . He explained that the [commission] must also consider the potential cumulative impacts on water quality, noting: 'A specific development may not in itself have a deleterious impact on a water supply reservoir. However, the cumulative impact of a number of discrete projects may result in negative impact on water quality.'" Id., 273. Roach also referenced the DEP's publication "Protecting Connecticut's Water-Supply Watersheds: A Guide for Local Officials" - also part of this record; (ROR, Item 118) - recommending that "'a maximum density of [one] dwelling unit per [two] acres will provide adequate protection of water quality.'" Id.

Additionally, Lori Mathieu, the supervisor of the DPH, source water protection unit, submitted a letter opposing the development. Id., 274. She noted that "'direct harm to the public will be realized by allowing for intensive land use that is inconsistent with long standing' state water source protection policies and that developments of the size and density proposed 'have not been allowed within the state's public water supply watershed areas due to [those policies].' The letter concluded: 'Finally, consistent with the [state's conservation and development policies], when public drinking water supply watershed and groundwater recharge area land is developed, low density residential development is the least impacting and

most preferable land use from a public health perspective. Use of minimum sustainable lot sizes of two or more acres should adequately protect public drinking water supplies while allowing community growth.'" Id.

The court held that "there was sufficient evidence before the [commission] to support its initial determination that the granting of the plaintiff's applications as submitted would present more than a mere theoretical possibility of a specific harm to the public's substantial interest in maintaining a safe and healthy drinking water supply." Id. The court rejected, however, the commission's absolute ban on development in the watershed portion finding that the record did not support such a conclusion. Id., 275. It held that "development at a lower density than that sought by the plaintiff could have adequately protected the public's interest in safe drinking water." Id.

In the present case, *Eureka V's* holding supports the protection of the watershed and the commission's denial. In the commission's February 14, 2011 resolution, incorporated by reference into its August 8, 2011 resolution, it found "substantial public interests in health and safety, especially in regard to protection of the public drinking water supply for over 400,000 water consumers . . . ." (ROR, Item 162, p. 4.) Next, it found that the need for affordable housing as expressed by the plans "contravene other more significant principles . . . . These policies specifically advocate the protection of public water supply watersheds . . . ." (ROR, Item 162, p. 4.) It indicated its reliance on Eric McPhee's report which "confirmed the state density guidelines for public water supply watersheds of not more than

one dwelling unit per two buildable acres and adds that 'The [drinking water section of the DPH] believes, consistent with the state policy for the protection of drinking water supply watersheds, that development of this nature is best located outside of a public water supply watershed area.'" (ROR, Item 162, p. 5.) It further noted the tension between the need for affordable housing and the policy, including the density limitation, to protect safe drinking water that was set forth in the blue ribbon commission report. (ROR, Item 162, p. 5.) It referenced the Greater Bridgeport Regional Planning Agency's August 27, 2010 letter which stated it would not support the Saddle Ridge Village project "due to potential impacts to the regional water supply." (ROR, Item 162, p. 5.) In accordance with § 8-30g (g) (1) (B), the commission next found that after balancing the competing goals of affordable housing versus the protection of the water supply for over 400,000 users, the risk to the water supply outweighed the need for thirty-two units of affordable housing. (ROR, Item 162, p. 11.)

Instrumental to that conclusion are the state of Connecticut studies and policies to avoid degradation of the public water supply by overburdening Connecticut's watershed areas. The documents and letters relied on by the commission were essentially identical to those discussed in *Eureka V*, and as found by the Appellate Court, constitute "sufficient evidence . . . to support [the commission's] initial determination that the granting of the plaintiff's applications as submitted would present more than a mere theoretical possibility of a specific harm to the

public's substantial interest in maintaining a safe and healthy drinking water supply." *Eureka V, LLC* v. *Planning & Zoning Commission*, supra, 139 Conn. App. 274.

The commission further found that the modified application with the six unit reduction was "an insignificant modification which fails to address the very substantial concerns about an excessive density of development on a public water supply watershed." (Emphasis in original.) (ROR, Item 249, p. 3.) It referred to the DPH, source water protection unit, drinking water section May 9, 2011 report which "cited the State of Connecticut Conservation and Development Policies Plan 2005-2010 and noted the inconsistency of the amended Saddle Ridge plans with State policies for the protection of public drinking water supplies." (ROR, Item 249, p. 4.) In addition, it cited a letter from Roach which stated, in relevant part, that "[b]ecause the development density of this revised proposal still conflicts with fundamental principles of watershed protection and remains, consequently, contrary to the recommendations of the Connecticut Department of Public Health, the Connecticut Department of Environmental Protection, the Connecticut Office of Policy and Management and the Regional Planning Agency Association of Connecticut, the Aquarion Water Company Department of Watershed and Environmental Management strongly urges the Town of Easton not to approve this application." (ROR, Item 249, pp. 4-5.) It further referenced the May 9, 2011 report of GHD, Inc., its consulting engineer, which observed that "the applicant's statement on the overall density of the project, 'now below one home per acre', does not agree with State density protocols

for public water supply watershed because it fails to subtract out wetland areas." (ROR, Item 249, p. 5.)

Moreover, the commission found that "the proposed HOD regulation retains a specified density limit of 2.5 'homes per gross acre of land', which constitutes an egregious violation of State standards for public water supply watershed acceptable densities. Adoption of this proposed density standard for the Saddle Ridge property of 124 acres would create a basis for an application for as many as 310 dwelling units (124 acres x 2.5), or more than six times the number of units which a prudent and safe density in accordance with the State watershed policies could allow. The Commission finds that, as revised, the HOD standards fail to protect the overriding public interest in safe drinking water and protection of the State's natural environment." (ROR, Item 249, p. 9.) In responding to the § 8-30g (g) requirements, the commission "affirms the findings of its Original Resolution, that there remain substantial public interests in health and safety, as set forth in the Original Resolution, as discussed further herein, supported by substantial evidence in the record; the potential harm to health and safety presented by this Application, including the modifications, clearly outweigh the need for affordable housing; that the modifications made by the applicant do not satisfy the concerns raised by the Commission in the Original Resolution and are not consistent with the standards and guidelines set forth in the State of Connecticut Conservation and Policies Plan for Connecticut (2005-2010) and the Town of Easton Plan of Conservation and Development, nor does it adequately protect the public interest in the drinking water

supply; that the lower density modification suggested in the Original Resolution has not been achieved by the minimal deletion of six units; and that in all other respects the findings and conclusions in the Original Resolution are affirmed and incorporated herein." (ROR, Item 249, p. 9.)

Saddle Ridge argues that the alleged harm is a remote risk not clearly outweighing the need for affordable housing, there is no actual proof of harm, and the evidence only suggests a mere theoretical possibility of harm. Nevertheless, the commission's "burden is met not by proving facts to a given level of certainty, but by presenting persuasive legal and policy arguments." *River Bend Associates, Inc.* v. *Zoning Commission*, supra, 271 Conn. 25 n.14. The evidence is overwhelming that the proposal contravenes governmental studies and policies to protect substantial public interests; the scientific research should not be dismissed because it is labeled guidelines or reports or studies. Unlike early cases where commissions with lay members with no scientific background made decisions with good intentions, but with little technical support, the present case is replete with sufficient evidence to support the commission's denial and the reasons for the denial.

Moreover, based upon this court's review of the record as previously discussed, the commission has proven that its decision was necessary to protect the public's interest in safe drinking water and that the risk to the drinking water supply for 400,000 people clearly outweighed the need for affordable housing units as proposed by Saddle Ridge. General Statutes § 8-30g (g) (1) (A) and (B). The facts in the present case are distinguishable than those in *Eureka V.* In *Eureka V*, the limit of

one unit per two acres was combined with a total ban on all development and sewering on the sixty-seven acres within the watershed. *Eureka V, LLC* v. *Planning & Zoning Commission*, supra, 139 Conn. App. 275-76. The analysis for this application is not restricted to the issue of density nor is there an outright ban on development. Beyond the density being too great, the proposed development is much closer to the reservoirs than in *Eureka V*. The distance to the Saugatuck Reservoir was more than five miles. (ROR, Item 110.) Here, the distance is just 1.4 miles to Easton Lake Reservoir and about two miles to the Aspetuck Reservoir. (ROR, Item 110; Item IW 4, tab 11, pp. 151-55; Item IW 115, p. 3.)

The stormwater system and amount of impervious pavement are also problematic. In addition to GHD's comments concerning the density, it recommended that both the initial and modified applications be rejected because the proposed use of 225,000 square feet of permeable pavers to reduce impervious surface and presumably to provide for groundwater recharge would not function as proposed. (ROR, Item 223, p. 3.) GHD cautioned that "there is likely to be a fatal flaw to the permeable pavement design. Most of the roadways where this surface is proposed are on a slope, some as great as 10%. It is our opinion that rather than storing water in the stone layer, this stone will serve as a rapid underdrain system, the water will not infiltrate into the soils in the manner represented by the applicant but will flow downhill, discharging to the surface at points which could cause blowouts forming deep ruts and damage to the driving surface." (ROR, Item 223, p. 3.) The coalition's experts agreed. (ROR, Item 96; Item 134; Items 224-25.)

GHD also recommended rejection because the "[d]esign of the hybrid stormwater detention and infiltration basins does not meet low-impact design standards nor comply with the CT DEP Stormwater Quality Manual, with the result that 20 per cent or more of pollutants in stormwater (depending on storm frequency) will be released directly to on-site wetlands with a consequent impact on the quality of the water leaving the site." (ROR, Item 162, p. 7.) GHD further commented that the basins were not designed in accordance with the DEP stormwater quality manual and that there was inadequate testing performed for the water basins. (ROR, Item 91, pp. 11-12; Item 223, pp. 1-2, 5.) Additionally, GHD rejected the assertion that the impact would be the same as the previously approved subdivision noting that the population on the site would be "considerably more" with 180 to 260 persons rather than 85 to 100 and with more clear cutting, earthwork, impervious area, and lawn products. (ROR, Item 91, pp. 8-9.) Finally, GHD commented that Saddle Ridge failed to obtain DEP approval for its subsurface sewage disposal system as the total discharge would exceed 5000 gallons per day and that the Saddle Ridge description to avoid such review was "contrived." (ROR, Item 91, pp. 5-6.)

As to whether the water supply could be protected by reasonable changes to the affordable housing development under § 8-30g (g) (1) (C), the commission invited Saddle Ridge to submit a less intense application and the reduction of six units did not suffice. (ROR, Item 249, p. 3.) The commission readily acknowledges in its decision; (ROR, Item 162, pp. 12-13); and its brief that the public drinking supply can be protected by changes to the proposal. It suggests that Saddle Ridge return to its

original plan of twenty-one units or submit another plan with one dwelling unit per two buildable acres. The evidence here supports limiting development to not more than one dwelling unit per two buildable acres and the commission does not seek an outright ban on development. This court cannot remand, however, the proposal to the commission with directions to approve a change to one unit per two buildable acres as this would not necessarily address other issues such as the proximity to the reservoirs, the stormwater system, and the amount of impervious pavers, among other things. More importantly, it would not address the *actual* or *required* changes that would have to be made to protect the public interest which requires a redesign of the development. In § 8-30g (g) (1) (C), the legislature did not demand that a commission prove that the public interests could not be protected merely by "changes" to the development; rather it centered on "*reasonable* changes" to the development. It is impossible to know exactly what the changes for a project of this scale would be and whether they could be deemed reasonable. Indeed, the ability to submit a second or revised proposal under § 8-30g (h) is precisely the vehicle to resolve this quandary. Here, Saddle Ridge only proposed a minimal change in its revised proposal that did not assist in answering the § 8-30g (g) (1) (C) question of whether reasonable changes could be made.

The commission has given what information it could as to changes that may be made and, for whatever reason and despite a long period when the parties tried to settle the appeals, Saddle Ridge did not submit a plan with these changes to the commission. This court also takes judicial notice of Saddle Ridge's appeal

commenced on January 8, 2015, of a conditional approval by the agency in *Saddle Ridge, LLC* v. *Easton Conservation Commission*, Superior Court, land use litigation docket at Hartford, Docket No. LND CV-15-6058139-S. In that appeal, the agency conditionally approved an application for forty-eight single-family homes with twenty accessory apartments on the same parcel. This is obviously a substantial redesign and emphasizes why this court or the commission cannot be the developer, engineer, architect, environmental consultant, etc., to redesign Saddle Ridge's proposal: it is their project and many technical aspects require proper review. Historically, commissions have appropriately not been charged with that duty and for a variety of obvious reasons that holds true today. See *Shorehaven Golf Club, Inc.* v. *Water Resources Commission*, 146 Conn. 619, 625, 153 A.2d 444 (1959) ("[The plaintiffs] urged their plan as the only one feasible under all the circumstances. The commission denied it. The commission was not under a duty to make suggested changes."); *D'Amato* v. *Orange Plan & Zoning Commission*, Superior Court, judicial district of Hartford, Docket No. CV-92-0506426-S (February 5, 1993, *Berger, J.*). Common sense cannot be ignored; see *State* v. *Brown*, 270 Conn. 330, 343, 869 A.2d 64 1224 (2005) ("[c]ommon sense does not take flight at the courthouse door" [internal quotation marks omitted]); and basic logic strongly suggests that a redesign order in this case would not and could not constitute a reasonable change. Accordingly, this court holds that the commission has met its burden in connection with § 8-30g (g) (1) (C).

IV

The Inland Wetland Appeal

A

Agency Standard of Review[14]

"[I]n an appeal from a decision of an inland wetlands commission, a trial court must search the record of the hearings before that commission to determine if there is an adequate basis for its decision." *Gagnon* v. *Inland Wetlands & Watercourses Commission*, 213 Conn. 604, 611, 569 A.2d 1094 (1990). "In challenging an administrative agency action, the plaintiff has the burden of proof. . . . The plaintiff must do more than simply show that another decision maker, such as the trial court, might have reached a different conclusion. Rather than asking the reviewing court to retry the case de novo . . . the plaintiff must establish that substantial evidence does not exist in the record as a whole to support the agency's decision. . . .

"In reviewing an inland wetlands agency decision made pursuant to the act, the reviewing court must sustain the agency's determination if an examination of the record discloses evidence that supports any one of the reasons given. . . . The evidence, however, to support any such reason must be substantial; [t]he credibility of witnesses and the determination of factual issues are matters within the province of the administrative agency. . . . This so-called substantial evidence rule is similar to the sufficiency of the evidence standard applied in judicial review of jury verdicts, and

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[14] Under General Statutes § 8-30g (a) (4), the provisions of § 8-30g do not apply to inland wetland commissions applying the provisions of General Statutes § 22a-36 et seq.

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. . . . 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." (Citations omitted; internal quotation marks omitted.) *Samperi* v. *Inland Wetlands Agency*, 226 Conn. 579, 587-88, 628 A.2d 1286 (1993).

"Where a zoning agency has stated its reasons for its actions, the court should determine only whether the assigned grounds are reasonably supported by the record and whether they are pertinent to the considerations which the authority was required to apply under the zoning regulations. . . . The [decision] must be sustained if even one of the stated reasons is sufficient to support it. . . . [This] applies where the agency has rendered a formal, official, collective statement of reasons for its action." (Internal quotation marks omitted.) *Bloom* v. *Zoning Board of Appeals*, 233 Conn. 198, 208, 658 A.2d 559 (1995).

B

The Agency's Decision

On July 12, 2011, the agency unanimously voted to deny the modified application and resolved in a twenty-eight page decision that:

"1. The 99 unit development with all of its ancillary components represents an operation within or use of a wetland or watercourse involving removal or deposition of material, or any obstruction, construction, alteration or pollution,

of such wetlands or watercourses. These represent regulated activities within the jurisdiction of this Commission, including more specifically, discharges (stormwater, nitrogen), runoffs, pollutants, stormwater control, and other uses as set forth above. The Commission's definition of Regulated Activity and the Appendix C provision cited above provide jurisdiction for this Commission.

"2. The direct and indirect effects resulting from the proposed activities present significant adverse impacts to the wetlands and watercourses, as set forth herein, and as supported by substantial evidence in the record.

"3. The specific findings mentioned concerning unreasonably high density, high wastewater discharges and nitrogen loading from the 99 septic systems, the current application vs. that of the prior 21 lot subdivision, the conclusion that this is a new application, inadequacies in the stormwater control plan, effectiveness of using pavers, introduction of the water supply line, maintenance and management by the separate homeowner associations, the Drinking Water Quality Management Plan, and findings pursuant to Section 10.2 of the regulations are supported by substantial evidence in the record of this proceeding." (Emphasis in original.) (ROR, Item IW 115, p. 28.)

C

Analysis

Saddle Ridge argues that the agency's decision[15] is unlawful primarily because it asserts jurisdiction over activities outside its jurisdiction and it is not supported by substantial evidence. Additionally, Saddle Ridge asserts that the agency should have approved Saddle Ridge's application because the proposed regulated activities would have the same or less impact than its approved 2009 permit. The commission counters that it had regulatory authority over the upland review activities and beyond if the proposed activities affected the inland wetlands or watercourses; the approval of the 2009 permit did not suffice as the subject permit was fundamentally different; and its decision is supported by substantial evidence in the record.

As to the jurisdictional issue, General Statutes § 22a-42 (a) provides: "To carry out and effectuate the purposes and policies of sections 22a-36 to 22a-45a, inclusive, it is hereby declared to be the public policy of the state to require municipal

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[15] Saddle Ridge alleges in page nine of its complaint that the reasons provided by the agency are that: "a. the proposed density 'poses a direct significant adverse effect to the wetlands'; b. the proposed septic systems should require Department of Energy and Environmental Protection ('DEEP') approval rather than DPH approval and the impact of nitrogen from the septic systems was not adequately addressed by Saddle Ridge; c. the 2011 proposed plan will have more wetland impact than the 2009 approved plan even though the upland review area disturbance is less because: (1) changes in the land beyond 100 feet; (2) the projected number of future residents; (3) the introduction of public drinking water to the Site; and (4) the use of a homeowners association to manage each lot; d. the proposed stormwater management system and pervious pavers will not operate as designed; e. the proposed drinking water quality management plan would not be effective; f. the proposed plan is reasonably likely to unreasonably pollute or impair the public trust; and g. feasible and prudent alternatives exist."

regulation of activities affecting the wetlands and watercourses within the territorial limits of the various municipalities or districts." General Statutes § 22a-38 defines certain relevant terms. "Discharge" is defined as "the emission of any water, substance or material into waters of the state whether or not such substance causes pollution"; General Statutes § 22a-38 (10); "'[w]aste' means sewage or any substance, liquid, gaseous, solid or radioactive, which may pollute or tend to pollute any of the waters of the state"; General Statutes § 22a-38 (7); "pollution" is defined as "harmful thermal effect or the contamination or rendering unclean or impure of any waters of the state by reason of any waste or other materials discharged or deposited therein by any public or private sewer or otherwise so as directly or indirectly to come in contact with any waters"; General Statutes § 22a-38 (8); and "'[r]egulated activity' means any operation within or use of a wetland or watercourse involving removal or deposition of material, or any obstruction, construction, alteration or pollution, of such wetlands or watercourses, but shall not include the specified activities in section 22a-40.'" General Statutes § 22a-38 (13).

The agency defines "regulated activity" as "any *operation [within] or use of a wetlands or watercourse* involving discharge of water, removal or deposition of material, or any obstruction, construction, alteration or pollution of such wetlands or watercourses, and any earth moving, removal, deposition, construction, or clear-cutting of trees within one hundred (100) feet from the point on the boundary of any wetlands or watercourses and two hundred (200) feet from the Aspetuck River, Mill River, Saugatuck Reservoir, Aspetuck Reservoir, Hemlock Reservoir,

Easton Lake Reservoir or Pfeiffer Pond, and ponds having an area in excess of three (3) acres, but shall not include the activities specified in Section 4 of these regulations." (Emphasis in original.) (ROR, Item IW 115, p. 5.) The definition of "significant impact," includes, but is not limited to, "[a]ny activity which substantially diminishes the natural capacity of an inland wetland or watercourse to . . . supply water [and] assimilate waste . . ." and "[a]ny activity which is likely to cause or has the potential to cause pollution of a wetland or a watercourse. . . ." (ROR, Item IW 115, p. 4.)

Saddle Ridge argues that *Prestige Builders, LLC* v. *Inland Wetlands Commission,* 79 Conn. App. 710, 721-24, 831 A.2d 290 (2003), cert. denied, 269 Conn. 909, 852 A.2d 740 (2004), is controlling and that the agency is limited in its review outside the wetlands and watercourses to the defined upland review area. In *Prestige Builders*, the court held that an agency must first enact a regulation that gives it authority over an area before it may, in fact, regulate within those areas. Id., 723.

In *Queach Corp.* v. *Inland Wetlands Commission*, 258 Conn. 178, 183-84, 779 A.2d 134 (2001), the court reviewed amendments to the Branford inland wetlands regulations adopted pursuant to legislative changes made in the late 1990s. Of significance to the present case, Branford had an amendment authorizing review outside an upland review area. Id., 196-97. Specifically, the amendment provided that "[t]he [a]gency may rule that any other activity located within such upland review area or in any other non-wetland or non-watercourse area is likely to impact or affect

wetlands or watercourses and is a regulated activity."[16] (Internal quotation marks omitted.) Id., 198. In the present case, the regulations do not contain similar language, but the agency defines a "regulated activity," in relevant part, as the "use of a wetlands or watercourse involving discharge of water."[17] (ROR, Item IW 115, p. 5.)

"The sine qua non of review of inland wetlands applications is a determination whether the proposed activity will cause an *adverse impact* to a wetland or watercourse." (Emphasis in original.) *River Bend Associates, Inc.* v. *Conservation & Inland Wetlands Commission*, 269 Conn. 57, 74, 848 A.2d 395 (2004). In *Queach Corp.* v. *Inland Wetlands Commission*, supra, 258 Conn. 197-98, the court stated: "[General Statutes §] 22a-42a (f) provides that a wetlands agency may regulate

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[16] The regulation more fully defined a "regulated activity," in relevant part, as "any operation within or use of a wetland or watercourse involving removal or deposition of material, or any obstruction, construction, alteration or pollution of such a wetland or watercourse . . . . Furthermore any clearing, grubbing, filling, grading, paving, excavating, constructing, depositing or removing of material and discharging of stormwater in the following areas is a regulated activity:

"(1) on land within 100 feet measured horizontally from the boundary of any wetland or watercourse, provided

"(2) The Agency may rule that any other activity located within such upland review area or in any other non-wetland or non-watercourse area is likely to impact or affect wetlands or watercourses and is a regulated activity." (Internal quotation marks omitted.) Id., 185 n.11.

[17] The agency argues that appendix C to its regulations contains the "Guidelines Upland Review Regulations, Connecticut's Inland Wetlands and Watercourses Act, June 1997." The agency refers to it in its decision. (ROR, Item IW 115, p. 5.) In light of the stipulation (pleading #131.00) filed by the parties on October 7, 2015, this court does not hold that the guidelines were officially adopted by the agency. The agency has, however, adopted an upland review definition; (ROR, Item IW 115, p. 5); and in light of *Aaron* v. *Conservation Commission*, 183 Conn. 532, 441 A.2d 30 (1981), the reference to the guidelines does not control the outcome of this case.

activities outside of the wetlands areas, '[i]f a municipal inland wetlands agency regulates activities within areas around wetlands or watercourses' *and* 'those activities . . . are likely to impact or affect wetlands or watercourses.' This statutory language effectively codifies our previous statement in the seminal case of *Aaron* v. *Conservation Commission*, [183 Conn. 532, 542, 441 A.2d 30 (1981)], wherein we emphasized that '[a]n examination of the act reveals that one of its major considerations is the environmental impact of proposed activity on wetlands and water courses, which may, in some instances, come from outside the physical boundaries of a wetland or water course.' In *Aaron*, we held that activity that occurs in nonwetlands areas, but that affects wetlands areas, falls within the scope of regulated activity. Id. We also have emphasized this principle in more recent decisions. See *Mario* v. *Fairfield*, [217 Conn. 164, 171, 585 A.2d 87 (1991)], ('[t]he commission could reasonably have determined that the construction activity inevitably accompanying the erection of a structure, albeit on the nonwetland portion of a parcel of land containing wetlands, could pose a significant threat to the environmental stability of the nearby wetlands'); *Cioffoletti* v. *Planning & Zoning Commission*, [209 Conn. 544, 558, 552 A.2d 796 (1989)], ('the defendant in this case acted within its authority in regulating mining and excavation in areas adjacent to the inland wetlands because there was evidence that these activities would adversely affect wetlands areas')." (Emphasis in original.) Thus, the *Prestige Builders* court's conclusion that an agency must enact regulations to exercise authority over an upland review area; *Prestige Builders, LLC* v. *Inland Wetlands Commission,* supra, 79 Conn.

App. 723; is fundamentally different from the agency's authority and obligation to review "the environmental impact of proposed activity on wetlands and water courses which may, in some instances, come from outside the physical boundaries of a wetland or water course." See *Aaron* v. *Conservation Commission*, supra, 183 Conn 542.

In the present case, the agency's regulations included this obligation in its definition of regulated activity and in its statutory duty under General Statutes § 22a-41 as adopted in § 10.2 of the regulations, which, in relevant part, provides: "The Agency shall consider relevant facts and circumstances in making its decision on any application for a permit, including but not limited to the following:

"a. The environmental impact of the proposed action, including the effects on the inland wetland's and watercourse's capacity to support fish and wildlife, to prevent flooding, to supply and protect surface and ground water, to control sediment, to facilitate drainage, to control pollution, to support recreational activities, and to promote public health and safety.

. . .

"d. Irreversible and irretrievable commitments of resources, which would be involved in the proposed activity. This requires recognition that the inland wetlands and watercourses of the State of Connecticut are an indispensable, irreplaceable and fragile natural resource, and that these areas may be irreversibly destroyed by deposition, filing, and removal of material, by the

diversion, diminution or obstruction of water flow including low flows, and by the erection of structures and other uses.

"e. The character and degree of injury to, or interference with, safety, health, or the reasonable use of property, including abutting or downstream property, which would be caused or threatened by the proposed activity, or the creation of conditions which may do so. This includes recognition of potential damage from erosion, turbidity, or siltation, loss of fish or wildlife and their habitat, loss of unique habitat having demonstrable natural, scientific or educational value, loss or diminution of beneficial aquatic organisms and wetland plants, the dangers of flooding and pollution, and the destruction of the economic, aesthetic, recreational and other public and private uses and value of wetland and watercourses to the community. . . ." (ROR, Item IW 115, pp. 5-6.)

Therefore, the fact that the agency's regulations did not include the specific language as in *Queach* or that its upland review area was defined as 100 feet, did not deprive it from examining activity that would use the wetlands and watercourses. See Aaron v. *Conservation Commission*, supra, 183 Conn 542. Simply put, an upland review regulation is a useful regulatory mechanism; it does not supplant a substantive review of an activity that may use or impact a downgradient wetland or watercourse. It is the commission's charge to evaluate the impact on a wetland or watercourse and not the impact on an upland review area per se.

Even if the agency is restricted to activities within the upland review area, the agency adopted the following as a finding: "'The proposed development includes a

substantial amount of vegetation removal, earth disturbance, grading, rock removal, installation of storm drainage and detention basins, construction of roads, driveways, and parking lots, installation of 99 sub-surface sewage disposal systems and construction of 31 buildings. Many of these activities are located within the 100' upland review area. *Regardless of the distance between the activity and the nearest wetland boundary, virtually all of these activities generate a discharge to wetlands, watercourses or groundwater, during and after construction, thereby altering the physical, chemical and biological attributes of the wetlands and watercourses.*' (Emphasis added by Commission)." (ROR, Item IW 115, p. 25.)

Moreover, the agency made specific and extensive findings based upon the density of the project, the development's departure from state policy, and ultimately its impact to the wetlands. First, as to the density issue, the findings included the following representative statement: "The Commission finds that evidence in the record from outside agencies and entities recommend against this project based upon overly dense use in the public drinking water watershed, which will cause a direct significant and adverse effect upon the wetlands. Specifically, reports received from Aquarion Water Company and the State of Connecticut Department of Public Health consistently state that residential development density within a watershed should not exceed 1 dwelling unit per 2 acres of buildable area. 'The 9 lots proposed for multi-family housing encompass an area of 81.313 acres exclusive of wetlands, which yields a proposed density of 1 unit per 0.82 acres. This is 2.4 times denser than the maximum density the DEP determined would protect public drinking water supplies.

Even including the Open Space, the density of the multi-family housing would be substantially greater than the maximum recommended.' [Michael Klein letter, May 8, 2011, Page 3] (Emphasis added by Commission)." (ROR, Item IW 115, p. 8.) In addition to this finding, the agency made eleven other findings based upon, in part, the May 10, 2011 GHD report; (ROR, Item IW 57); a March 24, 2011 letter from Aquarion (ROR, Item IW 12); and reviews conducted by the DPH. (ROR, Item IW 41.) The agency also made four findings concerning the septic systems based upon the review of its consultant GHD. (ROR, Item IW 115, pp. 113-15.) Representative of those findings is the following: "'[A]lthough the Applicant asserts that they do not have to follow DEP guidelines for pollutant analysis from wastewater discharges, in their November 22, 2010 supplemental materials report (Page 9, Item R3) they have presented nitrogen data while claiming to have analyzed the site in compliance with DEP criteria, but have not provided the details of the analysis.' GHD goes on to note 'It appears that the Applicant has only analyzed the anticipated nitrogen concentrations from wastewater discharges at 2 (unknown) locations and apparently at property lines rather than at wetland boundaries since only two nitrogen values have been provided. . . . Therefore, it is our professional opinion that the Applicant has inaccurately represented that the Application is compliant with DEP nitrogen criteria from onsite wastewater discharges - which clearly has not been proven. There is a clear concern that Nitrogen will be exceeded because the limited data provided by the Applicant shows values near the limit, presumably at points

father down gradient.' (Emphasis added by Commission)." (ROR, Item IW 115, pp. 14-15.)

Next, the agency rejected Saddle Ridge's argument that the proposed ninety-nine unit project was similar to the 2009 permit. In finding that this proposal had substantially more impact on the wetlands and watercourses, the agency, in relevant part, stated: "Specifically, the higher density, according to GHD, has a direct effect upon the wetlands and watercourses. GHD states the following:

> 'While the total area of impact within the 100- foot upland review area is +6.2 acres or 269,805 square feet and is less than the original 21 unit plan, the critical issue relative to upland review areas remains the overall environmental quality and viability of the upland buffer and consequently the wetlands following development. The Commission needs to consider how the altered buffer will function to protect wetland resources and down gradient water quality during and after construction. Given the overall amount of clearing and development of the vegetated upland areas is much more extensive, it will have a more significant impact on the overall environmental resource on the site and in the watershed. For example:
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> '1. A block of existing growth approximately 500 feet wide and 800 feet long with extensions on two sides of several hundred feet is shown being cleared and developed on the eastern side of the site;

'2. A block of existing growth approximately 400 feet wide and 1,000 feet long with extensions in two directions is shown being cleared on the southwest side of the site.' [GHD report, May 10, 2011, Page 11].

"Page 12: 'The difference in overall environmental impact to natural habitat and the full range of ecosystems between the two development proposals is dramatic, hence the impacts to the watershed lands are significant. The multi-family plan essentially clears habitat from the entire development zone, and the limited proposed plants along the road edges and stormwater basins plus the written statements that plants will be installed around the house will not be a character that will support viable levels of local fauna." (ROR, Item IW 115, p. 16.) The agency also noted that Michael S. Klein, soil and wetland scientist for Environmental Planning Services, stated that "the substantial increase in disturbance of land draining to the wetlands creates a higher likelihood of indirect impacts to the wetlands that were not considered in the agency's original proceedings. These factors point to a significant adverse impact on the wetlands and watercourses." (ROR, Item IW 115, p. 17.) The agency also noted the May 13, 2011 submission of Polly Edwards, the Easton health officer, and the May 17, 2011 report of Gary Dufel of GHD who both indicated the total wastewater per day would be substantially increased in the new proposal. (ROR, Item IW 115, p. 17.) The agency made additional findings as to stormwater control and noted, based upon comments of GHD, Klein, and Trinkaus Engineering, LLC, that Saddle Ridge's proposal was inconsistent with the DEP 2004 Connecticut stormwater quality manual. (ROR, Item IW 115, pp. 18-19.) Hence, the agency

concluded "that absent a well designed stormwater control system based on adequate field testing to validate the design assumptions, pollutant loads not limited to excess nutrients, sediment loading, pathogens, organic materials, hydrocarbons, metals, de-icing constituents, and trash and debris [DEP 2004 WQM], will have an adverse effect on the adjacent wetlands and watersheds." (ROR, Item IW 115, p. 19.) The agency negatively commented on the proposed permeable pavers finding, in relevant part, that "[t]he lack of a viable, sustainable paver system will have a direct, adverse impact on the wetlands, watercourses and watershed." (Emphasis in original.) (ROR, Item IW 115, p. 21.) The agency also made certain negative findings about the maintenance plan for the homeowners and the drinking water quality management plan. (ROR, Item IW 115, pp. 22-25.)

"Where a zoning agency has stated its reasons for its actions, the court should determine only whether the assigned grounds are reasonably supported by the record and whether they are pertinent to the considerations which the authority was required to apply under the zoning regulations. . . . The [decision] must be sustained if even one of the stated reasons is sufficient to support it. . . . [This] applies where the agency has rendered a formal, official, collective statement of reasons for its action." (Internal quotation marks omitted.) *Bloom* v. *Zoning Board of Appeals*, supra, 233 Conn. 208. "When an administrative agency specifically states its reasons, the court should go no further because it could reasonably be inferred that this was the extent of its findings. To go beyond those stated reasons invades the factfinding mission of the agency by allowing the court to cull out reasons that the agency may

not have found to be credible or proven." (Internal quotation marks omitted.) *Gibbons* v. *Historic District Commission*, 285 Conn. 755, 771, 941 A.2d 917 (2008).

In the present case, the agency had expert testimony on the impact of the proposal from the applicant, from its own experts, from the intervenor and from the state. As discussed, a review of this record indicates that substantial evidence supports the agency's stated reasons for denial. Indeed, a number of experts made specific findings of actual adverse impacts to the wetlands or watercourses. "Determining what constitutes an adverse impact on a wetland is a technically complex issue . . . frequently necessitating resort to expert testimony." (Citation omitted; internal quotation marks omitted.) *Three Levels Corporation* v. *Conservation Commission,* 148 Conn. App. 91, 102, 89 A.3d 3 (2014). "It is well established that credibility and factual determinations are solely within the province of the commission . . . and the commission is not required to believe any witness, even an expert." (Citation omitted; internal quotation marks omitted.) *Unistar Properties, LLC* v. *Conservation & Inland Wetlands Commission*, 293 Conn. 93, 123, 977 A.2d 127 (2009). Thus, Saddle Ridge's wetlands appeal is dismissed.

V

Saddle Ridge's application highlights Easton's need for affordable housing. The legislature's enactment of § 8-30g to accomplish that goal was not intended to allow every development at the cost of damaging natural resources such as our wetlands and watercourses. Sometimes, a different type or less intensive use of the

land is demanded.[18] While our zoning regulations "shall . . . encourage the development of housing opportunities, including opportunities for multifamily dwellings," they shall also be drafted "consistent with soil types, terrain and infrastructure capacity . . . ." General Statutes § 8-2 (a). Additionally, they "shall be designed . . . to facilitate the adequate provision for . . . water" and "shall be made with reasonable consideration for the protection of existing and potential public surface and ground drinking water supplies. . . ."[19] General Statutes § 8-2 (a).

In adopting the Inland Wetlands and Watercourses Act, the legislature declared, "The inland wetlands and watercourses of the state of Connecticut are an indispensable and irreplaceable but fragile natural resource with which the citizens of the state have been endowed. The wetlands and watercourses are an interrelated web of nature essential to an adequate supply of surface and underground water; to hydrological stability and control of flooding and erosion; to the recharging and purification of groundwater; and to the existence of many forms of animal, aquatic and plant life. Many inland wetlands and watercourses have been destroyed or are in danger of destruction because of unregulated use by reason of the deposition, filling or removal of material, the diversion or obstruction of water flow, the erection of

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[18] It has long been held that "[i]n regulating the use of land under the police power, the maximum possible enrichment of a particular landowner is not a controlling purpose." *Figarsky* v. *Historic District Commission*, 171 Conn. 198, 211, 368 A.2d 163 (1976).

[19] It is also true that affordable housing and protection of drinking water supply be considered in preparing municipal plans of conservation and development. General Statutes § 8-23 (d).

structures and other uses, all of which have despoiled, polluted and eliminated wetlands and watercourses. Such unregulated activity has had, and will continue to have, a significant, adverse impact on the environment and ecology of the state of Connecticut and has and will continue to imperil the quality of the environment thus adversely affecting the ecological, scenic, historic and recreational values and benefits of the state for its citizens now and forever more. The preservation and protection of the wetlands and watercourses from random, unnecessary, undesirable and unregulated uses, disturbance or destruction is in the public interest and is essential to the health, welfare and safety of the citizens of the state. It is, therefore, the purpose of sections 22a-36 to 22a-45, inclusive, to protect the citizens of the state by making provisions for the protection, preservation, maintenance and use of the inland wetlands and watercourses by minimizing their disturbance and pollution; maintaining and improving water quality in accordance with the highest standards set by federal, state or local authority; preventing damage from erosion, turbidity or siltation; preventing loss of fish and other beneficial aquatic organisms, wildlife and vegetation and the destruction of the natural habitats thereof; deterring and inhibiting the danger of flood and pollution; protecting the quality of wetlands and watercourses for their conservation, economic, aesthetic, recreational and other public and private uses and values; and protecting the state's potable fresh water supplies from the dangers of drought, overdraft, pollution, misuse and mismanagement by providing an orderly process to balance the need for the economic growth of the state and the use of its land with the need to protect its environment and ecology in order to forever

guarantee to the people of the state, the safety of such natural resources for their benefit and enjoyment and for the benefit and enjoyment of generations yet unborn." General Statutes § 22a-36. Moreover, the water resources policy of the state is declared to be the following: "(1) To preserve and protect water supply watershed lands and prevent degradation of surface water and groundwaters; (2) to protect groundwater recharge areas critical to existing and potential drinking water supplies; (3) to make water resources conservation a priority in all decisions; (4) to conserve water resources through technology, methods and procedures designed to promote efficient use of water and to eliminate the waste of water; (5) to prevent contamination of water supply sources or reduction in the availability of future water supplies; (6) to balance competing and conflicting needs for water equitably and at a reasonable cost to all citizens; and (7) to reduce or eliminate the waste of water through water supply management practices." General Statutes § 22a-380. In accordance with the legislature's directions to protect these two watersheds, the commission and the agency properly reviewed the impact of Saddle Ridge's proposal and denied the applications.

For the foregoing reasons, Saddle Ridge's affordable housing appeal and inland wetlands appeal are dismissed.

Berger

Berger, J.