

## Municipal Group Client Alert

### ***INTERNATIONAL INVESTORS v. TOWN PLAN AND ZONING COMMISSION OF FAIRFIELD, 344 Conn. 46 (2022)***

December 2022

By Mark K. Branse

The Connecticut Supreme Court released an opinion in July that partially resolved a long-standing question about special permits/special exceptions (the statutes use both terms, but our courts have said that they are interchangeable, so for simplicity we'll call them "special permits"). Connecticut General Statutes Section 8-3(i) provides for the term of most site plan approvals: an initial term of five years, and additional extensions of up to five more years within which the improvements depicted in that site plan must be completed (Certain site plans may have different time limits based on other statutory provisions or special acts). However, while the statutes expressly authorize zoning commissions to issue special permits, no minimum or maximum time period is specified. Most towns have adopted regulations that set a time limit within which work proposed to be conducted under a special permit must be constructed and/or completed, but until now the courts hadn't ruled on the validity of such regulations. That open issue of the law has been resolved by the Supreme Court's decision in *International Investors v. Town Plan and Zoning Commission of Fairfield*, but the Court's holding will require many towns to amend their zoning regulations.



While the factual background to the case is complicated, the basic issue concerned an extension of time that was granted to a developer for a special permit that was granted by the Fairfield Town Planning Commission. A neighbor claimed that the special permit had expired based on the language of the regulations and appealed the extension of time. The Superior Court held that the special permit could not have expired because, in the absence of an express Statutory time period, special permits were perpetual and could never terminate. The Court's reasoning was that because land use approvals must "run with the land" (that is, be transferable to future property owners), there can be no time limits absent a provision in the statutes.

The Appellate Court reversed, observing that a time limit on a special permit still allows it to “run with the land,” but not in perpetuity; a buyer of the property would have a valid permit for the remaining time left in the approval. The Appellate Court upheld the time limits in the Fairfield zoning regulations and the extension of time that the Commission had granted.

The Supreme Court generally upheld the Appellate Court’s reasoning, but with an important limitation: The Supreme Court noted that special permits typically include a site plan, and observed that the site plan was an essential component of the special permit. The Court correctly noted that when evaluating the compatibility of a proposed use in a particular location, the local commission’s determination can only be made after a “thorough examination of the specific site plan submitted” [quoting from *Barberino Realty & Development Corp. v. Planning & Zoning Commission*, 222 Conn. 607, 613-614 (1992)]. The Court also noted that even though a site plan is typically a component of a special permit, it is not a separate application and does not trigger automatic approval, citing to *Center Shops of East Granby v. Planning & Zoning Commission*, 253 Conn. 183, 191 (2000). The Court appears to conclude that zoning commissions *can* set time limits for special permits:

Applying this logic [that a special permit requires a determination of suitability in location] to the present case, we see no basis to conclude that the time limit to complete construction in §8-3, governing site plans, would apply by operation of law to special permits.

*Id.*, at p. 72.

The Court then proceeds to do exactly that! While acknowledging the benefits of a time limit to prevent “stale” special permits that don’t reflect current regulations or conditions, and also acknowledging what it called “the ubiquity of the exercise of this authority by municipal zoning agencies all across this state,” *Id.*, p. 77, the Court nevertheless concluded that it was illogical for a special permit to expire before the Statutory life of its accompanying site plan. The Court held, therefore, that a special permit must be valid for *at least* the time period for completion of the improvements depicted on its accompanying site plan, i.e., five years plus extensions of up to five more years. Zoning Commissions should amend their zoning regulations to provide that where a special permit includes a site plan *that depicts improvements to be constructed*, that special permit must be valid for at least the time period of that site plan.

This is not the end of the discussion, however. The Court expressly noted that some special permits—specifically excavation permits—do not involve the construction of new improvements, and thus *can* be subject to a term of years that is shorter than the five-and-five years of Section 8-3 for site plans. As the Court held, “Temporal limitations on special permits have been deemed proper if they relate to the *use* of the property.” *Id.*, p. 65 (emphasis original). The same logic should apply to any special permit that does not involve the construction of new improvements. For example, if a local regulation provides that a liquor store is a special permit use, and the applicant seeks to convert an existing retail building into a liquor store without making any exterior modifications, the zoning commission should be able to set a time period within which that special permit use must be established, or else the permit expires. The same would be true of other uses which

are, by their very nature, temporary, such as carnivals/festivals and flea markets.

The bottom line is that every zoning commission must examine its special permit regulations and revise them in such a way that any special permit which includes a site plan depicting physical improvements must be valid for an initial term of five years, with extension of at least five more years if requested by the applicant. However, special permits for uses that are temporary, or that do not involve the construction of new improvements, may be subject to lesser periods of validity. We would be happy to work with any of our client commissions to update their regulations to achieve compliance with the *International Investors* case.

## Our Attorneys

**Morris R. Borea**

[borea@halloransage.com](mailto:borea@halloransage.com)  
860.297.4676

**Mark K. Branse**

[branse@halloransage.com](mailto:branse@halloransage.com)  
860.241.4088

**Ann M. Catino**

[catino@halloransage.com](mailto:catino@halloransage.com)  
860.297.4682

**Michael C. Collins**

[collins@halloransage.com](mailto:collins@halloransage.com)  
860.297.4697

**Alan P. Curto**

[curto@halloransage.com](mailto:curto@halloransage.com)  
860.297.4694

**Duncan J. Forsyth**

[forsyth@halloransage.com](mailto:forsyth@halloransage.com)  
860.297.4696

**Kevin J. Greene**

[greene@halloransage.com](mailto:greeneg@halloransage.com)  
860.297.4670

**Christopher J. McCarthy**

[mccarthy@halloransage.com](mailto:mccarthy@halloransage.com)  
860.297.4637

**Andrew R. Morin**

[morin@halloransage.com](mailto:morin@halloransage.com)  
860.241.4084

**Ronald F. Ochsner**

[ochsner@halloransage.com](mailto:ochsner@halloransage.com)  
860.522.6103

**Jennifer A. Pedevillano**

[pedevillano@halloransage.com](mailto:pedevillano@halloransage.com)  
475.655.3400

**James J. Perito**

[perito@halloransage.com](mailto:perito@halloransage.com)  
203.672.5423

**Richard P. Roberts**

[roberts@halloransage.com](mailto:roberts@halloransage.com)  
860.297.4695

**Kenneth R. Slater, Jr.**

[slater@halloransage.com](mailto:slater@halloransage.com)  
860.297.4662

**Oscar L. Suarez**

[suarez@halloransage.com](mailto:suarez@halloransage.com)  
860.297.4604

**Matthew J. Willis**

[willis@halloransage.com](mailto:willis@halloransage.com)  
860.241.4074

**Michael A. Zizka**

[zizka@halloransage.com](mailto:zizka@halloransage.com)  
860.294.4680

---

860.522.6103 | [halloransage.com](http://halloransage.com)

Hartford | Danbury | Middletown | New Haven  
New London | Springfield, MA | Washington, D.C.