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Re: Processing Applications during Appeal Period

**ISSUE:** With respect to the case of *The Strand/BRC Group LLC, et al. v. Board of Representatives of the City of Stamford*, CV 19-6111731 (2020), you have asked whether the Planning Board must process applications filed by the Plaintiffs during the appeal period, and in view of the fact that the Board of Representatives has not yet decided whether to appeal the trial court's decision. The Plaintiffs have acknowledged that they are proceeding "at its own risk," recognizing that the Board of Representatives may ultimately decide to appeal the trial court's decision and, if that happens, the trial court's decision may be reversed.

**SHORT ANSWER:** If the Plaintiffs' applications are complete, the Planning Board must process them during the appeal period as it would any other application.

**DISCUSSION:** In *The Strand/BRC Group LLC, et al.*, the Plaintiffs appealed from the decision of the Board of Representatives acting on a protest petition filed pursuant to Charter § C6-30-7 in opposition to the Planning Board's decision to amend the City's Master Plan. The trial court determined that the Board of Representatives did not properly accept or have jurisdiction to consider the petition, and sustained the Plaintiffs' appeal. The Board of Representatives has not yet decided whether to appeal the decision.

Pursuant to Connecticut Practice Book Rules of Appellate Procedure, § 61-11(b), there is no automatic stay of proceedings in any appeal taken from a final judgment of the trial court unless ordered by a court or unless a stay was in effect during the pendency of the administrative appeal in the trial court. In the present case, the trial court did not order a stay, and Charter § C6-30-7 does not mandate one during the appeal period.

Charter § C6-30-7 - Referral to Board of Representatives by Opponents of Proposed Amendments, provides that when a petition is filed with the Planning Board objecting to the proposed amendment to the Master Plan, the Planning Board's decision "shall have no force or effect but the matter shall be referred by the Planning Board to the Board of Representatives." In other words, the filing of a petition operates as a stay of the Planning Board's decision pending the Board of Representatives' decision. The stay terminates, however, when the Board of Representatives acts because there is no language in the Charter that extends the stay beyond that point. "The interpretation of a charter is a question of law, and the rules of statutory interpretation generally apply." (Citations omitted; internal quotation marks omitted.) *AEL Realty Holdings, Inc. v. Board of Representatives*, 82 Conn. App. 613, 616 (2004). "If the statutory language ... is clear and unambiguous... courts cannot, by construction, read into such statutes provisions which are not clearly stated." (Citations omitted; internal quotation marks omitted.) *Iovieno v. Commissioner of Correction*, 242 Conn. 689, 710 (1997). To conclude that the stay imposed under § C6-30-7 remains in effect throughout the entire appeal process means reading into the Charter a provision that is not clearly stated, in violation of the rules of statutory construction.

The trial court's decision sustaining the Plaintiffs' appeal constitutes a final judgment on the merits of the case because no further determinations are required of the Board of Representatives and the court did not dictate the outcome of post proceeding with respect to the changes made to the Master Plan. See Practice Book § 61-2, Appeal of Judgment on Entire Complaint, Counterclaim or Cross Complaint. ("When judgment has been rendered on an entire complaint... such judgment shall constitute a final judgment.") See also *Kaufman v. Zoning Commission*, 232 Conn. 122, 129-30 (1995) (where judgment requires agency to make further evidentiary determinations that are not merely ministerial, decision is not final.) Accordingly, even if the Board of Representatives decide to file an appeal, unless the court stays the judgment pending appeal, there is no legal basis upon which the Planning Board may refuse to act on the Plaintiffs' applications.

**CONCLUSION:** Based on our reading of the Rules of Appellate Procedure, Charter § C6-30-7, and the trial court's decision in *The Strand/BRC Group LLC, et al. v. Board of Representatives of the City of Stamford*, if the Plaintiffs' applications are complete, then the Planning Board must process them as it would any other application. The trial court's decision is a final judgment on the merits of the Plaintiffs' appeal, and unless stayed by the Court, the Planning Board must act without regard to whether the Board of Representatives chooses to appeal the court's decision or the expiration of the appeal period.