

the statute to persons and families satisfying the income criteria set forth therein. The municipality may, by ordinance, establish or designate a municipal agency to implement the program. If the legislative body does not enact an ordinance within 120 days following the date of such request, the Zoning Commission may notify the housing authority of the municipality or, in any municipality which has not by resolution authorized its housing authority to transact business in accordance with the provisions of Section 8-40 of the General Statutes, the municipal agency with responsibility for housing matters that it has adopted such regulation. Upon receiving such notice the housing authority or the municipal agency with responsibility for housing matters shall implement the program. Any such program is required to provide for a method of selecting persons satisfying the income criteria to purchase or rent the units of affordable housing from among a pool of applicants which methods shall not discriminate on the basis of age, gender, race, creed, color, national origin, ancestry, marital status, mental retardation, physical disability, including, but not limited to, blindness or deafness, place of residence, number of children or veteran status.

## Chapter Nine FLOATING ZONES

A floating zone is a special detailed use district of undetermined location in which the proposed kind, size and form of structures must be pre-approved. It is legislatively pre-deemed compatible with the area in which it eventually locates if specified standards are met and the particular application is not unreasonable. It differs from the traditional "Euclidean" zone in that it has no defined boundaries and is said to float over the entire area where it may eventually be established. The legality of this type of zoning, when properly applied, has been recognized by the Connecticut courts. *Lurie v. Planning & Zoning Commission*, 160 Conn. 295, 278 A.2d 799 (Westport Designed Development District); *Sheridan v. Planning Board*, 159 Conn. 1, 266 A.2d 396 (Stamford Industrial Park District); *Hawkes v. Town Plan & Zoning Commission*, 156 Conn. 207, 240 A.2d 914 (Farmington Restricted Apartment Zone); *Dooley v. Town Plan & Zoning Commission*, 154 Conn. 470, 226 A.2d 509 (Fairfield Residence District); *Miss Porter's School, Inc. v. Town Plan & Zoning Commission*, 151 Conn. 425, 198 A.2d 707 (Farmington Restricted Apartment Zone); *Luery v. Zoning Board*, 150 Conn. 136, 187 A.2d 247 (Stamford Designed Commercial District); *DeMeo v. Zoning Commission*, 148 Conn. 68, 167 A.2d 454 (Bridgeport Garden Apartment Zone).<sup>176</sup>

"The concept of floating zones giving rise to design development districts received legislative approval in 1959 with an amendment to Section 8-2 of the General Statutes. The legislature added the provision authorizing the adoption by a zoning commission of regulations which would allow a use subject to standards set forth in the regulations and under special conditions, after the obtaining of a special permit. The power of local zoning authorities was thus broadened, and they were allowed to impose certain standards and conditions on the use of the property when the public interest required it.

<sup>176</sup> *Schwartz v. Town Plan & Zoning Commission*, 168 Conn. 20, 22.

Under the amended statutes, the zoning commission could by regulation reserve to itself or delegate to any of the other specified agencies power to grant special permits or special exceptions.<sup>177</sup>

This Court has recognized the legality of floating zones when properly applied, in a number of other decisions.<sup>178</sup> In *Sheridan v. Planning Board*, 159 Conn. 1, 16, 17, this Court noted: "While the concept of a floating zone is similar to the established power of a zoning board to grant special exceptions, the two types of regulations may be distinguished. The special exception is the product of administrative action, while the floating zone is the product of legislative action. Further, if a landowner meets the conditions set forth for a special exception, the board is bound to grant one, but in the case of a floating zone discretion is maintained and additional limitations may be imposed — more control is retained by the zoning board because it is acting legislatively. This legislative function meets the need for flexibility in modern zoning ordinances, since the exact location of the new zone is left for future determination, as the demand develops, and applications are granted which meet all conditions specified by the board. Thus, a floating zone provides more control over changes than does the granting of special exceptions, as noted above, with no greater likelihood of creating incompatible uses, and with no less forewarning than precedes the granting of a special exception."

The floating zone concept is directed toward those situations in which new or specialized uses are contemplated but cannot be specifically located at the time the districts are originally drawn.<sup>179</sup> A special characteristic of a floating zone is

<sup>177</sup> *Summ v. Zoning Commission*, 150 Conn. 79, 86.

<sup>178</sup> *Hawkes v. Town Plan & Zoning Commission*, 156 Conn. 207; *Dooley v. Town Plan & Zoning Commission*, 154 Conn. 470; *Luery v. Zoning Board*, 150 Conn. 136.

<sup>179</sup> *Zoning And Land Use Controls*, Vol. II § 13.01, Page 13-3.

that it is initiated on the instigation of the landowner within the district rather than that of a legislative body.<sup>180</sup>

### Aggrievement and Appellate Review

In the case of *Schwartz v. Town Plan & Zoning Commission*, 168 Conn. 20 the Court had occasion to review and discuss the right of appeal from the Commission's action in amending its regulations so as to permit the establishment of floating zones. With respect thereto the Court stated the following at pages 23 through 26 of its decision:

"The trial court sustained the commission's action on all issues raised by the plaintiff's. The ruling that was dispositive of the appeals, however, concerned the issue of aggrievement. The trial court concluded that the plaintiffs were not aggrieved by the action of the commission because their appeals were filed before any particular property or area in the town had been designated as a shopping center district. That decision was based on *Sheridan v. Planning Board*, supra, where we held (p. 12) that: "as a matter of law, there can be no aggrievement when the zoning regulations of a municipality are amended in such a way that no particular area or property is affected."

The plaintiffs concede that their appeals were filed before the new shopping center districts had affected any particular area or property. They argue, however, that the trial court's interpretation of *Sheridan* means that judicial review is obtainable only after the floating zone has settled; that such review is limited to questioning the application of the zone to particular property; and that there can be no review of the validity of the amendments which created the zone. The plaintiffs contend that this denies them effective judicial review of the commission's action in amending the zoning regulations and, in effect, deprives them of due process of law.

<sup>180</sup> *American Land Planning Law*, § 28.02, Page 581.

The due process clause of the fourteenth amendment requires an opportunity for a hearing at a meaningful time and in a meaningful manner appropriate to the nature of the case. *Boddie v. Connecticut*, 401 U.S. 371, 378, 91 S. Ct. 780, 28 L. Ed. 2d 113. That opportunity was afforded in this case when the commission held its public hearing on March 17, 1970, after proper legal notice. The plaintiffs attended that hearing, argued against the adoption of the amendments, and raised numerous procedural objections. Moreover, the root requirement of due process is "that an individual be given an opportunity for a hearing before he is deprived of any significant property interest." *Boddie v. Connecticut*, supra, 379. In this case, the plaintiffs have not been deprived of any property interest. The statutes adequately protect the plaintiffs in the event that their property interests are later threatened by the application of the floating zone to land within the town. Before the floating zone can "descend," an application must be made for a change of zone and a public hearing must be held. General Statutes, § 8-3. If the zone change is granted and the plaintiffs are aggrieved, they may appeal the granting of the zone change to the Court of Common Pleas. General Statutes, §§ 8-8, 8-9.

There is no constitutional right to judicial review of the action of a planning or zoning agency. Such review exists only under statutory authority. *Schwartz v. Hamden*, 168 Conn. 8, 10, 357 A.2d 488; *Tazza v. Planning & Zoning Commission*, 164 Conn. 187, 191, 319 A.2d 393; *East Side Civic Assn. v. Planning & Zoning Commission*, 161 Conn. 558, 560, 290 A.2d 348; *Sheridan v. Planning Board*, 159 Conn. 1, 10, 266 A.2d 396; *Long v. Zoning Commission*, 133 Conn. 248, 252, 50 A.2d 172. Under Section 8-8 of the General Statutes, aggrievement is a prerequisite to a right of appeal. "Except in cases involving the sale of alcoholic beverages, aggrievement requires a showing that the plaintiffs have a specific, personal and legal interest in the subject matter of the decision, as distinguished from a general interest such as is the concern of the community as a whole, and that the plaintiffs were specially and injuriously affected in their property or other legal rights. *Hughes v. Town Planning & Zoning Commission*, 156 Conn. 505, 507,

242 A.2d 705; *I.R. Stich Associates, Inc. v. Town Council*, 155 Conn. 1, 3, 229 A.2d 545; *Hickey v. New London*, 153 Conn. 35, 37, 213 A.2d 308; *Tyler v. Board of Zoning Appeals*, 145 Conn. 655, 662, 145 A.2d 832: see "The Connecticut Law of Zoning (Part B)," 41 Conn. B.J. 453, 485-88." *Sheridan v. Planning Board*, supra, 13. Since the amendment in question did not affect the plaintiffs in their property or other legal rights, they were not specially and legally injured by its adoption. *Sheridan v. Planning Board*, supra. In such circumstances there can be no aggrievement.

"The plaintiffs' contention that the above ruling precludes judicial review when a zoning agency adopts a floating zone is incorrect. Since the creation of the floating zone is an indispensable component of the zoning authority's ability to apply it eventually to land by means of a change of zone, irregularities in the amendment or adoption of zoning regulations which create a floating zone may be raised by an aggrieved person in an appeal from the change of zone if and when such change occurs. See *Sheridan v. Planning Board*, supra, 14-19.

"The plaintiffs' argument that they have standing to appeal as resident taxpayers who are aggrieved because the new shopping center districts may involve the sale of liquor is without merit. There is no sale of liquor involved in these appeals."