DOCKET NO. HHD-LND-CV196106449	:	SUPERIOR COURT
FCR REALTY, LLC	:	JUDICIAL DISTRICT
V.	:	AT HARTFORD
PLANNING AND ZONING COMMISSION OF THE TOWN OF BROOKLYN	:	OCTOBER 22, 2019

MEMORANDUM OF DECISION

The plaintiff/appellant, FCR Realty, LLC("FCR"), appeals from the denial by the Brooklyn Planning and Zoning Commission(the "Commission") of its application for a special permit to continue a gravel bank operation that FCR and its predecessors have operated for over sixty years.

Application, Subject Property, Public Hearing and Decision

FCR is a Connecticut limited liability company located in Brooklyn, Connecticut. Fred C. Green, is its principal. FCR owns two parcels of property located north of Brickyard Road and west of Day Street in Brooklyn and known as Assessor's Map 35, Lot 7 and Assessor's Map 41, Lot 6(both parcels together are the "subject property"). The subject property consists of approximately 200 acres and is located in the Residential-Agricultural "RA" zone, where gravel banks are allowed subject to special permit approval. See Brooklyn Zoning Regulations § 3.4.4.4. FCR also owns an abutting parcel to the east of the subject property, Assessor's Map 42, Lot 33("FCR parcel").

126.00

In 1953, Clifford B. Green, Fred Green's father, started a gravel bank operation on portions of the subject property. A gravel bank operation has existed on portions of the subject property since that time. At one time the operation employed 80 people and had 20 trucks. The gravel bank operation predated the zoning regulations of the town of Brooklyn, which were first adopted on May 24, 1972. Since the precise locations of the gravel bank operations have changed over the years, the current operation is not considered to be a "grandfathered" use for which special permit is not required. Apparently the Town of Brooklyn first came to that conclusion in 2014, some forty-two years after the Zoning Regulations were adopted when the zoning enforcement officer of the town looked at aerial maps, found that the gravel bank areas had not remained the same over the years and issued a cease and desist order to FCR.

The only viable means of access to the subject property is over the parcel to the northeast owned by Grampa's Cabin LLC, Assessor's Map 42, Lot 43("Grampa's Cabin"), from Day Street pursuant to an access license in favor of FCR(the "Access License"). At one time Grampa's Cabin was owned by Clifford B. Green & Sons, Inc., Fred Green's father's company. Grampa's Cabin is now managed by Fred Green's two estranged brothers, Clifford B. Green, Jr. and Richard Green. At the time of the public hearings in this case one of Fred Green's nieces and her husband, Krista and Sprio Haveles, claims to have a contract to purchase Grampa's Cabin.

FCR has used Day Street and the area of the Access License as the primary access to the subject property for at least 50 years. The written Access License originated as the result of the settlement of litigation between Fred Green and his brothers. It was recorded in the Brooklyn Land Records on January 23, 2017 as part of a Quitclaim Deed at Volume 590, Pages 9-12. It provides that FCR may use the Access License "for the purpose of providing access, ingress and egress with

vehicles, machinery and equipment, to and from Day Street to the" gravel bank on the subject property.

On July 10, 2018, FCR filed an application for a special permit to continue the gravel bank operation on the subject property and the FCR parcel(the "Application"). Prior to filing the Application, FCR had received approval for its sand and gravel operation from the Brooklyn Inland Wetlands and Watercourses Commission("IWWC") at its June 12, 2018 regular meeting. Town staff later removed the FCR parcel and incorporated Grampa's Cabin into FCR's Application.

FCR's Application proposed the removal of approximately 20,000 cubic yards of sand and gravel per year with a maximum removal of 97,000 cubic yards on an 8.8 acre tract situated within the 200 acre subject property and the FCR parcel over a five year period. FCR estimated that its proposed gravel operation would result in approximately 10 truckloads per day on average with a guaranteed maximum of 25 truckloads per day. FCR and its proponents explained at the public hearing that the scope of work and truck traffic presented no change from the existing gravel bank operation on the subject property.

The Application first appeared on the Commission's agenda on July 17, 2018. At that meeting Bruce Woodis, FCR's professional land surveyor, explained to the Commission that 1) FCR had already obtained IWWC approval for is gravel operation; 2) there would be no washing, crushing or blasting of material on the subject property; and 3) all residences were at least 1000 feet away from the gravel operation. At that meeting the public hearing on the application was scheduled for September 5, 2018. Thereafter, FCR requested an extension of time and the public hearing was rescheduled for October 3, 2018.

At the October 3, 2018 public hearing FCR's attorney, Joseph Williams, explained that the

Green family had operated the gravel bank business on portions of the subject property since 1953 and that FCR just wanted to continue to operate the gravel bank with no material changes. He also explained that the 8.8 acre removal area was deep within FCR's 200 acres of property and that that location alone with the wooded buffer areas on the subject property and the FCR parcel ensured that there would be no adverse impacts to surrounding properties.

At the public hearing in October, Mike Niejadlik stated:

> I live on Day Street. I have been a resident of Brooklyn for well over 65 years, and I remember right as a kid growing up six, seven years old when Cliff Green had his sand bank operations in the business and it's been going ever since that I can remember. The business itself, obviously they're hauling gravel and tryin-, there's traffic on the road, but there's never ever been an instance of having any kind of a problem with the trucks.

Transcript, Public Hearing, October 3, 2018, p. 9.

At the oral argument the Commission argued that there was no evidence that FCR had been operating a gravel business on the subject property for over 50 years. The aforementioned statement by Mr. Niejadlik and statements made by Fred Green and others refer to the longstanding use of the subject property as a gravel bank. Moreover, no one, not even the many estranged family members who spoke against the Application, ever questioned or contradicted the history of removal of gravel from the subject property.

Fred Green has been involved in litigation with his brother, Clifford Green, Jr. In an action entitled *FCR Realty, LLC et al* v. *Frederick C. Green and Linda Green*, Superior Court for the Judicial District of Putnam, Docket No. WWM-CV13-5005777-S, Clifford Green, Jr., as a member of FCR and a shareholder of Clifford B. Green & Sons, Inc. brought derivative claims against Fred and Linda Green. The case was settled in 2017. In connection with that settlement, Fred Green

transferred his partial ownership interest in the Grampa's Cabin property to his two brothers and retained an access license in favor of FCR.

Most of the public input at the hearings came from Fred Green's estranged family members. In particular, Krista and Spiro Haveles, the daughter and son-in-law of Clifford B. Green, Jr., who did not live near the subject property but claimed to be contract purchasers of Grampa's Cabin, spoke several times. Notwithstanding the License which the town planner, Jana Roberson, emphasized *did give FCR the right to drive its trucks through the Grampa's Cabin property*(See Transcript of Public Hearing of November 7, 2018, p.39), Spiro complained that the trucks were going "through my land that I am purchasing." *Id.* p.11. He also claimed that FCR gravel operations had expanded in recent years.

Kyle Green, Fred Green's son, spoke at the October 3, 2018 hearing. He explained that, contrary to Spiro Haveles' contentions, FCR's business operations had significantly decreased in recent years. He stated, "We have two trucks. Two tri-axles and two little six-wheelers. He's tellin' you we're busier now than we've ever been. There isn't hardly a company left. We used to have 80 men." *Id.*, pp.15-16. Kyle Green also addressed the Haveles' claims that FCR's operations were "driving out" wildlife within the subject property and his alleged surprise as to the gravel operation that the entire Green family had known about and been involved in for years:

> The company's been in business for 50 years. I been workin' for my dad for 36 years since I was 12 years old . . . So if they wanna buy the property, that's fine, but they know what they're getting into with the gravel bank behind'm and the road goin' through. They've known about it for years. Spiro's been part of the family now for like ten years or longer. He knows what's up there . . . So I don't understand why the complaints about we're driven' through a swamp, we're drivin' out wildlife. Its in the middle of the woods. We're not driving out any wildlife. I can show you pictures of animals up there you wouldn't believe.

Id. pp. 17-18.

At the October hearing, Ms. Roberson confirmed that FCR was not required to supply sight lines in their special permit application. The issue of sight lines came up again at the November 7, 2018 hearing at which Ms. Roberson informed the Commission that the Town Engineer and First Selectman were receptive to the installation of signs on Day Street to alert traffic to the potential exiting of trucks. In response, Commissioner Kerouac stated that the signs were "a bigger, much better scenario than what we have now, so that sounds good." Transcript of Public Hearing of November 7, 2018, p. 35. No calculation of required sight distance or any analysis of intersection safety was provided to or requested by the Commission.

At the public hearing on November 7, 2018, the town planner, Jana Betts Robertson, addressed the haul road and pond on Grampa's Cabin and the alternate access way to Church Street. She stated that she had concerns about the alternate access way because improvements would require approval from the Wetlands Commission,

FCR's attorney addressed public comments regarding the minimal impact of the gravel operations on the surrounding neighborhood:

> You heard from more than one person who said I didn't even know there was a gravel bank operation happening until they looked at something or found out in some other way. Well, that's pretty good evidence that it's not impacting anyone. And as we told you, we're not proposing to increase or change the existing operation that's been going on for quite some time. To continue what FCR is doing and has been doing is not going to create any impact on neighboring properties or on neighbors. . .

Transcript of Public Hearing of November 7, 2018, pp. 7-8.

A large part of the November 7th hearing was devoted to discussing the dam on the Grampa's Cabin property, which occasionally flooded. Some Commission members seemed confused about

the issue and saw the problems with the dam as being the responsibility of FCR. Town Planner Robertson clarified the issue as follows:

> I just wanted to offer really quickly that there's kind of two issues with this dam. One is the dam isn't quite up to modern standards and occasionally overtops. *I see that as the landowner's responsibility. It's their dam. They own it...* The dam is also an access road to a gravel pit...The gravel operators...have established the legal right . . .to use this access road. So in that regard the question is, is the dam/road capable of handling the gravel traffic and is the gravel traffic gonna impair the integrity of the dam? Those are two separate issues. One is the long-term design improvement of the dam to prevent it from overtopping, and the other one is purely related to the gravel traffic.

Id. pp. 10-11. Emphasis added.

Ms. Robertson also confirmed that the overtopping of the pond would occur regardless of whether FCR used the road for its gravel operations. She noted that the Commission could require FCR to post a bond to ensure its repair of any portion of the road damaged by the gravel operation. At the time of the November hearing, Mr. Pauley, the Commission's engineer, had already approved FCR's proposed bond.

FCR's Application sought to reserve Church Street as an alternate access way to be used only as a secondary means of access. At the November public hearing, Ms. Roberson for the first time insisted that FCR either remove the alternate access way from its application or obtain approval from the Inland Wetlands Commission. This position was inconsistent with information FCR had received from Brooklyn's Zoning and Wetland Enforcement Officer, Martha Frankel, who had informed FCR on October 4, 2018 that, "Generally, us of an existing road will not trigger IWWC permitting." Record #19, p. 2. Based on Ms. Robertson's statement, FCR elected to remove the Church Street access way from the Application.

FCR's engineering expert, David A. Smith, P.E., of KWP Associates, testified at the November public hearing. He confirmed that the haul road is "perfectly adequate" for FCR's proposed use: "[The road was]physically built with the intention that it's gonna be a durable and robust structure not only for the traffic that goes over the top of it but to allow that pond to exist." *Id.*, pp. 17-18. In a November 2, 2018 letter to the Commission Mr. Smith stated that, "This driveway is for construction vehicles, and this embankment surface is durable enough to be adequate for this use. Bear in mind that this access path has been in service for number of years and with the exception of some minor maintenance has been appropriate for this use." Record Item 17.

The public comments at the November hearing, as those at the October hearing, were more related to the dispute between members of the Green family than to the merits of the Application. Krista Haveles stated that she had hired legal counsel in an attempt to revoke FCR's Access License to Grampa's Cabin and her husband, Spiro, attacked FCR for an alleged non-payment of taxes.

Much of the testimony from the public and questions by commissioners were on subjects not relevant to the issues in the application. The hearings at times digressed to such degree that a member of the public commented:

> Some of these things that I'm hearing just as an observer are rally not relevant to the actual approval of the special permit. Whether or not the road is in good condition today or next week or whatever is really a matter of the zoning enforcement officer going out if need be and ensuring that the property is being maintained as its expected to be maintained as part of your requirements, but beyond that, that's also not a matter of debate, whether it's wet today or whether there's excess run-off because of rain and whatnot, it, that's really not salient from what I can understand from my past experience, so I would just urge you to focus on the key points here, stay away from all the family nonsense. There's a lot of bitterness. There's a lotta history. None of us want to get involved with any of that. . .

Transcript of Public Hearing of October 3, 2018, p. 25.

After the close of the November 7, 2018 public hearing the Commission voted 4 to 1 to deny FCR's application for special permit. In its certified letter to FCR dated November 14, 2018 the Commission stated:

> At the November 7, 2018 regular meeting of the Brooklyn Planning and Zoning Commission, your Gravel Special Permit application SPG 18-002-FCR Realty,LLC, north of Brickyard Road and west of Day Street (Assessor's Map 35, Lot 7; Map 41, Lot 6; Map 42, Lot43), a proposal to remove 97,650 cubic years of gravel over 8.8 acres was denied on the grounds that the standards of Section 5.7.1 of the Brooklyn Zoning Regulations have not been met in one or more of the following ways: the location, type, character, and extent of the proposed use is not in harmony with the orderly development of the neighborhood, including but not limited to traffic safety issues, driveway intersection sight line issues, storm water drainage issues and that the granting of the permit and the subsequent gravel excavation operation will hinder and/or discourage the appropriate development and use of adjacent property that have development potential and will impair the value thereof.

Aggrievement and Ruling

FCR is the owner of the subject property and the applicant for the Application which the Commission denied. FCR has an Access License for the Grampa's Cabin parcel. Therefore, FCR is statutorily aggrieved as a matter of law under Connecticut General Statutes § 8-8. *Goldfield* v. *Planning & Zoning Commission*, 3 Conn. App. 172, 176, 486 A.2d 646 (1985). FCR's investment and interest in the property have been adversely impacted by the Commission's denial of its special permit application. Therefore, it is also classically aggrieved. *West Farms Mall, LLC* v. *West Hartford*, 279 Conn. 1, 13, 901 A.2d 649 (2006).

This court must determine whether, based on the record, the Commission acted illegally, arbitrarily, or in abuse of its discretion. *Gagnon* v. *Municipal Planning Commission*, 10 Conn. App. 54, 56-57, 521 A.2d 589 (1987). This court must also determine whether the Commission's decision to deny FCR's Application was supported by substantial evidence in the record. *Clifford*

v. *Planning & Zoning Commission*, 280 Conn. 434, 452, 908 A.2d 1049 (2006).

When the information in the Notice of Decision letter set forth above is read in conjunction with the minutes and the transcript, it appears that the Commission based it denial of FCR's Application on three general reasons: 1) traffic safety and driveway intersection issues; 2) storm water drainage issues on the Grampa's Cabin haul road and pond; and 3) general neighborhood impact issues.

As set forth above, FCR was not required to submit any information on sight lines with its Application. Section 5.7.4 of the Regulations requires a special permit applicant to submit a traffic impact analysis for site plans involving 25 or more parking spaces, a drive-thru window, or any uses projected to generate more than 200 vehicle trips per day. There was evidence that FCR's operations would generate only 10-25 trips daily. Town Planner Roberson stated that there was no practical way to improve sight line where the haul road meets Day Street, but confirmed that signs could be installed to alert passing traffic that trucks might be proceeding on the roadway.

The only thing about sight lines that the Commission mentions in its brief other than generalized comments of the public is that Mr. Woodis, a land surveyor, stated that the "sight line [on Day Street] is not very good." That certainly does not constitute evidence that the intersection at the access road and Day Street was unsafe. No calculation of required sight distance or any analysis of intersection safety was provided to or required by the Commission. Indeed, had the Commission requested such information, it would have been in violation of its own zoning regulations as set forth above. Moreover, there was substantial evidence that the FCR had been conducting its gravel operations in the area for years and no one, not even the many family members who clearly disliked Fred Green, provided any examples of accidents that occurred at the

aforementioned intersection or accidents involving one of FCR's trucks.

A special permit may be denied only for failure to meet specific standards in the regulations, and not for vague and general reasons. *Cambodian Buddhist Society of Connecticut, Inc.* v. *Planning & Zoning Commission*, 285 Conn. 381, 431, 941 A.2d 868(2008). It is an abuse of discretion to deny a special permit application based on unsubstantiated evidence. *Norwalk Yacht Club Corp.* v. *Zoning Commission*, No. FSTCV064008012, 2010 WL 1667281, at *7 (March 31, 2010, Adams, J.). In *Norwalk* a yacht club applied for a special permit to remodel its clubhouse. The local homeowner's association opposed the application on the grounds that the club's summer sailing program and increase in the club's membership would generate increased traffic. The zoning commission denied the special permit on the grounds, among other things, that there would be an increase in traffic from the summer sailing program.

On appeal, the court found that there was no evidence in the record that the renovation of the clubhouse would have any effect on traffic. The court stated that most of the traffic complaints from neighbors involved traffic related to the club's youth sailing program, which the proposed renovations would not affect. The court determined that it would be "unfair and arbitrary to deny a permit when the project applied for would have no adverse effect on the condition complained of." *Id.* at p. 7.

In *Martland v. Zoning Commission*, 114 Conn. App. 655, 971 A.2d 53 (2009) the court affirmed the trial court's decision that "the requirement of [a] restoration condition was improper," because the record did not contain substantial evidence to support the Commission's imposition of the condition. *Id.*, at 667. The condition required the applicant to restore an existing berm, which the Commission found had acted as a noise and physical barrier. The court concluded that the

evidence before the Commission that the berm acted as a noise buffer was not substantial because " it is not supported by anything other than speculation and conjecture on the part of those objecting to the plaintiff's proposed activities." *Id.*, at 665-666. The court highlighted the absence of "scientific data" comparing the noise levels in the area with and without the berm and stated "Even if we assume arguendo that the noise level would increase as a result of the changes to the berm, the record is devoid of any evidence indicating how much of a noise increase would be permissible before the public health, safety, convenience or property values would be impacted. *Id.*

In *American Institute for Neuro-Integrative Development, Inc.* v. *Town Plan & Zoning Commission*, 189 Conn. App. 332, 207 A.3d 1053 (2019) the Appellate Court recently held that the Fairfield Plan & Zoning Commission lacked substantial evidence to deny the plaintiff's special exception to expand its school based on traffic. The court stated:

> Connecticut courts have held that public testimony is not to be considered substantial evidence when "it is *not supported by anything other than speculation and conjecture on the part of those objecting to the [party's] proposed activities.*" *Martland* v. *Zoning Commission*, 114 Conn. App. 655, 665–66, 971 A.2d 53 (2009), *citing Bethlehem Christian Fellowship, Inc.* v.*Planning & Zoning Commission*, 73 Conn. App. 442, 463, 807 A.2d 1089, *cert. denied*, 262 Conn. 928, 814 A.2d 379 (2002). In *Martland*, this court concluded that generalized concerns of two laypersons who opposed the plaintiffs' proposed activities were "not substantial because [their concerns were] not supported by anything other than speculation and conjecture ... [as neither layperson] indicated any type of expertise that would buttress their lay opinion ...." (Citation omitted.) *Martland* v. *Zoning Commission*, *supra*, at 665–66, 971 A.2d 53.
>
> In the present case, the neighbors' remarks as to prospective traffic impact suffer from the same deficiency. While the commission could take into consideration the neighbors' concerns and observations as to current road conditions, the neighbors' remarks as to the adequacy of the streets to accommodate traffic and prospective hazards or congestion addressed matters of professional expertise. See *Gevers* v. *Planning & Zoning Commission, supra*, 94 Conn. App. at 485–86, 892 A.2d 979

(plaintiffs offered no expert traffic analysis rebutting expert conclusions regarding pedestrian safety and traffic impact). The neighbors did not purport to have the training or skills needed to properly assess traffic impact, nor did they offer an expert's opinion on their behalf. Accordingly, their comments amounted to generalized concerns about hypothetical effects of increased traffic.

To the extent the commission relied on the neighbors' remarks, the commission's *conclusion under § 27.4.3 of the regulations essentially turned on the mere potential for adverse effects*. The mere possibility of an adverse outcome, without more, typically does not constitute substantial evidence. See *AvalonBay Communities, Inc.* v. *Inland Wetlands & Watercourses Agency, supra*, 130 Conn. App. at 88–89, 23 A.3d 37 (concluding mere "potential" adverse effect not substantial evidence [internal quotation marks omitted]). Thus, we conclude that the commission's assigned ground for denial under § 27.4.3 of the regulations is not reasonably supported by the record. Therefore, the commission's conclusion that the plaintiff had not satisfied certain traffic related requirements under § 27.4.3 of the regulations was improper.

American Institute for Neuro-Integrative Development, Inc. v. *Town Plan & Zoning Commission*, 189 Conn. App. at 349-351. Emphasis added.

The same is true in this case. There is no substantial evidence in the record to support the Commission's findings that traffic safety is being impaired by FCR's gravel bank operation or that the continuation of the operation would affect traffic safety in any way. There was no submission of any traffic accident data and not even any anecdotal evidence of traffic safety issues.

The only evidence in the record regarding traffic consisted of unsubstantiated complaints from neighbors and estranged family members, a comment by a land surveyor that the sight lines were not good and a comment from the Town Planner who subsequently agreed that sight line problems could be addressed with signage. Nevertheless, the Commission denied the special permit application based on traffic safety.

It was unfair and arbitrary to deny FCR's permit application where the Commission's own

regulations do not require the applicant to provide any traffic impact study and the only evidence of "traffic issues" were generalized comments about unsafe traffic and "bad" sight lines.

The Commission also denied the Application based on "storm water drainage issues associated with the pond and haul road on the Grampa's Cabin property. This appeared to be based on the inability to appreciate the distinction between the pond's occasional "overtopping" of the haul road, for which FCR is not responsible and the stability of the haul road. This distinction was recognized by the Town's own planner, Ms. Roberson, who stated:

> I just wanted to offer real quickly that there's kind of two issues with this dam. One is the dam isn't quite up to modern standards and occasionally overtops. *I see that as the landowner's responsibility. It's their dam. They own it.* . . The dam is also an access road to a gravel pit . . .the gravel operators . . .have established the legal right. . . to use this access road. *So in that regard the question is, is the dam/road capable of handling the gravel traffic* and is the gravel traffic gonna impair the integrity of the dam? *Those are two separate issues.*

Transcript of Public Hearing of November 7, 2018, pp. 10-11. Emphasis added.

David Smith, P.E., FCR's engineering expert, provided oral and written evidence to the Commission that the haul road was capable of handling FCR's proposed gravel traffic and the said traffic would not impair the integrity of the road. The Commission's consulting engineer, Mr. Pauley, did not contradict Mr. Smith's findings. Spiro and Krista Haveles, estranged family members of Fred Green, did not contradict Mr. Smith's expert opinion and provided no expert evidence in support of their claims. A municipal Commission is not required to believe any witness, but it may not disregard expert testimony unless there is evidence to the contrary. *Loring* v. *Planning & Zoning Commission*, 287 Conn. 746, 759, 950 A.2d 494 (2008); *see also Bethlehem Christian Fellowship, Inc.* v. *Planning & Zoning Commission*, 73 Conn. App. 442, 463-64, 807 A.2d 1089 (2002)(finding insufficient evidence to deny special permit based on traffic concerns because

this reason was "not supported by anything other than speculation, fear and conjecture on the par of those objecting to the special exception."). There was no evidence contradicting Mr. Smith's expert opinion that the haul road was capable of handling FCR's proposed traffic.

To the extent the Commission relied on Mr. Pauley's statement in his memorandum, Record Item 16, that the overtopping of the dam would cause "negative effects on the road/dam if an engineering solution isn't found," that statement does not address the ability of the haul road to handle FCR's gravel operation, nor does it contain an opinion that the gravel bank operation would adversely affect the haul road's condition. In fact, FCR's expert, Mr. Smith, proposed a solution to help prevent dirt on the road from being washed out. Neither the Commission nor its expert provided any evidence that the proposed solution was unacceptable.

Ms. Roberson confirmed that the overtopping of the pond would occur with or without FCR's use of the haul road:

> You actually drive over [the haul] road that is impounding water, and it occasionally overtops, possibly because the pipe gets blocked or is just not big enough to take all the water, and the area where it gets overtopped is right about here. . . And there's a stream behind it. So when it does overtop, it moves material into that stream. . . *I believe this situation exists with or without the gravel pit.*

Based on the foregoing, the Commission's decision to deny FCR's application due to stormwater drainage issues was unreasonable and without substantial evidence to support it.

The Commission's final reason for denying FCR's Application was general concerns regarding neighborhood impact. The impact on traffic safety and storm water drainage issues have been addressed above. To the extent the Commission based its decision on concerns with property value and development, there was no evidence that any parcel near the subject property had diminished in value as a result of FCR's gravel bank or that development of those parcels had been

impaired by the gravel operations. In its brief, the Commission asserts that it had substantial evidence to conclude that FCR's gravel operation would "hinder and/or discourage the appropriate development and use of adjacent property that had development potential." Brief at p. 19. On the very next page of its brief, the Commission mentions that a ten lot subdivision had just been approved in the neighborhood two months prior to FCR's public hearing. It is difficult to understand how the approval of the subdivision can be seen as "stifled development." In addition, one member of the public at the hearing claimed that she had recently purchased a house near the subject property and was unaware of the gravel bank operation until she saw trucks passing through the subject property. Transcript of Public Hearing of October 3, 2018, p.20. Based on the foregoing the Commission's reason for denial based on neighborhood impact is not supported by any substantial evidence.

The decision of the Commission is reversed and the appeal is sustained. The Commission is directed to approve FCR's Application.

By the court,

Aurigemma, J.