DOCKET NO: CV-15-6013033-S	:	SUPERIOR COURT
LIME ROCK PARK, LLC	:	J.D. OF LITCHFIELD
VS.	:	AT TORRINGTON
PLANNING AND ZONING COMMISSION	:	
OF THE TOWN OF SALISBURY	:	JANUARY 31, 2018

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SUPERIOR COURT
2018 JAN 31 PM 4 24
JUDICIAL DISTRICT OF
LITCHFIELD
STATE OF CONNECTICUT

MEMORANDUM OF DECISION

I

INTRODUCTION

Lime Rock Park, LLC (Park) filed this action to appeal the decision of the defendant, Planning and Zoning Commission of the Town of Salisbury (Comm'n), to amend certain of its zoning regulations. The amended regulations pertain to the operation of an automobile race track at a site owned by the Park (Site). On May 16, 2016, the court, *Moore, J.*, granted the motion of the Lime Rock Citizens Council, LLC (Council) to intervene. The court conducted a hearing on May 10, 2017, with an additional argument taking place on August 30, 2017. At that August argument, the parties agreed to allow the court to file its decision in this matter on or before October 16, 2017. On September 11, 2017, the parties submitted supplemental briefing based on issues that arose during the August argument. Thereafter, on September 25, 2017, the court indicated, by way of order, that additional argument was necessary and, on September 26, 2017, ordered the parties to supplement the record. The parties filed the requested supplementation on October 6, 2017, and the additional hearing was held on October 10, 2017. During that hearing, the court allowed both parties to further supplement the record by admitting documents into

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evidence, including a more complete version of the Comm'n's 1959 zoning regulations. For the reasons set forth below, the appeal is denied, in part, and sustained, in part.

II

REGULATORY HISTORY

Given the nature of some of the arguments, this court finds it both useful and necessary to review the regulatory history related to use of the Site's race track. The court gleaned the following history from the administrative record and through judicial notice of pleadings in the following related cases: (1) *Adams* v. *Vaill*, Superior Court, judicial district of Litchfield, Docket No. CV-58-0015459-S, and the related appellate decision at 158 Conn. 478, 262 A.2d 169 (1969), including the appellate court file;[1] (2) *Lime Rock Foundation, Inc.* v. *Zoning Board of Appeals*, Superior Court, judicial district of Litchfield, Docket No. CV-77-0016404-S; (3) *Lime Rock Protection Committee* v. *Lime Rock Foundation, Inc.*, Superior Court, judicial district of Litchfield, Docket No. CV-77-0016416-S; and (4) *Lime Rock Protection Committee* v. *Lime Rock Foundation, Inc.*, Superior Court, judicial district of Litchfield, Docket No. CV-78-0016920-S.

Regulation of the Site has taken three avenues: (1) a permanent injunction arising out of a nuisance lawsuit brought by neighbors of the Site against the owner; (2) a stipulated judgment resolving three appeals of decisions made by the Salisbury Zoning Board of Appeals; and (3) the enactment of zoning regulations. The zoning amendments at issue comprise, to some degree, a consolidation of these three paths.

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[1] Volume A-496, Connecticut Supreme Court Records and Briefs, Part 1, A-F, October Term, 1969, 1-62.

A

Background Facts

Motor vehicle racing and other related activities, including camping, automobile shows, and demonstrations of driving speed and skill have been conducted at the Site since 1957. At the inception of such activities, the Town of Salisbury had no zoning regulations.[2] In 1957, racing and related activities occurred seven days a week. The operation of the race track, existing as it did prior to the inception of zoning regulations, was a preexisting, nonconforming use.

B

Adams v. Vaill: The Injunction Action

In 1958, a private nuisance action, *Adams* v. *Vaill*, supra, Superior Court, Docket No. CV-58-0015459-S, was brought against B. Franklin Vaill, the owner of the Site, and The Lime Rock Corporation (LRC), the lessee of the Site and operator of the race track. The action was brought by twenty-five individuals, mostly residents and property owners in the village of Lime Rock, and two institutions, the Trinity Episcopal Church of Lime Rock (Church)[3] and the Lime Rock Cemetery Improvement Association (Cemetery). The plaintiffs claimed that the use of the race track constituted a nuisance, and they sought to abate this nuisance by means of permanent injunctive relief. Given that the injunction is the original source of regulation at the Site, it is necessary to undertake a careful review of the allegations in *Adams*.

The plaintiffs alleged that, for more than twenty-five years prior to 1957, the village of Lime Rock was a "quiet, peaceful and secluded residential area" of Salisbury with little commercial activity. Starting in early 1957, LRC used the Site as a sports car race track, hosting

[2] Although the Town of Salisbury created a zoning commission in 1955, it did not adopt zoning regulations until June 8, 1959.

[3] The Church was not an original plaintiff, but was added shortly after the complaint was served.

races and exhibitions almost every weekend when weather and driving conditions permitted. Even when no formal events took place, drivers used the track to test their cars and practice racing. This activity began as early as 9:00 a.m. and went as late as 11:00 p.m., and sometimes lasted for up to ten consecutive hours. "[C]onsiderable noise," arising from the racing activity, included the roar of car engines when accelerating at high and low speeds, generally "without mufflers or other devices to silence" the engine exhaust; the revving of "unmuffled engines of cars at a stand still;" the "loud screeching of tires and squealing of brakes;" the "noisy changing of gears;" and announcements emanating from loudspeakers and amplifiers. The noise could travel as far as two and one-half to three miles. While attending events at the track, racing fans drove their own cars recklessly and without consideration of the rights of others, "often with loud noises occasioned by operation with cut-outs or without mufflers." The attendees also sped and raced on public roads, and engaged in horn honking and other boisterous conduct. The racing fans created such heavy traffic that the plaintiffs were denied normal access to and from their homes. The fans violated the plaintiffs' property rights by trespassing on their land, turning vehicles on their lawns, throwing beer cans and other litter on private property, and "using [one plaintiff's] property to relieve calls of nature." This behavior continued despite complaints to the police. Noise associated with the racing activity prevented the plaintiffs from occupying their homes with comfort and, in some instances, forced some plaintiffs to either close all of their windows and "retire to the basement" or to leave their homes. The noise was "annoying, irritating and disturbing, both physically and emotionally," and caused some of the plaintiffs to be "seriously nervous and upset." The noise menaced the health of the plaintiffs, lowered property values, prevented homes from selling and being leased, and caused the Cemetery to padlock its grounds on race days.

The Church alleged that the arrival of racing fans "before, during and immediately after the hours of worship," and the attendant "noise, racket and behavior . . . intrude upon, disturb and interfere with the conduct of worship of said Church, deter some of its communicants from attending church services," and "hamper [churchgoers'] access to and egress from" the Church, thereby "endanger[ing] their safety." The Church further alleged that it could no longer schedule religious rites on race days, and that the rectory's inhabitants could not peacefully enjoy their home.

The foregoing allegations demonstrate that noise was the plaintiffs' primary, although not exclusive, grievance. On May 12, 1959, the court, *Shea, J.*, entered judgment for the plaintiffs by granting a permanent injunction. The court issued a memorandum of decision, setting forth its findings and holding that noise generated by the track's operation constituted a nuisance.[4] More specifically, the court found that "[w]hen these races take place or when the track is in use, the noise and roar of car engines caused by the operation of the vehicles upon the track can be heard for a considerable distance away. The track is constructed with a number of sharp curves and the squealing of brakes, screeching of tires, and other noises emanating from the operation of the cars upon the track can be heard throughout the Village of Lime Rock." The court further found that noise from the loudspeaker announcing aspects of the races "can be heard for some distance away."

Notably, the court underscored the additional volume of noise that arose when car engines were not mufflered, finding that during "weekdays the engines of the cars which are operated upon the track are usually mufflered, but this is not uniformly true and the noise, of

[4] The court rejected the plaintiffs' claims of motor vehicle violations and heavy traffic, finding that many witnesses commended the State Police for their work in defusing these issues. The court held that, "[a]t the present time there is little or no complaint about the traffic problem or the manner in which it is handled."

course, is much greater when the engines are not mufflered." The court also found that during "racing events or speed tests, and particularly on weekends, the events are often held with unmufflered engines. These events cover an extended period of time. On certain occasions they are carried on continuously for a period of hours. The noise and sounds, particularly when the vehicles are unmufflered, reach such intensity that they can sometimes be heard for some distance beyond the village depending upon the wind and atmospheric conditions."

After considering the legal standards relative to the creation of a nuisance, the court, once again, emphasized the impact of unmufflered racing on its decision: "In applying these principles of law to the case before us, it becomes evident at once that a single or isolated use of the race track does not constitute a nuisance in and of itself. The noise becomes irritating, annoying, and disturbing to the comfort of the community when the race track is used by unmufflered engines for an extended number of hours. In fact, there is little or no complaint to be made against the operations upon the track when it is used by vehicles which are mufflered." After finding that the "residents of Lime Rock often invite visitors and friends to spend the weekend there and to enjoy the peaceful surroundings of the beautiful countryside," and that the "operation of the race track on Sundays proves to be especially annoying and irritating to the plaintiffs," the court prohibited Sunday racing. The court then found that "the noise does not have the same effect on other days, and the track could be operated on every other day of the week provided, however, that the events with unmufflered engines should be limited in number and space of time."[5]

Accordingly, the permanent injunction prohibited "[a]ll activity upon the track . . . on Sundays;" limited mufflered racing to weekdays between 9:00 a.m. and 10:00 p.m., except for

[5] Notably, the court did not find that unmufflered racing created additional traffic, or enhanced air or light pollution because it was more popular than mufflered racing. This lack of findings is relevant to certain of the Comm'n arguments, which will be addressed by this court later in this memorandum of decision.

six days per year when racing could continue beyond 10:00 p.m.; and permitted unmufflered racing between specified hours only on Tuesdays and ten Saturdays each year (as well as the ten Fridays that preceded those ten Saturdays for the purpose of preparing for the Saturday races), and the following holidays between the hours of 9:00 a.m. and 6:00 p.m.: Memorial Day, the Fourth of July and Labor Day. The injunction also referred the parties to General Statutes § 14-80 (c) regarding what constituted "permissible mufflers."

C

Salisbury Zoning Regulations

Shortly after the *Adams* decision, on June 8, 1959, the Comm'n adopted zoning regulations and a zoning map. The zoning regulations placed the Site in the Rural Enterprise (RE) District, and allowed race tracks as a permitted, as of right use within the RE District. Salisbury Zoning Regs., § 8.1.17. The Site was the only race track operating in the RE District. The regulations allowed a "track for racing motor vehicles, excluding motorcycles, to which admission may be charged, and for automotive education and research in safety and for performance testing of a scientific nature." Id. These regulations also permitted such accessory uses as "grandstands, judges' stands, automobile repair pits, rest rooms, lunch counters or stands . . . use of the premises for automobile shows and exhibitions, for the sale of motor vehicles, automotive parts and accessories and fuels, for manufacturing and automotive repair incident to the other activities herein permitted, [and] may also include the production of television, motion picture or radio programs and the use of necessary lighting and sound equipment therefor." Id., § 8.1.17.7. Additionally, the regulations allowed racing "during such hours as are permitted by statute." Id. At that time, the controlling statute provided, in relevant part, that any "race, contest or demonstration of speed or skill with a motor vehicle as a public exhibition . . . may be

conducted at any reasonable hour on any week day or after the hour of two o'clock in the afternoon of any Sunday, provided no such race or exhibition shall take place contrary to the provisions of any city, borough or town ordinances." General Statutes § 898c, as amended by Public Acts 1939, No. 23.

D

Modification of the *Adams* Injunction

Even though the *Adams* injunction was permanent, it was, nonetheless, modified several times. The first modification occurred by way of a March 2, 1966 stipulation[6] further limiting the use of the Site for racing and related activity. Specifically, the stipulation provided that the prohibition on Sunday racing applied to both "mufflered" and "unmufflered racing cars;" extended the Sunday prohibition to the "paddock areas;" added a definition of "racing car;" and further limited the Friday unmufflered race preparation by specifying that "no qualifying heats or races shall be permitted on such Fridays." Other activities, not part of the original permanent injunction, were incorporated, including a prohibition on revving or testing of any racing car engines on Saturdays and permitted holidays before 9:00 a.m. and after 6:00 p.m., except for the transportation of the vehicles to and from the paddock areas or on their trailers. Such transportation could not take place before 7:30 a.m. or after 7:30 p.m. The stipulation also banned the use of loudspeakers at the track before 8:00 a.m. and after 7:00 p.m.

The second modification resulted from the *Adams* plaintiffs' July 29, 1968 motion for modification to the 1966 version of the permanent injunction. The 1968 modification was sought

[6] Neither the extant *Adams* v. *Vaill* Superior Court file nor the 1969 volume of the Supreme Court Records and Briefs, which contains the appellate record for the 1969 Supreme Court decision in *Adams* v. *Vaill*, includes an underlying motion to modify the injunction. The court, therefore, does not know whether the 1966 stipulation arose from motion practice or was simply an agreement among the parties that was placed before the court for its approval.

on the basis of a 1967 amendment to General Statutes § 14-80 (c), which expanded the mufflering requirement to all times and places rather than only when "operated upon a street or highway." See *Adams* v. *Vaill*, supra, 158 Conn. 481. The *Adams* plaintiffs argued that, based on this amendment, the court could modify the 1966 injunction to prohibit, at all times, the racing of unmufflered vehicles. Id., 482. The court agreed and the injunction was modified "to prohibit the operation and use of unmufflered motor vehicles on the Lime Rock race track," and the defendants were ordered to "cease and desist immediately from sponsoring the racing of said unmufflered vehicles." *Adams* v. *Vaill*, Superior Court, judicial district of Litchfield, Docket No. CV-58-0015459-S (August 28, 1968, *Wall, J.*); see *Adams* v. *Vaill*, supra, 482. This 1967 modification was upheld on appeal in 1969 by our Supreme Court, despite its acknowledgement that § 14-80 (c) had been amended in 1969 to allow unmufflered motor vehicle racing contests. *Adams* v. *Vaill*, supra, 482-84, 484 n.1.[7]

E

Appeals of Salisbury ZBA Decisions

Beginning in 1977, a series of appeals were taken from decisions of the Salisbury Zoning Board of Appeals' (ZBA) determination of what constituted "permitted activities" at the Site. The first such action, brought by the then-owner of the Site, the Lime Rock Foundation, Inc. (Foundation), appealed an August 5, 1977 decision of the ZBA upholding the Comm'n's limitation on the number of campers at the Site to 1,000 at any given time. *Lime Rock Foundation, Inc.* v. *Zoning Board of Appeals*, Superior Court, judicial district of Litchfield,

[7] The Supreme Court cryptically noted that "[t]his subsequent amendment, however, does not render the present appeal moot since it appears that there is litigation pending, the outcome of which is dependent, at least in part, upon the legality of the existing injunction as modified." Id. Neither the existing *Adams* trial court file nor the Supreme Court Records and Briefs contain any motions or pleadings that would inform this court as to the nature of this "pending litigation," although the Supreme Court was certainly aware of it.

Docket No. CV-77-0016404-S. After the appeal was filed, the ZBA agreed to raise the limit to 1,500 campers at a time. Id. The Foundation claimed that the 1,500 person limitation was illegal, arbitrary, and constituted an abuse of discretion because the track was a "valid nonconforming use which cannot be limited in this manner." Id.

Almost immediately after the Foundation filed its appeal, the Lime Rock Protection Committee (Committee) and individual neighbors of the track sued the Foundation and the ZBA, also alleging that the ZBA's decision to raise the number of campers to 1,500 was illegal, arbitrary, and not supported by record evidence. *Lime Rock Protection Committee* v. *Lime Rock Foundation, Inc.*, Superior Court, judicial district of Litchfield, Docket No. CV-77-0016416-S. In this appeal, the plaintiffs alleged that the Comm'n, in an August 5, 1977 decision, issued a ruling that camping at the track was "a permitted use of said property" subject to the following limitations: (1) camping was confined to the infield; (2) camping could not include spectators; and (3) camping could not exceed more than 1,000 campers at a time. The plaintiffs further alleged that, after the Foundation appealed the August 5, 1977 decision, the ZBA modified said decision by (1) dispensing with the requirement that camping be confined to the infield; (2) allowing campers to include spectators; and (3) increasing the allowed number of campers at any one time to 1,500. The plaintiffs alleged that the ZBA acted illegally because (1) camping is not a permitted use in the RE Zone, where the Site is located, and the zoning regulations do not otherwise permit such a use and (2) the type of camping that existed prior to the 1959 zoning regulations was substantially different in nature, type and degree from that permitted by the ZBA, in that pre-zoning camping (a) did not include spectators; (b) was limited to the infield; (c) was limited to far less than 1,500 campers; (d) took place over shorter time periods; and (e) was far less objectionable in nature. The plaintiffs further claimed that the ZBA's action was illegal

because it permitted a use not in harmony with the "general purpose of the Zoning Regulations of the Town of Salisbury and is contrary to public policy," and did not attempt to conserve the public health, safety, convenience, welfare and/or property value of the plaintiffs and of other Town residents. Finally, the plaintiffs alleged that the ZBA's action was undertaken pursuant to defective notice.

In the third action, filed in 1978, the Committee and two individuals brought another action against the Foundation and the ZBA. *Lime Rock Protection Committee, Inc.* v. *The Lime Rock Foundation, Inc.*, Superior Court, judicial district of Litchfield, Docket No. CV-78-0016920-S. In the third action, the plaintiffs asserted that, at their request, the Comm'n had issued, on May 20, 1975, an order enforcing a zoning regulation that required a buffer strip between the race track and its neighbors, but that the Foundation did not comply with this order and that the Comm'n never enforced the order. The plaintiffs took an appeal seeking enforcement of the order, which was denied by the ZBA. The plaintiffs alleged that the actions of the ZBA were illegal because (1) it failed to require the Comm'n to enforce the buffer strip regulation; (2) its action was not supported by record evidence; (3) it permitted a use not in harmony with the general purpose of the zoning regulations and violative of public policy; (4) it failed to consider public health, safety, convenience, welfare and/or property values of the plaintiffs and other Salisbury residents; and (5) it provided defective notice.

All three appeals were resolved by one stipulation for judgment dated May 31, 1979, with judgment entered in each file on September 19, 1979 (ZBA Judgment). The stipulation did not mention any provision of the zoning regulations, but simply recited that the track's owner was permitted to use the Site for camping for an unlimited number of spectators and participants at any events held there, subject to the following restrictions: (1) camping was limited to the

infield; (2) no non-official motor vehicles were allowed to be parked in the outfield, except between 6:00 a.m. and 10:00 p.m.; (3) the track entrance running past the Reed Williams property was closed between 11:00 p.m. and 6:00 a.m. to all camping traffic; and (4) the 1978 case (Docket No. CV-78-0016920-S) was dismissed with prejudice.

The judgment in each of the two 1977 cases (Docket Nos. CV-77-0016404-S, CV-77-0016416-S), although identical in all significant respects, also augmented the stipulation by construing "the nonconforming use" of the Site to permit camping by an unlimited number of spectators and participants as an accessory use to permissible car racing events subject to certain restrictions, including: (1) camping and camping vehicles were confined to the infield of the race track; (2) no motor vehicles were to be parked in the race track outfield between 10:00 p.m. and 6:00 a.m., except for those on official track business, which had to be parked in the parking lot area adjacent to the track office; and (3) the back road and the race track entrance, which abutted the Reed Williams property were to be closed, between 11:00 p.m. and 6:00 a.m., to all traffic except for emergency and service vehicles.

F

Zoning Regulation Amendments

Under the 1967 zoning regulations, racing at the Site was a permitted use but, in 1975, over the Site's objection, the Comm'n voted to change it to use by special permit. There is no evidence, however, that since this change, the Park or any of its predecessors have ever sought a special permit for its main uses, i.e., racing and exhibitions. Moreover, despite this change, the Site maintained its character as a preexisting, nonconforming use because it was in operation prior to the enactment of zoning regulations.

In 1985, the zoning regulations were again amended. Significantly, at this time, the basis for the allowed racing times pivoted from the relevant state statute to the permanent injunction. Unlike the 1959 regulations, which allowed racing during the hours permitted by statute, the 1985 amendment prohibited racing "except during such hours as are permitted by Court Order dated 5/12/59."

The last version of the zoning regulations prior to the amendments at issue, the May 26, 2013 regulations, specified that "[n]o races shall be conducted on any such track except during such hours as are permitted by Court Order dated 5/12/59 and subsequent Court Orders on file in the Planning and Zoning Office, or the Town Clerk's Office." The 2013 regulations did not include a specific reference to days of operation. Moreover, the 2013 regulations did not incorporate, by reference, the ZBA Judgment and did not contain any provisions as to camping, parking, or traffic on access ways to the track.

The 2015 amendments were proposed by the Comm'n on or before July 20, 2015, and adopted on November 16, 2015. Sections 221.1 and 221.3 of these amendments[8] are the subject of the present appeal. These sections will be set forth in more detail in section IV (A) and (C) of this memorandum of decision.

[8] Several of the 2015 amendments are not at issue in the present appeal, including clarifying and expanding a list of various uses that are incidental and accessory to a race track use; modifying the Table of Uses to specify that a race track is a use allowed by special permit in the RE District; adding a definition of "motor vehicle" that is derived from state statute; and providing that certain temporary uses associated with racing, even though not incidental or accessory thereto, may be allowed by special permit. Moreover, initially, the 2015 amendments also added Section 221.6, a severability clause, providing that, if one portion of the regulations were found by a court to be invalid, all of the other provisions would be invalid as well. The Park challenged this section on appeal, and the Comm'n, in a public hearing on March 30, 2016, repealed Section 221.6. Therefore, Section 221.6 is no longer before the court on this appeal.

III

STANDARD OF REVIEW

As a threshold matter, aggrievement is a prerequisite to maintaining a zoning appeal, and the Park bears the burden of proof that it is aggrieved by the Comm'n's decision to amend its regulations. Unless an appellant pleads and proves aggrievement, the case must be stricken for lack of subject matter jurisdiction. In the present case, the parties have stipulated to facts which allow this court to make a finding that the Park is aggrieved. See *Hughes* v. *Town Planning & Zoning Commission*, 156 Conn. 505, 509, 242 A.2d 705 (1968); *Hendel's Investors Company* v. *Zoning Board of Appeals*, 62 Conn. App. 263, 270-71, 771 A.2d 182 (2001); R. Fuller, 9A Connecticut Practice Series: Land Use Law and Practice (4th Ed. 2015) § 32:3.

A local zoning commission, acting in a legislative capacity, has broad authority to enact or amend zoning regulations. *Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc.* v. *Planning & Zoning Commission*, 220 Conn. 527, 542, 600 A.2d 757 (1991); *Arnold Bernhard & Co.* v. *Planning & Zoning Commission*, 194 Conn. 152, 164, 479 A.2d 801 (1984). "Acting in such legislative capacity, the local board is free to amend its regulations whenever time, experience, and responsible planning for contemporary or future conditions reasonably indicate the need for a change." (Internal quotation marks omitted.) *Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc.* v. *Planning & Zoning Commission*, supra, 543. The broad discretion of local zoning authorities acting in their legislative capacity is not, however, unlimited. *Damick* v. *Planning & Zoning Commission*, 158 Conn. 78, 83, 256 A.2d 428 (1969). "Zoning is an exercise of the police power. . . . As a creature of the state, the . . . [town . . . whether acting itself or through its planning commission,] can exercise only such powers as are expressly granted to it, or such powers as are necessary to enable it to discharge the duties and

carry into effect the objects and purposes of its creation. . . . In other words, in order to determine whether the regulation in question was within the authority of the commission to enact, we do not search for a statutory prohibition against such an enactment; rather, we must search for statutory authority for the enactment. . . . If the legislation is [a zoning] ordinance, it must comply with, and serve the purpose of the statute under which the sanction is claimed for it. . . . A local zoning commission is subject to the limitations prescribed by law [and] [t]he power to zone [is] not absolute but [is] conditioned upon an adherence to the statutory purposes to be served." (Citations omitted; internal quotation marks omitted.) *Builders Service Corp.* v. *Planning & Zoning Commission*, 208 Conn. 267, 274-75, 545 A.2d 530 (1998).

Judicial review of a decision to amend zoning regulations is limited. *Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc.* v. *Planning & Zoning Commission*, supra, 220 Conn. 542. "[I]t is not the function of the court to retry the case. Conclusions reached by the commission must be upheld by the trial court if they are reasonably supported by the record. The credibility of the witnesses and the determination of issues of fact are matters solely within the province of the agency. The question is not whether the trial court would have reached the same conclusion but whether the record before the agency supports the decision reached." (Internal quotation marks omitted.) Id., 542-43. A local zoning board's "legislative discretion is 'wide and liberal,' and must not be disturbed by the courts unless the party aggrieved by that decision establishes that the commission acted arbitrarily or illegally." (Internal quotation marks omitted.) Id., 543; see *Stiles* v. *Town Council*, 159 Conn. 212, 218-19, 268 A.2d 395 (1970) ("[c]ourts cannot substitute their judgment for the wide and liberal discretion vested in the local zoning authority when it is acting within its prescribed legislative powers"). "Courts will not interfere with . . . local legislative decisions unless the action taken is

clearly contrary to law or in abuse of discretion. . . . Within these broad parameters, [t]he test of the action of the commission is twofold: (1) The zone change must be in accord with a comprehensive plan, General Statutes § 8-2 . . . and (2) it must be reasonably related to the normal police power purposes enumerated in § 8-2 . . . ." (Citations omitted; internal quotation marks omitted.) *Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc.* v. *Planning & Zoning Commission*, supra, 543-44; see *Arnold Bernhard & Co.* v. *Planning & Zoning Commission*, supra, 194 Conn. 159 ("General Statutes § 8-2 delegates broad authority to municipalities to enact local zoning regulations").

"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 zone change must be sustained if even one of the stated reasons is sufficient to support it. . . . The principle that a court should confine its review to the reasons given by a zoning agency does not apply to any utterances, however incomplete, by the members of the agency subsequent to their vote. It applies where the agency has rendered a formal, official, collective statement of reasons for its action. . . . [H]owever . . . the failure of the zoning agency to give such reasons requires the court to search the entire record to find a basis for the commission's decision." (Citations omitted; internal quotation marks omitted.) *Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc.* v. *Planning & Zoning Commission*, supra, 220 Conn. 544.

Applying these principles to the present case, the scope of this court's review of the 2015 amendments to the zoning regulations is, therefore, quite limited. This court must uphold the amendments and deny the appeal if even one of the Comm'n's officially proferred reasons is

reasonably supported by the record, provided that the amendments are based upon the statutory purpose of zoning and are neither arbitrary nor illegal. While this formulation sounds simple, its application in the preset case is complex, especially with regard to the Park's preemption arguments concerning Sunday racing and the regulation of noise.

IV

PARTIES' ARGUMENTS

The Park asserts that the Comm'n acted illegally, arbitrarily, capriciously and in abuse of its discretion in the following ways:[9] (1) The limitations on days and hours of racing and race car activities violate and are preempted by General Statutes § 14-164a ("motor vehicle racing"); (2) the amendments attempt to regulate noise in an improper fashion; (3) no record evidence supports the amendments; (4) the amendments violate General Statutes § 8-2 (a) because they are not in conformity with the Town's comprehensive plan; and (5) the amendments constitute illegal spot zoning, target a single property owner and regulate the user, not the use, of the property. The Park also argues that the Comm'n acted in excess of its statutory authority in three ways. First, it improperly "cut and pasted" provisions from the injunctive orders and the ZBA Judgment into the 2015 amendments because it considered these provisions already part of the zoning scheme and to which the parties were previously subject. Accordingly, the Park asserts, the Comm'n did not allow testimony on the substance of the "cut and pasted" provisions. Second, the amendments are not supported by any legitimate land use basis, and third, by

[9] Although the Park originally mounted other attacks on the amendments, not all were briefed, including an improper notice argument and an argument that the new regulations required the Park to seek a special permit for activities it undertook prior to these amendments. The court will not consider these abandoned arguments.

requiring a special permit to amend the regulations, the Comm'n specifically exceeded its statutory authority under § 8-3 (c).

In contrast, the Comm'n argues that the amendments concerning the track's hours of operation are not preempted by or irreconcilably in conflict with General Statutes § 14-164a; the amendments do not constitute illegal noise regulations, and, in fact, the limitations on unmufflered racing are not even attempts to regulate noise; the amendments have support in the administrative record; there is a legitimate land use basis for the amendments; it acted within its authority in addressing how certain standards in the regulations may be amended; the Park has not sustained its burden to prove that the amendments do not conform to the Town's comprehensive plan; and the amendments do not constitute spot zoning, target a single property owner, or seek to regulate a user rather than a use.

Additionally, the Council contends that several of the Park's claims are abandoned for failure to brief; the Park's prior stipulation to limits on Sunday racing and hours of operation act as a waiver to any current challenge thereto; the Comm'n's actions in limiting Sunday racing are not preempted by General Statutes § 14-164a; the amendments do not impermissibly regulate noise; and state law allows the Comm'n to regulate the use of the track by special permit.

IV

DISCUSSION

The Park's arguments that concern general land use issues, such as those pertaining to a legitimate land use basis for the amendments and record evidence in support of the amendments can be dealt with summarily. Many of these arguments spring from the Park's perception that the Comm'n merely cut and pasted provisions from the permanent injunction and the ZBA Judgment into the zoning regulations.

At first blush, these arguments seem to have some merit. Comments of individual Comm'n members, made prior to the formal vote in favor of the amendments, reveal that some members felt that their charge involved nothing more than cutting and pasting. Based on the belief of some Comm'n members that they were simply codifying the existing zoning scheme, one Comm'n member issued stern warnings at the beginning of the public hearings that the Comm'n would not hear any testimony regarding the impact of the Park on townsfolk. This member evinced a belief that all provisions of the amendments before them were already incorporated by reference into the existing zoning regulations. As a result, the action being taken by the Comm'n was simply the administrative task of spelling out each such provision in the regulations to obviate the need for an individual to obtain a copy of the most recent injunction from the Superior Court or the Town Clerk's office to find out what was incorporated by reference into the regulations. This belief, however, was mistaken. While the 2013 regulations did incorporate the injunction's restrictions on hours of racing, those regulations did not incorporate the injunction's restrictions on days of racing, or the 1979 ZBA Judgment's restrictions on camping and traffic.

Nonetheless, these erroneous beliefs of individual members of the Comm'n are not a sufficient basis upon which this court could sustain the Park's appeal. First, despite the Comm'n's expressed intent to limit the testimony, it, in fact, took voluminous evidence and public commentary related to the essential issues at dispute in the present appeal, including, but not limited to, noise, traffic, and days of racing. Second, this court must disregard comments by Comm'n members during the public hearing, prior to the formal vote to amend. See *Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc.* v. *Planning & Zoning Commission*, supra, 220 Conn. 544. Third, the Comm'n's formal statement of reasons contains at

least one legitimate land use basis for the amendments under § 8-2, to wit, that the proposed amendments support public health and safety, and preserve property values. Persuasive evidence was taken during the public hearing to support this reason and to underscore the impact that the Site has on the value of surrounding properties. "If any one [reason] supports the action of the commission, the plaintiff must fail in his appeal." *Zygmont* v. *Planning & Zoning Commission*, 152 Conn. 550, 553, 210 A.2d 172 (1965). Section 8-2 expressly recognizes that the promotion of health and safety and the preservation of property values are two purposes of zoning regulations.[10] "Zoning legislation has been upheld with substantial uniformity as a legitimate subject for the exercise of the police power when it has a rational relation to the public health, safety, welfare and prosperity of the community and is not in plain violation of constitutional provision, or is not such an unreasonable exercise of this power as to become arbitrary, destructive or confiscatory." (Internal quotation marks omitted.) *Builders Service Corp. Inc.* v. *Planning & Zoning Commission*, supra, 208 Conn. 283. Accordingly, this court finds that the foregoing articulated reason for the 2015 amendments is valid, is reasonably supported by the record and is pertinent to the considerations the Comm'n was required to apply under the zoning regulations. See Fuller, 9A Connecticut Practice Series: Land Use Law and Practice (4th Ed. 2015) § 33:2.

Therefore, the Park cannot succeed on its arguments that (1) the "cutting and pasting" of the injunction into the regulations was improper; (2) the Comm'n generally acted outside of its statutory authority; (3) no legitimate land use basis was provided for the amendments; and (4) no record evidence supported the amendments.

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[10] Section 8-2 (a) provides, in relevant part, that zoning regulations "shall be designed to . . . promote health and the general welfare" and that "[s]uch regulations shall be made with reasonable consideration as to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings . . . ."

Similarly, the court finds no merit in the Park's arguments that the amendments constitute illegal spot zoning or that the Park was singled out for unfair treatment. Spot zoning is "the reclassification of a small area of land in such a manner as to disturb the tenor of the surrounding neighborhood. . . . Two elements must be satisfied before spot zoning can be said to exist. First, the zone change must concern a small area of land. Second, the change must be out of harmony with the comprehensive plan for zoning adopted to serve the needs of the community as a whole. . . . The vice of spot zoning lies in the fact that it singles out for special treatment a lot or a small area in a way that does not further such a [comprehensive] plan." (Internal quotation marks omitted.) *Gaida* v. *Planning & Zoning Commission*, 108 Conn. App. 19, 32, 947 A.2d 361, cert. denied, 289 Conn. 922, 958 A.2d 150 (defendant's petition for cert.), 289 Conn. 923, 958 A.2d 151 (plaintiffs' cross-petition for cert.) (2008); see *Delaney* v. *Zoning Board of Appeals*, 134 Conn. 240, 245, 56 A.2d 647 (1947) ("'spot zoning,' . . . if permitted, must often involve unfair and unreasonable discrimination and necessarily defeat, in large measure, the beneficial results of zoning regulation"). "Spot zoning is impermissible in this state." (Internal quotation marks omitted.) *Gaida* v. *Planning & Zoning Commission*, supra. "The obvious purpose of the requirement of uniformity in the regulations is to assure property owners that there shall be no improper discrimination, all owners of the same class and in the same district being treated alike." (Internal quotation marks omitted.) Id., 33.

On this appeal, the Park did not sustain its burden to convince the court that the amendments constituted the reclassification of a small area of land so as to disturb the tenor of the surrounding neighborhood. *Gaida,* supra. Moreover, this court finds that the 2015 amendments are in conformity with the Town's comprehensive plan.