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

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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- LeClairRyan a Professional Corporation
- Shipman & Goodwin LLP

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.

[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.

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[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.

"A comprehensive plan has been defined as a general plan to control and direct the use and development of property in a municipality or a large part thereof by dividing it into districts according to the present and potential use of the properties." (Internal quotation marks omitted.) *Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc.* v. *Planning & Zoning Commission*, supra, 220 Conn. 551. "In the absence of a formally adopted comprehensive plan, a town's comprehensive plan is to be found in the scheme of the zoning regulations themselves." (Internal quotation marks omitted.) Id. Here, the conclusion reached by the Comm'n that the 2015 amendments were consistent with the Town's comprehensive plan is reasonably supported by the record. Moreover, public health and safety, and preservation of property values are clearly within the purposes contemplated by § 8-2.[11] The Park did not sustain its burden to convince the court that the amendments were discriminatory or out of harmony with the comprehensive plan of zoning adopted to serve the needs of the town.

For these reasons, the court finds that the Park did not sustain its burden to prove that the regulations as a whole constituted spot zoning or were discriminatory.

The court will now address, in turn, the Park's arguments that the amendments are, in part, violative of, or preempted by, a state statute; an unlawful regulation of noise; and in excess of the Comm'n's statutory authority.

[11] Although the Park also argued that the amendments were not in conformance with the Town's Plan of Conservation and Development, the Comm'n heard record evidence adduced from Martin J. Connor, AICP, to the contrary. The Comm'n found this evidence to be credible and persuasive and the court cannot substitute its judgment for that of the Comm'n in regard to this issue. *Stiles*, supra.

A

Days of Racing and Preemption

It is the Park's position that the restrictions placed on days of racing and racing activities violate and are preempted by General Statutes § 14-164a (a). The Park argued that the amended regulations "include extensive illegal restrictions on days and hours of 'races,'" and specifically, that "Section 221.1 (2) restricts 'activity' with 'unmufflered racing car engines' to Tuesday afternoons and ten Fridays and Saturdays."

Before addressing the merits of this argument, the court will first tackle the argument made by the Council and the Comm'n that the Park waived its right to oppose the amendments that prohibit Sunday racing or racing on other days of the week. This court finds no merit in these arguments. First, the argument by the Council and Comm'n that the 2013 regulations limited only days of racing is clearly rebutted by its plain language that "[n]o races shall be conducted on any such track except during such hours as are permitted by Court Order 5/12/59 and subsequent Court Orders on file in the Planning and Zoning Office, or the Town Clerk's Office." Thus, the 2013 regulations limited hours, but not days, of racing. This court finds equally unpersuasive the Council's argument that the Park waived its right to contest the Sunday racing amendments because it, or its predecessors, agreed, as part of previous amendments to the injunction order, to limitations on Sunday racing. Putting aside for the moment the very real issue of whether the Park's predecessors had the legal authority to waive the Park's rights to assert legal arguments, the Park's predecessors did, in fact, fight, albeit unsuccessfully, for Sunday racing in the initial *Adams* hearing. The issue of Sunday racing was decided by Judge Shea rather than stipulated to by the Park's predecessor in interest. Moreover, the stipulated amendments to the injunction order that came later did not relate to the fundamental issue of

Sunday racing. To the extent the Park or its predecessor stipulated to other, unrelated restrictions on the use of the Site, such as number of campers, that stipulation cannot bind the Park in perpetuity to a prohibition of Sunday racing. Additionally, as the court will discuss at the end of this decision, regulation that results from a private nuisance lawsuit is different in nature from that which results from zoning regulations. The court finds that the Park has not waived its rights to oppose the 2015 amendments that prohibit Sunday racing or racing on other days of the week.

The Park's substantive argument is that the prohibition on Sunday racing, set forth in section 221.1 of the 2015 amendments is either preempted by, or violates, General Statutes §14-164a. Our Supreme Court has provided extensive guidance on the law of preemption. "The State may regulate any business or the use of any property in the interest of the public welfare or the public convenience, provided it is done reasonably." (Internal quotation marks omitted.) *Modern Cigarette, Inc.* v. *Orange*, 256 Conn. 105, 118, 774 A.2d 969 (2001). "[I]n determining whether a local ordinance is preempted by a state statute, [the court] must consider whether the legislature has demonstrated an intent to occupy the entire field of regulation on the matter or whether the local ordinance irreconcilably conflicts with the statute." Id., 119. "Whether the legislature has undertaken to occupy exclusively a given field of legislation is to be determined in every case upon an analysis of the statute, and the facts and circumstances upon which it intended to operate." (Internal quotation marks omitted.) *Bencivenga* v. *Milford*, 183 Conn. 168, 176, 438 A.2d 1174 (1981). "Whether an ordinance conflicts with a statute or statutes can only be determined by reviewing the policy and purposes behind the statute and measuring the degree to which the ordinance frustrates the achievement of the state's objectives." *Modern Cigarette, Inc.* v. *Orange*, supra. "Therefore, [t]hat a matter is of concurrent state and local concern is no impediment to the exercise of authority by a municipality through the enactment of an ordinance,

so long as there is no conflict with the state legislation." Id. "Whether a conflict exists depends on whether the ordinance permits or licenses that which the statute forbids, or prohibits that which the statute authorizes." Id., 120.

To decide whether the amendments are preempted by or violate General Statutes §14-164a, the court must review the language of each.

As set forth immediately below, the 2015 amendments address the days of the week on which motor vehicle racing may take place as follows. The 2015 amendments clearly prohibit all racing on Sunday. In addition to the Sunday prohibition, the 2015 amendments also prohibit mufflered racing on Saturdays in the following way. The amendments state that "[n]o motor vehicle races shall be conducted on any track except in accordance with the following parameters...." and then proceed to state that activity with mufflered car engines shall be permitted "on any weekday." Weekdays include Mondays through Fridays. Therefore, no mufflered race activity may take place on Saturdays. The 2015 amendments also place extensive limitations on the days of the week on which unmufflered racing can take place. Significantly, unmufflered racing may only take place, for example, on ten Saturdays per calendar year. Because mufflered racing is only permitted on weekdays, and not, therefore, on Saturdays and because unmufflered racing may only take place on ten Saturdays in one year, the regulations operate to limit car racing to ten Saturdays per year.

Section 221.1 provides, in relevant part, as follows:

> A track for racing motor vehicles, excluding motorcycles, as well as for automotive education and research in safety and for performance testing of a scientific nature, private auto and motorcycle club events, car shows, and certain other events identified in section 221.2 are permitted subject to the issuance of a special permit in compliance with the procedures and standards of these regulations and also subject to the following:

(a) No motor vehicle races shall be conducted on any such track except in accordance with the following parameters [footnote 1 is then inserted which reads as follows: FN 1. The parameters set forth herein are identical to those set forth in the Amended stipulation of Judgment entered by the Court, Dranginis, J., on March 21, 1988 in the civil action, Ann Adams, et al. v. B. Franklin Vaill, et al., CV No. 15,459 (Judicial District of Litchfield at Litchfield), which parameters were previously incorporated by reference in the zoning regulations]:

(1) All activity of mufflered or unmufflered racing cars upon the asphalt track or in the paddock areas shall be prohibited on Sundays.

(2) Activity with mufflered racing car engines shall be permitted as follows: (A) On any weekday between 9:00 a.m. and 10:00 p.m. provided, however, that such activity may continue beyond the hour of 10:00 p.m. without limitation on not more than six (6) occasions during any one calendar year. (B) Permissible mufflers are those which meet the standards set forth in Section 14-80(c) of the General Statutes of Connecticut, Revision of 1959, or as the same may be amended from time to time.

(3) Activity with unmufflered racing car engines shall be permitted as follows: (A) On Tuesday afternoon of each week between 12:00 noon and 6:00 p.m. (B) On Saturdays, not more than ten (10) in number each calendar year, between the hours of 9:00 a.m. and 6:00 p.m. (C) On the ten (10) Fridays which precede the said ten (10) Saturdays between the hours of 10:00 a.m. and 6:00 p.m. for the purpose of testing, qualifying or performing such other activities as may be necessary or incidental to the direct preparation for races on the Saturdays specified, provided that no qualifying heats or races shall be permitted on such Fridays. (D) In such event the scheduled activity for any of the said ten (10) Saturdays must be rescheduled for a "rain date", then said "rain date and the Friday preceding it shall not be considered as one of the ten (10) days referred to in Paragraphs b) and c) above. (E) On Memorial Day, Fourth of July and Labor Day between the hours of 9:00 a.m. and 6:00 p.m. (i) In the event any of the holidays falls on a Tuesday, Thursday or a Friday, there may be unmufflered activity on the day preceding the holiday between the hours of 12:00 noon and 6:00 p.m., but in the event the permissible unmufflered activity of the Tuesday next preceding the holiday shall be forfeited. (ii) In the event any of said holidays falls on a Sunday, the next day (Monday) will be considered the holiday for these purposes. (iii) In no event shall any such holidays increase the number of Saturdays of permissible unmufflered activity beyond ten (10) as provided in Paragraph b) above.

The court now moves to review the language of General Statutes §14-164a. The parties sharply disagree on the meaning of this statute. Accordingly, this court begins its preemption

analysis by gleaning the meaning of General Statutes § 14-164a through the familiar process of statutory interpretation.

"The process of statutory interpretation involves a reasoned search for the intention of the legislature . . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of this case." (Internal quotation marks omitted.) *Cox Cable Advisory Council* v. *Dept. of Public Utility Control*, 259 Conn. 56, 63, 788 A.2d 29, cert. denied, 537 U.S. 819, 123 S. Ct. 95, 154 L. Ed. 2d 25 (2002). In seeking to determine that meaning, General Statutes § 1-2z directs us to first consider the words of the statute. *State* v. *Heredia*, 310 Conn. 742, 756, 81 A.3d 1163 (2013). "We seek the intent of the legislature not in what it meant to say, but in what it did say." (Internal quotation marks omitted.) *Sanzone* v. *Board of Police Commissioners*, 219 Conn. 179, 187, 592 A.2d 912 (1991). "[T]he actual intent, as a state of mind, of the members of a legislative body is immaterial, even if it were ascertainable." (Internal quotation marks omitted.) Id.

"If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered." (Internal quotation marks omitted.) *State* v. *Heredia*, supra, 310 Conn. 756. "When a statute is not plain and unambiguous, we also look for interpretative guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter." (Internal quotation marks omitted.) Id.

In accordance with General Statutes § 1-2z, this court begins its analysis with the text of General Statutes § 14-164a (a): "No person shall operate a motor vehicle in any race, contest or

demonstration of speed or skill with a motor vehicle as a public exhibition except in accordance with the provisions of this section. Such race or exhibition may be conducted at any reasonable hour of any week day or after twelve o'clock noon on any Sunday. The legislative body of the city, borough or town in which the race or exhibition will be held may issue a permit allowing a start time prior to twelve o'clock noon on any Sunday, provided no such race or exhibition shall take place contrary to to the provisions of any city, borough or town ordinances." Although mindful of the axiom that no sentence in a statute can be read in isolation, *Lackman* v. *McAnulty*, 324 Conn. 277, 287, 151 A.3d 1271 (2016), a careful examination of the three individual sentences in the context of the other sentences found in this portion of subsection (a) will help unlock the meaning of subsection (a).

The first sentence states that "[n]o person shall operate a motor vehicle in any race, contest or demonstration of speed or skill with a motor vehicle as a public exhibition except in accordance with the provisions of this section."

The second sentence provides that "[s]uch race or exhibition may be conducted at any reasonable hour of any week day or after twelve o'clock noon on any Sunday." The statute does not define the word "such," but, in accordance with General Statutes § 1-1 (a), this court looks to "the common understanding expressed in dictionaries in order to afford the term its ordinary meaning." *Lackman* v. *McAnulty*, supra, 324 Conn. 287. "The word 'such' has been construed as an adjective referring back to and identifying something previously spoken of; the word naturally, by grammatical usage, refers to the last antecedent." (Internal quotation marks omitted.) Id. "The accepted dictionary definitions of 'such' include 'having a quality already or just specified,' 'previously characterized or specified,' and 'aforementioned.'" (Internal quotation marks omitted.) Id. Mindful of the dictionary definition, and when read contextually

and in accordance with applicable grammatical rules, "such race or exhibition" refers the reader back to the kinds of "race" and "exhibition" described in the preceding sentence. Quite clearly then, "such race or exhibition" in the second sentence refers to "any race, contest or demonstration of speed or skill with a motor vehicle as a public exhibition," as stated in the first sentence. Further, the word "may" has several functions, and in the context of the second sentence, the word "may" denotes a grant of statutory authority. See Black's Law Dictionary (8th Ed. 2004) p. 1000 (defining "may" as "[t]o be permitted to"). Harmonizing the first and second sentences, it is permissible to conduct a race, or any contest or demonstration of speed or skill with a motor vehicle at any reasonable hour of any week day or after twelve o'clock noon on any Sunday.

The third sentence provides that "[t]he legislative body of the city, borough or town in which the race or exhibition will be held may issue a permit allowing a start time prior to twelve o'clock noon on any Sunday, provided no such race or exhibition shall take place contrary to the provisions of any city, borough or town ordinances." The construction of this third sentence requires this court to seek guidance from traditional rules of English grammar. See, e.g., *Indian Spring Land Co.* v. *Inland Wetlands & Watercourses Agency*, 322 Conn. 1, 14-16, 145 A.3d 851 (2016). Sentence three consists of two clauses: an independent clause ("[t]he legislative body of the city, borough or town in which the race or exhibition will be held may issue a permit allowing a start time prior to twelve o'clock noon on any Sunday") that, were it not for the second clause, could stand alone as a complete thought, and a subordinate, adverb clause ("provided no such race or exhibition shall take place contrary to the provisions of any city, borough or town ordinances") that is dependent upon the main clause for its meaning and thus cannot stand by itself. See B. Garner, The Red Book: A Manual on Legal Style (2d Ed. 2006) §

10.48, pp. 179-80. The relationship between the two clauses is shown by the subordinating conjunction "provided" and signals that the subordinate, adverb clause places a condition on the operation of the independent clause. See Black's Law Dictionary, supra, p. 1261 (defining "provided" as a conjunction meaning "[o]n the condition or understanding;" or "[e]xcept").

Thus, application of the normal rules of English grammar dictates the following construction: a local legislative body has the authority to issue a permit allowing a race or exhibition to be held prior to 12 p.m. on Sunday, but this authority is limited by the condition that "such race or exhibition" cannot be held in violation of any local ordinance. Finally, careful interpretation leads this court to conclude that the adjective "such" in the subordinate clause of sentence three refers the reader back to its immediate antecedent, the "race or exhibition" that may be held before noon on Sunday referred to in the independent clause of the third sentence. *Lackman*, supra.

Consequently, by its plain language, General Statutes § 14-164a (a) allows a race, contest or demonstration of speed or skill with a motor vehicle as a public exhibition to be conducted at any reasonable hour of any week day or after twelve o'clock noon on any Sunday. It further allows a local legislative body to issue a permit authorizing a race or exhibition to be held prior to 12 p.m. on Sunday. However, that grant of authority to the local legislative body is limited by the condition that a race or exhibition can only be conducted prior to 12 p.m. on Sunday if it does not violate any local ordinance.

Contrary to the Comm'n's argument, there is no reasonable construction of General Statutes § 14-164a (a) that results in the subordinate, adverb clause in the third sentence ("provided no such race or exhibition shall take place contrary to the provisions of any city, borough or town ordinances") placing a condition on the operation of the second sentence ("Such

race or exhibition may be conducted at any reasonable hour of any week day or after twelve o'clock noon on any Sunday"). The plain language of a statute can be revealed by the legislature's choice of sentence structure and use of punctuation. See, e.g., *Indian Spring Land Co.* v. *Inland Wetlands & Watercourses Agency*, supra, 322 Conn. 14-16; see also *Lieb* v. *Dept. of Health Services*, 14 Conn. App. 552, 559, 542 A.2d 741 (1988) ("courts must presume that the legislature incorporated the purpose of the statute in every sentence, clause, phrase and item of punctuation of the statute"). Indeed, the plain meaning of a statute "will typically heed the commands of its punctuation." (Internal quotation marks omitted.) *Indian Spring Land Co.* v. *Inland Wetlands & Watercourses Agency*, supra, 14.

Here, the drafters clearly created two sentences, separated by a period for punctuation. By use of a period, each sentence contains an independent, complete thought. The grammar, syntax and punctuation of subsection (a) compel the conclusion that the drafters did not intend for sentence three's subordinate clause to be carried past its intended destination, i.e., the independent clause that comes before the subordinate clause in the third sentence, so as to modify or limit anything in the second sentence. By use of the end punctuation, the period, the legislature created a distinction between the statutory authorization to conduct races and exhibitions at reasonable times, and the power of local legislative bodies to regulate Sunday racing prior to noon. If the legislature had intended to vest local legislative bodies with the power to regulate all days and times of racing, it would have drafted the statute differently. See *Windels* v. *Environmental Protection Commission*, 284 Conn. 268, 299, 933 A.2d 256 (2007) (legislature knows how to convey its intent expressly); see, e.g., *Indian Spring Land Co.* v. *Inland Wetlands & Watercourses Agency*, supra, 322 Conn. 16 (legislature could have used comma to separate terms if it intended a different result). This court is constrained to read the statute as written, and,

as dictated by its punctuation, structure and grammar, General Statutes § 14-164a (a) does not allow a local legislative body to limit the days and times of racing, other than to allow racing before noon on Sunday on the condition that such earlier racing time complies with local ordinances.

This conclusion is buttressed by the evolution of General Statutes § 14-164a over time, and by the legislative history of the language at issue in this case. Originally enacted in 1935 as General Statutes § 898c, the statute did not address days or times of racing but provided only that "[n]o person shall operate a motor vehicle in any race or speed contest, open to the public and to which an admission fee is charged, unless the commissioner of state police shall have issued a certificate approving such race or contest."

In 1939, the legislature amended the statute to provide, in more specific detail, that any person desiring to manage, operate or conduct a race or exhibition was required to make an application in writing to the commissioner of state police, setting forth in detail, inter alia, the time of the proposed race or exhibition. See Public Acts 1939, No. 23. The 1939 revision also provided the commissioner of state police with the authority to "issue a permit naming a definite date for such race or exhibition, which 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." Public Acts 1939, No. 23.

The clause, "which 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," is non-restrictive, as evidenced by both the introductory term "which" and its separation from the beginning and end of the sentence by

commas.[12] See W. Strunk Jr. & E.B. White, The Elements of Style (3d Ed. 1979), pp. 3-5. As it is non-restrictive, the clause provides a supplemental, non-essential description of the commissioner's authority to issue a permit naming a definite date for a race or exhibition, and could be removed without changing the basic meaning of the subject-predicate combination. See W. Strunk Jr. & E.B. White, supra, pp. 3-5 (non-restrictive clauses do not limit or define, but merely expand upon the meaning of the words to which they relate); B. Garner, The Redbook: A Manual on Legal Style, supra, §§ 1.6, 10.20, pp. 6, 156-58; see also *United States* v. *Indoor Cultivation Equipment*, 55 F.3d 1311, 1315 (7th Cir. 1995) ("Congress's use of the pronoun 'which' is significant; it introduces a nonrestrictive clause . . . that does not limit the meaning of the word it modifies").

The next clause – "provided no such race or exhibition shall take place contrary to the provisions of any city, borough or town ordinances" – functions solely as a dependent, adverb clause modifying the independent clause ("may issue a permit naming a definite date for such race or exhibition"). Specifically, its purpose is to modify the verb "may issue" by limiting the commissioner's authority to issue a permit for a race or exhibition. See B. Garner, The Redbook: A Manual on Legal Style, supra, § 10.39, p. 173-74 (adverbs modify verbs to explain more about the action); see generally *Wellington Underwriting Agencies, Ltd.* v. *Houston Exploration Co.*, 267 S.W.3d 277, 288 (Tex. App. 2008), aff'd, 352 S.W.3d 462 (Tex. 2011) (interpreting dependent, adverb clause).

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[12] Indeed, that the words "and it" can be substituted for "which" confirms that the clause is nonrestrictive – the commissioner of state police . . . may issue a permit naming a definite date for such race or exhibition and it 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. See generally *Commonwealth* v. *Kenehan*, 12 Pa. D. & C. 585, 593 (Pa. Ct. Common Pleas 1929) (clause is nonrestrictive if "and it" or "and their" can be substituted for the relative pronoun).

By this analysis, the 1939 statute vested the commissioner of state police with the authority to issue a permit allowing races or exhibitions at reasonable times and days, but he could not issue a permit allowing a race or exhibition on a day or at a time that was contrary to any local ordinances. In other words, in 1939, the time and date of a race or exhibition could be limited by local ordinances.

Amendments in 1998, however, significantly altered both the substance and meaning of the statute. To demonstrate how the statute was altered, the legislature placed brackets around the omitted content while capitalizing added content:

> The Commissioner of Motor Vehicles . . . may issue a permit naming a definite date for such race or exhibition, which may be conducted at any reasonable hour of any week day or after twelve o'clock noon on any Sunday. [, provided] THE COMMISSIONER, WITH THE APPROVAL OF THE LEGISLATIVE BODY OF THE CITY, BOROUGH OR TOWN IN WHICH THE RACE OR EXHIBITION WILL BE HELD, MAY ISSUE A PERMIT ALLOWING A START TIME PRIOR TO TWELVE O'CLOCK NOON[13] ON ANY SUNDAY, PROVIDED no such race or exhibition shall take place contrary to the provisions of any city, borough or town ordinances.

Public Acts 1998, No. 98-102, p. 787.

This court cannot discount the drafters' placement of a period after "Sunday," thereby liberating the authority of the commissioner to issue a permit allowing races or exhibitions at any reasonable hour of any week day or after twelve o'clock noon on any Sunday, and giving it grammatical independence. Possibly of even more significance was making the phrase, "provided no such race or exhibition shall take place contrary to the provisions of any city, borough or town ordinances," dependent upon a newly created main clause ("the commissioner, with the approval of the legislative body of the city, borough or town in which the race or exhibition will be held, may issue a permit allowing a start time prior to twelve o'clock noon on

[13] By revisions in 1975, "two o'clock in the afternoon of any Sunday" was changed to "twelve o'clock noon on any Sunday." Public Acts 1975, No. 75-404, pp. 398-99.

any Sunday") for its meaning. By these modifications, it is impossible for the sentence, "[t]he commissioner of motor vehicles . . . may issue a permit naming a definite date for such race or exhibition, which may be conducted at any reasonable hour of any week day or after twelve o'clock noon on any Sunday," to be modified by the clause, "provided no such race or exhibition shall take place contrary to the provisions of any city, borough or town ordinances."

"When the legislature amends the language of a statute, it is presumed that it intended to change the meaning of the statute and to accomplish some purpose." *State* v. *Johnson*, 227 Conn. 534, 543, 630 A2d 1059 (1993); cf. *Bassett* v. *City Bank & Trust Co.*, 115 Conn. 393, 400-01, 161 A.852 (1932) (legislature may modify phrase of statute to simplify or condense the statutory language and not effect a substantive change). As it relates to General Statutes § 14-164a (a), to infer that the amendments were not intended to change the meaning of the statute would be to treat the inclusion of the new language as mere surplusage, a construction of the statute that clearly should be avoided, *Segal* v. *Segal*, 264 Conn. 498, 507, 823 A.2d 1208 (2003), and to ignore the change in punctuation. See *People ex rel Krulish* v. *Fornes*, 175 N.Y. 114, 121, 67 N.E. 216 (1903) (*O'Brien, J.*, concurring) ("[p]unctuation is what gives virility, point and meaning to all written composition. . . . A change in punctuation is frequently as material and significant as a change in words" (citation omitted)).

The materiality of the revisions is a significant indication that it was the intent of the legislature to substantively change the meaning of General Statutes § 14-164a (a) from its prior 1939 version. The alterations in phraseology and change in punctuation cannot be attributed to a desire to condense or simplify the law, or to improve the phraseology, nor can the alterations be construed to reflect nothing more than corrections of inaccurate or superfluous punctuation. See *Bassett* v. *City Bank & Trust Co.*, supra, 115 Conn 400-01; 82 C.J.S. § 332 (2009). The

foregoing revisions are more than grammatical sleights of hand, but reflect a significant change in the meaning of the provision.

Returning now to the question of preemption, it is apparent that the legislature intended local authorities to have some input regarding, inter alia, reasonable hours of racing on week days and start times for Sunday racing. As such, the legislature has not demonstrated an intent to occupy the entire field of regulation on hours of racing to the exclusion of local regulations. See, e.g., *Parillo Food Group, Inc.* v. *Board of Zoning Appeals*, 169 Conn. App. 598, 151 A.3d 864 (2016) (legislature did not intent to occupy the entire field of regulation under liquor control act, but intended municipalities and local zoning board to have some input regarding the location of establishments that sell alcohol and conditions relating to the operation of those businesses).

However, as General Statutes § 14-164a (a) is now drafted,[14] it does not allow a local legislative body to limit the days and times of racing, other than to allow racing before noon on Sunday so long as the earlier time complies with local ordinances. As such, those portions of section 221.1.a that provide for any restriction on the days of the week when "any race, contest or demonstration of speed or skill with a motor vehicle as a public exhibition" can be held (other than before noon on Sunday) irreconcilably conflict with General Statutes § 14-164a. "A test frequently used to determine whether a conflict exists is whether the ordinance permits or licenses that which the statute forbids, or prohibits that which the statute authorizes; if so, there is a conflict." *Bauer* v. *Waste Management of Connecticut, Inc.*, 234 Conn. 221, 235, 662 A.2d 1179 (1995). Section 221.1.a (1) attempts to prohibit that which the General Statutes authorize, to wit, Sunday racing after twelve noon and racing and other contests or demonstrations of speed

[14] In 2004, the legislature revised the statute to its current wording, which no longer includes permitting responsibilities for the commissioner of motor vehicles. See Public Acts 2004, No. 04-199, pp. 714-15. However, in all other relevant respects, the revisions of 1998 remained intact.

or skill with a motor vehicle as a public exhibition on any day of the week. The zoning regulation and the statute cannot coexist without conflict and, therefore, those portions of section 221.1.a both violate, and are preempted by, General Statutes § 14-164a (a). Along with the prohibition of Sunday racing after noon in any form (see section 221.1.a. (1)), the portions of section 221.1.a that irreconcilably conflict with the statute are those provisions of section 221.1.a (3) that restrict racing on all other days of the week.

Accordingly, the court sustains the Park's appeal as to that portion of section 221.1.a of the amendments to the zoning regulations which provides that "[a]ll activity of mufflered or unmufflered racing cars upon the asphalt track or in the paddock areas shall be prohibited on Sundays" to the extent that this section prohibits that which the legislature permits, namely, car racing after noon on Sundays, and as to the other portions of 221.1.a, namely those that restrict mufflered and unmufflered racing, that, when read together, limit car racing on Saturdays to ten Saturdays per year.

B

Regulation of Unmufflered Racing

The 2015 amended regulations limit, more strictly, unmufflered as compared to mufflered racing. Unmufflered racing is permitted only on Tuesdays, and on ten Saturdays and Fridays a year. In contrast, mufflered racing is allowed on any weekday between 9:00 a.m. and 10:00 p.m.[15] The Park contends that these limitations on unmufflered racing are an illegal and unauthorized attempt to regulate noise because the Comm'n did not comply with the prerequisites set forth in *Berlin Batting Cages* v. *Planning & Zoning Commission*, 76 Conn. App.

[15] The restrictions on unmufflered racing are found in Section 221.1.a of the amendments.

199, 821 A.2d 269 (2003) before passing those specific amendments. The Comm'n and the Council disagree, contending that (1) the separate prohibitions and limitations on unmufflered racing are regulations of use and not noise; (2) even assuming it is a noise regulation, it is authorized; and (3) *Berlin Batting Cages* does not govern the outcome. Accordingly, this court must decide (1) whether the restrictions on unmufflered racing constitute regulation of noise; if so, then (2) whether the Comm'n has the authority to regulate noise; and, if so, then (3) whether the Comm'n was required to comply with *Berlin Batting Cages*.

The court turns first to the language of the regulations. As the regulations do not contain a definition of "muffler," "mufflered racing" or "unmufflered racing," the court refers to dictionary definitions to determine the commonly approved usage of the language in question. See *Schwartz* v. *Planning & Zoning Commission*, 208 Conn. 146, 153, 543 A.2d 1339 (1988) ("words employed in zoning ordinances are to be interpreted in accord with their natural and usual meaning"); 9A R. Fuller, supra, § 34.6 (land use regulations passed by an agency rather than by the legislative body of a municipality are equivalent to an ordinance). A muffler is "a device to deaden noise; *especially*: one forming part of the exhaust system of an automotive vehicle." Merriam-Webster's Collegiate Dictionary (10th Ed. 1997). Accordingly, by definition, mufflers exist to deaden noise. The rational and only distinction between mufflered and unmufflered racing is the amount of noise generated. See *Spero* v. *Zoning Board of Appeals*, 217 Conn. 435, 441, 586 A.2d 590 (1991) ("[c]ommon sense must be used in construing the regulation, and we assume that a rational and reasonable result was intended by the local legislative body").

The position taken by the Comm'n and the Council, that regulation of unmufflered engines is not a regulation of noise, casts a blind eye on the overwhelming amount of record

evidence demonstrating that those who supported the 2015 amendments associated unmufflered racing with intolerable noise. The position taken by the Comm'n and the Council also ignores the lengthy history of the regulation of unmufflered racing at the Site. Given this lengthy history, it cannot be argued that the 2015 amendments were written on a blank slate. Rather, for almost sixty years, beginning with the 1959 injunction, unmufflered racing has been associated with the creation of intolerable noise. Indeed, in issuing the 1959 injunction, the court clearly distinguished mufflered from unmufflered racing, and strictly limited the operation of such unmufflered engines at the Site after finding that noise from unmufflered engines especially created a nuisance.

In an attempt to counter the almost tautological quality of these facts and conclusions, the Comm'n advanced what, at first blush, appears to be a logical sounding argument as to why the regulation of unmufflered racing is not the regulation of noise. According to the Comm'n, unmufflered racing is more strictly regulated because it is more popular than mufflered racing, and, therefore, attracts more fans who, in turn, create more traffic and more air and light pollution. The one insuperable problem with this argument is that, in the 1,870 page administrative record, there is not one jot of factual evidence to support the conclusion that unmufflered racing attracts more fans. Without any factual support in the administrative record, this argument must fail.[16] For the foregoing reasons, the court finds that the regulation of unmufflered racing is the regulation of noise.

The court also finds that the Comm'n has the general authority to regulate noise. See *Cambodian Buddhist Society* v. *Planning & Zoning Commission*, 285 Conn. 381, 440, 941 A.2d

[16] Notably, in making this argument, the Comm'n does not point to any facts in the record, but only to its interpretation of a legal argument made by the Park's counsel in its motion to modify the injunction in the *Adams* case.

868 (2008) (zoning commission could reasonably have concluded that 148-car parking lot would be a significant source of noise); *Husti* v. *Zuckerman Property Enterprises, Ltd.*, 199 Conn. 575, 582, 508 A.2d 735, appeal dismissed, 479 U.S. 802, 107 S. Ct. 43, 93 L. Ed. 2d 6 (1986) (citing § 8-2 and noting that noise is one of dangers that zoning is meant to combat); *Hayes Family Limited Partnership* v. *Plan & Zoning Commission*, 115 Conn. App. 655, 662, 974 A.2d 61, cert. denied, 293 Conn. 919, 979 A.2d 489 (2009) (noise was a relevant consideration when evaluating special permit application to construct a pharmacy).

The court must now decide whether the Comm'n's general authority to regulate noise is limited by the holding of *Berlin Batting Cages*. There, the court held, inter alia, that a zoning regulation purporting to control noise was invalid because it conflicted with state statutes governing noise pollution control. *Berlin Batting Cages, Inc.* v. *Planning & Zoning Commission*, supra, 76 Conn. App. 215-219. General Statutes § 22a-67 et seq. governs noise pollution control, and mandates that any municipal noise pollution control enactment must be approved by the commissioner of environmental protection. The regulation at issue in *Berlin Batting Cages*, § X (D) (3), was located within a chapter of regulations entitled "Environmental and Related Regulations," and provided that "[a]ny noise emitted outside the property from which it originates shall comply" with certain noise pollution control provisions of the State's Department of Environmental Protection. Id., 215. By its terms, that regulation "purported to adopt the noise control regulations promulgated by the commissioner," and, thus, the court held that § X (D) (3) was a noise control ordinance as contemplated by General Statutes § 22a-67 et seq. Id., 217-18. However, § X (D) (3) had not been approved by the commissioner. Id., 217.

The Appellate Court rejected the town's argument that such approval was unnecessary because General Statutes § 8-2 authorized it to regulate noise. Id., 218. The court explained that

the authority granted to zoning commissions under § 8-2, to promote health and the general welfare, does not "necessarily confer" the authority to promulgate regulations concerning noise pollution and, even if it did, § 8-2 certainly could not trump the legislature's specific enactment in § 22a-67 et seq. Id. Indeed, the court noted that § 8-2 does not even "mention noise or noise pollution." Id. The court also rejected the town's argument that the regulation did not purport to comprehensively regulate noise emissions because its requirements only applied to site plan reviews. Id., 217-18.

It is difficult to reconcile *Berlin Batting Cages* with the line of cases cited above that stand for the proposition that §8-2 gives a zoning body the authority to regulate noise. Read broadly and very liberally, *Berlin Batting Cages* could require a zoning commission to seek the approval of the state environmental commissioner before promulgating any zoning regulation even remotely related to noise. The broad dicta of *Berlin Batting Cages*, namely that §8-2 does not even mention "noise or noise pollution," id., 218 seems to conflict with prior and subsequent appellate authority, including *Cambodian Buddhist Society* v. *Planning & Zoning Commission*, supra, 285 Conn. 381, *Husti* v. *Zuckerman Property Enterprises, Ltd.*, supra, 199 Conn. 575, and *Hayes Family Limited Partnership* v. *Plan & Zoning Commission*, supra, 115 Conn. App. 655, all of which stand, either expressly or by necessary implication, for the proposition that zoning commissions may regulate noise under the authority of § 8-2. *Husti*, in particular, is at odds with *Berlin Batting Cages*. In *Husti*, the Supreme Court turned back state and federal constitutional challenges to zoning regulations that limited outdoor concerts in a residential neighborhood. In so holding, the Supreme Court cited "noise" as falling within the "kinds of dangers that zoning is meant to combat; see General Statutes §8-2." *Husti*, supra, 581-82.

In attempting to reconcile the foregoing appellate authority with the holding of *Berlin Batting Cages*, this court is mindful of the bedrock principle that "[a]s a procedural matter, it is well established that [our Appellate Court], as an intermediate appellate tribunal, is not at liberty to discard, modify, reconsider, reevaluate or overrule the precedent of our Supreme Court. . . . Furthermore, it is axiomatic that one panel of [the Appellate Court] cannot overrule the precedent established by a previous panel's holding." (Citation omitted; internal quotation marks omitted.) *St. Joseph's High School, Inc.* v. *Planning & Zoning Commission*, 176 Conn. App. 570, 595, 170 A.3d.73 (2017). Any assumption by this court that *Berlin Batting Cages* intended to overrule Supreme Court precedent recognizing that § 8-2 authorizes zoning bodies to generally regulate noise would contravene those fundamental principles of judicial restraint. Similarly, this court will also not assume that the Appellate and Supreme Court cases issued after *Berlin Batting Cages* were meant to overrule it sub silentio. Rather, in light of appellate authority standing for the proposition that § 8-2 authorizes a zoning commission to regulate noise, this court concludes that the holding of *Berlin Batting Cages* should be interpreted narrowly and should be limited to its facts. Specifically, there were two overriding factors that resulted in the finding that § X (D) (3) was a noise pollution control ordinance subject to approval pursuant to General Statutes § 22a-67 et seq. First, § X (D) (3) was located within the regulatory chapter regarding "Environmental and Related Regulations," and second, by its terms, it "purported to adopt the noise control regulations promulgated by the commissioner." *Berlin Batting Cages, Inc.* v. *Planning & Zoning Commission*, supra, 76 Conn. App. 215-219. The town virtually insured that the noise control regulations would be ineffective without the prior approval of the commissioner of environmental protection by placing these regulations so clearly within the bounds of the comprehensive statutory scheme regulating noise pollution.

Here, the court finds that the 2015 amendments limiting unmufflered racing do not constitute regulation of noise pollution in a manner similar to the regulation of noise pollution found in *Berlin Batting Cages*. Rather, the amendments at issue in this case, which restrict noise from car engines arising from entertainment event, a race, are much more similar to the limitations at issue in *Husti*, which restricted noise from entertainment events, namely, outdoor concerts in a residential neighborhood under §8-2. As the Comm'n properly invoked its general authority to regulate noise, an authority conferred by § 8-2, the court concludes that the unmufflered racing regulations are not ineffective for want of the pre-approval of the commissioner of environmental protection. The Park's appeal as to the regulation of unmufflered racing is denied, and the regulations concerning the same are upheld.

C

Special Permit to Seek Zoning Amendments

The Park argues that the Comm'n exceeded its statutory authority under § 8-3 (c) by requiring that the Park apply for and obtain a special permit as a precondition to attempt to amend the new zoning regulations. As previously noted, section 221.1.a regulates racing, including days and hours of racing operation and restrictions on unmufflered racing. Subsection (8) provides that "[t]he parameters set forth in this subsection may be amended by the Commission upon filing and approval of (1) a special permit application in compliance with all requirements of these regulations, including a site plan identifying the location of all uses, accessory uses, buildings, structures, pavement, and all other improvements on the relevant property, and amendments to any of the parameters set forth above; and (2) a petition to amend the zoning regulations setting forth alternative parameters for this subsection." Virtually identical

is subsection (d) of 221.3, which pertains to camping by spectators and participants: "The standards set forth in this subsection may be amended by the Commission upon filing and approval of (1) a special permit application in compliance with all requirements of these regulations, including a site plan identifying the location of all uses, accessory uses, buildings, structures, pavement, and all other improvements on the relevant property, and amendments to any of the restrictions set forth above; and (2) a petition to amend the zoning regulations setting forth alternative standards for this subsection."

In contrast to these regulations, General Statutes § 8-3 (c) only requires an applicant requesting a change in zoning regulations to file a written petition requesting such, in a form prescribed by a zoning commission; it does not authorize a zoning commission to require a petitioner seeking an amendment to apply for and receive a special permit before seeking the change. Counsel for the Comm'n candidly admitted that there is no other provision in the Salisbury zoning regulations requiring a person or entity who seeks a zoning amendment to apply for and receive a special permit. Nevertheless, in an attempt to counter the Park's argument, the Comm'n steadfastly claims that §§ 221.1.a (8) and 221.3.d are merely precatory. The court disagrees.

The foregoing amendments indicate that the Comm'n *may* amend the regulations in question, namely Sections 221.1 and 221.3. That part does not create a legal obligation and, is indeed, precatory. See *Citizens Against Overhead Power Line Construction* v. *Connecticut Siting Council*, 139 Conn. App. 565, 579, 57 A.3d 765 (2012), aff'd, 311 Conn. 259, 86 A.3d 463 (2014) ("the word 'may' denotes permissive behavior"). However, there is nothing "permissive" about what the Park must do to secure an amendment. To attempt to change either the "parameters" of section 221.1 or the "standards" of section 221.3, the Park must file, and have

approved by the Comm'n, (1) a special permit application that is in compliance with all requirements of these regulations (including a site plan identifying the location of all uses, accessory uses, buildings, structures, pavement, and all other improvements on the property); (2) the proposed amendments; and (3) a petition to amend the zoning regulations setting forth alternative parameters or standards. Nothing in the existing language of section 221.1.a (8) or section 221.3.d indicates that these requirements are anything but directory. In other words, if the Park wished to seek an amendment allowing activity with mufflered cars on the track until 10:05 p.m. instead of 10:00 p.m. then the Park would be required to file a full site plan as set forth above. The foregoing requirements are clearly outside of the statutory authority laid out in § 8-3 (c) and, therefore, the court sustains the appeal insofar as it pertains to amendment procedures set forth in sections 221.1.a (8) and 221.3.d.

The court also notes that this amendment process is unreasonable given that the Park is a preexisting, nonconforming use. There is no doubt that a municipality may regulate a preexisting nonconforming use under its police powers. See *Taylor* v. *Zoning Board of Appeals*, 65 Conn. App. 687, 697-98, 783 A.2d 526 (2001) (requiring a landowner to obtain a permit for a quarry was a reasonable regulation of a preexisting nonconforming use under the town's police powers). "Regulation of a nonconforming use does not, in itself, abrogate the property owner's right to his nonconforming use. . . . A town is not prevented from regulating the operation of a nonconforming use under its police powers. Uses which have been established as nonconforming uses are not exempt from all regulation merely by virtue of that status. It is only when an ordinance or regulatory act abrogates such a right in an unreasonable manner, or in a manner not related to the public interest, that it is invalid." (Internal quotation marks omitted.) Id., 698. In the present case, it is the "parameters" of 221.1.a, pertaining to hours, days, and noise quality of

racing, and the "standards" of 221.3, concerning parking and camping, that would be subject to the foregoing amendment process. There is, however, no rational correlation between these use, noise or hours of racing issues and the requirement that a site plan be filed in order to secure even the smallest of amendments thereto. As such, this court finds that the onerous requirements of sections 221.1.a (8) and 221.3.d – requiring that the Park file a comprehensive site plan solely to apply for, and receive, a special permit in order to then petition the Comm'n for a zoning change – are unreasonable and not related to the public interest.

V

CONCLUSION

The court sustains the Park's appeal as to (1) the provisions prohibiting Sunday racing after noon and otherwise limiting car racing on Saturdays to ten Saturdays per year, in contravention of General Statutes § 14-164a (a), and (2) the provisions, found in sections 221.1.a(8) and 221.3.d that require the Park to file a comprehensive site plan so as to apply for and obtain a special permit prior to seeking a change in these regulations. The court finds in favor of the Comm'n in regard to other aspects of the zoning amendments.

The court must remind all of the parties, however, that both the *Adams* injunction and the stipulated ZBA Judgment remain in full force and effect. This decision has no impact on the pending motion to motion to modify the *Adams* injunction, which awaits a hearing date and a decision. The legal standards for modifying an existing injunction in a private nuisance action are different from those used when a court reviews zoning amendments. Compare *Adams* v. *Vaill*, supra, 158 Conn. 485 ("courts have inherent power to change or modify their own injunctions where circumstances or pertinent law have so changed as to make it equitable to so

do") with *Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc.* v. *Planning & Zoning Commission*, supra, 220 Conn. 543-44 ("[c]ourts will not interfere with . . . local legislative decisions unless the action is clearly contrary to law or in abuse of discretion").

SO ORDERED.

BY THE COURT,

The Hon. John D. Moore