

DOCKET NO: LLICV770016416S
LIME ROCK PROTECTION Et Al
V.
LIME ROCK FOUNDATION Et Al

SUPERIOR COURT
JUDICIAL DISTRICT OF LITCHFIELD
AT LITCHFIELD

9/26/2016

ORDER

ORDER REGARDING:
03/24/2016 130.00 MOTION TO DISMISS

The foregoing, having been considered by the Court, is hereby:

ORDER: GRANTED

In each of Lime Rock Foundation, Inc. v. Zoning Board of Appeals of the Town of Salisbury, LLI-CV-77-001-6404 and Lime Rock Protection Committee v. Lime Rock Foundation, Inc. et al., LLI-CV-77-001-6416, the defendant Zoning Board of Appeals of the Town of Salisbury (ZBA), has moved to dismiss the motion to modify stipulation and judgment filed by Lime Rock Park, LLC (the Park) (found in #113 in the case ending in 6416 and #107 in the case ending in 6404), claiming, inter alia, that the court lacks subject matter jurisdiction to decide the Park's motion to reopen because the Park has failed to exhaust its administrative remedies. For the reasons set forth below, the court agrees and dismisses the Park's motion to modify stipulation and judgment.

Although, in a related matter, the Park is pursuing a modification of a stipulated judgment dated May 12, 1959 and amended on several occasions thereafter, the last being in 1988, it is important to realize that the issues in these two cases arise from later-arising litigation involving different issues.

LLI-CV-77-001-6404 and LLI-CV-77-001-6416 (collectively the 1977 cases or individually referred to as 6404 and 6416, respectively) were brought in 1977 as competing administrative appeals of decisions by the ZBA concerning the use of the racetrack located at the Park's premises in Salisbury. 6404 was brought by the former operator of this racetrack to appeal the ZBA's limitation of the number of campers during race weekends to 1500. 6416 was brought by neighbors of the racetrack to appeal the ZBA's decision expanding the number of campers during race weekends to 1500, allowing camping in areas other than the track infield and allowing spectators to camp at the track. A third related case, Lime Rock Protection Committee, Inc. et al. v. Lime Rock Foundation, et al., LLI-CV-78-001-6920 (the 1978 case) was brought one year later by abutters and concerned citizens appealing the ZBA's decision not to enforce a buffer strip around the racetrack, an area required under Salisbury's zoning regulations. The 1977 cases and the 1978 case were resolved by means of judgment entered by this court, O'Neill, J. on September 19, 1979 in accordance with a stipulation entered into by all parties. Pursuant to that judgment, the 1978 case was dismissed with prejudice. The judgment contained provisions governing the number of campers, the use of the infield for camping, night-time parking of certain vehicles on the racetrack's outfield and the use of a road accessing the racetrack during certain hours. The 1979 judgment is the subject of the Park's motion to modify stipulation and judgment.

The Park's motion to modify stipulation and judgment is the mechanism pursuant to which the Park seeks to revivify the 1977 cases. Although the Park also seeks to revive the 1978 case, the court has previously ruled that the 1978 case cannot be brought back to life, as it was dismissed with prejudice. In its motion to modify stipulation and judgment, the Park argues that the racing business has changed radically since the 1979 judgment. The Park additionally claims that camping at racing events has substantially changed since this time, and that contemporary campers camp in larger recreational vehicles cannot fit in the infield. Based upon its contention that these changes in the racing business

make it economically non-viable for the Park to compete in the present day, the Park prays for a modification of what it terms the “injunction” to allow for overnight camping and parking in the racetrack outfield from 6:00 p.m. the night before a race until noon of the day following a race and overnight camping traffic between 11:00 p.m. and 6:00 a.m. on the nights when camping is allowed. The Park also requests a hearing at which to present evidence as to the alleged changes in circumstances. In response, the ZBA moves to dismiss, claiming that the court lacks subject matter jurisdiction because the Park has failed to exhaust its administrative remedies. Specifically, the ZBA argues, inter alia, that the questions raised in the motion to modify stipulation and judgment should be first taken up in the administrative arena. The court agrees and grants the motion to dismiss in both 1977 cases.

The exhaustion of administrative remedies doctrine implicates subject matter jurisdiction. *Levine v. Sterling*, 300 Conn. 521, 528, 16 A.3d 664 (2011). A motion to dismiss is the proper way to raise a lack of subject matter jurisdiction. *St. George v. Gordon*, 264 Conn. 538, 545, 825 A.2d 90 (2003). Under the exhaustion of administrative remedies doctrine, a trial court lacks subject matter jurisdiction over an action that seeks a remedy that could be provided through an administrative proceeding, unless and until that remedy has been sought in an administrative forum, and the action must be dismissed if a party has not exhausted its administrative remedies. *Levine*, supra. The *raison d’etre* of this doctrine is twofold: (1) to put into effect the legislative intent that the issue in question be handled initially by the local administrative officials in order to provide aggrieved persons with full and adequate administrative relief, and to give the reviewing court the benefit of the local board’s judgment and (2) to relieve the court system of prematurely deciding questions that may be resolved appropriately through the administrative process. *Ammirata v. Zoning Board of Appeals*, 81 Conn. App. 193, 202, 883 A.2d 1047 (2004). The only exception to this doctrine is when recourse to the administrative body would be futile or inadequate, or when injunctive relief from an agency decision is necessary to prevent immediate and irreparable harm. *D’Eramo v. Smith*, 273 Conn. 610, 616, 872 A. 2d 408 (2005). After reviewing the materials presented, and for the following reasons, the court finds that the movant has not exhausted its administrative remedies and that the exceptions to the doctrine of exhaustion do not apply.

First, both the 1977 cases and, for that matter, the dismissed 1978 case, all of which gave rise to the judgment that the Park would like to modify, arose as administrative appeals of the ZBA’s decisions. The ZBA, in each of the three cases, was acting as the appellate body for Salisbury’s Planning and Zoning Commission. The 1979 judgment itself states that each action is “in the nature of an appeal from a decision of the Zoning Board of Appeals of the Town of Salisbury...” (September 19, 1979 judgment, O’Neill, J.) In the judgment, the court did not enter an injunctive order *de novo*, but rather entered judgment “modifying the decision of the Zoning Board of Appeals...” *Id.* By its very language, the judgment at question was authorized by Conn. Gen. Stat. § 8-8, which permits the court to modify an administrative board’s decision. The court concludes that the parties to the 1977 cases firmly believed that the issues in the 1979 judgment were within the bailiwick of the Planning & Zoning Commission and the ZBA, and the court that issued judgment concurred. Therefore, since the 1979 judgment arose entirely from three administrative appeal cases, any attempts to seek relief from any of its provisions should return to the administrative arena and exhaust all remedies there before turning to the courts.

Second, in an administrative appeal recently filed in this judicial district, the Park has acknowledged that the Town’s newly amended zoning regulations address the issues that the Park wishes to address in these cases by requesting modification of the 1979 judgment. In *Lime Rock Park, LLC v. Planning and Zoning Commission of the Town of Salisbury [P & Z]*, Docket No. LLI-CV-15-601-3033S, the Park appealed the P & Z’s 2015 decision to approve zoning amendments. The Park’s appeal alleged the following. The recently-adopted zoning amendments pertain to issues such as “camping” and “use of accessways abutting property.” (Appeal, para. 28). “There is no evidence in the Record to support the Modified Amendments...[which] purport to address the minutia of race track operations, including... accessways, camping,...parking...” (Appeal, para. 51e.) In fact, the newly-adopted regulation 221.3 incorporates the provisions of the 1979 judgment. (See Defendant’s exhibit 1 to the 6/2/16 short calendar argument on this motion, filed with the court on 6/10/16). The Park’s allegations in this administrative appeal and the newly-amended regulations themselves demonstrate that a significant portion of the issues that the Park wants to address in these cases by means of its motion to modify are within the province of the P & Z, an administrative body. In fact, the Park, by pursuing its recently-filed administrative appeal of the P & Z’s amendments, is already pursuing one aspect of its redress in this

administrative appeal itself.

Third, even though the newly-filed administrative appeal deals with the approval of the newly-adopted zoning amendments, the Park could, as the ZBA suggests in its memorandum, seek redress of the restricted camping, parking and access road uses through the P & Z, and then, if necessary, by appeal to the ZBA. Doing so would allow interested members of the public to become involved. Further, the areas that the Park wishes to modify in these cases clearly fall within areas in which the local and technical expertise of the Salisbury administrative planning, zoning and zoning appeal bodies should first be brought to bear.

Finally, the Park has not convinced the court that exhausting administrative remedies would be futile or that injunctive relief from the operation of an agency decision would be necessary to prevent immediate and irreparable harm.

For all of these reasons, the court grants the ZBA's motion to dismiss the motion to modify in both of these cases for failure to exhaust administrative remedies.

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Judge: JOHN DAVID MOORE

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