

CONNECTICUT FEDERATION OF PLANNING
AND ZONING AGENCIES
QUARTERLY NEWSLETTER

Summer 2020

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regulations to clarify what activities were permitted at Lime Rock Park. Historically, Lime Rock Park had been governed by several court judgments which stipulated as to when certain activities could take place. One of these stipulations was that unmuffled automobile racing could not take place on Sundays.

Lime Rock Park claimed that Connecticut General Statute Sec. 14-164a(a) preempted the Commission's zoning regulation which prohibited unmuffled racing on Sunday. The State statute provided in part that such racing could take place, during reasonable hours, on any weekday and after 12 noon on Sundays. In order to resolve this issue, the Court looked to the history of this State statute. Until it was amended in 2004, this State statute had always provided that any such racing could be approved by the appropriate state agency as long as it did not conflict with any municipal ordinance. Relying on this history, the Court reasoned that the state legislature, when it amended the statute in 2004 without any debate, would not have departed from this long history of allowing municipal control over automobile racetracks. Since Sec. 14-164a(a) was prohibitory in nature, the Commission was acting within its authority when it imposed additional restrictions on Lime Rock Park, including the ban on Sunday racing.

Lime Rock Park also challenged the validity of the Sunday racing provision of the regulations on the basis that it was an invalid noise regulation. Before a municipal noise ordinance can be adopted, it must first comply with Connecticut General Statutes Sec. 22a-73 which requires, among other things, that the proposed ordinance be approved by the Commissioner of the Department of Energy and Environmental Protection. The Court found that the zoning regulation in question, which did not impose a noise level scheme but instead banned a particular use due to it being incompatible with the neighborhood wherein it would take place because of excessive noise was valid. One of the purposes of zoning is to eliminate nuisances. Thus, restricting loud, unmuffled automobile racing could reasonably be viewed as a way to eliminate a nuisance to this neighborhood, especially on Sundays. *See Lime Rock Park LLC v. Planning & Zoning Commission, SC 20237, 20238, 20239 (2020).*

OPINION LETTER BY ZEO IS A
FINAL DECISION SUBJECT TO
APPEAL TIME LIMITATIONS

A cease and desist order was timely appealed by the owner of a quarry to the zoning board of appeals. The cease and desist order alleged that the quarry operation was not permitted by the zoning regulations and needed to

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stop. The quarry owner alleged in defense that his quarry was a nonconforming use and thus could continue. As support for this claim, the quarry operator produced a written opinion by the prior ZEO that the quarry operation was a nonconforming use. This written opinion had been issued several years before and was recorded on the land records. The Board ignored this letter and upheld the issuance of the cease and desist order.

An appeal to court followed. In sustaining the appeal, the court found that the operative decision was the written decision by the prior ZEO and that this decision could not be challenged at this late date. Thus, the board was without jurisdiction to rule on the issue of whether the quarry was a nonconforming use as that issue had been decided by the prior ZEO and the time to appeal this decision had long since expired. *See One Barberry Real Estate Holding LLC v. Zoning Board of Appeals, 69 Conn. L. Rptr. 297 (2019).*

PZC CAN SUE ZBA OVER
VARIANCE APPROVAL

When a planning and zoning commission appealed a decision to grant a variance, the zoning board of appeals moved to strike the complaint because it claimed a planning and zoning commission was not aggrieved by its decision. The court found in favor of the

commission and allowed the appeal to proceed.

The court reached its decision by first finding that the commission, under Connecticut General Statutes Sec. 8-8(1), is included as a person and thus could be aggrieved. Then, since the commission, as well as its agent, are entrusted with enforcing the zoning regulations, and a variance approved by a zoning board of appeal authorizes a violation of the zoning regulations, it is aggrieved by such a decision. This decision will certainly cause some discomfort to Boards of Finance. *See Planning & Zoning Commission v. Zoning Board of Appeals, 69 Conn. L. Rptr. 405 (2019).*

ANNOUNCEMENTS

Workshops - If your land use agency recently had an influx of new members or could use a refresher course in land use law, contact us to arrange for a workshop to be held at your next meeting. At the price of \$180.00 per session for each agency attending, it is an affordable way for your commission or board to keep informed.

ABOUT THE EDITOR

Steven Byrne is an attorney with an office in Farmington, Connecticut. A principle in the law firm of Byrne & Byrne LLC, he maintains a strong focus in the area of land use law and is available for consultation and representation in all land use matters both at the administrative and court levels.

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Summer Webinar

Pronouncements have been made that zoning in general, and local control of land use in particular, are a leading racial segregation in our state. Could towns lose zoning authority? We are looking into holding a webinar this summer on this topic. If you would like to receive a notice, please e-mail us at cfpza@live.com.

**STATE APPEALS COURT REMINDS
US IT'S ABOUT THE USE,
NOT THE USER**

A shorefront hotel held outdoor summer concerts several times each year on a town owned park that abutted the hotel's property. Both the hotel and the park were nonconforming uses. The hotel property was subjected to various use restrictions that had been part of a comprehensive variance granted to it in the past. Outdoor concerts were not specifically mentioned as part of this variance approval. Several nearby neighbors grew increasingly frustrated by these concerts and sought a permanent injunction from the court.

The neighbors' property, as well as the hotel and park, were located in a residential zone that allowed single family homes and only those other uses not detrimental to single family uses. Public parks and hotels were not permitted in the zone and there was no evidence that outdoor concerts took

place at the hotel or park properties prior to the adoption of zoning.

The court granted the injunction and banned any future outdoor concerts at the park finding they would be an illegal expansion of the nonconforming hotel use as well as the nonconforming park. This decision was reversed by the Appellate Court. First, the court found that only the use of the park property was relevant as the concerts did not take place on hotel property. Thus, there could be no expansion of any nonconforming aspect of the hotel property. Second, there was evidence that the town allowed outdoor concerts at other town parks and that the term 'park' was not defined in the zoning regulations. Based on this evidence, the court found that since an outdoor concert was a typical use of park property, there was no expansion of the nonconforming park property near the hotel when it also hosted outdoor concerts. *See Phister v. Madison Beach Hotel LLC, 197 Conn. App. 326 (2020).*

**AUTO RACE TRACKS SUBJECT
TO ZONING SAYS STATE
SUPREME COURT**

In a recent opinion by our State Supreme Court which involved a well-known car racing venue, the authority of a planning and zoning commission to regulate such a use of land was affirmed. The case arose from an appeal of a decision by the commission to amend its zoning

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