AT STAMFORD
123 HOYT STREET
STAMFORD, CT 06905

DOCKET NO. FSTCV236064286S : SUPERIOR COURT

STAMFORD NEIGHBORHOODS COALITION, LLC : JUDICIAL DISTRICT : OF STAMFORD

2024 MAY 29 A 11: 50

V. : AT STAMFORD

ZONING BOARD OF THE CITY OF STAMFORD : MAY 29, 2024

MEMORANDUM OF DECISION
RE: MOTION TO DISMISS (101.00)

This action is the nature of an appeal by the plaintiffs, Stamford Neighborhoods Coalition (the "Coalition"), and an additional 20 named individuals[1], from a certain decision of the Zoning Board of the City of Stamford (the "Board").

It is useful for the court to set forth in some detail certain allegations, by direct quotation or by paraphrasing. The plaintiffs' complaint (100.31) includes the following:

"1. By Court Order of the parties' stipulation in the matter of *Sweetspot Stamford, LLC v. Zoning Board of the City of Stamford*, FST-CV23-6062247-S (the "Sweetspot Case"), Defendant Zoning Board has indicated that it has issued a Certificate of Approval of the application of Sweetspot Stamford, LLC, Application 223-15, to conduct a Cannabis based business, to wit, a hybrid cannabis retailer, at 111 High Ridge Road, Stamford, CT (the "Sweetspot location"). *Sweetspot v. Zoning Board*, Motion for Approval of Settlement and Withdrawal of Appeal in Accordance with Stipulation, Seq. 102, Exhibit A: Stipulation of Settlement, para. E, p. 7 (granted November 15, Judge John Kavanewsky)."[2]

. . . .

"4. The Plaintiff STAMFORD NEIGHBORHOODS COALITION ("SNC" or "the Coalition" herein) is an unincorporated association formed for the purpose of representing and voicing the concerns of residents and property owners in matters

[1] The individual plaintiffs are alleged to own or reside premises at certain locations in some proximity to what will be referred to as the "Sweetspot location." The distances vary from across the street from it to 2.81 miles therefrom.

[2] At the hearing on the present motion, counsel stated that this court's approval of the stipulation of settlement would not pose any issue in the court hearing and deciding the motion.

101.03

affecting the use and enjoyment of properties in Stamford. Specifically, SNC monitors activities of the Zoning Board and advances and opposes and helps residents and property owners advance and oppose relevant matters before and actions of the Zoning Board."

The plaintiffs claim that the business, activities and the nature of the substance-cannabis-that Sweetspot is allowed to dispense:

"[W]ill increase criminal activity in close proximity to the homes and properties of the Plaintiffs substantially affecting their use and enjoyment thereof" . . . . "is likely to have an adverse effect on the values of the properties of the Plaintiffs" . . . . "is likely to have an adverse effect on the values of the properties of the Plaintiffs" . . . . "will cause a greater incidence of driving while under the influence of cannabis in the vicinity of the Sweetspot location, putting Plaintiffs and their families at greater risk for physical injury" . . . . "will foster further contempt for the law;" "necessarily increases criminal activity in Stamford, putting Plaintiffs and their families at greater risk" . . . . "will have an adverse effect on Plaintiff's use and enjoyment of their properties" and. . . . "will necessarily increase criminal activity in their neighborhoods and Stamford generally, with added risks to the health and safety of Plaintiffs and their families."

The four-count complaint is somewhat broadly stated and far-reaching. It is based upon grounds that include federal preemption, unlawful action under the Racketeer Influenced and Corrupt Organization Act (RICO), 18 USC §§ 1961, et seq., violations of the Connecticut Constitution, and other misapplications of law by the Board. The plaintiffs have requested that this court: "1. Nullify the Zoning Board Approval of the Sweetspot Application, as preempted, unconstitutional, and outside of the Authority of the Zoning Board; 2. Failing that, Strike the Certificate of Approval of the Court Ordered Stipulation in the Sweetspot Case for failure to make appropriate and necessary considerations. . ."

Before the court is the defendant's motion to dismiss, 101.00. The defendant has also filed a memorandum of law in support thereof, 102.00. The stated basis for dismissal is that this court lacks subject matter jurisdiction because there is no right of appeal from the Board's decision to settle a pending land-use appeal (the SweetSpot

case) by entering into a stipulation of settlement, which was then approved by this court. The plaintiffs have filed a memorandum of law in opposition, 103.00.[3] This court has carefully read the memoranda of the parties and considered the arguments of counsel.

The position of the Board is that this matter begins, and ends, by application of Gen. Stat. sec. 8-8.[4] However, the plaintiffs, mindful that this statute, including subsections (n) and (o), rely upon the argument that the court cannot sanction a decision where there has been legitimate, exclusive federal preemption of a matter, or where a

---

[3] It should be noted that, prior to the court hearing on the motion and objection, the defendant filed an amended motion to dismiss, 104.00, to which the plaintiffs also objected. 106.00. The variance between the initial and subsequent motion is the defendant's additional assertion that the plaintiffs were not aggrieved by the decision of the Board and that, therefore, they lacked standing.

[4] That statute provides, in relevant part that:
(a) As used in this section:
(1) "Aggrieved person" mans a person aggrieved by a decision of a board. . .
"Aggrieved person" includes any person owning land in this state that abuts or is within a radius of one hundred feet of any portion of the land involved in the decision of the board.
(2) "Board" means a municipal . . . board or commission the decision of which may be appealed pursuant to this section. . .
(b) Any person aggrieved by any decision of a board. . . may take an appeal to the superior court for the judicial district in which the municipality is located. . .The appeal shall be commenced by service of process in accordance with subsections (f) and (g) of this section within fifteen days from the date that notice of the decision was published as required by the general statutes.
. . .
(n) No appeal taken under subsection (b) of this section shall be withdrawn and no settlement between the parties to any such appeal shall be effective unless and until a hearing has been held before the Superior Court and such court has approved such proposed withdrawal or settlement.
(o) There shall be no right to further review except to the Appellate Court by certification for review, on the vote of three judges of the Appellate Court so to certify and under such other rules as the judges of the Appellate Court establish. . . "

local authority has otherwise acted in a clear, unconstitutional manner. See, *Murphy* v. *Town of Darien*, 332 Conn. 244, 249-51 (2019).

"The question of preemption is one of federal law arising under the supremacy clause of the United States constitution.... Determining whether Congress has exercised its power to preempt state law is a question of legislative intent." (Internal quotation marks omitted.) *Cox Cable Advisor* v. *Dept. of Public Utility Control,* 259 Conn. 56, 62, 788 A.2d 29, cert. denied, 537 U.S. 819, 123 S.Ct. 95, 154 L.Ed.2d 25 (2002).

The Supreme Court has limited preemption to three circumstances. *English* v. *General Electric Co.,* 496 U.S. 72, 78, 110 S.Ct. 2270, 110 L.Ed.2d 65 (1990). First, state law is preempted "when Congress has made its intent known through explicit statutory language...." *Id.,* at 79, 110 S.Ct. 2270. Second, a state law implicitly is preempted when it "regulates conduct in a field that Congress intended the [f]ederal [g]overnment to occupy exclusively." *Id.* The intent to occupy a particular field "may be inferred from a scheme of federal regulation ... so pervasive as to make reasonable the inference that Congress left no room for the [s]tates to supplement it, or where an [a]ct of Congress touch[es] a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject." (Internal quotation marks omitted.) *Id.*

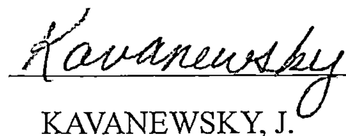
This court has considered the plaintiffs' argument of federal preemption against this backdrop. It appears that the plaintiffs have essentially sought to cloak their arguments in garb that does not fit. There has not been a pervasive scheme evidencing federal preemption. Further, there is no other evidence to suggest that the Board has acted in an illegal, arbitrary or unlawful manner. Certainly, there can be honestly held

disagreement with the decision of the Board. Indeed, the record reflects that the Board initially rejected the subject application. It was then that the Board negotiated with SweetSpot. An agreement was reached. Pursuant to statute, the parties sought a hearing before this court in order to withdraw the pending appeal. The court held a full hearing on the settlement application at which any person could appear and be heard. The court then approved the settlement.

In order to appeal a decision of a Board, there must be strict compliance with any statute which allows that right. *H-K Properties, LLC* v. *Town of Mansfield Planning and Zoning Commission,* 165 Conn. App. 488, 496-7 (2016).

"Appeals from administrative agencies exist only under statutory authority; *Rose v. Freedom of Information Commission,* 221 Conn. 217, 223, 602 A.2d 1019 (1992); and, to exercise the statutorily granted right of appeal, the appellant must strictly comply with the statutory authority by which the right of appeal is created. *Tarnopol v. Connecticut Siting Council,* 212 Conn. 157, 163–64, 561 A.2d 931 (1989)." *Ertel* v. *Carothers*, 34 Conn.App. 18 (1994); *Town of Bethel* v. *City of Danbury Planning Commission*, No. CV106004563S, Superior Court, judicial district of Danbury (2011).

Pursuant to Gen. Stat. sec. 8-8 (o), there is no further right to appeal from the court's approval of the settlement. *Brookridge District Association* v. *Planning and Zoning Commission of Town of Greenwich*, 259 Conn. 607, 616-17 (2002). Therefore, the defendant's motion to dismiss is granted and a judgment of dismissal shall enter.



KAVANEWSKY, J.

DECISION ENTERED IN ACCORDANCE WITH THE FOREGOING ON 5/29/24
JDNO SENT 5/29/24

DCC