DOCKET NO. KNL-CV22-6057321-S	:	**SUPERIOR COURT**
BLUE CAMP CT, LLC	:	**JD OF NEW LONDON**
V.	:	**AT NEW LONDON**
TOWN OF PRESTON PLANNING AND ZONING COMMISSION	:	**MAY 2, 2024**

MEMORANDUM OF DECISION

Statement of Appeal

The plaintiffs, Blue Camp, LLC and The Mashantucket Pequot Tribal Nation a/k/a The Mashantucket Pequot Tribe, appeal from a decision of the Town of Preston Planning and Zoning Commission (the Commission), in which it denied their special exception application and site plan application for a 304-unit recreation vehicle campground located at the intersection of Route 2 and Route 164.

Background

On November 12, 2021, the plaintiff, Blue Camp, LLC, submitted a special exception application and a site plan application with the Commission for a proposed development that originally consisted of 304-unit recreation vehicle campground and glamping site. The proposed project includes a welcome center, three bath houses, a pavilion, a volleyball court, a playground, a maintenance building, a swimming pool, two bocce areas, two tennis courts and a floating dock on Avery Pond.

The site lies in two (2) zoning districts, the R-60 Zoning District and the Resort Commercial District. A special exception is required for the project in each of these districts as

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a recreational campground pursuant to § 10.4.11 of the Preston Zoning Regulations. Blue Camp, LLC's applications were accepted by the Commission on November 22, 2021. A public hearing was held on February 23, 2022. At that time, the applications consisted of 304 camping sites for recreational vehicles and 21 glamping tents. The proposed location for the glamping tents were on two peninsulas of uplands which extended northerly along the eastern shore of Avery Pond and a wetland area located east of Avery Pond. The property is abutted to the east by Indiantown Brook which is in turn abutted by a Hilton Hotel and single-family residences. The property is abutted to the north by Avery Pond and is abutted to the west by a church and single family residences which have been constructed along Connecticut Route 164 and Lynn Drive. The existing use of the property is undeveloped land in a location along Route 2 in close proximity to the Foxwood Casino and Resort.

The Commission closed the public hearing on April 27, 2022. On May 24, 2022, the Commission voted against the motion to approve the applications. This appeal followed. The plaintiffs argue that there is no substantial evidence to support a denial of the applications. The court held a hearing on this matter on January 26, 2024.

Aggrievement

At the outset, the court addresses the issue of aggrievement. General Statutes § 8-8 (b) provides in relevant part that "any person aggrieved by any decision of a board, including a decision to approve or deny a site plan . . . a special permit or special exception . . . 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. . . ." "[A] statutory right of appeal may be taken advantage of only by strict compliance with the statutory provisions by which it is created . . . including the time periods prescribed in which to appeal." (Citations omitted; internal quotation marks omitted.) *Reardon* v. *Zoning Board of Appeals*, 311 Conn. 356, 366, 87 A.3d 1070 (2014). "[P]leading and proof of aggrievement are prerequisites to the trial court's jurisdiction over the subject matter of a plaintiff's appeal." (Internal quotation marks omitted.) *Stauton* v. *Planning & Zoning Commission*, 271 Conn. 152, 157, 856 A.2d 400 (2004). "It is [therefore] fundamental that, in order to have standing to bring and administrative appeal, a person must be aggrieved." (Internal quotation marks omitted.) *Office of Consumer Counsel* v. *Dept. of Public Utility Control*, 234 Conn. 624, 637, 662 A.2d 1251 (1995).

There are two (2) categories of aggrievement: statutory and classical. *Stauton* v. *Planning & Zoning Commission*, supra, 271 Conn. 157. "Statutory aggrievement exists by legislative fiat, not by judicial analysis of the particular facts of the case. In other words, in cases of statutory aggrievement, particular legislation grants standing to those who claim injury to an interest protected by that legislation." (Internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC* v. *Alves*, 262 Conn. 480, 486-87, 815 A.2d 1188 (2003). "In the case of a decision by a zoning commission, planning commission, combined planning and zoning commission or zoning board of appeals, '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 decisions of the board." General Statutes § 8-8 (a) (1). "Those persons who come within

§ 8-8 (a) (1) are statutorily aggrieved and are not required to plead and to prove the elements of classical aggrievement." *Lucas* v. *Zoning Commission*, 130 Conn. App. 587, 591, 23 A.3d 1261 (2011).

Classical aggrievement involves a two-part determination: "first, the party claiming aggrievement must successfully demonstrate a specific personal and legal interest in the subject matter of the decision, as distinguished from a general interest, such as is the concern of all the members of the community as a whole. Second, the party claiming aggrievement must successfully establish that the specific personal and legal interest has been specially and injuriously affected by the decision." (Internal quotation marks omitted.) *Bongiorno Supermarket, Inc.* v. *Zoning Board of Appeals*, 266 Conn. 531, 539, 833 A.2d 883 (2003)

"Aggrievement presents a question of fact for the trial court and the party alleging aggrievement bears the burden of proving it." Id. at 538-39. "Parties cannot consent or agree to aggrievement ... parties can [however] stipulate to facts to allow a finding of aggrievement." (Citations omitted.) *Fox* v. *Zoning Board of Appeals*, 84 Conn. App. 628, 637, 854 A.2d 806 (2004).

It is well established that a party may be aggrieved for purposes of appeal by virtue of its status as a property owner. *Moutinho v. Planning & Zoning Commission,* 278 Conn. 660, 671, 899 A.2d 26 (2006) (owner of property at issue in zoning appeal always is aggrieved); see also *Bossert Corp. v. Norwalk,* 157 Conn. 279, 285, 253 A.2d 39 (1968) ("[a]s the owner of the tract in issue, the plaintiff was certainly aggrieved by the action of the common council").

The plaintiffs argue that they are statutorily and classically aggrieved. The evidence demonstrates that the plaintiff, Blue Camp, LLC, is the tenant of the property in question. The plaintiffs allege that the Mashantucket Pequot Tribal Nation is the property owner and the evidence supports this allegation. Blue Camp, LLC however, has "a right to possession of real property under a lease has also been held to be aggrieved by an adverse decision of a zoning commission with respect to that property. *Primerica v. Planning & Zoning Commission,* 211 Conn. 85, 95, 558 A.2d 646 (1989)." *PJC Essex Realty, LLC v. Zoning Comm'n of Town of Essex*, Superior Court, judicial district of Middlesex, Docket No. CV04-4000746-S (August 11, 2005 *Aurigemma, J.*). The Mashantucket Pequot Tribal Nation and Blue Camp, LLC have established statutory aggrievement.

With regard to classical aggrievement, Blue Camp, LLC has demonstrated a specific and legal interest in the Commission's denial of its Special Exception and Site Plan Applications. Blue Camp, LLC has further demonstrated that it has a specific personal and legal interest that has been negatively affected by the Commission's denial of its application. Thus, the court finds that Blue Camp, LLC has sufficiently pled and established classical aggrievement.

Applicable Law

The plaintiffs argue that there is no substantial evidence in the record to support a denial of Blue Camp, LLC's applications. "In reviewing a decision of a zoning board, a reviewing court is bound by the substantial evidence rule, according to which, [c]onclusions reached by [a zoning] 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 [commission]. . . . The question is not whether the trial court would have reached the same conclusion, but whether the record before the [commission] supports the decision reached. . . . If a trial court finds that there is substantial evidence to support a zoning board's findings, it cannot substitute its judgment for that of the board. . . . If there is conflicting evidence in support of the zoning commission's stated rationale, the reviewing court . . . cannot substitute its judgment as to the weight of the evidence for that of the commission. . . . The agency's decision must be sustained if an examination of the record discloses evidence that supports any one of the reasons given." (Citations omitted; internal quotation marks omitted.) *Mun. Funding, LLC v. Zoning Bd. of Appeals of City of Waterbury*, 270 Conn. 447, 453, 853 A.2d 511 (2004). "This substantial evidence standard is highly deferential and permits less judicial scrutiny than a clearly erroneous or weight of the evidence standard of review. . . . The reviewing court must take into account [that there is] contradictory evidence in the record . . . but the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. . . . The burden is on the [plaintiffs] to demonstrate that the [agency's] factual conclusions were not supported by the weight of substantial evidence on the whole record." *Sams v. Dep't of Env't Prot.*, 308 Conn. 359, 374, 63 A.3d 953(2013).

In this case, the Commission did not give a statement of reasons for the denial of the applications. Thus, the court is obligated to search the record to determine if the record supports the Commission's denial. The court does not find that the comment by Commissioner

Beale amounts to a formal, collective, official statement of the Commission. See *Protect Hamden/N. Haven from Excessive Traffic & Pollution, Inc. v. Plan. & Zoning Comm'n of Town of Hamden*, 220 Conn. 527, 545, n.15, 600 A.2d 757 (1991).

Special Exception

In *A. Aiudi And Sons, LLC v. Plan. And Zoning Comm'n Of The Town Of Plainville*, 267 Conn. 192, 203–04, 837 A.2d 748, (2004), the Supreme Court considered a special exception and stated:

> We previously have observed that [a] special [exception] allows a property owner to use his property in a manner *expressly permitted* by the local zoning regulations. . . . Nevertheless, special exceptions, although expressly permitted by local regulations, must satisfy [certain conditions and] standards set forth in the zoning regulations themselves as well as the conditions necessary to protect the public health, safety, convenience and property values [as required by § 8–2]. . . . Moreover, we have noted that the nature [of special exceptions] is such that their precise location and mode of operation must be regulated because of the topography, traffic problems, neighboring uses, etc., of the site. . . . We also have recognized that, if not properly planned for, [such uses] might undermine the residential character of the neighborhood. Thus, we have explained that the goal of an application for a special exception is to seek permission to vary the use of a particular piece of property from that for which it is zoned, without offending the uses permitted as of right in the particular zoning district. (Citations omitted; internal quotation marks omitted). Id.

General considerations such as public health, safety and welfare, which are enumerated in zoning regulations may be the basis for the denial of a special exception. *Irwin v. Planning & Zoning Commission,* 244 Conn. 619, 627, 711 A.2d 675 (1998); *Whisper Wind Development Corp. v. Planning & Zoning Commission,* 229 Conn. 176, 177, 640 A.2d 100 (1994). Special exception decisions by zoning commissions must be supported by the record and utilize only considerations pertinent to the decision. *Connecticut Health Facilities, Inc. v. Zoning*

Board of Appeals, 29 Conn. App. 1, 10, 613 A.2d 1358 (1992). A zoning commission has no discretion to deny the special exception if the regulations and statutes are satisfied. When a zoning authority has stated the reasons for its actions, a reviewing court may determine only if the reasons given are supported by the record and are pertinent to the decision. The zoning commission's action must be sustained if even one of the stated reasons is sufficient to support it. *Daughters of St. Paul, Inc. v. Zoning Board of Appeals,* 17 Conn. App. 53, 56-57, 549 A.2d 1076 (1988).

The site in question is in the R-60 zoning district and the Resort Commercial District. According to § 10.4.11 of the Preston Zoning Regulations, a special exception is required for the project in each of these districts. The special exception requirements for Recreational Campgrounds are contained in § 18.11 of the Regulations. The project must also satisfy the general criteria set forth in § 18.4 of the Regulations. The general criteria takes into consideration, among other things, overall design, architectural treatment and aesthetic character of the project; the project shall not degrade or decrease the value of the surrounding properties; increase of traffic; and excessive noise. By statute, the Commission must ensure that the special exception application satisfies the standards set forth in the regulations as well as the "conditions necessary to protect the public health, safety, convenience and property values." General Statutes § 8-2 (a) (3).[1]

Compatibility with the neighborhood

[1] The court does not agree with the plaintiff's position that Public Act 21-29 no longer permits the Commission to consider property values. The plain language of General Statutes § 8-2(a)(3) states otherwise.

Regulation § 18.4 (b) (i) provides: "The use and project shall be compatible with adjacent established uses and the neighborhood." The record supports the following. The proposed project called for 304-camp sited and 21 glamping tents. There was evidence in the record that at least a thousand people a day may be at the campsite. The activities at the campground were geared toward the patrons being outside, as opposed to the patrons at the neighboring hotel where all the activity was inside. Indeed, the record shows that Attorney Michael Carey pointed these differences out at the public hearing. Resident Margaret Gibson testified that the project was too big and out of balance with the neighborhood. The plaintiffs submitted evidence that the campground would be not visible from the adjoining neighborhoods. Visibility, however, is not the determinative factor in whether the project is compatible with the neighborhood. The factors addressed below demonstrate that evidence exists in the record to support a finding that the project is not compatible with the neighborhood.

Property Values

The record demonstrates that Blue Camp, LLC submitted an appraisal report for the surrounding properties. The record demonstrates that the Commission heard testimony about issues regarding the appraisal report from Steve Ballirano. Ballirano testified that he believed there would be a reduction in property values of the surrounding properties. He testified about newspaper articles in other towns showing that property values of abutting property owners to campgrounds went down from just the threat of a having a campground being built. He further testified that the appraisal report was insufficient because it looked at other campgrounds that

were significantly smaller than the proposed campground when it made the conclusion that property values would not decline.

The Commission was entitled to credit the testimony of Ballirano and was not obligated to credit the appraisal report submitted by the plaintiff. See *Cambodian Buddhist Soc. of Connecticut, Inc. v. Plan. & Zoning Comm'n of Town of Newtown*, 285 Conn. 381, 434, 941 A.2d 868, 901 (2008) overruling *Bethlehem Christian Fellowship, Inc. v. Planning and Zoning Commission of Town of Morris*, 73 Conn, App 442, 807 A.2d 1089 (2002). Although the plaintiffs cite to *Bethlehem Christian Fellowship, Inc.* in support of their argument on the issue of property value, the court notes that *Bethlehem Christian Fellowship, Inc.* was overruled by *Cambodian Buddhist Soc. of Connecticut, Inc.*

Traffic

In this case, the record indicates that Blue Camp, LLC submitted a traffic study from an expert, Benesch Engineering, that counted traffic in May before Memorial Day. The traffic study states that the traffic counts in May 2021 were low compared to normal pre-Covid numbers. The traffic study states that there are 304 camp space. The record indicates that the Commission heard testimony at the public hearing from individuals who questioned the traffic study, pointing out that the traffic study should have been done during the summer months, starting after Memorial Day. The record also indicates that the Commission heard testimony on the issue of the recently approved waterpark at the casino and how that was not taken into consideration in the uptick of traffic along with the proposed campground. The record shows that a Preston firefighter raised concerns through testimony about the width of the roads and the

roads' ability to accommodate recreational vehicles and campers safely. The record also shows that the resident state trooper submitted his concerns to the Commission which included traffic during and after construction. The resident trooper raised concerns about traffic as it would affect the middle school around the corner during drop off and pick up times.

The Commission is charged with making the determination the adjacent and feeder streets shall have the ability to handle peak traffic loads and shall not cause traffic hazards. "The Supreme and Appellate Courts of this state have repeatedly held that members of a Zoning Commission are allowed to rely on their personal knowledge on subjects which do not require expert knowledge, such as traffic congestion and street safety." *PJC Essex Realty, LLC*, supra. Our Supreme Court has stated that: "In making this determination, the commission may rely on statements of neighborhood residents about the nature of the existing roads in the area and the existing volume of traffic, and its own knowledge of these conditions." *Cambodian Buddhist Soc. of Connecticut, Inc.*, supra, 285 Conn. at 434. The Commission was acting within its authority and was permitted to rely on the testimony of the residents and firefighter and statements submitted by the state trooper when it made its decision to deny the applications.

Noise

The general criteria states that the use "shall not create excessive and unreasonable noise that is different from what currently exists within the neighborhood. Consideration shall be given to light levels, smoke, odor, gas, dust or vibration in noxious or offensive quantities, and the distance between offensive processes and adjacent properties." Town of Preston Regulations § 18.4 (b) (iii). Blue Camp, LLC's engineer submitted a site plan with a berm that

purported to insulate the campground from traffic noise. The record demonstrates that several residents testified about their concerns that the berm would not be effective at preventing a disruption in noise. The record reflects that residents referred to the number of people visiting the campgrounds to be around 1,700 people at a time. The record also reflects that the residents raised concerns about the noise carrying off of Avery Pond and having a negative impact on the neighborhood. The record demonstrates that Attorney Carey raised concerns about the number of patrons at the campsite and the noise level effecting the residential neighbors. The record reflects that Attorney Cary notified the Committee that based on the figures that he had reviewed, there would be six (6) patrons per camp site, with approximately 300 sites, which would amount to about 1,800 people at the property. Attorney Carey represented residential neighbors Susan Hotchkiss and Jennifer Hollstein at the administrative agency level.

The record also reflects that the resident state trooper raised concerns about the alcohol policy and whether there will be events for the patrons. Benesch Engineering responded that alcohol would be allowed at the site, and that Blue Camp, LLC intended to apply for a liquor permit. Benesch Engineering also responded that Blue Camp, LLC planned to have events for the patrons.

The Committee was not obligated to believe the expert that the berm would reduce noise levels. "Lay members of the commissions may rely on their personal knowledge concerning matters readily within their competence. *Welch v. Zoning Board of Appeals,* 158 Conn. 208, 214, 257 A.2d 795 (1969). An administrative agency is not required to believe any of the witnesses, including expert witnesses. *Manor Development Corporation v. Conservation*

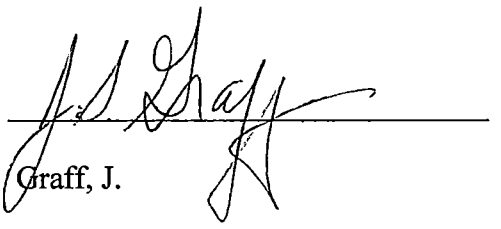
Commission, 180 Conn. 692, 697, 433 A.2d 999 (1980). The subject of noise, as it affects people's lives, is neither sophisticated nor complex, although technical measuring methods may be." *Swaim v. Norwalk Zoning Commission*, Superior Court, Docket No. CV96-0151026-S (May 5, 1998, *D'Andrea, J.*). The Commission was not tasked with measuring the noise level of the campground. Rather, it was tasked with whether the campground would create an "excessive and unreasonable noise that is different from what currently exists within the neighborhood." The Commission does not need an expert to tell it that the large amount of patrons expected to stay at the campground is going to lead to an excessive and unreasonable amount of noise that is different from what currently exists in the neighborhood.

Condition of Approval 3

In the Town Planner's recommended motion for approval to the Commission, Condition of Approval 3 recommended the elimination of certain glamping tent sites due to "the steep slope and lack of detail for the installation of platforms. The plaintiffs argue that the Commission lacks authority to impose Condition of Approval 3. The court declines to rule on this issue since the Commission did not adopt Condition of Approval 3 and the issue is not properly before the court at this time.

Conclusion

A close examination of the record in the present case reveals that there was substantial evidence to support the Commission's denial of the applications. The plaintiffs' appeal is dismissed.



Graff, J.