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ResearchReport

Lime Rock Park Race Track Litigation and CGS § 14-164a

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Issue

On May 22, 2020, the Connecticut Supreme Court issued a decision, *Lime Rock Park, LLC v. Planning & Zoning Comm'n of the Town of Salisbury*, impacting the legal scope of the state statute governing car race exhibitions in Connecticut generally and the operations of the Lime Rock Park race track in Salisbury, Connecticut specifically. This report summarizes the effect of the court's decision on that statute (CGS § 14-164a) and race track.

Summary

The *Lime Rock* case, which revolved around certain 2015 amendments to Salisbury's zoning regulations, asked the state Supreme Court to address whether portions of those amendments conflicted with various state laws. Among other things, the amendments expressly restricted the days and hours of car race exhibitions at the Lime Rock Park race track. Ultimately, the court decided those specific amendments can remain in place, holding that CGS § 14-164a(a):

1. prohibits car race exhibitions during (a) unreasonable hours on weekdays and (b) before noon on Sundays without a municipal permit,

2. does not confer the absolute right to conduct exhibitions during reasonable hours on weekdays and after noon on Sundays, and

3. authorizes municipalities to adopt zoning regulations that (a) restrict the hours of exhibitions on any day of the week or hour of the day or (b) ban them entirely.

(To the extent the race track contested the amendments based on other state statutes, specifically ones in Titles 8 and 22a, this report generally does not examine those arguments).

In terms of the overall impact on Lime Rock Park, the court's decision did not change the race track's current operating schedule (see, e.g., this statement from the track's president, which notes that the decision maintained the status quo). For example, the track continues to be allowed to conduct unmufflered exhibitions on 10 Saturdays a year and on Memorial Day, the Fourth of July, and Labor Day, and is prohibited from having exhibitions on Sundays. However, the effect of the court upholding most of the 2015 zoning amendments may make it more burdensome for the company owning the track to alter operations in the future because it will have to go before the Salisbury Planning and Zoning Commission and request specific modifications to the municipality's zoning regulations, which it did not necessarily have to do before.

Case Background

Legal Constraints on Race Track Operations Before 2015 Zoning Amendments

Car race exhibitions and other related activities, including camping, began at the Lime Rock Park race track in 1957, with races occurring seven days a week. At that time, only state law regulated the track's activities (e.g., the version of CGS § 14-164a that existed then, which was codified as CGS § 29-143), as Salisbury had no zoning regulations.

In 1958, in response to the race track's activities, a group of local citizens and institutions brought a private nuisance action, *Adams v. Vaill* (Docket No. CV-58-0015459-S). That lawsuit resulted in the Superior Court imposing a permanent injunction on the track on May 12, 1959, that restricted its operations, such as prohibiting all race exhibitions on Sundays (see Docket No. LLI-CV15-6013033-S Entry No. 135 at pages A25 to A28).

Shortly after the *Adams* injunction was issued, on June 8, 1959, Salisbury adopted zoning regulations and a zoning map. The regulations placed the race track in a ''Rural Enterprise'' zoning district, in which a track for racing motor vehicles and accessory uses were permitted uses. They allowed exhibitions at the track to the extent they were permitted by state statute. The regulations contained no reference to the *Adams* injunction.

In 1977 and 1978, three appeals were brought to Superior Court from certain decisions of the Salisbury Zoning Board of Appeals (ZBA) concerning the track's activities. All appeals were resolved by a single stipulation for judgment that the court entered in 1979. Under this judgment, certain restrictions were imposed on campers and the parking of nonofficial motor vehicles (see Docket No. LLI-CV15-6013033-S Entry No. 135 at pages A41 to A42).

In total, before 2015, the race track's activities were regulated by four sets of legal restrictions: (1) state statutes, (2) the *Adams* permanent injunction, (3) the stipulated judgment arising from the ZBA appeals, and (4) the Salisbury zoning regulations.

Several of those restrictions underwent changes between 1957 and 2015. For example, the *Adams* injunction was modified three times, in 1966, 1968, and 1988 (see Docket No. LLI-CV15-6013033-S Entry No. 135 at pages A29 to A40). Additionally, CGS § 29-143 was transferred to CGS § 14-164a and revised several times.

The Salisbury zoning regulations changed numerous times as well. Of note, at some point between 1974 and 1981, the municipality amended the zoning regulations to replace the reference to state law with a reference to the *Adams* injunction for the purposes of regulating the track's exhibition times. The 2013 zoning regulations, which were the last relevant version prior to the 2015 amendments, specified, among other things, 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" (see Docket No. SC 20237 Plaintiff-Appellee's May 10, 2019 Appendix pages A038 to A041). Thus, the 2013 regulation was intrinsically connected to and dependent on the terms of the *Adams* injunction and its modifications.

2015 Zoning Amendments Controversy

The Salisbury Planning and Zoning Commission adopted the contested zoning amendments on November 16, 2015 (see Attachment 1). In these amendments, the commission removed the reference to the *Adams* injunction and instead directly embedded the language from the (1) 1988 injunction modification into Section 221.1 of the zoning regulations and (2) ZBA appeals judgment into Section 221.3 of the regulations. The amendments effectively prevent the zoning regulations from automatically being modified if a court ever revises the *Adams* injunction or ZBA appeals judgment in the future. Instead, the commission will have to affirmatively incorporate any such changes into the regulations. Beyond those modifications, the commission added other provisions that placed additional restrictions on Lime Rock Park, such as requiring the race track to file an application for a special permit as a condition for seeking an amendment to the regulations.

The company owner of the Lime Rock Park race track appealed Sections 221.1 and 221.3 of the 2015 zoning amendments on December 8, 2015, in state Superior Court (see Docket No. LLI-CV15-6013033-S). The owner made several arguments in its appeal, including that CGS § 14-164a(a) prevented the commission from adopting zoning regulations limiting the days and hours of racing activities and that the commission exceeded its authority under CGS § 8-3(c) by requiring the track to file a special permit application in order to request a regulation amendment. Among other things, the owner requested that the court declare the amendments to be illegal and without effect.

The Superior Court issued a final, amended decision on July 17, 2018, after which several appeals were filed that were taken by the state Supreme Court (see Docket Nos. SC 20237, SC 20238, and SC 20239). The state Supreme Court issued a consolidated decision on May 22, 2020.

Review of the State Supreme Court Decision

Analysis of CGS § 14-164a

In the *Lime Rock* case, among other things, the state Supreme Court reviewed whether CGS § 14-164a preempted (i.e., prevented adoption of) Section 221.1(a) of the 2015 zoning amendments, which limits when exhibitions on the track can take place. The court's decision turned on whether CGS § 14-164a is a permissive or prohibitory statute. The former grants permission to engage in specific activities and the latter places constraints on engaging in certain activities. Under common-law preemption principles, municipalities cannot ban activities that permissive statutes allow. They also cannot permit activities that a prohibitory statute forbids but they can adopt regulations that are more restrictive than the constraints in the statute.

The court's analysis of this issue focused on the following three sentences in CGS § 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 the provisions of any city, borough or town ordinances....

The court found this language ambiguous as to whether the statute is permissive or prohibitory, so it looked at the statute's legislative history for guidance. It stated that from 1939 through 1998 the statute expressly contemplated that municipalities would have the authority to restrict racing activities that were statutorily permitted or to prohibit them altogether. The court acknowledged that the 1998 revision to the statute (PA 98-182) could reasonably be interpreted as changing the function of the second sentence of CGS § 14-164a(a), but concluded that this was not the intent of the change. The court found nothing in the legislative history of PA 98-182 that suggested the intent of the revision was to divest municipalities of their authority to regulate car exhibitions locally. According to the court, "[i]f the legislature had intended such a radical departure from the policy underlying the original statute, it surely would have discussed that reason for the change during the debate on the proposed legislation and used clearer language to express its intent."

Based on this guidance, the court decided that CGS § 14-164a(a) is a prohibitory statute that does not preempt Section 221.1(a) of the 2015 zoning amendments.

(Additionally, the court indicated that the term "week day" as used in CGS § 14-164a(a) includes Saturdays since it was considered a weekday under the ordinary usage at the time that the statute was adopted. It noted that it was "unlikely that the legislature would have imposed a prohibition on Saturday racing by omitting any reference to that day in the statute or that it would have placed greater restrictions on Saturday racing than on Sunday racing" (see the decision's footnote 35).

Effect on Race Track Operations

The state Supreme Court's decision allows the 2015 zoning amendments to go forward as is except for one clarification and two deletions. Specifically, the court concluded that the word "weekday" as used in Section 221.1(a)(2)(A) of the amendments includes Saturdays, which is consistent with the general understanding of the terms of the *Adams* injunction that allowed mufflered racing exhibitions on Saturdays for decades. Additionally, the court struck Sections 221.1(a)(8) and 221.3(d), which required the filing and approval of a special permit application in order to modify the regulations in the future, because they were beyond the authority of the commission under CGS §§ 8-2 and 8-3. Thus, the court's decision does not affect the race track's current operating schedule.

Beyond the *Lime Rock* decision, a subsequent change to the 2015 zoning amendments by the Salisbury Planning and Zoning Commission must be highlighted. Specifically, the commission deleted Section 221.6 from the municipality's zoning regulations in 2016, before the court's decision (see, e.g., its absence from Salisbury's current regulations). Section 221.6 contained, among other things, a clause that if the race track successfully challenged any part of the 2015 amendments, then it would no longer be permitted to conduct exhibitions under the zoning regulations.

Going forward, the race track remains regulated by four sets of legal restrictions: (1) state statutes, (2) the *Adams* permanent injunction, (3) the stipulated judgment arising from the ZBA appeals, and (4) the Salisbury zoning regulations. While the current *Adams* injunction and ZBA appeals judgment are embedded into the zoning regulations for now, both may be modified in the future. Due to the structure of the zoning regulations resulting from the court's decision, if either the injunction or judgment are modified, the race track will have to take additional steps by going before the commission and requesting changes so that the zoning regulations mirror any injunction or judgment modifications.

Attachment 1

Final 2015 Zoning Amendments Approved by Salisbury Planning and Zoning Commission

(Taken from Docket No. SC 20237 Appellant's Joint Appendix Part 1 pages JA415 to JA420.)

221.1 Track for Racing Motor Vehicles

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[1]:

(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 in 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 the 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.

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[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.

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 said 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.

(4) Prohibited activity upon the track property shall include the revving or testing of mufflered or unmufflered car engines on Saturdays and permitted holidays prior to 9:00 a.m. and after 6:00 p.m., excepting the transportation of said vehicles to and from the paddock areas on or off their respective trailers, which transporting, unloading or loading shall not commence before 7:30 a.m. or extend beyond 7:30 p.m.

(5) The use of the track loudspeakers before 8:00 a.m. and after 7:00 p.m. is prohibited.

(6) A "racing car", for purposes of this subsection, is defined as any car entered in an event on an asphalt track.

(7) Racing of motorcycles is prohibited. Nevertheless, specifically permitted are non-racing motorcycle activities including but not limited to demonstrations, instruction, timing, testing, practice and photography.

(8) The 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.

b. Where the land on which a race track is situated abuts or faces a residential zone district, there shall be a minimum of fifty foot buffer strips along each yard, or part thereof, so abutting or facing, which shall contain a screen of shrubbery not less than fifteen feet in width nor less than six feet in height within one year of the adoption of this amendment to

the regulations. This screen shall thereafter be suitably and neatly maintained by the owner, tenant and/or their agent. Any such screen shall consist of at least fifty percent evergreens so as to maintain a dense screen at all seasons of the year.

c. The lot shall have adequate frontage on or access to a principal traffic street or street capable of handling the volume of traffic to be generated thereon. The access and service roads connecting with the principal traffic street or streets shall be so located and designed as to avoid unsafe traffic conditions or congestion. Traffic control devices and lighting of access points at or across street or access intersections shall be provided at the expense of the owner when required and provision shall be made for safe pedestrian traffic to, from and within the lot. The design and location of access and intersections with public highways shall be subject to the approval of the Selectmen for a town road or the Connecticut Department of Transportation for a state highway.

d. Adequate off-street parking shall be provided to accommodate the vehicles of employees, proprietors, participants, customers, visitors and others.

e. Not more than three signs, not more than 50 square feet each, advertising the use of the premises shall be permitted. Any sign not consistently visible from off the premises is permitted. Directional signs, not more than six square feet each, are permitted.

f. No sign, with the exception of scoreboards, visible off the premises shall be illuminated by exposed tubes or other exposed light sources, nor shall any flashing sign be visible from off the premises. Spot or other lighting of any sign, building, structure, land track, parking space or any other part of the premises shall be so arranged that the light source is not visible from any point off the premises.

221.2 Accessory Uses to a track for racing motor vehicles may include: retail stores, professional or business offices, fire or emergency services, ATMs, restaurants, and food stands. Accessory uses may also include the use of the premises for automobile shows, sale of motor vehicles during racing events, sale of automotive parts and accessories; car washes, auto service and repairs; filling stations; commercial parking; laundry; equipment storage; racing schools and clubs; indoor theaters; and other similar activities that are accessory to the operation of a recreational race track herein permitted. Other accessory uses may include the production, showing, or performance of television, motion picture or radio programs with their related lighting and sound equipment.

221.3 Camping by spectators and participants is allowed as an accessory use to permissible automobile racing events subject to the following restrictions:

a. All camping and camping vehicles shall be limited to locations within the infield of any asphalt race track existing as of the effective date of this regulation.

b. No motor vehicles shall be parked in any Race Track outfield during the hours of 10:00 p.m. to 6:00 a.m. except those which are (1) on official track business; and (2) parked in the parking lot existing as of the effective date of this regulation.

c. No traffic other than emergency or service vehicles shall be allowed between the hours of 11:00 pm and 6:00 am on any accessway into any race track that abuts property located at 52 White Hollow Road.

d. 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.

221.4 The following uses are deemed not to be accessory uses to a track for racing motor vehicles but are allowed subject to a special permit: Fireworks displays (with the exception of a single evening display during the annual Independence Day period in early July for charitable purposes), concerts, flea markets, craft fairs, food shows, non-automotive trade shows, and garden shows.

221.5 If the holder of a special permit for a track for motor vehicle racing leases or otherwise authorizes a private organization to use all or part of its property to a third party, it shall require said party to comply with all provisions of these regulations, the special permit, and its conditions.

221.6 If any portion of this section 221.1 shall be found by a court of competent jurisdiction to be illegal, it is the intent of this Commission no part of Section 221.1 shall remain valid, including the amended table of uses adopted simultaneously herewith providing that a track for racing of motor vehicles shall be allowed by special permit in the RE District; it being the intent of the Commission that, if it is found that the Commission lacks authority to regulate any aspect of Race Track use as set forth herein, then a track for Racing of Motor Vehicles shall be found to not be permitted in the RE District, and any race track use in existence at the time of the adoption of these regulations shall have such rights as may exist as a nonconforming use under these regulations and Connecticut law.

Attachment 1 (continued)

205.3 TABLE OF ACCESSORY USES	
THESE ACCESSORY USES, BUILDING AND STRUCTURES ARE SUBJECT TO THE REQUIREMENTS OF SECTIONS 207 AND 208 AND ARE ALLOWED IN ALL ZONES UNLESS OTHERWISE STATED IN THE REGULATIONS	
Farming, gardening, raising of crops or fruit and keeping of farm animals	No Permit Required
Renting of room and board	Zoning Permit
Home office of convenience	No Permit Required
Apartment on Single Family Residential Lot	See Section 208
Keeping horses (max.3)	Zoning Permit
Fence over 8 feet height	Zoning Permit
Family day care home	Zoning Permit
Temporary special events	No Permit or Special Permit
Excavation and grading	Special Permit with exceptions as stated under Section on Excavation and Grading Art.VI
Signs	See Section on Signs
Accessory buildings and structures	Zoning Permit or Site Plan
Dock	Zoning Permit
Construction site trailer	Temporary Use Zoning Permit
Single commercial vehicle max. 200 sq.ft footprint	No Permit Required
More than one commercial vehicle and/or commercial equipment storage	Zoning Permit
Wireless telecommunication antennae	Site Plan
Outdoor Woodburning Furnace	See Section 208
* Activities incidential/accessory to Lime Rock Park, see Section 221	

Attachment 1 (continued)

Skilled nursing, assisted living, convalescent, continuing care retirement	Special Permit	Special Permit	Special Permit	Not Permitted		
205.2 TABLE OF USES- Rural Enterprise; Commercial & Industrial Zones page 3						
	RE	C-20	CG-20	LI-1		
Cemetery	Special Permit	Special Permit	Special Permit	Special Permit		
Commercial golf course	Special Permit	Not Permitted	Not Permitted	Not Permitted		
Outdoor commercial uses: skating rink, ski area, golf driving range, tennis court, beach, swimming and picnic areas	Special Permit	Not Permitted	Not Permitted	Not Permitted		
Golf course, outdoor tennis club or riding club sponsored by non-profit organization	Special Permit	Not Permitted	Not Permitted	Not Permitted		
Indoor tennis, racquetball or squash facility	Site Plan	Site Plan	Site Plan	Not Permitted		
Exercise or dance studio	Not Permitted	Site Plan	Site Plan	Not Permitted		
Musical theater, instruction, (Stage of Film)	Not Permitted	Site Plan	Site Plan	Not Permitted		
* Track for Racing Motor Vehicles	Special Permit	Not Permitted	Not Permitted	Not Permitted		

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