

NNH CV24-6149766 S

FFDC EJV II, LLC

V.

NORTH HAVEN PLANNING & ZONING
COMMISSION

Judicial District of New Haven
SUPERIOR COURT
FILED
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MEMORANDUM OF DECISION

I. INTRODUCTION

The plaintiffs commenced this action to appeal the North Haven Planning and Zoning Commission's ("Commission") denial of plaintiff, FFDC EJV II, LLC's ("Fine Fettle") special permit and site plan application to establish a retail adult-use recreational cannabis establishment at the real property owned by plaintiff, SHIV, L.L.C. ("SHIV") at 104 Washington Avenue, North Haven ("Property").

For the reasons stated herein the court enters judgment in favor of the plaintiff, Fine Fettle on its appeal. Also, for the reasons stated herein the court dismisses the appeal by plaintiff, SHIV.

A contextual framing of the application was outlined by the Commission Chair at the start of Fine Fettle's presentation that the application would be considered under the sale of alcohol regulations. The Chair noted an issue raised in the September memorandum to the Commission from Land Use Administrator/Town Planner Alan Fredericksen ("Staff Report"): that the Zoning Regulations with respect to alcohol uses establish a 500 foot separation distance requirement between those uses and a variety of other uses, such as

schools, places of worship, or libraries (“Alcohol Separation Regulation”). R. 19/p.315-16; 23/p. 342-60; Zoning Regulations § 8.10.3.1.

Across the street from the Property that is the subject of the application is a Paul Mitchell cosmetology school (“Paul Mitchell”). The Chair noted that he, Fredericksen, and the town attorney discussed the Application prior to the start of the public hearing. R. 23/p. 348-50. The Chair explained that they had concluded that Paul Mitchell constituted a “school” for the purposes of the Alcohol Separation Regulation, a finding noted in the Staff Report. R. 23/p.349-55. Both the Chair and Mr. Fredericksen noted that no written opinion or interpretation had been prepared by them or the town attorney. R. 23/p.356-57, 359.

The Commission debated the Application and on a unanimous vote, denied the special permit application **“because the proposed location of this cannabis dispensary is ineligible because it is within 500’ [feet] of a school (The Paul Mitchell School).”** R. 34/p.577-79; 46/p.663. It then denied the site plan application based upon the lack of a special permit and the proximity to Paul Mitchell (collectively, the “Denial”). R. 34/p.581-82; 47/p.666 (emphasis added). Notice of the Denial was published in the North Haven Courier on October 17, 2024. R. 45/p.661.

Pursuant to General Statutes § 8-8, SHIV claims it is statutorily aggrieved by the Denial as the owner of the Property and Fine Fettle claims that it is statutorily aggrieved as the applicant before the Commission and lessee of the Property. SHIV and Fine Fettle claim classic aggrievement as the owner and applicant/lessee respectively, whose interests differ from those of the general public with respect to the Application. These interests have allegedly been specially and injuriously affected by the Denial, as Fine Fettle cannot operate its intended store and SHIV cannot receive the financial benefits under the lease.

The defendant denies aggrievement and argues that the Commission exercised reasonable discretion in applying its Regulations to the plaintiffs' application and the plaintiffs' appeal should be denied. As noted above, a contextual underpinning of the Commission's decision is its recognition of Paul Mitchell as a school for purposes of § 8.10.3.1, which the Commission asserts is a consistent and long-standing practice.

Section 8.10 of the Zoning Regulations under which the plaintiffs' special permit application was considered by the Commission provides in its entirety:

SECTION 8.10 SALE OF ALCOHOLIC LIQUOR AND BEER

8.10.1 A Certificate of Location, Special Permit, must be approved by the Planning and Zoning Commission, after a public hearing, for any permits required by the State of Connecticut Liquor Control Board, in accordance with Section 30-52 of the Connecticut General State Statutes.

8.10.2 A certificate of Location, Special Permit, may be denied by the Planning and Zoning Commission if it has reasonable cause to believe:

8.10.2.1 That the proximity of the location will have a detrimental effect upon any church, **school (public, private or parochial)**, convent, charitable institution (Supported by public or private funds), hospital, veterans' home, home for the aged or workmen's camp.

8.10.2.2 That issuing a new permit will be detrimental to the public interest. In reaching a conclusion, in this respect, the Planning and Zoning Commission may consider: the character of; the population of; the number of like permits; and, all permits existent in the immediate neighborhood and North Haven.

8.10.2.3 That the place has been conducted as a lewd or disorderly establishment.

8.10.3 The following provisions must be satisfied in order for the Planning and Zoning Commission to issue a Certificate of Location.

8.10.3.1 **The proposed building, where the liquor permit is to be granted, may not be within 500' [feet] from any premises used or reserved to be used; for a college, school, church, synagogue, hospital or library.**

8.10.3.2 A Certificate of Location may not be issued to a bar or tavern that is within 1500' [feet] of another bar or tavern.

8.10.3.3 A Certificate of Location may not be issued to a wholesale or-retail package store that is within 1500' [feet] of another wholesale or retail package store.

8.10.3.4 In order for a retail business to obtain a Certificate of Location, for a Grocery Store beer permit, it must be 30,000 square feet or larger.

8.10.3.5 The 500' [feet] and 1500' [feet] distance shall be measured from the outer perimeter of the lot of the proposed location in a straight line to any other premise to which the rule applies (emphasis added).

In briefing the matter, the defendant raised a claim that the Connecticut Secretary of State's Office had administratively dissolved SHIV in December of 2022, over seventeen months prior to the subject special permit and site plan applications being submitted by Fine Fettle to the Commission for its consideration and approval. The Commission raised the issue of SHIV's "forfeited" corporate status in its Brief, asked that the court take judicial notice of the records of the Secretary of State's Office and the Town's Assessor submitted in Attachment A to its Brief (#132.00), and argued that SHIV did not have standing to bring this appeal and that the Court lacks subject matter jurisdiction over SHIV's claims against the Commission, and SHIV's claims should be dismissed. See p. 26-27 of Commission's Brief #131.00.

A Hearing on the Merits was held on October 16, 2025 before the court. At the Hearing, the Commission again raised the issue of whether both FFDC or SHIV lacked standing to bring this appeal. In the interests of judicial economy, the court suggested that the matter proceed on both the defendant's motion to dismiss and the underlying issues raised in the appeal. The parties agreed on the record to this suggestion and the court

proceeded to take evidence on the record with regard to the motion to dismiss and standing, as well as aggrievement and the underlying appeal.

At the conclusion of the Hearing, the court entered an Order (#134.00) affording, inter alia, the Commission an opportunity to file a formal motion to dismiss, as well as to allow the plaintiffs an opportunity to respond to the order also allowed for the opportunity for each party to fully brief the underlying issues raised in the appeal. The parties each submitted memorandums in compliance with the briefing schedule, including the formal motion to dismiss at #137.00. The court, thereafter, scheduled a status conference with counsel on February 23, 2026 to confirm that all matters had been fully briefed. At that time, plaintiff's counsel confirmed that she was relying on the prior briefing filed related to the appeal, as well as the pleadings filed in response to the #134.00. As such, the court confirmed all relevant briefing has been filed.

The court has considered all relevant pleadings filed by the parties, the respective arguments raised on the record, the record that has been submitted, and the governing law.

Based on that review the court will first address the motion to dismiss and then, as necessary, proceed to the merits of the case.

II. Motion To Dismiss

The motion to dismiss is premised on the fact that plaintiff SHIV, as a legal entity, has been administratively dissolved by the state in 2022 consistent with the provisions of § 34-267g. As such, the defendant argues that SHIV can perform no action other than winding up its affairs consistent with § 34-367a. Given the dissolved status of SHIV, the defendant argues that SHIV does not have standing to bring this action and that its case should be

dismissed. Further, the defendant argues that SHIV, as a dissolved entity, had no legal authority to enter a lease and therefore, the defendant argues that the Fine Fettle's lease was not made with a proper entity.

The defendant further argues that Fine Fettle lacks standing to bring this action due to the lease being an improper exercise of engaging in new business by a dissolved company which has no other statutory purpose other than winding down.

The plaintiffs oppose the motion to dismiss. Through the testimony of Navin Patel, the sole member of SHIV, the plaintiffs argue that Mr. Patel had legal authority to enter a lease on behalf of SHIV and to file this instant action as an aggrieved owner pursuant to § 8-8(a).

"A motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court. . . . A motion to dismiss tests, *inter alia*, whether, on the face of the record, the court is without jurisdiction." *Beecher v. Mohegan Tribe of Indians of Connecticut*, 282 Conn. 130, 134, 918 A.2d 880 (2007) (Internal quotation marks omitted). "The issue of standing implicates subject matter jurisdiction and is therefore a basis for granting a motion to dismiss." *Saint George v. Gordon*, 264 Conn. 538, 544, 825 A.2d 90 (2003). "If a party is found to lack standing, the court is without subject matter jurisdiction to determine the cause." *Fort Trumbull Conservancy, LLC v. New London*, 282 Conn. 791, 802, 925 A.2d 292 (2007) (Internal quotation marks omitted). Likewise, "[m]ootness implicates [the] court's subject matter jurisdiction and is thus a threshold matter for [the court] to resolve." *Lichtman v. Beni*, 280 Conn. 25, 30, 905 A.2d 647 (2006) (Internal quotation marks omitted.)

“A court deciding a motion to dismiss must determine not the merits of the claim or even its legal sufficiency, but rather, whether the claim is one that the court has jurisdiction to hear and decide.” (Internal quotation marks omitted.) *Hinde v. Specialized Education of Connecticut, Inc.*, 147 Conn.App. 730, 740-41, 84 A.3d 895 (2014). “When a . . . court decides a jurisdictional question raised by a pretrial motion to dismiss, it must consider the allegations of the complaint in their most favorable light. . . . In this regard, a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader.” (Internal quotation marks omitted.) *Cogswell v. American Transit Ins. Co.*, 282 Conn. 505, 516, 923 A.2d 638 (2007). When determining whether the court has jurisdiction over any controversy, “every presumption favoring jurisdiction should be indulged.” (Internal quotation marks omitted.) *Keller v. Beckenstein*, 305 Conn. 523, 531, 46 A.3d 102 (2012). Still, “the plaintiff bears the burden of proving subject matter jurisdiction, whenever and however raised.” (Internal quotation marks omitted.). *Fort Trumbull Conservancy, LLC v. New London*, 265 Conn. 423, 430 n. 12, 829 A.2d 801 (2003).

“A court deciding a motion to dismiss must determine not the merits of the claim or even its legal sufficiency, but rather, whether the claim is one that the court has jurisdiction to hear and decide.” (Internal quotation marks omitted.) [*4] *Hinde v. Specialized Education of Connecticut, Inc.*, 147 Conn.App. 730, 740-41, 84 A.3d 895 (2014). “The grounds which may be asserted in [a motion to dismiss include] lack of jurisdiction over the subject matter . . .” *Zizka v. Water Pollution Control Authority*, 195 Conn. 682, 687, 490 A.2d 509 (1985). “[T]he plaintiff bears the burden of proving subject matter jurisdiction, whenever and however raised.” (Internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC v.*

New London, 265 Conn. 423, 430 n.12, 829 A.2d 801 (2003). It is well established that “in determining whether a court has subject matter jurisdiction, every presumption favoring jurisdiction should be indulged.” (Internal quotation marks omitted.) *MacDermid, Inc. v. Leonetti*, *supra*, 310 Conn. 626.

In support of its position the SHIV cites to *Pay Day, Inc. v. Planning & Zoning Comm’n of the City of Bridgeport*, 2019 Conn. Super. LEXIS 1127, 2019 LX 60370, 2019 WL 2369879. While that decision does support the right of an owner to pursue an appeal when impacted as an adjoining landowner, it does not apply to the facts of this case where SHIV is seeking to pursue or carry on a new business venture. “Although a dissolved corporation has the statutory right to commence an action in the corporation’s name, “the power of the de facto corporation is confined to the parameters of an expeditious windup of its business, and it is for this purpose only that it is permitted to act in such capacity. **It cannot carry on a new business.**” *M.R.S. Enters. v. Nadeau*, Superior Court, Judicial District of New Britain, Docket No. CV14-6023962S, (July 18, 2014, *Abrams, J.*), 2014 Conn. Super. LEXIS 1754, 2014 WL4290624, citing *Construction & Envtl. Consultants v. Cristwood Contr.*, Superior Court, Judicial District of New Britain, Docket No. CV95-04714554 (April 13, 1998, *Gaffney, J.*), 22 Conn. L. Rptr. 8, 10, 1998 Conn. Super. LEXIS 1034 at *9. (emphasis added). *Pay Day, Inc. v. Planning & Zoning Comm’n of the City of Bridgeport*, 2019 Conn. Super. LEXIS 1127, *14; 2019 LX 60370; 2019 WL 2369879 (emphasis added).

To the extent there is some question as to the validity of the agreement based on SHIV’s status as a dissolved entity, that issue could be easily resolved, as plaintiffs note in their pleadings. SHIV need only to apply for reinstatement in accordance with § 34-267b

and any liability or similar obligation incurred after dissolution and before reinstatement will be determined “as if dissolution had never occurred.” Conn. Gen. Stat. § 34-267b(c)(2) (“Subject to subdivision (3) of this subsection, any liability incurred by the company after the dissolution and before reinstatement is effective is determined as if dissolution had never occurred.”)

Generally, an owner of property would have standing to file an appeal such as the one in this case and the courts have consistently found that to be the case. “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”). *Handsome, Inc. v. Planning & Zoning Comm’n of Monroe*, 317 Conn. 515, 527 (2015). In this case however, considering the dissolution of SHIV, the court would have to ignore § 34-267 et. seq. and render it meaningless. The court cannot ignore the appropriate implications of the dissolution statutes and cannot absolve SHIV from compliance thereto.

“Interpreting a statute to render some of its language superfluous violates cardinal principles of statutory interpretation. “It is a basic tenet of statutory construction that the legislature [does] not intend to enact meaningless provisions.” (Internal quotation marks omitted.) *State v. Gibbs*, 254 Conn. 578, 602, 758 A.2d 327 (2000); see also *Vibert v. Board of Education*, 260 Conn. 167, 176, 793 A.2d 1076 (2002) (“in interpreting a statute, we do not interpret some clauses of a statute in a manner that nullifies other clauses but, rather, read the statute as a whole in order to reconcile all of its parts”). “[I]n construing statutes, we

presume that there is a purpose behind every sentence, clause, or phrase used in an act and that no part of a statute is superfluous.” (Internal quotation marks omitted.) *Small v. Going Forward, Inc.*, 281 Conn. 417, 424, 915 A.2d 298 (2007). Because “[e]very word and phrase [of a statute] is presumed to have meaning”; *Vibert v. Board of Education*, supra, 176; § 29-356 (3) must be construed, “if possible, such that no clause, sentence or word shall be superfluous, void or insignificant.” (Internal quotation marks omitted.) *Hatt v. Burlington Coat Factory*, 263 Conn. 279, 310, 819 A.2d 260 (2003). *Am. Promotional Events, Inc. v. Blumenthal*, 285 Conn. 192, 203 (2008).

“Rather, the legislature is always presumed to have created a harmonious and consistent body of law [T]his tenet of statutory construction . . . requires [this court] to read statutes together when they relate to the same subject matter Accordingly, [i]n determining the meaning of a statute . . . we look not only at the provision at issue, but also to the broader statutory scheme to ensure the coherency of our construction. . . . [T]he General Assembly is always presumed to know all the existing statutes and the effect that its action or non-action will have [on] any one of them.” (Citations omitted; internal quotation marks omitted.) *Hatt v. Burlington Coat Factory*, 263 Conn. 279, 310, 819 A. 2d 260 (2003). *Sylvan R. Shemitz Designs, Inc. v. Newark Corp.*, 291 Conn. 224, 235 (2009).

Entering a lease and seeking to support the lessee in opening a new business through a zoning application and related efforts is not winding up the activities of SHIV. On the contrary, the court finds that such post-dissolution conduct is an effort to carry on new business over a year (17 months) after the dissolution. Based on the credible evidence presented that SHIV is a dissolved corporation, the court finds that SHIV lacks standing to

pursue this appeal on behalf of SHIV as this appeal has no relation to winding up the dissolved LLC.

Therefore, the court GRANTS the defendant's motion to dismiss the appeal as to SHIV.

Regarding Fine Fettle, the defendant argues that it also lacks standing due to SHIV's lack of standing or power to engage in any business other than winding up, including entering a lease. Fine Fettle counters that it relied on the lease and SHIV's authority to enter it. In reliance on the lease, Fine Fettle has made payments on the lease and moved forward with the instant zoning application to operate a business in the leased space.

Based on the evidence presented, the court finds that it is undisputed that Fine Fettle entered a lease for the property in question that is the subject of the application and has relied on the lease. The lease remains in full force and effect, and the plaintiffs have, and appear to intend to remain, bound by the lease. The court finds that the actions of Fine Fettle demonstrate good faith reliance on the lease and that Fine Fettle has standing to pursue this appeal. "It is well established that a lessee has a sufficient interest in the leased property for standing to be aggrieved by a zoning decision affecting that property." *Primerica v. Planning & Zoning Commission*, 211 Conn. 85, 668 A.2d 646 (1989). As such, the motion to dismiss as to Fine Fettle is DENIED.

III. AGGRIEVEMENT AS TO FINE FETTLE

"The fundamental test for determining [classical] aggrievement encompasses a well-settled twofold 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. . . . *Cannavo Enterprises, Inc. v. Burns*, 194 Conn. 43, 47, 478 A.2d 601 (1984); *Bakelaar v. West Haven*, [supra, 193 Conn. 65]. . . . Aggrievement is established if there is a possibility, as distinguished from a certainty, that some legally protected interest . . . has been adversely affected. . . . *Light Rigging Co. v. Dept. of Public Utility Control*, [219 Conn. 168, 173, 592 A.2d 386 (1991)]. . . . *Office of Consumer Counsel v. Dept. of Public Utility Control*, supra, 234 Conn. 638.” (Internal quotation marks omitted.) *Harris v. Zoning Commission*, supra, 259 Conn. 410-11. *Bongiorno Supermarket, Inc. v. Zoning Bd. of Appeals*, 266 Conn. 531, 539.

In this case, the denial of the application in question results in it being impossible for Fine Fettle to pursue the desired business at the location in question. The court finds that this is classic aggrievement and, therefore, the court will proceed to the merits of the denial.

IV. DISCUSSION

“We have stated that, when a zoning agency has stated its reasons for its actions, a court should not reach beyond those stated purposes to search the record for other reasons supporting the commission’s decision. . . . Rather, the court should determine only whether the assigned grounds are reasonably supported by the record and whether they are pertinent to the considerations which the authority was required to apply under the zoning regulations. . . . The principle that a court should confine its review to the reasons given by a zoning agency . . . applies [only] where the agency has rendered a formal, official, collective

statement of reasons for its action. . . .” *Clifford v. Planning & Zoning Comm’n*, 280 Conn. 434, 439 (2006). (Internal quotations emitted.)

As our Supreme Court explained, [i]n traditional zoning appeals, the scope of judicial review depends on whether the zoning commission has acted in its legislative or administrative capacity. The discretion of a legislative body, because of its constituted role as formulator of public policy, is much broader than that of an administrative board, which serves a quasi-judicial function. . . . Acting in such legislative capacity, the local [zoning] board is free to amend [or to refuse to amend] its regulations whenever time, experience, and responsible planning for contemporary or future conditions reasonably indicate the need for [or the undesirability of] a change. . . . Zoning must be sufficiently flexible to meet the demands of increased population and evolutionary changes in such fields as architecture, transportation, and redevelopment. . . . The responsibility for meeting these demands rests, under our law, with the reasoned discretion of each municipality acting through its duly authorized zoning commission. . . . In contrast, when acting in an administrative capacity, a zoning commission’s more limited function is to determine whether the applicant’s proposed use is one which satisfies the standards set forth in the [existing] regulations and the statutes. . . . In fulfilling its administrative function, a zoning commission is less concerned with the development of public policy than with the correct application of law to facts in the particular case.” (Citations omitted; internal quotation marks omitted.) *MacKenzie v. Planning & Zoning Commission*, 146 Conn. App. 406, 4357-36, 77 A.3d 904 (2013).

“In a land use appeal, the appellants have the burden of proof that the agency acted improperly.” R. Fuller, 9A Connecticut Practice Series: Land Use Law and Practice (4th Ed. 2021) § 34:4. “When a commission is functioning in such an administrative capacity, a

reviewing court's standard of review of the commission's action is limited to whether it was illegal, arbitrary or in abuse of [its] discretion. . . ." (Internal quotation marks omitted.) *Loring v. Planning & Zoning Commission*, 287 Conn. 746, 756, 950 A.2d 494 (2008). "In appeals from administrative zoning decisions, the commission's conclusions will be invalidated only if they are not supported by substantial evidence in the record." *Cybulski v. Planning & Zoning Commission*, 43 Conn. App. 105, 110, 682 A.2d 1073, cert. denied, 239 Conn. 949, 686 A.2d 123 (1996). "The substantial evidence rule is similar to the sufficiency of the evidence standard applied in judicial review of jury verdicts, and evidence is sufficient to sustain an agency finding if it affords a substantial basis of fact from which the fact in issue can be reasonably inferred. It must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury." (Internal quotation marks omitted.) *Loring v. Planning & Zoning Commission*, supra, 287 Conn. 764. *River Grace Plaza, LLC v. Town of Cromwell Plan. & Zoning Comm'n*, 2025 Conn. Super. LEXIS 3286, *11-13.

Based on the record presented, the denial in this case was premised on the Commission's finding that proposed location for the "retailer" use was not eligible because it was within 500 feet of a school, specifically The Paul Mitchell School, and the special permit application was denied. This resulted in the denial of the site plan application as the Commission had determined that a special permit was required pursuant to § 8-10 of the Zoning Regulations. The Commission's decision on the special permit application was rendered pursuant to § 8.10.3 of the Zoning Regulations, with a specific finding of noncompliance with § 8.10.3.1 after the Commission had made the initial determination per

C.G.S. § 21a-422f(c) that the applicable similar use to the proposed retailer use was a retail package liquor store, not a pharmacy or drug store.

The plaintiffs question whether the Commission was correct to review this application as similar to a “package store” as opposed to considering the application as more similar to a retail pharmacy. From the outset of the Application and as noted in its cover letter, Fine Fettle asserted that the Closest Use was a retail pharmacy – a permitted use in the CB-20 Zone. R. 1/p.17-19; Zoning Regulations § 4.4.1.10. The retail nature of Fine Fettle’s operation, combined with its similarity to a pharmacy, supported that conclusion. R. 1/p.17-19.

The court defers to the reasonable discretion of the Commission in its determination of what would be the closest use to the application at issue in this case. The decision by the Commission aligns with the thoughtful ruling of Judge Radcliffe where he determined the logical connection between treating the sale of alcohol and the sale of cannabis similarly with regard to municipal zoning provisions and challenges. See, *Saint Nicholas Russian Orthodox Greek Cath. Church v. Stratford Zoning Comm’n*, 2024 Conn. Super. LEXIS 203, 2024 LX 75265, 2024 WL 445967.

Fine Fettle further questions whether the Commission appropriately considered the Paul Mitchell School to be a “school” within the zone of interest outlined in the applicable regulations. Paul Mitchell is not a public educational institution servicing children in a classroom setting in compliance with the various Education Statutes applicable to public schools. Rather, the Fine Fettle argues, Paul Mitchell is a private technical or vocational school and that the Commission expanded the definition of school in the regulations, as an improper pretext to deny this application. The plaintiff submitted contextual support for its

position from the regulations that articulate a distinction between schools (traditional schools with children or teenagers attending for daily study in a classroom setting) versus a technical or vocational school catering to train adults for a specific set of vocational skills. The plaintiff points out that the Paul Mitchell use is allowed in the CB-20 as a “vocational and technical school.” Zoning Regulations § 4.4.1.5. Further, the underlying approval for Paul Mitchell expressly identifies its use as a “vocational school.” R. 38/p.611-16. The Staff Report characterized Paul Mitchell as a “long established beauty and esthetics trade school.” R. 19/p.315. No public or kindergarten through grade 12 schools, colleges, or universities are allowed in a CB-20 Zone. Zoning Regulations § 4.4.1.

The defendants argue that the Commission appropriately considered Paul Mitchell to be a school under the applicable regulations and that based on the proximity of the Paul Mitchell the Commission denied the application. The court is not persuaded.

The history of interpretation by the Commission and distinctions that have been drawn by the Commission between traditional schools and vocational schools, as well as the contextual use of the Paul Mitchell location that has been provided in persuasive that Paul Mitchell is not a “school” as identified in the relevant regulations. It is a trade or vocational program that falls under a different definition under the applicable regulations. The expansion by the Commission to consider Paul Mitchell as a “school” for purposes of denying this application was improper and an abuse of discretion. The expansive definition of “school” ignores the language in the regulations which describe vocational schools. If the definition of school was and is so expansive, as the defendant argues, then what is the logic for having the parenthetical qualification in 8.10.2.1 and what is the logic for having other language for vocational schools included in the regulations at all? Just as the Commission

asks the court to recognize CT statute governing dissolved entities, the Commission must also recognize the language of its own regulations.

The denial of the application is premised on defining Paul Mitchell as a school. The elimination of that expansive definition renders the decision of the Commission in this case improper, and the plaintiff aggrieved by it. Applicants such as the Fine Fettle are entitled to expect the regulations in place at the time of their application to have meaning and to be applied fairly. By ignoring terms within the regulation and by expanding the definition of other terms, the Commission is creating an unpredictable and imbalanced playing field. The selective use of certain sections of the regulations and the expansive use of terms within such regulations is a pretextual exercise by the Commission which ignores other relevant definitions and terms within the regulations.

The Commission could certainly have chosen to refine its regulations and update its terms and definitions whether in a more expansive or perhaps more restrictive manner. Absent such amendments to the regulations the Commission must consider applications under the existing regulations.

Following the State of Connecticut's passage of the Responsible and Equitable Regulation of Adult-Use Cannabis Act ("RERACA") in mid-2021, municipalities had the option to adopt an ordinance or zoning regulation with respect to recreational adult-use cannabis. Conn. Gen. Stat. § 21a-422f. The statute provides, in relevant part, that:

(b) Any municipality may, by amendment to such municipality's zoning regulations or by local ordinance, (1) prohibit the establishment of a cannabis establishment, (2) establish reasonable restrictions regarding the hours and signage within the limits of such municipality, or (3) establish restrictions on the proximity of cannabis establishments to any of the establishments listed in subdivision (1) of subsection (a) of section 30-46.

Contained within the statutory provisions for alcohol sales, the establishments referenced in Conn. Gen. Stat. § 30-46(a)(1) include “any charitable institution supported by private or public funds, church, convent, hospital, public or parochial school, or veterans’ home, or any barracks, camp or flying field of the armed forces.” Id. (emphasis added).

RERACA also addressed the zoning ramifications of a municipality failing to take any action. In that circumstance, recreational cannabis stores “shall be zoned as if for any other similar use, other than a cannabis establishment, would be zoned.” (“Closest Use”). Conn. Gen. Stat. § 21a-422f(c).

At no point prior to the filing of the Application did the Commission adopt zoning regulations governing the recreational adult-use of cannabis, nor did it enact a ban on recreational adult-use cannabis facilities¹. Thus, pursuant to the Act, the Application had to be processed and decided as the Closest Use in the Zoning Regulations. Once again, the lack of adoption of specific ordinances to address an application such as Fine Fettle’s application, or by the lack of adoption of more specific definitions to terms within the regulations, the Commission is bound by their existing regulations. In this case, based on the substantial evidence presented, those regulations in place at the time of Fine Fettle’s application do not support the expansive definition that would include the Paul Mitchell school as a “school” and it was an abuse of the Commission’s discretion to apply such definition in support of its denial of the application.

¹ Since the application in question, the Commission did exercise its right to amend its zoning regulations to prohibit cannabis facilities. See, Record 43 pp. 649.

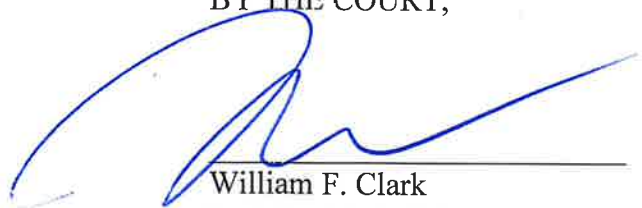
V. CONCLUSION

The court finds that plaintiff, SHIV lacks standing to pursue this appeal due to its status as statutorily dissolved.

The court finds the Fine Fettle does have standing to pursue this appeal, as the applicant and lessee of the Property, and that Fine Fettle has established that it has “a substantial and legitimate interest” in the property and was aggrieved by the Denial, which prevents it from operating its intended store at the Property. The Commission improperly denied Fine Fettle’s application based on a misapplication of the governing regulations wherein the Commission improperly concluded that the nearby Paul Mitchell was a “school.” The court finds that there is a lack of substantial evidence to support the broad interpretation of “school” applied by the Commission. As it was only this improperly broad definition of “school” which is cited to as the reason for the denial and as the application otherwise appeared to comply with the site plan and special permit the decision of the Commission is REVERSED.

Therefore, Judgment shall enter in favor of the plaintiff, Fine Fettle. The Denial of the application by the Commission is REVERSED and the application deemed GRANTED.

BY THE COURT,



William F. Clark
Superior Court Judge