INTERNATIONAL INVESTORS *v.* TOWN PLAN AND ZONING COMMISSION OF THE TOWN OF FAIRFIELD ET AL.
(AC 43035)

Prescott, Elgo and Moll, Js.

Syllabus

The plaintiff, an abutting property owner, appealed to this court from the judgment of the trial court sustaining in part its appeal from the decision of the defendant Town Plan and Zoning Commission of the Town of Fairfield granting extensions of the approvals of a special permit and coastal site plan review to the defendant F Co., until April, 2023. The commission had approved the special permit and coastal site plan review in April, 2006. A nonparty appealed the commission's decision to the Superior Court and an appeal from the Superior Court's judgment in that case to our Supreme Court was dismissed on April 8, 2009. In April, 2009, the Fairfield zoning regulations provided that a special permit was valid for two years, subject to any extensions, from the date of such approval and, in the case of an appeal, the two year period would commence from the date of the final judicial determination of such appeal. On February 8, 2011, the commission amended the Fairfield

zoning regulations, which deleted the language providing for the two year limitation. On February 15, 2011, F Co. requested confirmation from the town that pursuant to the 2011 amendment to the Fairfield zoning regulations and a certain statute (§ 8-3 (i)), the special permit and coastal site plan review approvals granted in April, 2006, remained in effect until April 8, 2014. The town provided the requested confirmation in writing. A few years later, in March, 2018, F Co. submitted a letter to the commission requesting an extension of the special permit and coastal site plan review approvals, which the commission voted to extend until April, 2023. The plaintiff appealed from that decision to the trial court, which sustained the appeal in part, concluding that the commission's decision to extend the special permit approval was improper. The court further concluded, however, that its decision sustaining the plaintiff's appeal as to the commission's decision to extend the special permit approval did not operate to invalidate the special permit, because special permits attach to the property and run with the land and, therefore, could not be limited as to time, and the plaintiff, on the granting of certification, appealed to this court. The plaintiff claimed that the court improperly concluded that the special permit granted to F Co. could not be limited in duration because a zoning authority is empowered pursuant to statute (§ 8-2 (a)) to impose a temporal condition on a special permit and the court's reliance on the legal principle that special permits "run with the land" was misplaced. *Held* that the trial court incorrectly determined that the special permit granted to F Co. and recorded in the land records pursuant to statute (§ 8-3d) was valid indefinitely and could not be subject to a temporal condition: § 8-2 (a), which provides that special permits may be approved subject to "conditions necessary to protect the public health, safety, convenience and property values," authorizes a zoning authority to condition, by regulatory fiat, its approval of a special permit on the completion of development related to the permitted use within a set time frame as it prevents the permit holder from unduly delaying the commencement of the permitted use to a time when the surrounding circumstances may no longer support it; moreover, the fact that the legislature has chosen to set forth express time limits in some land use statutes does not prevent the imposition of temporal limits on special permits, especially in light of the explicit language in § 8-2 (a) permitting a zoning authority to subject a special permit approval to certain conditions; furthermore, the trial court misapplied the legal principle that special permits "run with the land" in concluding that special permits cannot be temporally restricted, although permits are not personal to the applicant and remain valid notwithstanding a change in the ownership of the land, a zoning authority is not prohibited from placing a temporal condition on a special permit; accordingly, once the special permit became effective in April, 2009, F Co. had two years to complete development on the property in accordance with the Fairfield zoning regulations in effect at that time,

and, because it failed to do so or request any extensions within that time frame, the special permit expired in April, 2011, and the case was remanded with direction to render judgment sustaining the plaintiff's appeal as to its claim that the special permit expired on April 8, 2011.

Argued September 21, 2020—officially released February 16, 2021

Procedural History

Appeal from the decision of the named defendant extending its approvals of a special permit and a coastal site plan review granted to the defendant Fairfield Commons, LLC, brought to the Superior Court in the judicial district of Fairfield and tried to the court, *Radcliffe*, *J.*; judgment sustaining the appeal in part, from which the plaintiff, on the granting of certification, appealed to this court. *Affirmed in part; reversed in part*; *judgment directed.*

Charles J. Willinger, *Jr.*, with whom, on the brief, were *Ann Marie Willinger* and *James A. Lenes*, for the appellant (plaintiff).

James T. Baldwin, for the appellee (named defendant).

John F. Fallon, for the appellee (defendant Fairfield Commons, LLC).

Opinion

MOLL, J. This appeal requires us to consider whether a zoning authority may condition its approval of a special permit on the completion of development attendant to the permitted use by a date certain, in effect imposing a conditional time limit on the special permit. The plaintiff, International Investors, appeals from the judgment of the trial court disposing of the plaintiff's appeal from the decision of the defendant Town Plan and Zoning Commission of the Town of Fairfield (commission) extending its approvals of a special permit and coastal site plan review granted to the defendant Fairfield Commons,

LLC (Fairfield Commons).[1] After sustaining the plaintiff's appeal insofar as it challenged the commission's decision to extend the special permit approval, the court ruled that it nonetheless was not finding that the special permit had expired because, it reasoned, the special permit, once recorded in the town land records, was valid indefinitely and not subject to a condition limiting its duration. On appeal before us, the plaintiff claims that the court improperly concluded that the special permit remained valid on the basis that it could not be temporally limited. We reverse, in part, the judgment of the trial court.

The following facts and procedural history are relevant to our resolution of this appeal. Fairfield Commons owns an approximately 3.6 acre parcel of property known as 1125 Kings Highway in Fairfield (property). The plaintiff is an abutting landowner. In 2006, Fairfield Commons filed an application for a special permit to construct a 36,000 square foot retail building on the property. Fairfield Commons also submitted an application for a coastal site plan review.[2] On April 11, 2006, the commission approved the special permit and the coastal site plan review.[3] Thereafter, a nonparty to this matter appealed from the commission's decision to the Superior Court, challenging a condition of the special permit requiring the removal of an existing billboard. See

[1] On January 16, 2020, the commission filed a notice indicating that it was adopting the appellate brief filed by Fairfield Commons. We refer in this opinion to Fairfield Commons and the commission individually by their designated names and collectively as the defendants.

[2] Pursuant to § 2.14.1 of the Fairfield Zoning Regulations, "[a]ll buildings, uses and structures fully or partially within the coastal boundary as defined by Section 22a-94 of the Connecticut General Statutes and as delineated on the Coastal Boundary Map for the Town of Fairfield, shall be subject to the coastal site plan review requirements and procedures in Sections 22a-105 through 22a-109 of the Connecticut General Statutes."

[3] When the commission approved the special permit in 2006, the permitted use was a retail building. In 2017, the commission granted an application filed by Fairfield Commons to change the permitted use to a medical office building.

Lamar Co. of Connecticut, LLC v. *Town Plan & Zoning Commission*, Superior Court, judicial district of Fairfield, Docket No. CV-06-4016312-S, 2008 WL 366557 (January 25, 2008) (*Lamar* action). On May 5, 2008, an appeal from the judgment rendered in the *Lamar* action was filed with this court and later transferred to our Supreme Court, which dismissed the appeal on April 8, 2009. See Connecticut Supreme Court, Docket No. SC 18204 (appeal dismissed April 8, 2009).

The Fairfield Zoning Regulations in effect on April 8, 2009 (2009 regulations)[4] contain the following relevant provisions. Section 25.8.3 of the 2009 regulations provides: "The duration of a [special permit] shall be as provided in Sections 2.23.5, 2.23.6 and 2.23.7 of the Zoning Regulations." Section 2.23.5 of the 2009 regulations in turn provides: "Approval or approval with modification shall constitute approval conditioned upon completion of the proposed use in accordance with the Zoning Regulations within a period of two (2) years from the date of such approval." Section 2.23.6 of the 2009 regulations provides in relevant part: "(a) Upon failure to complete within such two (2) year period, the approval or approval with modification shall become null and void, unless an appeal to court is filed within such period, whereupon the two (2) year period shall commence from the date of the final judicial determination of such appeal. Three (3) extensions of such period for an additional period not to exceed one (1) year may be granted, subject to appropriate conditions and safeguards necessary to conserve the public health, safety, convenience, welfare and property values in the neighborhood. . . ."[5]

[4] Pursuant to Practice Book § 81-6, the plaintiff filed copies of (1) the 2009 regulations and (2) the Fairfield Zoning Regulations in effect on March 29, 2018. The plaintiff represents that §§ 2.23.5 and 2.23.6 of the 2009 regulations were also in effect in 2006, when Fairfield Commons' special permit and coastal site plan review applications were submitted and granted. None of the parties contends that the relevant zoning regulations in effect in 2006 varied from the 2009 regulations.

[5] Section 2.23.7 of the 2009 regulations concerned special permits required for land excavation and fill.

On February 8, 2011, the commission amended § 2.23 of the 2009 regulations (2011 amendment). Following the 2011 amendment, § 2.23 of the Fairfield Zoning Regulations read in its entirety: "Whenever a public hearing on any application is to be held pursuant to the requirements of the foregoing sections of the Zoning Regulations, other than the public hearing for an amendment to the Zoning Regulations, the procedure for which is set forth in Section 2.39 of the Zoning Regulations, the Commission shall proceed in accordance with the requirements of the Connecticut General Statutes." The remainder of § 2.23 as it existed in the 2009 regulations, including §§ 2.23.5 and 2.23.6, was deleted. The stated purpose of the 2011 amendment was "to repeal the language that is inconsistent with current statutory requirements. Rather than adopt statut[ory] language as part of the regulations, which may change from time to time, reference is made to the statutes." Additionally, sometime after April 8, 2009, § 25.8.3 of the 2009 regulations was amended to provide: "The duration of a [special permit] shall be as provided in the Connecticut General Statutes."

On February 15, 2011, Fairfield Commons requested confirmation from the town of Fairfield (town) that, pursuant to the 2011 amendment and General Statutes § 8-3 (i),[6] the special permit and coastal site plan review approvals granted in April, 2006, remained in effect until

[6] General Statutes § 8-3 (i) provides: "In the case of any site plan approved on or after October 1, 1984, except as provided in subsection (j) of this section, all work in connection with such site plan shall be completed within five years after the approval of the plan. The certificate of approval of such site plan shall state the date on which such five-year period expires. Failure to complete all work within such five-year period shall result in automatic expiration of the approval of such site plan, except in the case of any site plan approved on or after October 1, 1989, the zoning commission or other municipal agency or official approving such site plan may grant one or more extensions of the time to complete all or part of the work in connection with the site plan provided the total extension or extensions shall not exceed ten years from the date such site plan is approved. 'Work' for purposes of this subsection means all physical improvements required by the approved plan."

April 8, 2014. Thereafter, the town provided the requested confirmation in writing.[7]

On May 9, 2011, the legislature amended § 8-3 (m) to provide: "Notwithstanding the provisions of this section, any site plan approval made under this section prior to July 1, 2011, that has not expired prior to May 9, 2011,[8] except an approval made under subsection (j) of this section,[9] shall expire not less than nine years after the date of such approval and the commission may grant one or more extensions of time to complete all or part of the work in connection with such site plan, provided no approval, including all extensions, shall be valid for more than fourteen years from the date the site plan was approved."[10] (Footnotes added.)

Several years later, on March 29, 2018, Fairfield Commons submitted a letter to the commission requesting an extension of the special permit and coastal site plan review approvals. Fairfield Commons represented that,

[7] Fairfield Commons represents that it received the written confirmation on March 11, 2011.

[8] As enacted by the legislature, No. 11-5, § 1, of the 2011 Public Acts amended General Statutes (Rev. to 2011) § 8-3 (m) to provide in relevant part that "[n]otwithstanding the provisions of this section, any site plan approval made under this section prior to July 1, 2011, that has not expired prior to *the effective date of this section* . . . ." (Emphasis added.) In the interest of simplicity, we refer in this opinion to the current revision of the statute.

[9] General Statutes § 8-3 (j) is not germane to this matter, as it concerns site plans for projects "consisting of four hundred or more dwelling units approved on or after June 19, 1987" and "any commercial, industrial or retail project having an area equal to or greater than four hundred thousand square feet approved on or after October 1, 1988 . . . ."

[10] Prior to the amendment, General Statutes (Rev. to 2011) § 8-3 (m) provided: "Notwithstanding the provisions of this section, any site plan approval made under this section during the period from July 1, 2006, to July 1, 2009, inclusive, except an approval made under subsection (j) of this section, shall expire not less than six years after the date of such approval and the commission may grant one or more extensions of time to complete all or part of the work in connection with such site plan, provided no approval, including all extensions, shall be valid for more than eleven years from the date the site plan was approved."

on an unspecified date, the commission and the office of the town attorney had confirmed that, in accordance with § 8-3 (m), the approvals were extended to April 8, 2018, subject to extensions. Pursuant to § 8-3 (m), Fairfield Commons requested an additional five year extension of the approvals to April 8, 2023. In a letter addressed to the commission dated April 6, 2018, the plaintiff opposed Fairfield Commons' request for an extension, arguing, inter alia, that the approvals had expired in April, 2011, and that the 2011 amendment had not affected the expiration date of the approvals.

On April 10, 2018, the commission held a meeting to discuss Fairfield Commons' request for an extension of the special permit and coastal site plan review approvals. The meeting was attended by commission members, alternates, and town department members, including Jim Wendt, the town's planning director. During the meeting, which was transcribed, Wendt stated that, at the time of Fairfield Commons' March 29, 2018 request for an extension of the approvals, the expiration date of the approvals was April 8, 2018, explaining that (1) on April 8, 2009, when our Supreme Court dismissed the appeal filed in the *Lamar* action, the 2009 regulations were in effect, and, thereunder, the approvals were set to expire on April 8, 2011, (2) prior to the 2011 amendment, the 2009 regulations conflicted with § 8-3 (i), which allowed up to five years, not including extensions, for the completion of work related to site plans, (3) the commission approved the 2011 amendment so that the Fairfield Zoning Regulations would be "in sync" with the General Statutes, (4) the commission intended to have the 2011 amendment apply retroactively, (5) as the approvals had been active in February, 2011, when the 2011 amendment was adopted, the 2011 amendment had operated to extend the approvals to April 8, 2014, and (6) following the amendment to § 8-3 (m) in May, 2011, the approvals were further extended to April 8, 2018. At the conclusion of the meeting, the commission voted unanimously

to grant Fairfield Commons' request for an extension of the approvals to April 8, 2023.[11] In a letter dated April 12, 2018, Wendt notified Fairfield Commons of the commission's decision, and notice of the decision was published in a local newspaper on April 13, 2018.

On April 20, 2018, the plaintiff appealed from the commission's decision to the Superior Court. The plaintiff claimed on appeal that the commission improperly granted Fairfield Commons' request for an extension of the special permit and coastal site plan review approvals because the approvals had expired prior to the commission's action. More specifically, the plaintiff asserted that (1) the 2009 regulations governed the approvals, and, in accordance therewith, the approvals had expired on April 8, 2011, (2) the 2011 amendment and § 8-3 (m) did not apply retroactively to the approvals, and (3) even assuming that they applied retroactively, the 2011 amendment and § 8-3 (m) were germane to site plans only and, thus, had no bearing on the approval of the special permit.[12] In response, Fairfield Commons, joined

[11] The commission did not provide a collective statement of the basis for its decision on the record. Prior to rendering its decision, a few members of the commission opined that the approvals had not expired in February, 2011, when the 2011 amendment had become effective, and that the 2011 amendment had functioned to extend the approvals to April 8, 2018. Under our law, such individual statements cannot be construed as a collective statement of the basis of a zoning agency's decision. See *Verrillo* v. *Zoning Board of Appeals*, 155 Conn. App. 657, 673–74, 111 A.3d 473 (2015), and cases cited therein.

[12] The plaintiff also asserted that the 2011 amendment was void because the commission had failed to comply with the notice and hearing requirements of § 8-3 (a). On September 13, 2018, after the plaintiff had filed its brief on the merits on August 24, 2018, the parties moved by stipulation to supplement the record with two notices, dated January 28, 2011, and February 2, 2011, respectively, indicating that a public hearing on the proposed amendment had been scheduled for February 8, 2011, and with a notice reflecting that the commission's decision on the proposed amendment had been published on February 11, 2011. The plaintiff's claim challenging the validity of the 2011 amendment was not addressed by the trial court in its memorandum of decision, and the plaintiff has not attempted to pursue that claim on appeal before us.

by the commission,[13] argued that (1) the 2011 amendment incorporated by reference § 8-3 (i) and (m), pursuant to which the approval of the coastal site plan review had been extended first to April 8, 2014 (under § 8-3 (i)) and then to April 8, 2018 (under § 8-3 (m)), (2) the coastal site plan review was inseparable from the special permit such that the extension of the coastal site plan review approval to April 8, 2018, also functioned to extend the special permit approval to April 8, 2018, and (3) Fairfield Commons had statutory authority under § 8-3 (m) to request an additional five year extension of the approvals. On October 12, 2018, the plaintiff filed a reply brief, arguing, inter alia, that special permits and site plans are separate and distinct, such that § 8-3 (i) and (m), concerning site plans only, were inapplicable to the special permit approval.

On February 14, 2019, the trial court, *Radcliffe*, *J.*, issued a memorandum of decision sustaining, in part, the plaintiff's appeal. After finding that the plaintiff was statutorily aggrieved as an abutting landowner of the property, the court determined that § 8-3 (i) and (m) governed site plans only, and, as a result, those statutory provisions provided no basis to extend the approval of the special permit, which the court found to be separate and distinct from the approval of the coastal site plan review. Accordingly, the court concluded that the commission's decision to extend the special permit approval was improper.

The court proceeded to clarify that its decision sustaining the plaintiff's appeal as to the commission's decision extending the special permit approval did not

[13] On September 27, 2018, Fairfield Commons filed its brief on the merits. On September 28, 2018, the commission filed a notice providing that it was adopting the brief filed by the "defendant, International Investors." We construe the commission's reference to "International Investors," rather than to Fairfield Commons, to be a misnomer. See also footnote 1 of this opinion.

operate to invalidate the special permit. Citing R. Fuller, 9B Connecticut Practice Series: Land Use Law and Practice (4th Ed. 2015), and several Superior Court decisions, the court stated that "[s]pecial permits, like variances, attach to the property, and run with the land," and, consequently, special permits could not be "limited as to time, or personalized to any individual." In addition, observing that a zoning authority has no inherent powers but rather derives its authority strictly from statute, the court further determined that "[n]o provision of the General Statutes allows a municipal zoning commission to revoke, or place a time limit upon, a valid special permit, which has become effective pursuant to [General Statutes §] 8-3d[14] . . . . Therefore, the April 10, 2018 action of the [commission] had no impact on the special permit issued to . . . Fairfield Commons . . . assuming that the special permit was otherwise effective. The only approval impacted by the action, based upon the provisions of [§] 8-3 (i) and (m) . . . is the coastal [site plan review approval]." (Footnote added.) In sum, the court concluded that "[t]he appeal of the plaintiff . . . is sustained, to the extent that it challenges the authority of the [commission] to extend the expiration date of the special permit until April 8, 2023. In sustaining the appeal, the court does not find that the special permit issued to Fairfield Commons . . . has expired, or is

[14] General Statutes § 8-3d provides: "No variance, special permit or special exception granted pursuant to this chapter, chapter 126 or any special act, and no special exemption granted under section 8-2g, shall be effective until a copy thereof, certified by a zoning commission, planning commission, combined planning and zoning commission or zoning board of appeals, containing a description of the premises to which it relates and specifying the nature of such variance, special permit, special exception or special exemption, including the zoning bylaw, ordinance or regulation which is varied in its application or to which a special exception or special exemption is granted, and stating the name of the owner of record, is recorded in the land records of the town in which such premises are located. The town clerk shall index the same in the grantor's index under the name of the then record owner and the record owner shall pay for such recording."

otherwise invalid, as a matter of law." (Emphasis omitted.)

On March 1, 2019, the plaintiff filed a petition for certification to appeal from the court's judgment, which this court granted on May 22, 2019. This appeal followed. Additional facts and procedural history will be set forth as necessary.

The plaintiff on appeal challenges the court's judgment insofar as the court concluded that the special permit granted to Fairfield Commons could not be limited in duration and, thus, remained valid (and did not require timely extension).[15] More specifically, the plaintiff claims that the court improperly concluded that the special permit, once recorded in accordance with § 8-3d, was valid in perpetuity and not subject to a temporal condition because (1) General Statutes § 8-2 (a) empowers a zoning authority to impose a temporal condition on a special permit and (2) the court's reliance on the legal principle that special permits "run with the land" was misplaced. For the reasons that follow, we agree.

At the outset, we set forth the applicable standard of review. "The scope of our appellate review depends

[15] In its appeal to the Superior Court, the plaintiff claimed that the commission committed error in extending the approvals of both the special permit and the coastal site plan review. In its memorandum of decision, the court sustained the plaintiff's appeal insofar as the plaintiff challenged the commission's decision to extend the special permit approval. Although the court did not make an express ruling as to the coastal site plan review, it is apparent that the court did not sustain the plaintiff's appeal with respect thereto. After determining that the special permit, once recorded in the town land records, was valid indefinitely and could not be time restricted, the court stated that "[t]he only approval impacted by the [commission's] action [on April 10, 2018], based upon the provisions of [§] 8-3 (i) and (m) . . . is the coastal [site plan review approval]." The court then stated that "[t]he appeal of the plaintiff . . . is sustained, *to the extent that it challenges the authority of the* [*commission*] *to extend the expiration date of the special permit until April 8, 2023*." (Emphasis altered.) In the appeal before us now, the plaintiff limits its claims to the portion of the court's judgment regarding the special permit. The plaintiff has not raised any cognizable claim on appeal concerning the coastal site plan review. We also note that neither of the defendants has filed a cross appeal.

upon the proper characterization of the rulings made by the trial court. To the extent that the trial court has made findings of fact, our review is limited to deciding whether such findings were clearly erroneous. When, however, the trial court draws conclusions of law, our review is plenary and we must decide whether its conclusions are legally and logically correct and find support in the facts that appear in the record." (Internal quotation marks omitted.) *Villages, LLC* v. *Enfield Planning & Zoning Commission*, 149 Conn. App. 448, 456, 89 A.3d 405 (2014), appeal dismissed, 320 Conn. 89, 127 A.3d 998 (2015). This appeal does not require us to consider the propriety of the commission's decision to grant Fairfield Commons' application for a special permit. Instead, the issue before us concerns the court's legal conclusion that the special permit, once recorded in the town land records, was indefinite and not subject to a condition limiting its duration. Thus, our review is plenary.

I

We first turn to the plaintiff's claim that the trial court incorrectly determined that there was no statutory authority enabling a zoning authority to restrict the duration of a special permit, which, in the present case, came in the form of a condition requiring the completion of development attendant to the permitted use within two years, subject to extensions. The plaintiff contends that § 8-2 (a) extended such authority to the commission. We agree.

"It is axiomatic that [a]s a creature of the state, the . . . [town . . . whether acting itself or through its planning commission] can exercise only such powers as are expressly granted to it, or such powers as are necessary to enable it to discharge the duties and carry into effect the objects and purposes of its creation. . . . In other words, in order to determine whether the

[condition] in question was within the authority of the commission to [impose], we do not search for a statutory prohibition against such an [action]; rather, we must search for statutory authority for the [action]." (Citations omitted; internal quotation marks omitted.) *Moscowitz* v. *Planning & Zoning Commission*, 16 Conn. App. 303, 308, 547 A.2d 569 (1988).

Resolving the plaintiff's claim requires us to construe § 8-2 (a). "The principles that govern statutory construction are well established. When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and [common-law] principles governing the same general subject matter . . . ." (Internal quotation marks omitted.) *Petrucelli* v. *Meriden*, 198 Conn. App. 838, 847–48, 234 A.3d 981 (2020).

Section 8-2 (a) provides in relevant part that zoning "regulations in one district may differ from those in another district, and may provide that certain classes or kinds of buildings, structures or uses of land are per-

mitted only after obtaining a special permit or special exception[16] from a zoning commission, planning commission, combined planning and zoning commission or zoning board of appeals, whichever commission or board the regulations may, notwithstanding any special act to the contrary, designate, subject to standards set forth in the regulations and to conditions necessary to protect the public health, safety, convenience and property values. . . .'' (Footnote added.)

We construe the language of § 8-2 (a) providing that special permits may be approved subject to ''conditions necessary to protect the public health, safety, convenience and property values'' as authorizing a zoning authority to condition, by regulatory fiat, its approval of a special permit on the completion of development related to the permitted use within a set time frame.[17] We note that ''[t]he basic rationale for the special permit [is] . . . that while certain [specially permitted] land uses may be generally compatible with the uses permitted as of right in particular zoning districts, their nature 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.'' (Internal quotation marks omitted.) *St. Joseph's High School, Inc.* v. *Planning & Zoning Commission*, 176 Conn. App. 570, 586, 170 A.3d 73 (2017). The approval of a special permit on the condition that development

[16] ''[T]he terms 'special exception' and '[s]pecial permit' are interchangeable.'' *American Institute for Neuro-Integrative Development, Inc.* v. *Town Plan & Zoning Commission*, 189 Conn. App. 332, 338–39, 207 A.3d 1053 (2019).

[17] Section 8-2 (a) also provides that special permits are ''subject to standards set forth in the regulations . . . .'' General Statutes § 8-2 (a). We need not discuss whether this language provides an independent basis on which a zoning authority may impose a temporal condition on a special permit because we conclude that the portion of § 8-2 (a) subjecting special permits to ''conditions necessary to protect the public health, safety, convenience and property values'' enables a zoning authority to limit the duration of a special permit.

attendant to the permitted use is finished by a date certain prevents the permit holder from unduly delaying the commencement of the permitted use to a time when the surrounding circumstances may no longer support it.[18]

[18] The defendants argue that, pursuant to § 8-3 (i) and (m), site plans are temporally limited and, therefore, a zoning authority would consider changes in the surrounding circumstances if a permit holder's site plan expired and a new site plan application was submitted. We are not persuaded that a zoning authority could necessarily consider changes in the surrounding circumstances when acting on a new site plan application. "A zoning commission acts in an administrative capacity in its review of an application seeking a special permit use. . . . Conversely, when a zoning commission reviews a site plan, it is engaged in a ministerial process . . . ." (Citation omitted.) *Connecticut Health Facilities, Inc.* v. *Zoning Board of Appeals*, 29 Conn. App. 1, 6, 613 A.2d 1358 (1992). "A zoning commission's authority in ruling on a site plan is limited. . . . The agency has no independent discretion beyond determining whether the plan complies with the site plan regulations and applicable zoning regulations incorporated by reference." (Citation omitted; internal quotation marks omitted.) *Fedus* v. *Zoning & Planning Commission*, 112 Conn. App. 844, 848, 964 A.2d 549, cert. denied, 292 Conn. 904, 973 A.2d 104 (2009), and cert. denied, 292 Conn. 905, 973 A.2d 103 (2009). "[Section] 8-3 (g) sets out a zoning commission's authority to act on a site plan application: 'A site plan may be modified or denied only if it fails to comply with requirements already set forth in the zoning or inland wetlands regulations. . . .' " Id. Additionally, unlike a special permit, there is no statutory mandate that a public hearing be held on a site plan application; compare General Statutes § 8-3c (b) (public hearing required on special permit application), with *Clifford* v. *Planning & Zoning Commission*, 280 Conn. 434, 441–42, 908 A.2d 1049 (2006) (§ 8-3 does not impose public hearing requirement on site plan application); and a site plan application is presumed to be approved if not acted upon within the time prescribed by statute. Compare General Statutes § 8-3 (g) (1) ("[a]pproval of a site plan shall be presumed unless a decision to deny or modify it is rendered within the period specified in section 8-7d"), with *Center Shops of East Granby, Inc.* v. *Planning & Zoning Commission*, 253 Conn. 183, 194, 757 A.2d 1052 (2000) (A special permit application, even if containing a site plan, is not subject to automatic approval, as "[a]utomatic approval would negate the meaning that [our Supreme Court has] long attached to the concept of a special permit. By virtue of its unique status, a special permit for a purpose not permitted as of right necessarily must be considered by a town's planning and zoning commission."). In sum, a site plan application is not subject to the same scrutiny directed to a special permit application, and, in fact, in some instances, a site plan application will be automatically approved. Thus, the defendants' argument is unavailing.

The following example illustrates the utility of imposing a temporal condition on a special permit "to protect the public health, safety, convenience and property values" within a municipality. General Statutes § 8-2 (a).[19] In a particular municipality, in accordance with the zoning regulations, an individual applies for a special permit to operate a crematorium, which the zoning authority grants with no time restriction limiting the special permit. At that time, there is no other crematorium in the municipality. The individual elects to wait thirty years before constructing the crematorium. In the interim, following the necessary approvals, two other crematoriums have been built and are in operation. In this scenario, although the construction and operation of a crematorium may have been welcomed thirty years prior when no other similar use existed within the municipality, the lapse of time has diminished the need for such a use. A durational limit on the special permit granted to the individual would have prevented such a circumstance.[20]

The defendants argue that the legislature has expressly imposed durational limits with respect to other land use permits, such as inland wetlands permits; see General Statutes § 22a-42a (d) (2) and (g);[21] and thus, without

[19] Although the parties have not cited, and our research has not revealed, any appellate case law addressing the issue of whether § 8-2 (a) empowers a zoning authority to impose a time limit on a special permit, at least one Superior Court decision has construed § 8-2 (a) to extend such authority. See *Cole* v. *Planning & Zoning Commission*, Superior Court, judicial district of Litchfield, Docket No. CV-91-55617, 1994 WL 149326, *7 (April 4, 1994) ("permitting a limited duration for a special permit seems consistent with [§] 8-2"), aff'd, 40 Conn. App. 501, 671 A.2d 844 (1996).

[20] This is but one of many possible examples demonstrating how changes in a zoning district may render a specially permitted use to be no longer suitable. By way of another example, the construction and operation of a retail plaza as a specially permitted use in a commercial area would be appropriate, but less so if development was delayed and, in the meantime, the area transformed in character such that additional traffic could not be sustained.

[21] General Statutes § 22a-42a (d) (2) provides: "Any permit issued under this section for the development of property for which an approval is required under chapter 124, 124b, 126 or 126a shall be valid until the approval granted

an explicit time limit set forth therein, § 8-2 (a) should not be interpreted to authorize temporal limitations on special permits.[22] We are not persuaded. The defendants' argument ignores the explicit language of § 8-2 (a) permitting a zoning authority to subject a special permit approval to "conditions necessary to protect the public health, safety, convenience and property values." General Statutes § 8-2 (a). We do not construe the legislature's choice to set forth express time limits in some land use statutes as eschewing the imposition of temporal limits on special permits. As we conclude in this opinion, a condition limiting the duration of a special permit falls within the ambit of § 8-2 (a).

In sum, we conclude that § 8-2 (a) empowers a zoning authority to impose a temporal condition on a special permit, in this instance, by requiring the completion of development attendant to the permitted use within a set time frame. Thus, the court improperly concluded that there was no statutory authority enabling a zoning authority to impose such a condition.

under such chapter expires or for ten years, whichever is earlier. Any permit issued under this section for any activity for which an approval is not required under chapter 124, 124b, 126 or 126a shall be valid for not less than two years and not more than five years. Any such permit shall be renewed upon request of the permit holder unless the agency finds that there has been a substantial change in circumstances which requires a new permit application or an enforcement action has been undertaken with regard to the regulated activity for which the permit was issued, provided no permit may be valid for more than ten years."

General Statutes § 22a-42a (g) provides: "Notwithstanding the provisions of subdivision (2) of subsection (d) of this section, any permit issued under this section prior to July 1, 2011, that has not expired prior to May 9, 2011, shall expire not less than nine years after the date of such approval. Any such permit shall be renewed upon request of the permit holder unless the agency finds that there has been a substantial change in circumstances that requires a new permit application or an enforcement action has been undertaken with regard to the regulated activity for which the permit was issued, provided no such permit shall be valid for more than fourteen years."

[22] In support of their claim, the defendants also cite § 8-3 (i) and (m) (imposing time limit on site plans) and General Statutes § 8-25 (a) (imposing time limit on conditional approval of subdivision plan).

II

The plaintiff next claims that the trial court improperly relied on the legal tenet that special permits "run with the land" in concluding that special permits, once recorded pursuant to § 8-3d, are valid indefinitely and cannot be temporally restricted. We agree.

In concluding that special permits, once recorded in accordance with § 8-3d,[23] are valid in perpetuity and cannot be time limited, the court relied on former Judge Robert A. Fuller's treatise on land use and several Superior Court decisions. In his treatise, Fuller opines that "[w]hen a special permit is issued by the zoning commission or other agency designated in the zoning regulations, it remains valid indefinitely since the use allowed under it is a permitted use subject to conditions in the zoning regulations. [In *N & L Associates* v. *Planning & Zoning Commission*, Superior Court, judicial district of Litchfield, Docket No. CV-04-93492-S (June 8, 2005) (39 Conn. L. Rptr. 466, 468–69)] [w]here a special exception and related site plan was granted for earth excavation and related activities, including the retail sales of gravel created by processing it as an accessory use to the commercial gravel business even though renewal of the approval was required every two years from the zoning commission, the special exception runs with the land and was not personal with the initial property owner which is confirmed by the provision in § 8-3d that special exceptions are not effective until they are recorded in the land records. A special permit runs with the land,

[23] Section 8-3d mandates that, to be effective, special permits must be recorded in the appropriate town land records. See footnote 14 of this opinion. An instrument is not rendered valid indefinitely merely because it is recorded. By way of example only, once recorded, a notice of lis pendens is effective for no more than fifteen years unless it is properly rerecorded within five years prior to expiration of the fifteen year period, after which the rerecorded notice of lis pendens cannot continue in force for more than ten years. See General Statutes § 52-325e.

and a limitation on it and a related site plan cannot be limited to the time of ownership of the original applicant. The agency cannot put an expiration date on and require renewal of special permits or special exceptions because that automatically would turn a permitted use into an illegal use after the time period expired." (Footnotes omitted.) 9B R. Fuller, supra, § 50:1, pp. 162–63. Fuller further opines that "[i]f the conditions of the special permit are violated, the remedy is a zoning enforcement proceeding since there is no statutory provision allowing revocation or expiration of special permits." Id., 163.

Upon our careful review of the case law cited by the trial court and/or in Fuller's treatise, we conclude that the court misapplied the legal principle that special permits "run with the land." In those cases, the courts concluded that various land use permits "run with the land" in that they are not personal to the applicant and remain valid *notwithstanding a change in the ownership of the land*. See *Fromer* v. *Two Hundred Post Associates*, 32 Conn. App. 799, 802, 805, 631 A.2d 347 (1993) (concluding that inland wetlands permit "to conduct a regulated activity runs with the land and not with the applicant," that permit "is concerned solely with the property to be regulated, and that the change of ownership does not affect the validity of the permit"); *Madore* v. *Zoning Board of Appeals*, Superior Court, judicial district of Middlesex, Docket No. CV-11-6005648-S (August 21, 2012) (54 Conn. L. Rptr. 519, 523) (concluding that home occupation site plan permit issued to plaintiff's husband remained valid notwithstanding husband's death because permit "ran with the land, not with the applicant"); *Gozzo* v. *Zoning Commission*, Superior Court, judicial district of New Britain, Docket No. CV-07-4015865-S (July 24, 2008) (46 Conn. L. Rptr. 110, 114) (concluding that conditions imposed on special permit, including condition providing that special permit "shall pertain only to the present owner of the property

and shall not run with the property," were invalid, stating, inter alia, that "[t]o the extent that [the] conditions are personal to the plaintiffs and reflect that this permit will not run with the land, they are invalid"); *Shaw* v. *Planning & Zoning Commission*, Superior Court, judicial district of Fairfield, Docket No. CV-02-395344 (July 12, 2005) (39 Conn. L. Rptr. 648, 651) (concluding that "special permit runs with the land" and, therefore, change in operator of group home on property would not invalidate special permit); *N & L Associates* v. *Planning & Zoning Commission*, supra, 39 Conn. L. Rptr. 468 (concluding that "special permit issued to [prior property owner] ran with the land and [subsequent property owner] was entitled to use it to operate its gravel excavation business"); *Beeman* v. *Planning & Zoning Commission*, Superior Court, judicial district of New Haven, Docket No. CV-99-0427275 (April 27, 2000) (27 Conn. L. Rptr. 77, 80) (concluding that special permit "run[s] with the land" and, therefore, condition voiding special permit if permit holder transferred property was invalid); *Griswold Hills of Newington Ltd. Partnership* v. *Town Plan & Zoning Commission*, Superior Court, judicial district of Hartford-New Britain, Docket No. CV-95-0705701-S (June 9, 1995) (14 Conn. L. Rptr. 405, 407) (concluding that special permit and site plan "run with the land" and, therefore, current owner of property had standing to bring mandamus action to require planning and zoning commission to finalize land use approvals granted to previous owner of property). These cases illustrate the well settled precept that land use permits are not personal to the applicant and are not rendered void by a transfer of ownership of the property. None of these cases, however, addresses the issue of whether a zoning authority may impose a temporal condition in approving a special permit.

Put another way, there is a distinction between (a) the principle that a special permit "runs with the land"

as opposed to being personal in nature to the applicant and (b) the ability of a zoning authority to place a temporal condition on a special permit. At least one Superior Court decision has recognized this distinction. In *Vanghel* v. *Planning & Zoning Commission*, Superior Court, judicial district of Windham, Docket No. CV-11-6004127-S (August 20, 2012) (54 Conn. L. Rptr. 589), the trial court upheld the denial of the plaintiff's application seeking a second renewal of his special permit on the ground that the local zoning regulations, pursuant to which special permit approvals were rendered void if improvements attendant thereto were not completed within two years, subject to renewal for "an additional period of two years," did not authorize multiple renewals. (Emphasis omitted.) Id., 592–94. In a footnote, the court considered an argument raised by the plaintiff that construing the zoning regulations to preclude multiple renewals would be "inconsistent with the principle that the permit attaches to the land and follows the title . . . ." Id., 594 n.1. The court rejected that argument, aptly observing that "[t]here is no inconsistency between the zoning rights running with the land and not with the owner, and temporal limitations on those rights. *They are different subjects*."[24] (Emphasis added.) Id. We agree with that assessment.

In his treatise, Fuller cites *Durham Rod & Gun Club, Inc.* v. *Planning & Zoning Commission*, Superior Court, judicial district of Middlesex, Docket No. CV-94-0072189-S (November 27, 1995), *Scott* v. *Zoning Board of Appeals*, 88 App. Div. 2d 767, 451 N.Y.S.2d 499 (1982),

[24] In his treatise, Fuller states that the *Vanghel* decision "is questionable" because (1) special permits "run with the land" and (2) § 8-3 (i) allows work under an approved site plan to be completed within five years, subject to extensions. 9B R. Fuller, supra, § 50:1, p. 163. Regarding the first point, as we conclude in this opinion, the fact that special permits "run with the land" has no bearing on whether they may be temporally limited. The second point is not germane to the issue of whether a special permit may be temporally limited.

and *Room & Board Homes & Family Care Homes, Operators & Owners* v. *Gribbs*, 67 Mich. App. 381, 241 N.W.2d 216 (1976), in positing that "[t]here is some case law in Connecticut and other states concluding that *in the absence of statutory authority*, the commission or board which grants special permits (special exceptions) cannot impose a time limit or expiration date as a condition of approval of the permit." (Emphasis added.) 9B R. Fuller, supra, § 50:1, p. 163 and n.8. As we have concluded in part I of this opinion, § 8-2 (a) authorizes the imposition of a temporal condition on a special permit. Moreover, although the parties have not cited, and our research has not revealed, any appellate case law in this state analyzing the issue of whether a special permit may be restricted in duration, a number of our Superior Courts have determined that such a condition is permissible. See, e.g., *848, LLC* v. *Zoning Board of Appeals*, Superior Court, judicial district of New Haven, Docket No. CV-15-6055150-S (June 6, 2016) (62 Conn. L. Rptr. 550, 556–57) (concluding that planning and zoning commission had authority to grant special permit with condition, imposed in response to public safety concerns, that commission, along with police and fire departments, would review permit within one year); *Vanghel* v. *Planning & Zoning Commission*, supra, 54 Conn. L. Rptr. 594 n.1 (rejecting plaintiff's argument that limiting duration of special permit conflicted with legal principle that special permits "run with the land"); *Cole* v. *Planning & Zoning Commission*, Superior Court, judicial district of Litchfield, Docket No. CV-91-55617, 1994 WL 149326, *6–7 (April 4, 1994) (rejecting plaintiff's argument that amendment to zoning regulations, providing that special permits obtained to operate sawmills in residential districts expire after two years subject to renewals, was illegal), aff'd, 40 Conn. App. 501, 671 A.2d 844 (1996).

Additionally, in his treatise, in support of the proposition that, once issued, a special permit "remains valid

indefinitely since the use allowed under it is a permitted use subject to conditions in the zoning regulations," Fuller cites *Cioffoletti* v. *Planning & Zoning Commission*, 24 Conn. App. 5, 584 A.2d 1200 (1991), and *East Windsor Sportsmen's Club* v. *Planning & Zoning Commission*, Superior Court, judicial district of Hartford-New Britain, Docket No. 338696 (July 10, 1989) (4 C.S.C.R. 657). 9B R. Fuller, supra, § 50:1, p. 162 and n.5. Neither case supports the conclusion that special permits cannot be temporally limited.

In *Cioffoletti*, the plaintiffs owned property on which they operated a commercial sand and gravel removal business as a valid nonconforming use. *Cioffoletti* v. *Planning & Zoning Commission*, supra, 24 Conn. App. 6. Sometime after the plaintiffs had started their business, the local planning and zoning commission amended its zoning regulations to provide that sand and gravel operations required a special permit, which could be granted for a maximum of two years, subject to an additional extension. Id., 6–7. The plaintiffs challenged the amended regulation, and the trial court held that, as applied to the plaintiffs, the amended regulation was illegal because it attempted to prohibit the plaintiffs from continuing their valid existing nonconforming use. Id., 7. On appeal, this court affirmed the trial court's judgment, stating that "[i]t is a fundamental zoning precept in Connecticut . . . that zoning regulations cannot bar uses that existed when the regulations were adopted." Id., 8. Additionally, this court observed that "assum[ing], arguendo, that the [planning and zoning commission] has the authority to regulate sand and gravel removal and if otherwise proper, the regulation in question is a lawful mechanism to control any such business started after the effective date of the regulation." Id. Thus, whether a special permit can be temporally limited was not at issue in *Cioffoletti*; rather, *Cioffoletti* was decided in accord with the well settled legal principle that zoning

regulations cannot prohibit preexisting valid nonconforming uses.

In *East Windsor Sportsmen's Club*, the plaintiff submitted an application to amend its existing special permit to allow it to construct a storage shed adjacent to its shooting range. *East Windsor Sportsmen's Club* v. *Planning & Zoning Commission*, supra, 4 C.S.C.R. 658. The local zoning commission granted the application with certain conditions, including a limitation on the hours of the shooting range. Id. On appeal to the Superior Court, the plaintiff claimed, inter alia, that the zoning commission acted illegally by adding a restriction to the existing special permit. Id. The court sustained the appeal on that ground, concluding that there was nothing in the record reflecting that the existing special permit was conditioned on periodic review, that neither § 8-2 nor the local zoning regulations gave the zoning commission "authority to restrict a preexisting use of undisputed legality," and that, even assuming that the plaintiff's application could be construed as requesting an expansion of the use allowed under the special permit, there was no authority enabling the zoning commission to restrict the original permitted use. Id. Nothing in *East Windsor Sportsmen's Club* supports the proposition that, in granting a permit initially, a temporal condition cannot be imposed.

In sum, we conclude that the court incorrectly determined that the special permit granted to Fairfield Commons, once recorded, was valid indefinitely and could not be subject to a temporal condition, such as a condition requiring the completion of development attendant to the permitted use by a date certain. Thus, the court committed error in concluding that the special permit had not expired. Once the special permit became effective in 2009, Fairfield Commons had two years, subject to any additional extensions granted, to complete development on the property. Fairfield Commons failed to complete development or request any extensions of the

special permit approval within that time frame, and, therefore, the special permit expired in 2011. We leave undisturbed the court's conclusion that the commission's decision extending the special permit was improper.

The judgment is reversed only with respect to the trial court's conclusion that the special permit approval granted to Fairfield Commons, LLC, had not expired, and the case is remanded with direction to render judgment sustaining the plaintiff's appeal as to that claim; the judgment is affirmed in all other respects.

In this opinion the other judges concurred.

KACEY LEWIS *v.* FREEDOM OF INFORMATION COMMISSION (AC 42997)

Moll, Alexander and DiPentima, Js.

Syllabus

The plaintiff appealed to this court from the judgment of the trial court dismissing his appeal from the final decision of the defendant Freedom of Information Commission for lack of subject matter jurisdiction. The ground for dismissal was the plaintiff's failure to file his administrative appeal in the Superior Court within forty-five days of the mailing of the defendant's final decision, as required by statute (§ 4-183 (c)). *Held* that the trial court properly dismissed the plaintiff's appeal for lack of subject matter jurisdiction; although a court clerk improperly refused to file the plaintiff's appeal because he did not effect service through a marshal, contrary to the express statutory language of § 4-183, this rejection occurred after the time limitation for filing the appeal had already expired and, thus, even if the clerk had accepted and filed the plaintiff's appeal when the papers arrived, the plaintiff's appeal would have still been untimely.

Submitted on briefs October 7, 2020—officially released February 16, 2021

Procedural History

Appeal from the decision of the defendant dismissing the plaintiff's complaint regarding a records request he submitted to the Department of Correction, brought to the Superior Court in the judicial district of New London, where the matter was transferred to the judicial

district of New Britain; thereafter, the court, *Hon. Henry S. Cohn*, judge trial referee, granted the defendant's motion to dismiss and rendered judgment dismissing the appeal, from which the plaintiff appealed to this court. *Affirmed.*

Kacey Lewis, self-represented, filed a brief as the appellant (plaintiff).

Kathleen K. Ross, commission counsel, and *Colleen M. Murphy*, general counsel, filed a brief for the appellee (defendant).

Opinion

ALEXANDER, J. The self-represented plaintiff, Kacey Lewis, appeals from the judgment of the trial court dismissing his administrative appeal from the final decision of the defendant, the Freedom of Information Commission, for lack of subject matter jurisdiction on the ground that he failed to file his administrative appeal with the Superior Court within the time requirement of General Statutes § 4-183 (c). On appeal, the plaintiff claims that the trial court erred by (1) dismissing his appeal because the clerk of the court, either negligently or intentionally, gave him incorrect instructions regarding the service of the appeal and did not file his appeal in July, 2018, thereby wrongfully making his filing untimely, and (2) denying his application for the issuance of subpoenas by finding that any additional testimony would be irrelevant. We disagree and, accordingly, affirm the judgment of the trial court.

The following facts and procedural history are relevant to our resolution of this appeal. On or about July 12, 2017, the plaintiff, who is incarcerated, submitted a written request to the Department of Correction (department) to review and inspect certain documents. On or about July 21, 2017, the Freedom of Information Administrator for the department acknowledged the plaintiff's request. On July 27, 2017,[1] the plaintiff filed an appeal

[1] The complaint was dated July 25, 2017, and filed on July 27, 2017.

with the defendant alleging that the department had violated the Freedom of Information Act, General Statutes § 1-200 et seq., by failing to promptly provide the requested records. A hearing was held on January 19, 2018, and on May 25, 2018, the defendant mailed to the plaintiff notice of its final decision to dismiss his complaint.[2]

On June 14, 2018, the plaintiff signed his fee waiver application and subsequently mailed the application, an appeal of the defendant's final decision, and a civil summons to the Superior Court in the judicial district of New London. The plaintiff's fee waiver was granted on June 28, 2018. In an undated letter, a temporary assistant clerk at the court informed the plaintiff that his fee waiver had been granted, his civil summons had been signed, and he was responsible for serving the appeal on the defendant using the services of a state marshal. The clerk further instructed the plaintiff that "[o]nce the [s]tate [marshal] has given you the return of service that the defendant has been served, please send all originals [to the court] including the [f]ee [w]aiver so that the case [may] be initiated."

On July 6, 2018, the plaintiff mailed his approved application for fee waiver, civil summons, and notice of appeal (collectively, appeal papers) to a state marshal in Hartford and requested that she serve the appeal papers on the defendant at its Hartford office. On or about July 24, 2018, the appeal papers were returned to the plaintiff with an attached note that the marshal "is unavailable." On July 24, 2018, the plaintiff served the defendant by certified mail. On that same day, the plaintiff mailed his appeal papers to the court along with a signed affidavit attesting that he had served the defendant by certified mail. On or about July 26, 2018, the clerk's office sent the plaintiff a notice by mail indicating that his papers were being returned, and included

[2] The final decision was dated May 23, 2018, and the Notice of Final Decision was dated and mailed on May 25, 2018.

the message that "[a]ffidavit of service is provided by the [marshal]. Please contact the [marshal] [who] served the summons and complaint and return all paper work to court."

On August 24, 2018, the plaintiff sent his appeal papers by certified mail to the court with a note informing the clerk's office that he had served the defendant by certified mail and, therefore, a state marshal was not required to serve the defendant with the appeal papers. On September 10, 2018, the plaintiff received a letter from the clerk's office indicating that his appeal papers again were being returned and informing him that his affidavit constituted insufficient proof of service because "[t]he [c]ourt requires that a 'Green Card' from the post office be submitted to prove that service was made on the [d]efendant." On September 14, 2018, the plaintiff mailed the appeal papers along with the "Green Card" from the post office to the court. On October 10, 2018, the plaintiff's appeal papers were accepted for filing in the court.[3]

On November 26, 2018, the defendant filed a motion to dismiss the appeal, with an accompanying memorandum of law, arguing that the court lacked subject matter jurisdiction over the plaintiff's appeal because he had failed to serve and file his appeal within forty-five days of the mailing of the final decision of the defendant, as required by § 4-183 (c), excluding any proper tolling.[4] On March 11, 2019, the plaintiff filed his objection to

[3] On November 8, 2018, the case was transferred to the judicial district of New Britain.

[4] General Statutes § 4-183 (c) provides in relevant part: "(1) Within forty-five days after mailing of the final decision under section 4-180 or, if there is no mailing, within forty-five days after personal delivery of the final decision under said section . . . a person appealing as provided in this section shall serve a copy of the appeal on the agency that rendered the final decision at its office or at the office of the Attorney General in Hartford and file the appeal with the clerk of the superior court for the judicial district of New Britain or for the judicial district wherein the person appealing resides . . . . Within that time, the person appealing shall also serve a copy of the appeal on each party listed in the final decision at the address shown in the decision, provided failure to make such service within forty-five days

the defendant's motion and an accompanying memorandum, arguing, inter alia, that his service was proper and that the filing of his appeal was timely "notwithstanding the clerk's office at New London JD returning his appeal unfiled multiple times for specious reasons." On April 3, 2019, the plaintiff applied for an issuance of subpoenas for the clerk and the marshal seeking their testimony and any documents concerning the filing of his appeal. The defendant filed a reply to the plaintiff's objection to its motion to dismiss on April 22, 2019, in which it conceded that it had been timely served pursuant to § 4-183 (c) and (m),[5] but maintained the argument that the plaintiff had failed to file his administrative appeal timely with the court because the appeal was filed on October 10, 2018, beyond the forty-five day limitation of § 4-183 (c).

A hearing was held on May 1, 2019, and, on May 6, 2019, the court issued its memorandum of decision dismissing the plaintiff's appeal for lack of subject matter jurisdiction. The court determined that the plaintiff's appeal had not been filed until October 10, 2018, beyond the forty-five day statutory time period of § 4-183 (c). It also denied the plaintiff's application for the issuance of subpoenas. This appeal followed.

The plaintiff contends that his appeal was timely filed on July 24, 2018, and that, but for impropriety by the court clerk, he met the time limitation under § 4-183 (c) for filing an administrative appeal. The defendant argues

on parties other than the agency that rendered the final decision shall not deprive the court of jurisdiction over the appeal. Service of the appeal shall be made by United States mail, certified or registered, postage prepaid, return receipt requested, without the use of a state marshal or other officer, or by personal service by a proper officer or indifferent person making service in the same manner as complaints are served in ordinary civil actions. If service of the appeal is made by mail, service shall be effective upon deposit of the appeal in the mail."

[5] General Statutes § 4-183 (m) provides in relevant part: "The filing of the application for the waiver shall toll the time limits for the filing of an appeal until such time as a judgment on such application is rendered."

that the plaintiff's appeal was not filed until October 10, 2018, outside the time limitation of § 4-183 (c). We conclude that the plaintiff's appeal was not filed within the time limitation of § 4-183 (c) and, accordingly, affirm the judgment of the trial court.

"We begin our discussion by setting forth the well settled standard of review that governs an appeal from a judgment granting a motion to dismiss on the ground of a lack of subject matter jurisdiction. 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 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. . . . [B]ecause [a] determination regarding a trial court's subject matter jurisdiction is a question of law, our review is plenary." (Emphasis omitted; internal quotation marks omitted.) *Godbout* v. *Attanasio*, 199 Conn. App. 88, 95, 234 A.3d 1031 (2020). "[F]ailure to meet the time limitation [of § 4-183 (c) is] a subject matter jurisdictional defect." *Glastonbury Volunteer Ambulance Assn., Inc.* v. *Freedom of Information Commission*, 227 Conn. 848, 854, 633 A.2d 305 (1993).

It is well established that "[t]here is no absolute right of appeal to the courts from a decision of an administrative agency. . . . The [Uniform Administrative Procedures Act, General Statutes § 4-166 et seq.] grants the Superior Court jurisdiction over appeals of agency decisions only in certain limited and well delineated circumstances. . . . It is a familiar principle that a court which exercises a limited and statutory jurisdiction is without jurisdiction to act unless it does so under the precise circumstances and in the manner particularly prescribed by the enabling legislation." (Citation omitted; internal quotation marks omitted.) *Pine* v. *Dept. of Public Health*, 100 Conn. App. 175, 180, 917 A.2d 590 (2007).

Appeals to the Superior Court from a final decision of an agency are governed by § 4-183. In *Glastonbury Volunteer Ambulance Assn., Inc.* v. *Freedom of Information Commission*, supra, 227 Conn. 852–53, our Supreme Court articulated that § 4-183 (c) requires that the service *and* the filing of such an appeal must occur within the forty-five day statutory time period of § 4-183 (c). The court concluded that a failure to meet either of these requirements within the forty-five day time limitation constitutes a subject matter jurisdictional defect. Id., 854.

The record reflects that the defendant issued its Notice of Final Decision and mailed the same to the plaintiff on May 25, 2018. Pursuant to § 4-183 (c), the plaintiff was then required to file his appeal within forty-five days after the notice was mailed. However, § 4-183 (m) provides that "[t]he filing of the application for the [fee] waiver shall toll the time limits for the filing of an appeal until such time as a judgment on such application is rendered." In the present case, the plaintiff applied for a fee waiver on June 14, 2018, which was granted on June 28, 2018. The parties agreed that the plaintiff had until July 24, 2018, to complete the service and filing of the appeal.[6]

The defendant does not challenge that the plaintiff's service on it by certified mail on July 24, 2018, consti-

[6] The record reflects that the plaintiff's application for a waiver of fees was file-stamped on June 18, 2018. The trial court acknowledged this date and calculated the plaintiff's filing deadline as July 9, 2018. The court noted that "[t]he parties do not dispute that under . . . § 4-183 (c) and (m) the appeal had to be filed in court by July 24, 2018." The court further stated that its calculation yielding a July 9, 2018 deadline "is not necessarily determinative as the appeal was not filed until October 10, 2018."

For purposes of this appeal, even if we analyze the plaintiff's claim that the deadline for service and filing of his appeal in the Superior Court was July 24, 2018, we still affirm the judgment of the trial court dismissing the plaintiff's appeal because the plaintiff did not *file* his appeal on or before that date.

tuted timely service.[7] The plaintiff, however, did not file his appeal properly by that date. In an affidavit submitted to the trial court, the plaintiff indicated that on July 24, 2018, he mailed his appeal papers to the Superior Court by standard mail. Although *service* by certified mail is effective upon deposit in the mail under § 4-183 (c), there is no similar provision concerning the *filing* of an appeal thereunder. Proper filing is effective when received by the clerk's office.[8] The record reflects that the plaintiff's filing was placed in standard mail on July 24, 2018, and returned to the plaintiff on July 26, 2018. Although the record does not indicate the exact date the clerk's office received the plaintiff's filing, given the plaintiff's affidavit that he did not place his filing into the standard mail until July 24, 2018, it would not have been received by the clerk's office until July 25, at the earliest. We agree, therefore, with the trial court's finding that the appeal was filed untimely and required dismissal.

The plaintiff contends that any untimeliness of his appeal was caused by misinformation given to him by the clerk and the clerk's misreading of the applicable statutes, and that his appeal was timely filed on July 24, 2018, and should proceed. We disagree. In *Godaire* v. *Freedom of Information Commission*, 141 Conn. App. 716, 718, 62 A.3d 598 (2013), the plaintiff claimed that his administrative appeal was served late because of misinformation he had received from a court clerk

[7] General Statutes § 4-183 (c) provides in relevant part: "Service of the appeal shall be made by United States mail, certified or registered, postage prepaid, return receipt requested, without the use of a state marshal or other officer . . . . If service of the appeal is made by mail, service shall be effective upon deposit of the appeal in the mail." The plaintiff's service on the defendant was, therefore, effective on July 24, 2018.

[8] See *Glastonbury Volunteer Ambulance Assn., Inc.* v. *Freedom of Information Commission*, supra, 227 Conn. 853 (reviewing legislative history of § 4-183 (c) and determining that "[t]he commentary to . . . the proposal makes clear not only that service must be made within forty-five days, but that [t]he appeal must also be filed in the court within forty-five days" (internal quotation marks omitted)).

at the Superior Court in the judicial district of New London. The defendants moved to dismiss for lack of subject matter jurisdiction and the trial court dismissed the appeal. Id., 717–18.

This court affirmed the judgment of dismissal stating that, "[a]lthough the plaintiff's admittedly late service of his administrative appeal is claimed to have resulted frommisinformation he had received from a court clerk in the judicial district of New London as to how he was required to serve his appeal, we conclude that his late appeal cannot be saved from dismissal under the doctrine of equitable tolling because the forty-five day service requirement established by § 4-183 (c) is jurisdictional in nature, and thus cannot be waived or circumvented for any reason." (Footnote omitted.) Id., 718–19. The misinformation provided by the clerk to the plaintiff was not dispositive because the plaintiff always was within his abilities to review the statute and serve the commission by certified mail within the statutory time frame. He was not required to rely on the information provided by the clerk. Because the plaintiff relied on the information provided by the clerk and ultimately served and filed his appeal late, the judgment of dismissal was affirmed.

In the present case, the plaintiff was initially informed by the clerk of the court that service had to be completed by a marshal. This information was incorrect. Notwithstanding this misinformation, he timely and properly served the defendant by certified mail in accordance with § 4-183 (c). On July 26, 2018, the clerk, contrary to the express statutory language of § 4-183, refused to file the appeal because the plaintiff did not effect service through a marshal. The rejection, however, occurred *after* the time limitation for filing the plaintiff's appeal had already expired. Thus, even if we were to agree with the plaintiff that the clerk should have accepted and filed his appeal when the papers initially arrived, these documents did not arrive at the court within the

statutory time requirement for filing, on or before July 24, 2018. We conclude, therefore, that the trial court properly dismissed this action for lack of subject matter jurisdiction on the ground that the plaintiff failed to comply with the forty-five day time limit for filing.[9]

The judgment is affirmed.

In this opinion the other judges concurred.

KYLE MCCALL *v.* GINA SOPNESKI ET AL.
(AC 42498)

Lavine, Prescott and Elgo, Js.*

Syllabus

The plaintiff sought to recover damages from the defendants, S, and R. Co., an automobile dealership, for injuries he sustained when he was struck by a motor vehicle driven by S and owned by R Co., while he was riding his motorcycle. R Co. provided the vehicle to S to use while her own vehicle was being repaired at R Co. R Co. and S entered into an agreement regarding the vehicle, entitled "Subaru Rental Agreement," that provided that the agreement was for a "temporary substitute vehicle." The section of the agreement used for setting forth rental rates and charges was blank. S provided R Co. with proof of a valid automobile insurance policy at the time she signed the agreement. The plaintiff alleged that R Co. was vicariously liable for damages resulting from the accident pursuant to statute (§ 14-154a), because it had entered into a rental agreement with S. R Co. moved for summary judgment, asserting that the motor vehicle was loaned to S and that it was immune from liability pursuant to statute (§ 14-60), because § 14-60 grants immunity to motor vehicle dealers from liability caused by a loaned automobile, so long

[9] We acknowledge that our rationale slightly differs from that of the trial court. Nevertheless, "[i]t is axiomatic that [w]e may affirm a proper result of the trial court for a different reason." (Internal quotation marks omitted.) *Rafalko* v. *University of New Haven*, 129 Conn. App. 44, 51 n.3, 19 A.3d 215 (2011).

Because we conclude that the plaintiff's appeal was untimely filed, thereby depriving the trial court of subject matter jurisdiction, we need not address whether the trial court improperly denied the plaintiff's application for the issuance of subpoenas.

* The listing of judges reflects their seniority status on this court as of the date of oral argument.

as the customer has furnished the dealer with proof of liability insurance. The trial court rendered summary judgment for R Co., concluding that R Co. had loaned the vehicle to S and that S had provided R Co. with proof of insurance. The plaintiff appealed to this court, claiming that R Co. was not entitled to the immunity provided by § 14-60 because the motor vehicle did not have a dealer plate and there was a genuine issue of material fact as to whether the motor vehicle had been "loaned" to S. *Held* that the trial court properly concluded that there was no genuine issue of material fact as to whether R Co. was entitled to the immunity provided by § 14-60: the plaintiff's construction of § 14-60, that it applies only to the lending of motor vehicles that have dealer plates affixed, was untenable in light of the plain language of the statute encompassing situations in which a dealer lends either a dealer vehicle, a dealer plate, or a dealer vehicle containing a dealer plate and, thus, the fact that the motor vehicle operated by S had a vanity plate rather than a dealer plate did not operate to preclude the application of § 14-60; moreover, regardless of the label on the agreement between R Co. and S, the essence of the transaction was a loan, as the motor vehicle was given to S for temporary use and S was not charged a fee for the use of the motor vehicle.

Argued November 30, 2020—officially released February 16, 2021

Procedural History

Action to recover damages for personal injuries sustained as a result of the named defendant's alleged negligence, brought to the Superior Court in the judicial district of New London where the court *S. A. Murphy, J.*, granted the motion for summary judgment filed by the defendant Reynolds Garage & Marine, Inc., and rendered judgment thereon, from which the plaintiff appealed to this court. *Affirmed.*

John F. Wynne, Jr., with whom, on the brief, was *Joseph N. Schneiderman*, for the appellant (plaintiff).

Edward N. Storck III, with whom, on the brief, was *Christopher J. Lynch*, for the appellee (defendant Reynolds Garage & Marine, Inc.).

Opinion

ELGO, J. The plaintiff, Kyle McCall, was injured when the motorcycle he was operating was struck by a vehicle

operated by the defendant Gina Sopneski and owned by the defendant Reynolds Garage & Marine, Inc., known also as Reynolds Subaru (Reynolds).[1] The plaintiff thereafter served a two count complaint on the defendants, alleging in the first count negligence against Sopneski and in the second count vicarious liability against Reynolds pursuant to General Statutes § 14-154a.[2] The trial court subsequently granted summary judgment in favor of Reynolds on the second count of the complaint,[3] concluding as a matter of law that no genuine issue of material fact existed as to whether Reynolds was immune from liability for Sopneski's actions. On appeal, the plaintiff challenges the propriety of that determination. We affirm the judgment of the trial court.

The following undisputed facts and procedural history are relevant to the resolution of this appeal. On May 18, 2017, the plaintiff was operating a motorcycle on Route 154 in Deep River. At the same time, Sopneski was operating a 2014 Subaru motor vehicle (Subaru) on Route 154. When she attempted to make a left-hand turn onto Southworth Street, the Subaru collided with the plaintiff's motorcycle, causing injury to the plaintiff.

At the time of that accident, the Subaru was owned by Reynolds and had been provided to Sopneski on a temporary basis while her own motor vehicle was being repaired. It is undisputed that, prior to obtaining temporary use of the Subaru, Sopneski furnished proof of her

[1] In this opinion, we refer to Sopneski and Reynolds individually by name and collectively as the defendants.

[2] General Statutes § 14-154a (a) provides: "Any person renting or leasing to another any motor vehicle owned by him shall be liable for any damage to any person or property caused by the operation of such motor vehicle while so rented or leased, to the same extent as the operator would have been liable if he had also been the owner."

[3] In disposing of the plaintiff's complaint as to Reynolds, the court's judgment constitutes an appealable final judgment. See Practice Book § 61-3 ("[a] judgment disposing of only a part of a complaint . . . is a final judgment if that judgment disposes of all causes of action in that complaint . . . brought . . . against a particular party or parties").

automobile insurance to Reynolds and entered into a written agreement with Reynolds regarding the use of the Subaru (agreement).

Following the accident, the plaintiff commenced the present action against the defendants. His complaint contained two counts. Count one alleged negligence on the part of Sopneski.[4] In count two, the plaintiff alleged that Reynolds was vicariously liable for the plaintiff's injuries pursuant to § 14-154a because the defendants had entered into a rental agreement regarding Sopneski's use of the Subaru. In response, Reynolds filed an answer and two special defenses, in which it alleged (1) that Reynolds was immune from liability pursuant to General Statutes § 14-60 "because the [Subaru] . . . was loaned to [Sopneski] for her use while her own vehicle was being repaired" and (2) there was contributory negligence on the part of the plaintiff.

On August 6, 2018, Reynolds moved for summary judgment on count two of the complaint on the ground that it was entitled to judgment as a matter of law because it was immune from liability pursuant to § 14-60, which grants immunity to motor vehicle dealers from liability for any damage caused by a loaned automobile, so long as the customer has furnished the dealer with proof of liability insurance.[5] On January 4, 2019,

[4] The plaintiff alleged that Sopneski was negligent because, inter alia, she failed to (1) keep a proper lookout, (2) give the plaintiff a timely warning by sounding her horn, (3) apply her brakes in time to avoid the collision, (4) operate her vehicle under proper control, and (5) turn the vehicle in time to avoid the collision.

[5] General Statutes § 14-60 (a) provides in relevant part: "No dealer or repairer may loan a motor vehicle or number plate or both to any person except for (1) the purpose of demonstration of a motor vehicle owned by such dealer, (2) when a motor vehicle owned by or lawfully in the custody of such person is undergoing repairs by such dealer or repairer, or (3) when such person has purchased a motor vehicle from such dealer, the registration of which by him is pending, and in any case for not more than thirty days in any year, provided such person shall furnish proof to the dealer or repairer that he has liability and property damage insurance which will cover any damage to any person or property caused by the operation of the loaned

the court granted the defendant's motion, concluding that "[t]here is no genuine issue of material fact as to whether the transaction between Sopneski and Reynolds falls within the purview [of] § 14-60." In so doing, the court emphasized that, for two reasons, it construed the agreement between the defendants as a loan of the vehicle, rather than as a rental of it. First, the court noted the undisputed fact that the agreement provided for the use of a "temporary substitute vehicle" while Sopneski's own vehicle was being repaired. Second, the court relied on the undisputed fact that Sopneski was not charged for her temporary use of the substitute vehicle. Accordingly, the court concluded that "[t]he defendant ha[d] met its burden in clearly demonstrating that the [Subaru] was loaned to Sopneski by Reynolds while Sopneski's own vehicle was in for repairs . . . and that Sopneski provided Reynolds with proof of insurance." The court thus rendered judgment in favor of Reynolds on the second count of the complaint,[6] and this appeal followed.[7]

motor vehicle, motor vehicle on which the loaned number plate is displayed or both. Such person's insurance shall be the prime coverage. If the person to whom the dealer or repairer loaned the motor vehicle or the number plate did not, at the time of such loan, have in force any such liability and property damage insurance, such person and such dealer or repairer shall be jointly liable for any damage to any person or property caused by the operation of the loaned motor vehicle or a motor vehicle on which the loaned number plate is displayed. . . ."

[6] The judgment file indicates that the court rendered summary judgment "in favor of [Reynolds] only." In addition, we note that, in *Rodriguez* v. *Testa*, 296 Conn. 1, 21, 993 A.2d 955 (2010), our Supreme Court determined that 49 U.S.C. § 30106, known also as the Graves Amendment, preempts actions under § 14-154a because "the state statute does not impose liability on lessors for their failure to meet the type of insurance like requirements contemplated under the savings clause." In granting the defendant's motion for summary judgment, the court declined to address the preemption issue and instead, rested its decision on the applicability of § 14-60. In light of our resolution of this appeal, we likewise do not consider that alternative contention.

[7] During oral argument, the plaintiff orally moved for this court not to consider portions of Reynolds' appendix (letters between the plaintiff's counsel and Reynolds' commercial liability carrier) because they were not

On appeal, the plaintiff claims that the court improperly rendered summary judgment because a genuine issue of material fact exists as to whether Reynolds is entitled to the immunity provided by § 14-60 (a). We disagree.

We begin by setting forth the relevant standard of review. "The standards governing our review of a trial court's decision to grant a motion for summary judgment are well established. Practice Book [§ 17-49] provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. . . . In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party. . . . The party seeking summary judgment has the burden of showing the absence of any genuine issue [of] material facts which, under applicable principles of substantive law, entitle him to a judgment as a matter of law . . . and the party opposing such a motion must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact. . . . A material fact . . . [is] a fact which will make a difference in the result of the case." (Internal quotation marks omitted.) *Romprey* v. *Safeco Ins. Co. of America*, 310 Conn. 304, 312–13, 77 A.3d 726 (2013). "When a court renders summary judgment as a matter of law, our review is plenary, and we must decide whether its conclusions are legally and logically correct and find support in the facts that appear in the record." (Internal quotation marks omitted.) *Armshaw* v. *Greenwich Hospital*, 134 Conn. App. 134, 137, 38 A.3d 188 (2012).

part of the record of the proceedings in the trial court. Because Reynolds' counsel agreed with the plaintiff's oral motion, we granted the plaintiff's motion and decline to consider those portions of Reynolds' appendix and any provisions of Reynolds' brief that reference this material.

Additionally, because this appeal involves questions of statutory construction, we set forth our well established principles of statutory construction. "When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . Statutory interpretation is a question of law, over which our review is plenary." (Citation omitted; internal quotation marks omitted.) *Rutter* v. *Janis*, 180 Conn. App. 1, 7–8, 182 A.3d 85 (2018), aff'd, 334 Conn. 722, 224 A.3d 525 (2020).

In granting Reynolds' motion for summary judgment, the court concluded that there was no genuine issue of material fact that Reynolds had loaned the Subaru to Sopneski on a temporary basis while her own motor vehicle was being repaired, in accordance with § 14-60 (a).[8] The plain language of that statute permits dealers to "loan a motor vehicle or number plate or both . . . when a motor vehicle owned by or lawfully in the custody of such person is undergoing repairs . . . provided such person shall furnish proof to the dealer or repairer that he has liability and property damage insurance which will cover any damage to any person or property caused by the operation of the loaned motor vehicle, motor vehicle on which the loaned number plate is displayed or both. Such person's insurance shall

[8] On appeal, the plaintiff concedes that Reynolds is a dealer, as defined by General Statutes § 14-1 (26).

be the prime coverage. . . .'' General Statutes § 14-60 (a). In the present case, it is undisputed that the Subaru had been provided to Sopneski on a temporary basis while her own motor vehicle was being repaired by Reynolds. It also is undisputed that Reynolds verified that Sopneski had a valid automobile insurance policy prior to lending the Subaru to her.[9]

Our Supreme Court's decision in *Cook* v. *Collins Chevrolet, Inc.*, 199 Conn. 245, 246, 506 A.2d 1035 (1986), is instructive in resolving the plaintiff's claim. The issue in *Cook* was ''the extent of the statutory liability of an automobile dealer and its insurer [under § 14-60] when a motor vehicle bearing a loaned dealer's license plate becomes involved in an accident.'' Id. In that case, the defendant dealer lent a dealer plate to the purchaser of a pickup truck while his registration was pending. Id., 247. Significantly, the dealer confirmed that the purchaser ''had liability insurance covering personal injury and property damage'' prior to so doing. Id. The purchaser thereafter was involved in a motor vehicle accident with the plaintiff, who brought an action against the purchaser and the dealer. Id. The trial court subsequently granted the dealer's motion for summary judgment on the ground that it had fully complied with the requirements of § 14-60 when lending the dealer plates to the purchaser. Id., 248–49.

On appeal, our Supreme Court examined ''the language, history, and applicability of § 14-60'' and observed

[9] In moving for summary judgment, Reynolds offered the affidavit of Kathryn Wayland, its chief executive officer, who stated that it was the ''routine practice and procedure'' of Reynolds to verify that a customer had valid automobile insurance policy prior to loaning a dealer vehicle. Wayland also confirmed that, in accordance with that practice, Reynolds had made a photocopy of Sopneski's insurance card, which it kept on file. In support of its motion for summary judgment, Reynolds also attached Sopneski's insurance card as an exhibit. Sopneski's automobile insurance had an effective date of coverage between June 24, 2016, and June 24, 2017, and thus was valid at the time of the accident on May 28, 2017.

that a dealer's failure to comply with that statute by loaning a motor vehicle or dealer plate to an uninsured person "would make the dealer jointly liable" with that person. Id., 249–50. The court noted the "legislative intent to impose liability on a dealer *only* when [the dealer] violates the mandate of § 14-60 and lends dealer plates to a purchaser who is not insured." (Emphasis in original.) Id., 250 n.3. Because the dealer had confirmed that the purchaser was insured prior to lending him the dealer plates in question and "did not violate § 14-60 in any other way," the Supreme Court concluded that § 14-60 "on its face affords the plaintiff no remedy [against the dealer] in this case." Id., 250. Accordingly, the court held that the dealer "was entitled to summary judgment because of its full compliance with the conditions of § 14-60." Id., 252.

This court similarly has observed that § 14-60 (a) "reflects the legislative effort to protect the public from reckless driving of loaned motor vehicles. . . . By giving an injured person the statutory right to recover from the borrower's insurer when the borrower is at fault, § 14-60 (a) provides an incentive to those who test drive motor vehicles to drive with the same care that they would exercise if they were driving a motor vehicle they owned. . . . A dealer that has complied with the requirements set forth in § 14-60 *is not liable* for damages caused by the insured operator of the motor vehicle while that vehicle is displaying the loaned dealer number plate." (Citations omitted; emphasis added; internal quotation marks omitted.) *Rutter* v. *Janis*, supra, 180 Conn. App. 8–9. Bound by that precedent, the trial court concluded that the present case falls squarely within the ambit of § 14-60 (a).

The plaintiff nevertheless contends that Reynolds is not entitled to immunity under § 14-60 (a) because Reynolds provided Sopneski a motor vehicle, but not a dealer plate. He notes that Kathryn Wayland, Reynolds' chief executive officer, acknowledged in her deposition

that the Subaru had a vanity license plate, not a dealer plate. Because § 14-60 is titled "Use of Dealers' and Repairers' plates," the plaintiff claims that the immunity afforded by that statute applies only to the lending of motor vehicles that have a dealer plate affixed. We disagree.

It is well established that, "[a]lthough the title of a statute provides some evidence of its meaning, the title is not determinative of its meaning. . . . [B]oldface catchlines in the titles of statutes are intended to be informal brief descriptions of the contents of the [statutory] sections. . . . These boldface descriptions should not be read or considered as statements of legislative intent since their sole purpose is to provide users with a brief description of the contents of the sections." (Internal quotation marks omitted.) *Coyle* v. *Commissioner of Revenue Services*, 142 Conn. App. 198, 203, 69 A.3d 310, appeal dismissed, 312 Conn. 282, 91 A.3d 902 (2014). Moreover, the plain text of § 14-60 (a) provides that the statute applies to dealers who "loan a motor vehicle or number plate *or both*. . . ." (Emphasis added.) By its plain language, the statute thus encompasses situations in which a dealer lends either (1) a dealer vehicle, (2) a dealer plate, or (3) a dealer vehicle containing a dealer plate. The plaintiff's construction of § 14-60, therefore, is untenable.

The plaintiff also argues that a genuine issue of material fact exists as to whether Reynolds had "loaned" the Subaru to Sopneski, as that term is used in § 14-60 (a). Section 14-60 admittedly does not define the term "loan." When a statute does not define a term, "we look to the common understanding of the term as expressed in the dictionary." (Internal quotation marks omitted.) *Gomes* v. *Massachusetts Bay Ins. Co.*, 87 Conn. App. 416, 432, 866 A.2d 704 (2005), cert. denied, 273 Conn. 925, 871 A.2d 1031 (2005); see also General Statutes § 1-1 (a) ("[i]n the construction of the statutes, words and

phrases shall be construed according to the commonly approved usage of the language''). Black's Law Dictionary (11th Ed. 2019), p. 1122, provides several definitions of the term "loan," including, "1. An act of lending; a grant of something for temporary use,'' and "2. A thing lent for the borrower's temporary use. . . .'' It also defines the term "lease" as "[a] contract by which a rightful possessor of real property conveys the right to use and occupy the property in exchange for consideration, [usually] rent.'' Black's Law Dictionary, supra, p. 1066. It is undisputed that Reynolds granted Sopneski the temporary use of the Subaru for no fee on the date of the accident. Furthermore, as with any issue of statutory interpretation, we must construe the term "loan" in light of the context in which it is used. Section 14-60 (a) expressly permits a motor vehicle dealer to "loan a motor vehicle . . . when a motor vehicle owned by . . . such person is undergoing repairs by such dealer,'' which indisputably was the case here.

Because the agreement between the defendants is entitled "Subaru Rental Agreement''[10] and some variation of the word "rent" appears in the agreement twenty-

[10] We note that in *Saglimbene* v. *Baghdady*, Superior Court, judicial district of Fairfield, Docket No. CV-040409434-S (September 30, 2005) (40 Conn. L. Rptr. 63), the Superior Court rejected a similar argument as the one advanced by the plaintiff in this case. In *Saglimbene*, the plaintiff was injured in a motor vehicle accident with Joseph G. Baghdady, who was operating a motor vehicle on loan from Milford Gateway, Inc. (Gateway), an automobile dealership that was performing repairs on Baghdady's own vehicle. Id., 64. Gateway moved for summary judgment on the ground that § 14-60 (a) provides immunity from liability for dealers and repairers who loan a car to an insured driver while the driver's car is under repair. Id. The plaintiff countered, inter alia, that there were genuine issues of material fact as to whether Baghdady rented or loaned the vehicle from Gateway and thus claimed that the transaction fell under the purview of § 14-154a. Id. The court rejected that argument, stating: "Although the agreement [signed by Baghdady] is called a rental agreement, the affidavit of [the dealer's office manager indicated] that nothing was paid for the use of the car." Id., 65. As a result, the court concluded that there was no genuine issue that the car was anything other than a loaner vehicle to be used while Baghdady's car was being repaired, and thus fell within the protections of § 14-60 (a). Id.

six times,[11] the plaintiff argues that it raises a genuine issue of material fact regarding whether it more properly is characterized as a rental, rather than a loan. The undisputed facts surrounding Sopneski's use of the Subaru and the materials submitted in support of the motion for summary judgment indicate otherwise. In her affidavit, Wayland contended that the Subaru was loaned, and not rented, to Sopneski while her own motor vehicle was undergoing repairs. An examination of the four corners of the agreement supports that averment. Although the title of the agreement is "Subaru Rental Agreement," the agreement plainly states that the contract is "FOR A TEMPORARY SUBSTITUTE VEHICLE." The agreement also provides that "Subaru vehicles are available only to customers who leave their vehicles with [Reynolds] for service or repair." In addition, Wayland attested in her affidavit that Sopneski paid nothing for her use of the Subaru, which was confirmed by the fact that the section of the agreement titled "Rental Rates and Charges" was left blank. See *Barnard* v. *Barnard*, 214 Conn. 99, 109, 570 A.2d 690 (1990) ("[a] contract is to be construed as a whole and all relevant provisions will be considered together" (internal quotation marks omitted)).

In the present case, it is undisputed that Reynolds provided Sopneski with the temporary use of a dealer vehicle while her own motor vehicle was undergoing repairs by Reynolds, a scenario expressly contemplated by § 14-60 (a). Prior to lending her that vehicle, Reynolds secured proof that Sopneski had a valid automobile insurance policy and had her sign the agreement,

[11] A review of the Subaru agreement provided in the plaintiff's appendix reveals that several portions of the agreement are faded and, as a result, illegible. Because of this, we are unable to verify the accuracy of the plaintiff's assertion that the term "rental" appears more than twenty times in the contract. However, as discussed subsequently, the temporary nature of the transaction reflects that the Subaru agreement operates as a loan, not a rental. We view the use of the term "rental" throughout the Subaru agreement as merely poor drafting that does not raise a genuine issue of material fact.

which provided for the use of "a temporary substitute vehicle" for "customers who leave their vehicles with [Reynolds] for service or repair." Irrespective of its label, the transaction, in essence, is a loan. In light of the foregoing, we agree with the trial court that no genuine issue of material fact exists as to whether the present case falls within the ambit of § 14-60. Accordingly, the trial court properly rendered summary judgment in favor of Reynolds on count two of the complaint.

The judgment is affirmed.

In this opinion the other judges concurred.