INTERNATIONAL INVESTORS *v.* TOWN PLAN AND ZONING COMMISSION OF THE TOWN OF FAIRFIELD ET AL.
(SC 20579)

Robinson, C. J., and McDonald, D'Auria, Mullins, Kahn and Ecker, Js.

Syllabus

The plaintiff appealed to the trial court from the decision of the defendant plan and zoning commission, which granted extensions of the approvals of a special permit and coastal site plan review to the defendant F Co.

in connection with F Co.'s proposed construction of a retail building on its property, which abuts the plaintiff's property. The commission had approved F Co.'s application for a special permit and site plan review in 2006, and the special permit became effective in April, 2009. Under the applicable zoning regulations in effect in April, 2009, approval of special permits was conditioned on the completion of the proposed use within two years of the date of approval, subject to up to five years of extensions, and failure to complete the proposed use by the deadline would void the approval. The statute (§ 8-3 (i)) governing F Co.'s site plan in April, 2009, required work to be completed within five years of the approval of the site plan, subject to up to ten years of extensions, and failure to complete the proposed work by the deadline would result in the automatic expiration of the approval of the site plan. In February, 2011, the commission repealed the zoning regulation that prescribed the two year time limit for completing the proposed use authorized by a special permit and amended another regulation to require the commission to "proceed in accordance with the requirements of the . . . General Statutes" for applications that require a public hearing, including special permit applications. F Co. thereafter obtained confirmation from the commission that, pursuant to the 2011 amendment to the zoning regulations and § 8-3 (i), its special permit and site plan approvals would expire in April, 2014. In May, 2011, the legislature amended § 8-3 (m) to extend the time limitation for which site plans remain valid to nine years, which extended the deadline for the completion of work under F Co.'s site plan to April, 2018. In March, 2018, F Co.'s property remained undeveloped, and the commission granted F Co.'s request for a five year extension, to April, 2023, to complete work in connection with F Co.'s site plan and special permit. The trial court sustained the plaintiff's appeal from that extension insofar as the plaintiff challenged the commission's authority to extend the expiration date of the special permit to April, 2023. The trial court further concluded, however, that its decision to uphold the plaintiff's challenge to the extension of the expiration date of 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 temporally limited. Accordingly, the trial court declined to conclude that the permit had expired or was otherwise invalid. The plaintiff then appealed to the Appellate Court, which concluded that the trial court had incorrectly determined that the special permit was valid indefinitely and could not be subject to a temporal limitation. The Appellate Court further concluded that, once the special permit became effective in April, 2009, F Co. had two years, subject to any granting of extensions, to complete its development of the property and that, because F Co. failed to complete its development of the property or to request any extensions within that two year period, F Co.'s special permit expired in April, 2011. The Appellate Court thus reversed the trial court's judgment in part and remanded the case with direction to render judgment

sustaining the plaintiff's appeal as to the plaintiff's claim that the special permit had expired in April, 2011. On the granting of certification, F Co. appealed to this court, claiming that the Appellate Court had incorrectly concluded that the commission was authorized by statute (§ 8-2 (a)) to condition the approval of a special permit on the completion of development within a specified time period and that the special permit issued to F Co. expired in April, 2011, two years after its April, 2009 effective date, because construction had not been completed by that deadline. *Held* that the Appellate Court incorrectly concluded that F Co.'s special permit expired in April, 2011, and, accordingly, this court reversed the Appellate Court's judgment, remanded the case, and directed that the trial court deny the plaintiff's appeal: a zoning agency has the authority under § 8-2 (a) to adopt a regulation pursuant to which a special permit will expire if construction is not completed within a specified period of time, but, if a zoning agency exercises such authority, the time limitation imposed cannot conflict with the time limitation prescribed in § 8-3 (i) and (m); moreover, in light of the statutory amendments to § 8-3 extending the time limits for site plans, the statutory period governing the completion of development in connection with F Co.'s site plan had not yet expired when F Co. requested an extension of time in 2018, and, therefore, F Co.'s special permit could not have expired on the basis of its failure to complete its work within that time; accordingly, the commission properly granted F Co.'s request for an extension of time from April, 2018, to April, 2023.

Argued December 13, 2021—officially released July 19, 2022

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 the Appellate Court, *Prescott*, *Elgo* and *Moll*, *Js.*, which reversed in part the trial court's judgment and remanded the case to that court with direction to render judgment sustaining the plaintiff's appeal with respect to its claim that the special permit approval granted to the defendant Fairfield Commons, LLC, expired, and the defendant Fairfield Commons, LLC, on the granting of certification, appealed to this court. *Reversed*; *judgment directed.*

Timothy S. Hollister, with whom were *Andrea L. Gomes* and *John F. Fallon*, for the appellant (defendant Fairfield Commons, LLC).

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

Pascal F. Naples, *Joseph P. Williams* and *Joette Katz* filed a brief for the National Association of Home Builders as amicus curiae.

John P. Casey and *Evan J. Seeman* filed a brief for the Connecticut Association of Realtors, Inc., as amicus curiae.

Amy E. Souchuns filed a brief for the Home Builders & Remodelers Association of Connecticut, Inc., as amicus curiae.

Opinion

D'AURIA, J. This certified appeal concerns whether a local zoning authority may, by regulation, condition the continuing validity of a special permit[1] on completing development in connection with the permitted use within a specified period of time. The defendant Fairfield Commons, LLC, appeals from the judgment of the Appellate Court, which (1) affirmed the trial court's judgment insofar as the trial court concluded that the named defendant, the Town Plan and Zoning Commission of the Town of Fairfield (commission), improperly granted Fairfield Commons' request for an extension of its special permit deadline to complete development, and (2) reversed the judgment insofar as the trial court concluded that the special permit could not be subject to a temporal limitation as a matter of law. See *International Investors* v. *Town Plan & Zoning Commission*,

[1] General Statutes § 8-2 (a) provides in relevant part that zoning regulations "may provide that certain classes or kinds of buildings, structures or uses of land are permitted only after obtaining a special permit . . . ."

202 Conn. App. 582, 606–607, 246 A.3d 493 (2021). With regard to the latter determination, the Appellate Court concluded that the commission had authority to adopt a regulation prescribing a temporal condition for special permits; see id., 599; and that a temporal condition does not violate the tenet that special permits run with the land. See id., 606. We agree with those conclusions subject to an important—and, in this case, determinative—limitation that the Appellate Court did not recognize: such a special permit regulation may not prescribe a shorter time limitation for completing development than the statutory period prescribed for completion of development in connection with an accompanying site plan under General Statutes § 8-3 (i) and (m). Because the statutory period governing completion of development in connection with Fairfield Commons' coastal area management site plan (site plan)[2] had not expired, Fairfield Commons' special permit could not have expired for failure to satisfy that condition by force of a municipal regulation. We therefore reverse the Appellate Court's judgment.

The record reflects the following undisputed facts, either reflected in the trial court's memorandum of decision or otherwise reflected in the record. Fairfield Commons is the owner of a 3.6 acre undeveloped parcel of land located in a design commercial district in the town of Fairfield. Sometime before April 11, 2006, Fairfield Commons applied to the commission for a special permit and site plan review for the purpose of constructing a 36,000 square foot retail building, as required by Fairfield zoning regulations. On April 11, 2006, the commis-

[2] The plaintiff has suggested in its brief to this court that a coastal area management site plan is not a site plan, as that term is used in § 8-3. At oral argument before this court, Fairfield Commons asserted that the former serves the same function as the latter but is subject to additional requirements. The plaintiff effectively conceded this point in its reply brief to the trial court, and we therefore treat Fairfield Commons' coastal management site plan as a site plan subject to § 8-3, as did the trial court.

sion voted to approve the special permit, subject to several conditions, as well as the accompanying site plan. The approval did not actually take effect until April 8, 2009, however, when an appeal from that decision, unrelated to the present matter, was resolved. See Fairfield Zoning Regs., § 2.23.6 (a) (2009).

At the time the approval took effect in April, 2009, the Fairfield zoning regulation governing special permits conditioned approval on "completion of the proposed use" within two years from the date of approval. Id., § 2.23.5. The regulations provided that the commission may grant extensions of time to complete work, up to five years from the date of approval. Id., § 2.23.6 (a). Failure to complete the proposed use within the specified period would render the approval "null and void . . . ." Id.

The statute governing Fairfield Commons' site plan provides that "all work in connection with [the] site plan shall be completed within five years after the approval of the plan." General Statutes § 8-3 (i). "Work" is defined to mean "all physical improvements required by the approved plan."[3] General Statutes § 8-3 (i). The statute permits the local zoning authority to grant one or more extensions of time to complete the work, provided that the total of the extension(s) did not exceed ten years from the date of the site plan approval. General Statutes § 8-3 (i). The statute further provides that "[f]ailure to complete all work within [the specified] period shall result in automatic expiration of the approval of such site plan . . . ." General Statutes § 8-3 (i).

[3] Although "all physical improvements" reflected in the site plan (the statutory term) and those matters necessary for "completion of the proposed [special permit] use" (the regulatory term) may not be entirely coextensive, the parties in the present case have not argued that these terms are materially different in scope as these terms bear on the issues before us. We therefore treat the conditions as effectively governing the same matter.

Thus, under the statutes and regulations initially governing Fairfield Commons' development plans, its special permit would be rendered void if the proposed development was not completed by April, 2011, in the absence of a grant of an extension of time. Fairfield Commons' site plan would automatically expire if all work was not completed by April, 2014, unless the commission granted an extension of time.

In February, 2011, the commission amended its zoning regulations. As relevant to the present case, the commission repealed the regulation prescribing the time limit for completing the use authorized by a special permit. It simultaneously amended another regulation to provide that, for applications that require a public hearing (as do special permits under General Statutes § 8-3c (b)), "the [c]ommission shall proceed in accordance with the requirements of the . . . General Statutes." Fairfield Zoning Regs., § 2.23 (2011). Shortly thereafter, Fairfield Commons requested and obtained written confirmation from the commission that the expiration date of both its special permit and site plan was April 8, 2014.

Due to an economic downturn that had stalled development across the state, in May, 2011, the legislature amended statutes governing land use permits and approvals to extend the time limitations to complete development. See Public Acts 2011, No. 11-5 (P.A. 11-5). Site plans that had not yet expired, like that of Fairfield Commons, were provided a nine year period from the plan's approval date to complete the work, with authority for the local zoning agency to grant extensions of time not to exceed fourteen years from the date of approval. P.A. 11-5, § 1, codified at General Statutes (Supp. 2012) § 8-3 (m). This change extended the time limitation in Fairfield Commons' site plan until April, 2018, by operation of law.

In March, 2018, the parcel at issue remained undeveloped.[4] Fairfield Commons therefore requested from the commission a five year extension of the time limit to complete work in connection with its site plan and its special permit—from April 8, 2018, to April 8, 2023. At the hearing on the request, James R. Wendt, the town planning director, explained the intention and effect of the 2011 amendment to the zoning regulations, namely, to ensure that the commission's regulatory time limits would conform to statutory time limits as they may change, and stated that it applied retroactively to Fairfield Commons' unexpired special permit and site plan approvals. Commission members expressed agreement with this view and voted to grant Fairfield Commons' extension request.

The plaintiff, an owner of property abutting the parcel at issue, appealed to the Superior Court from the commission's decision granting the extension. See General Statutes § 8-8 (a) (1) and (b) (designating abutting property owner as aggrieved person for purposes of right to appeal). The trial court first addressed the plaintiff's challenge to the commission's authority to extend the time limitation attached to the special permit. The court concluded that the 2011 amendment to the town's zoning regulation providing that the commission would proceed "in accordance with the requirements of the . . . General Statutes"; Fairfield Zoning Regs., § 2.23 (2011); was irrelevant because no statute addressed time limits applicable to special permits. It rejected Fairfield Commons' position, jointly adopted by the commission, that the time limitations for completing work in connection with a "site plan" established by § 8-3 (i) and (m) encompass both the special permit and the site plan because they must be viewed as a

[4] In 2017, the commission approved a change in use for the subject parcel from a retail building to a medical office. The parties do not argue that this change is material to any issue on appeal.

single, integrated application and approval. The court reasoned that the two matters have materially distinguishing characteristics and functions. The court therefore sustained the plaintiff's appeal insofar as it challenged the commission's authority to extend the special permit approval in 2018.

The court then considered whether it was legally permissible for the special permit to be subject to a time limitation in the first instance. Relying on the view contained in Attorney Robert A. Fuller's treatise on Connecticut land use law, the court concluded that a duly recorded special permit; see General Statutes § 8-3d; runs with the land and, as such, is valid indefinitely in the absence of statutory authority allowing revocation or expiration of special permits. See R. Fuller, 9B Connecticut Practice Series: Land Use Law and Practice (4th Ed. 2015) § 50:1, pp. 161–62.[5] The trial court therefore concluded that the commission's 2018 decision had no impact on the validity of Fairfield Commons' special permit, assuming it was otherwise valid. Accordingly, the court sustained the plaintiff's appeal "to the extent that it challenge[d] the authority of the [commission] to extend the expiration date of the special permit until April 8, 2023," but declined to conclude that the permit had expired or was otherwise invalid.

The plaintiff appealed to the Appellate Court, which reversed the trial court's judgment in part.[6] See *Interna-*

[5] The treatise provides in relevant part that, "[w]hen a special permit is issued by the zoning commission . . . it remains valid indefinitely since the use allowed under it is a permitted use subject to conditions in the zoning regulations. . . . The agency cannot put an expiration date on and require renewal of special permits . . . because that automatically would turn a permitted use into an illegal use after the time period expired. . . . If 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." (Footnotes omitted.) 9B R. Fuller, supra, § 50:1, pp. 162–63.

[6] The commission declined to file an appellate brief and instead notified the Appellate Court that it was adopting Fairfield Commons' brief. The commission filed a similar notice with this court.

tional Investors v. *Town Plan & Zoning Commission*, supra, 202 Conn. App. 606–607. The Appellate Court concluded that the commission had statutory authority to impose a time limitation as a condition of the continuing validity of a special permit under General Statutes § 8-2 (a), which authorizes special permit "conditions necessary to protect the public health, safety, convenience and property values . . . ." See *International Investors* v. *Town Plan & Zoning Commission*, supra, 594–99. The Appellate Court reasoned that a temporal limitation on completing the development connected to the specially permitted use advances these interests by preventing the permit holder from unduly delaying the commencement of the permitted use to a time when the surrounding circumstances may no longer support it. See id., 596–97. It dismissed Fairfield Commons' contention that the statutorily prescribed time limitation on the completion of development for the site plan under § 8-3 (i) and (m) would provide an opportunity to address these concerns, noting the ministerial nature of that approval process. See id., 597 n.18.

The Appellate Court further concluded that the trial court had incorrectly interpreted the tenet that special permits run with the land to compel the conclusion that special permits, once duly recorded, cannot be temporally restricted. See id., 600. The Appellate Court examined the case law cited by the trial court and Fuller's treatise and concluded that these cases did not support their position. See id., 601–602. Rather, those cases stood for an entirely distinct proposition, namely, that special permits "are not personal to the applicant and remain valid notwithstanding a change in the ownership of the land." (Emphasis omitted.) Id., 601.

The Appellate Court then connected this error in the trial court's analysis to the ultimate issue of whether Fairfield Commons' special permit had, in fact, expired: "[T]he [trial] court incorrectly determined that the spe-

cial 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 [trial] court's conclusion that the commission's decision extending the special permit was improper." Id., 606–607. The Appellate Court accordingly reversed the trial court's judgment in part and remanded the case with direction to sustain the plaintiff's appeal as to its claim that Fairfield Commons' special permit had expired. See id., 607. It affirmed the judgment in all other respects. See id.

We granted Fairfield Commons' petition for certification to appeal with respect to the issues of whether the Appellate Court correctly concluded (1) that § 8-2 (a) provides authority for a municipal zoning commission to condition approval of a property owner's special permit on the completion of development within a specified time period, subject to extensions, and (2) that the special permit approval issued to Fairfield Commons to construct a retail building expired in 2011, two years after the effective date, because construction had not been completed, and, therefore, the extension of the special permit and site plan the commission granted in 2018, under § 8-3 (m), was invalid. See *International Investors* v. *Town Plan & Zoning Commission*, 336 Conn. 928, 247 A.3d 577 (2021).

Not long after this court granted Fairfield Commons' petition, the state enacted legislation relevant to the issue in this appeal. See Public Acts 2021, No. 21-34 (P.A. 21-34); Public Acts 2021, No. 21-163 (P.A. 21-163). In response to executive orders issued by Governor Ned Lamont to mitigate the economic impact of the COVID-19 pandemic, the 2021 public acts extended expiration dates for completing work in land use approvals that had not expired prior to the July, 12, 2021 effective date of P.A. 21-163.[7] The 2021 public acts not only extended deadlines previously imposed by statute, such as the one for site plans, but also added a new provision extending deadlines imposed as a condition of special permit approval. Section 8-3 (m), as amended by P.A. 21-34, § 3, and P.A. 21-163, § 1, provides in relevant part: "[A]ny site plan approval made under this section prior to July 1, 2011, that has not expired prior to July 12, 2021 . . . shall expire not less than fourteen 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 nineteen years from the date the site plan was approved." General Statutes (Supp. 2022) § 8-3 (m) (1). Section 8-3c, as amended by P.A. 21-163, § 5, provides in relevant part: "[A]ny special permit or special exception approval made under this section prior to July 1, 2011, that has

[7] See Executive Order No. 7JJ, § 3 (May 6, 2020), available at https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-7JJ.pdf (last visited July 13, 2022) ("Tolling of Land Use and Building Permits. In order to ensure that land use and building permit holders may continue to diligently pursue permitted activities after the state of emergency, an approval or permit issued by a municipal land use agency or official pursuant to the 'Covered Laws' as defined in Section 19 of Executive Order 7I, or by a municipal building official pursuant to Connecticut General Statutes Chapter 541 and valid as of March 10, 2020, shall not lapse or otherwise expire during the state of emergency, and the expiration date of the approval shall toll during the state of emergency.").

not expired prior to July 12, 2021, and that specified a deadline by which all work in connection with such approval is required to be completed, shall expire not less than nineteen 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 special permit or special exception."[8] General Statutes (Supp. 2022) § 8-3 (c) (1).

In its appeal to this court, Fairfield Commons, joined by the commission,[9] makes two overarching legal arguments. First, they claim that the Appellate Court failed to recognize that site plan expiration dates for completion of construction, as dictated by § 8-3 (i) and (m), control the duration of a special permit because the permit and site plan are inextricably linked and cannot be subject to different time limits.[10] Second, they reiterate the trial court's view that special permits run with the land and cannot be subject to time limitations in the absence of statutory authority to impose such limitations. The defendants contend that the Appellate Court incorrectly found authority in § 8-2 (a) that sets up a conflict with § 8-3 (i) and (m). The defendants characterize the 2021 public acts as an endorsement of their

[8] "The terms 'special exception' and 'special permit' are synonymous and have been used interchangeably." *Irwin* v. *Planning & Zoning Commission*, 244 Conn. 619, 623 n.4, 711 A.2d 675 (1998); see also 2 P. Salkin, American Law of Zoning (5th Ed. 2011) § 14:1, p. 14-5 (noting general view that special permit, special exception, and conditional use permit are synonymous terms).

[9] We hereafter refer to Fairfield Commons and the commission collectively as the defendants.

[10] The plaintiff contends that this claim is unpreserved for appellate review because the defendants did not raise this issue in the Appellate Court. Although the plaintiff is technically correct, review of the submissions in the proceedings below reveals that § 8-3 (i) and (m) has been an integral part of the defendants' position from the outset of this litigation. The question of the commission's authority to impose a time limitation on special permits, which is properly before us, requires consideration of the time limitation in the site plan statute, § 8-3, especially in light of P.A. 21-163. We therefore conclude that the defendants properly may advance this argument.

position, namely, that "special permits should endure on a long-term, uniform, statewide basis, for a time period consistent with the site plan statutes and other collateral permits." In addition to these legal arguments, they claim that the Appellate Court made an erroneous "finding" that the special permit expired in 2011, due to the absence of any request by Fairfield Commons for an extension of time.

Conversely, the plaintiff agrees in full with the Appellate Court's reasoning. With regard to the import of the 2021 public acts, the plaintiff views Fairfield Commons' special permit as falling outside of the operative dates therein but contends that the public acts undermine every argument the defendants advance.

We agree with the Appellate Court insofar as it concluded that a temporal limitation on a special permit does not violate the tenet that special permits run with the land and falls within the authority granted under § 8-2 (a), but we conclude that the Appellate Court incorrectly failed to consider the effect of § 8-3 on the exercise of that authority. We hold that the commission lacked authority to condition the continuing validity of the special permit on completion of development within a specified period that conflicted with the period prescribed for satisfying the same condition in the statute governing the site plan.

Except insofar as the defendants challenge a purported "finding" by the Appellate Court, an issue that we need not reach, all of the issues before us are questions of law. We therefore exercise plenary review and apply well established rules of statutory construction. See, e.g., General Statutes § 1-2z ("[t]he meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes"); *Kuchta* v. *Arisian*, 329 Conn. 530, 534–35, 187 A.3d 408 (2018) ("[w]hen 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)). Statutory text does not unambiguously resolve the issues before us—the parties do not contend otherwise—and we therefore consult extratextual sources to the extent that they are illuminating.

I

We begin with general land use principles and their relationship to the concept of land use permits running with the land. A special permit "authorizes those uses that are explicitly permitted in the [zoning] regulations (albeit subject to certain conditions not applicable to other uses in the district)." (Emphasis omitted; internal quotation marks omitted.) *Grasso* v. *Zoning Board of Appeals*, 69 Conn. App. 230, 243, 794 A.2d 1016 (2002); see *Rhine* v. *Bizzell*, 311 Wis. 2d 1, 16, 751 N.W.2d 780 (2008) (special permits are required "for those particular uses that a community recognizes as desirable or necessary but which the community will sanction only in a controlled manner"). "The 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 [a] particular zoning [district], their nature is such that their precise location and mode of operation must be [individually] regulated because of the [particular] topography, traffic problems, neighboring uses, etc., of the site. . . . T. Tondro, [Connecticut Land Use Regulation (2d Ed. 1992) p. 175]. *Barberino Realty & Development Corp.* v. *Planning & Zoning Commission*, 222 Conn. 607, 612–13, 610 A.2d 1205 (1992)." (Internal quotation marks omitted.) *Center Shops of East Granby, Inc.* v. *Planning & Zoning Commission*, 253 Conn. 183, 191–92, 757 A.2d 1052

(2000). "The proposed use, [therefore], must satisfy standards set forth in the zoning regulations themselves as well as the conditions necessary to protect the public health, safety, convenience and property values." (Internal quotation marks omitted.) *Heithaus* v. *Planning & Zoning Commission*, 258 Conn. 205, 215–16, 779 A.2d 750 (2001); see also *Irwin* v. *Planning & Zoning Commission*, 244 Conn. 619, 627, 711 A.2d 675 (1998) ("general considerations such as public health, safety and welfare, which are enumerated in zoning regulations, may be the basis for the denial of a special permit").

A special permit, like a variance, must be recorded in the land records to be effective.[11] General Statutes § 8-3d. "[I]f the zoning regulations change before the copy [is] recorded, the property owner may lose the benefit of the variance or special permit."[12] 9 R. Fuller,

[11] A variance permits the owner to use the property in a manner forbidden by the zoning regulations, upon a showing of hardship, whereas a special permit authorizes a use that is explicitly permitted in the regulations without any such evidence. See, e.g., *Grasso* v. *Zoning Board of Appeals*, supra, 69 Conn. App. 243. Variances do, however, have certain features in common with special permits: a variance also may be subject to reasonable conditions; see, e.g., *Vaszauskas* v. *Zoning Board of Appeals*, 215 Conn. 58, 64, 574 A.2d 212 (1990); and, as we explain in part I of this opinion, runs with the land. We rely on authority addressing variances solely to illustrate that this common feature of running with the land does not equate, as a matter of law, to indefinite duration. We have no occasion to express an opinion as to whether those features that distinguish a variance from a special permit would preclude a local zoning authority from imposing an expiration date on a variance or a time limitation on satisfaction of a variance condition.

[12] Although the legislative history of § 8-3d makes clear that recording serves two purposes—effectuating the permit and providing notice of a conditional privilege—one of the sponsors of the legislation explained that recording was not intended to guarantee the validity of the permit and that a title searcher would need to investigate whether permit requirements had been met. See 18 H.R. Proc., Pt. 9, 1975 Sess., pp. 4104–4105, remarks of Representative Richard C. Willard. Noncompliance with permit conditions may result in revocation of the permit. See 2 P. Salkin, American Law of Zoning (5th Ed. 2011) § 14:34, p. 14-160.

A Massachusetts statute illustrates that the recording of a special permit does not necessarily render the permit of infinite duration by providing both that a special permit must be recorded to take effect and that a special

supra, § 24:7, p. 777. Although the recording provides notice of the conditional privilege to successors in interest (as well as other interested parties); see 18 S. Proc., Pt. 4, 1975 Sess., p. 1846, remarks of Representative Louis Ciccarello; 18 H.R. Proc., Pt. 9, 1975 Sess., pp. 4088–89, remarks of Representative Richard C. Willard; 18 H.R. Proc., Pt. 9, 1975 Sess., p. 4103, remarks of Representative Richard O. Belden; it is not the act of recording that determines that the special permit runs with the land. That consequence flows from the nature of the permit and more fundamentally the nature of zoning law itself.

"[T]he identity of a particular user of the land is irrelevant to zoning." (Internal quotation marks omitted.) *Reid* v. *Zoning Board of Appeals*, 235 Conn. 850, 857, 670 A.2d 1271 (1996). "Since land use regulation is concerned with the use of the land and not its ownership, a change in ownership of land for which vested rights exist . . . does not affect the right to continue the same use or use the same approvals and permits, and the new owner stands in the same position as the prior owner. . . . A special permit . . . run[s] with the land, so a transferee can complete any conditions imposed on the prior approval and then use the land as allowed by the special permit." (Footnotes omitted.) 9B R. Fuller, supra, § 53:8, pp. 280–81; see *TWK, LLC* v. *Zoning Board of Appeals*, Docket No. CV-97-400324-S, 1999 WL 30815, *4 (Conn. Super. January 8, 1999) ("Like a variance, a special permit . . . is a legal status granted to a certain parcel of realty without regard to ownership. . . . A successor in interest to such realty succeeds to the benefits and to the conditions of a land use permit to which the realty is subject." (Internal

permit shall lapse if a "substantial use" has not commenced within a certain period of years after the permit was granted. Mass. Gen. Laws Ann. c. 40A, § 9 (LexisNexis 2018); see also *McDermott* v. *Board of Appeals*, 59 Mass. App. 457, 457–58, 796 N.E.2d 455 (2003).

quotation marks omitted.)); 3 E. Ziegler, Rathkopf's The Law of Zoning and Planning § 61:50 (4th Ed. 2011) p. 61-136 ("The [special] permit is not, and cannot be, personal to the applicant, but runs with the land. A transferee of the land succeeds to any benefits that the original grantee of the permit enjoyed, as well as being subject to its conditions." (Footnote omitted.)).

Because ownership is irrelevant to the status of a special permit, time limitations on the permit that are tied to the lifetime of the original grantee or to the original grantee retaining title to the property are invalid. See 2 P. Salkin, American Law of Zoning (5th Ed. 2011) § 14:32, p. 14-151 ("a special permit may not be conditioned to terminate when the title to the land is conveyed to one other than the applicant"); see, e.g., *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, 113–14); *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, 79–80). That this prohibition is the *sole* defining feature of running with the land is plainly reflected in the variance statute codifying this common-law rule: "Any variance granted by a zoning board of appeals shall run with the land and shall not be personal in nature to the person who applied for and received the variance. A variance shall not be extinguished solely because of the transfer of title to the property or the invalidity of any condition attached to the variance that would affect the transfer of the property from the person who initially applied for and received the variance."[13] General Statutes § 8-

[13] Long before enactment of this provision in 1993, this court had acknowledged that variances run with the land, although we did not employ that specific phrase. See, e.g., *Garibaldi* v. *Zoning Board of Appeals*, 163 Conn. 235, 239, 303 A.2d 743 (1972) ("By its very definition, a variance is granted with respect to a particular piece of property; it can be enjoyed not only by the present owner but by all subsequent owners. . . . It follows then that a variance is not a personal exemption from the enforcement of zoning

6 (b); see 36 S. Proc., Pt. 5, 1993 Sess., pp. 1507–1508, remarks of Senator George Jepsen (explaining ban on personal conditions); 36 H.R. Proc., Pt. 31, 1993 Sess., pp. 11,106–107, remarks of Representative Jefferson B. Davis (same).

Nothing, however, in the codification of this tenet or our appellate case law addressing it suggests that this tenet would render a temporal condition unrelated to ownership invalid per se.[14] Cf. *Appeal of Barefoot*, 437 Pa. 323, 325, 263 A.2d 321 (1970) ("[w]hen a special [permit] is granted, the use becomes a conforming use, and such use [i]nures to the benefit of a subsequent owner of the land and is not abandoned *in the absence of a time limitation in the* [*permit*] *itself or in the zoning ordinance*" [emphasis added]); 2 P. Salkin, supra, § 13-40, pp. 13-110 through 13-111 ("A variance

regulations. It is a legal status granted to a certain parcel of realty without regard to ownership." (Citation omitted.)); see also *Reid* v. *Zoning Board of Appeals*, supra, 235 Conn. 859–60 ("the legislature was well aware that this court has consistently stated that a variance must run with the land and not with the individual property owner"). We do not draw any particular significance from the absence of a similar statute applicable to special permits. At the time the legislature adopted § 8-6 (b), only a trial court decision had extended this tenet to special permits. See *Bosley* v. *Zoning Board of Appeals*, Docket No. 0290506, 1990 WL 276387, *4 (Conn. Super. September 17, 1990). Although this view has since been reiterated in many trial court cases, no appellate decision has discussed this tenet as applied to special permits until the present case.

[14] We observe that our trial courts have long been in agreement that the previously discussed land use principles compel the conclusion that site plans, subdivision plans, and wetlands permits—all of which are subject to statutory time limitations; see General Statutes §§ 8-3 (i) and (m), 8-26c and 22a-42a; also run with the land. See, e.g., *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); *N & L Associates* v. *Planning & Zoning Commission*, Superior Court, judicial district of Litchfield, Docket No. CV-04-0093492 (June 8, 2005) (39 Conn. L. Rptr. 466, 468); *Brentwood Extension, LLC* v. *Planning & Zoning Commission*, Docket No. CV-98-0354488, 2004 WL 203153, *10 (Conn. Super. January 20, 2004); *Griswold Hills of Newington Ltd. Partnership* v. *Town Plan & Zoning Commission*, Superior Court, judicial district of Hartford-New Britain at Hartford, Docket No. CV-95-0705701 S (June 9, 1995) (14 Conn. L. Rptr. 405, 407).

runs with the land; *absent a specific time limitation*, it continues until properly revoked. . . . A variance . . . may be conditioned to expire within a certain time, so that it does not continue to subsequent owners." (Emphasis added; footnotes omitted.)).[15]

Temporal limitations on special permits have been deemed proper if they relate to the *use* of the property. See 2 P. Salkin, supra, § 14:31, p. 14-147 (special permit conditions "must relate directly to, and be incidental

[15] In his treatise, Fuller expresses the concern that "put[ting] an expiration date on and requir[ing] renewal of special permits . . . automatically would turn a permitted use into an illegal use after the time period expired." 9B R. Fuller, supra, § 50:1, pp. 162–63. This concern appears to relate to durational limits unconnected to permit conditions (e.g., a one year permit) because the permit holder could use the permit in conformity with zoning requirements and permit conditions and, yet, the permit would expire by a set date. If a permit holder violates a permit condition requiring performance within a specified time, however, the permit holder would not be in compliance with the law. See T. Tondro, supra, p. 522.

Another Connecticut land use treatise expresses support for special permit durational limits when renewal is available. See id., p. 461 ("The reasons for limiting the duration of a special permit are to provide an effective means of enforcing a condition, and to give the commission an opportunity to review the activity after a period of time to determine whether circumstances have changed sufficiently to warrant a changed decision. Therefore, a renewal application could properly consider afresh whether the use belongs at the site, but only to the extent that new developments have occurred—in effect, a change or mistake rule should be applied in order to protect the permittee from abuses of discretion, yet give a commission the opportunity to balance the owner's interest (including the investment already made based on the initial permit) with the commission's responsibility for ensuring a balanced land use plan for the community."); see also *Dil-Hill Realty Corp.* v. *Schultz*, 53 App. Div. 2d 263, 267, 385 N.Y.S.2d 324 (1976) ("The purpose for imposing a time limitation in the grant of a special permit or variance, it would seem, is to [e]nsure that in the event conditions have changed at the expiration of the period prescribed the board will have the opportunity to reappraise the proposal by the applicant in the light of the then existing facts and circumstances if the latter still desires to proceed. However, such a time limitation imposed for its own sake unrelated to the purposes of zoning has no apparent rationale and its strict application as the sole basis for a denial of an extension effects an unreasonable restriction [on] the permission previously found to be warranted." (Internal quotation marks omitted.)).

to, the proposed use of the real property and not to the manner of the operation of the enterprise conducted on the premises which are subject to the special permit" (internal quotation marks omitted)); id., § 14:33, pp. 14-158 through 14-159 ("[a] time limitation [in a special permit] will be disapproved if it is unrelated to the use of the land"); see also, e.g., *Gozzo* v. *Zoning Commission*, supra, 46 Conn. L. Rptr. 110, 113 (The court distinguished time limitations in a special permit for gravel excavation and a special permit for a furniture restoration business on residential property, insofar as the latter "is not a project that progresses until it is finished. It is more perpetual in nature and does not require the town to monitor its progression."); *Whittaker & Gooding Co.* v. *Scio*, 122 Mich. App. 538, 544, 332 N.W.2d 527 (1983) ("[T]he policy considerations justifying a time limitation . . . are much more compelling . . . where the proposed use is temporary in nature at the outset . . . . Further, a limitation on the length of time one may extract sand and gravel from the ground is definitely related to the use of the land, whereas limitation on the use of a building already constructed on the land is a limitation on the use of the building.").[16]

[16] Special permits for excavation and other uses that, by their nature, result in physical changes to the property or effects on other properties often have been time limited. See, e.g., *Cioffoletti* v. *Planning & Zoning Commission*, 24 Conn. App. 5, 6–8, 584 A.2d 1200 (1991) (time limitation on special permit for commercial sand and gravel removal operation was deemed valid); *Kobyluck* v. *Planning & Zoning Commission*, Superior Court, Docket No. CV-00-121562-S, 2003 WL 283832, *5–6 (Conn. Super. January 27, 2003) (time limitation on excavation was deemed valid), rev'd in part on other grounds, 84 Conn. App. 160, 852 A.2d 826, cert. denied, 271 Conn. 923, 859 A.2d 579 (2004); see also *Rockford Blacktop Construction Co.* v. *Boone*, 263 Ill. App. 3d 274, 280, 635 N.E.2d 1077 ("The [five year] restriction would allow the [c]ounty to evaluate the use of the property as a quarry in light of any changes during the [five year] period, including whether the residential use has expanded. This factor suggests that the [five year] restriction is reasonable."), appeal denied, 157 Ill. 2d 522, 642 N.E.2d 1303 (1994); *Houdaille Construction Materials, Inc.* v. *Board of Adjustment*, 92 N.J. Super. 293, 303–304, 223 A.2d 210 (App. Div. 1966) (concluding that five year limitation on special use permit for operation of bituminous

The temporal condition at issue in the present case does not violate any of the principles discussed previously. The condition is not tied to ownership. It does not even limit the duration of the permit. Cf. General Statutes § 22a-42a (g) (prescribing period of years after which wetlands permit expires). Rather, it is a time limitation on the performance of a condition of the permit. If the condition—completion of the proposed use—is timely performed, then the permit would continue indefinitely. The condition relates to the use of the property at its most elemental level; the property cannot be put to the use for which the permit was granted until the proposed construction and development have been at least substantially completed.

The question we must answer, then, is not whether a time limitation on the performance of a permit condition (completing construction) violates the tenet that special permits run with the land. The Appellate Court correctly concluded that it does not. The question is whether local zoning agencies have authority to adopt a regulation that imposes such a condition.

II

The defendants claim that the authority to adopt regulations imposing the temporal limitation at issue in the present case does not exist for two reasons. First, they contend that the legislature has dictated the time limit allowed to complete construction in the site plan statute. See General Statutes § 8-3 (i) and (m). They contend that this time limitation necessarily controls the special permit because special permits are inextricably linked to site plans. Second, they contend that the grant of municipal authority relating to special permits under

concrete plant was valid because court "regard[ed] the power to impose the limitation as reasonably incident to the [zoning] board's responsibility to see to it, among other things, that the use not be attended by any substantial detriment to the public good").

§ 8-2 (a) does not authorize zoning agencies to impose time limitations and cannot provide authority to impose a time limitation that conflicts with § 8-3 (i) and (m).

The plaintiff contends that authority to impose time limitations exists in § 8-2 (a). It further contends that the time limitation for completing construction that applies to site plans under § 8-3 is no impediment to the exercise of that authority because site plans and special permits serve entirely different functions.

We do not entirely agree with either of these views of the law. Insofar as the defendants appear to suggest that § 8-3 imposes its time limitation on special permits by operation of law, we disagree. We conclude that zoning agencies have authority under § 8-2 (a) to adopt a regulation under which a special permit would expire if construction for the proposed use is not completed within a specified period of time. We also conclude, however, that, if this authority is exercised, the time limitation cannot conflict with the deadline prescribed in § 8-3 (i) and (m).

Our analysis begins with the different purposes of, and relationship between, the special permit and the site plan. As we previously indicated, a special permit authorizes use of the property for a specific purpose, subject to conformance with zoning regulations and any other conditions necessary to vindicate the general purposes of zoning (protecting public health, safety, convenience, and property values). See, e.g., *Torrington* v. *Zoning Commission*, 261 Conn. 759, 769, 806 A.2d 1020 (2002); see also General Statutes § 8-2 (a). A public hearing is required before a special permit may be approved. See General Statutes § 8-3c (b); *Center Shops of East Granby, Inc.* v. *Planning & Zoning Commission*, supra, 253 Conn. 194. The special permit process involves the exercise of discretion. See *Irwin* v. *Planning & Zoning Commission*, supra, 244 Conn. 626.

Approval confers a right, albeit one that may be subject to conditions.

A site plan is a document that reflects, among other things, the location and dimension of buildings, structures, development features, and uses of the subject property. See *Barberino Realty & Development Corp.* v. *Planning & Zoning Commission*, supra, 222 Conn. 613–14; see also General Statutes § 8-3 (g). If the plan conforms with zoning and wetlands regulations, it must be approved; see General Statutes § 8-3 (g); and, thus, the issuance of a certificate of approval is "a mere ministerial act . . . ." *Kosinski* v. *Lawlor*, 177 Conn. 420, 427, 418 A.2d 66 (1979). No public hearing is required. Cf. *Center Shops of East Granby, Inc.* v. *Planning & Zoning Commission*, supra, 253 Conn. 186 n.2.

Despite (or perhaps because of) the different functions zoning agencies serve, it is a common practice among them to review site plans in connection with special permit applications, as the Fairfield zoning regulations required in the present case.[17] See, e.g., *Yagemann* v. *Planning & Zoning Commission*, 92 Conn. App. 355, 362–64, 886 A.2d 437 (2005) (addressing similar Greenwich regulations); *Kobyluck* v. *Planning & Zoning Commission*, 84 Conn. App. 160, 173, 852 A.2d 826 (addressing similar Montville regulations), cert. denied, 271 Conn. 923, 859 A.2d 579 (2004). This court explained the reason for this practice in *Barberino Realty & Development Corp.* v. *Planning & Zoning Commission*, supra, 222 Conn. 607: "[B]efore the zoning commission can determine whether the specially permitted use is compatible with the uses permitted as of right in the particular zoning district, it is required to judge whether any concerns, such as parking or traffic congestion, would

[17] In his treatise, Tondro suggests that efforts of zoning treatises to draw a clear distinction between special permits and site plans are not entirely successful and that, in practice, the distinction is not always clear-cut. See T. Tondro, supra, pp. 181–87.

adversely impact the surrounding neighborhood. The commission, therefore, must be allowed to examine the suggested proposal closely. The details of the proposal are laid out in the site plan, which is a physical plan showing the layout and the design of the site of a proposed use . . . . It generally should indicate the proposed location of all structures, parking areas and open spaces on the plot and their relation to adjacent roadways and uses. . . . As used in § 8-3 (g), a site plan is a general term which is used in a functional sense to denote a plan for the proposed use of a particular site, purporting to indicate all the information required by the regulations for that use. . . .

"When considering an application for a special permit, the commission is called [on] to make a decision as to whether a particular application . . . would be compatible with the particular zoning district, under the circumstances then existing. That determination can . . . be made [only] after a thorough examination of the specific site plan submitted. . . . [R]eview of a special permit application is necessarily dependent on a thorough review of the proposed site plan because, in fact, the grant of the special permit is usually contingent [on] approval of the site plan." (Citations omitted; emphasis omitted; footnote omitted; internal quotation marks omitted.) Id., 613–14; see *Wethersfield* v. *PR Arrow, LLC*, 187 Conn. App. 604, 641, 203 A.3d 645 (quoting *Barberino Realty & Development Corp.* v. *Planning & Zoning Commission*, supra, 222 Conn. 620), cert. denied, 331 Conn. 907, 202 A.3d 1022 (2019).

Modifications to a site plan may be necessary to reflect the conditions imposed on the special permit use following the public hearing. Cf. *Garden Homes Management Corp.* v. *Planning & Zoning Commission*, Superior Court, judicial district of New Britain, Docket No. CV-07-4015729-S (November 3, 2009) (48 Conn. L. Rptr. 743, 750) (in affordable housing appeal, court remanded

case to zoning commission with direction to approve site plan and zoning permit applications "subject to reasonable and necessary conditions, not inconsistent with" court's decision, for specified physical improvements); *Ruggiero* v. *Zoning Commission*, Docket No. CV-00-0340891-S, 2001 WL 1178801, *1 (Conn. Super. September 5, 2001) (appeal from decision granting "a 'special permit/site plan amendment' to the defendant . . . for structural changes to one of its existing buildings" in case in which hearing was held on "amended special permit and attendant site plan"); *Mailloux* v. *Planning & Zoning Commission*, Docket No. 318723, 1995 WL 784981, *4–6 (Conn. Super. December 21, 1995) (reciting testimony at public hearing on application to revise/amend special exception permit, which included plans for construction of addition to current structure and creation of additional off-street parking spaces, as to whether off-street parking spaces were sufficient in number to meet zoning regulation's requirements). It is entirely proper, therefore, for the defendants to characterize the site plan and special permit as inextricably linked when both are required due to physical changes on or to the land to implement the permitted use. As we explain subsequently in this opinion, this close relationship would require the governing law to be in harmony. This relationship does not dictate, however, that every condition attached to one applies by operation of law to the other.

This court previously concluded that, even when zoning regulations required the special permit application to contain a site plan, that requirement does not render the site plan and permit legally inseparable. See *Center Shops of East Granby, Inc.* v. *Planning & Zoning Commission*, supra, 253 Conn. 191 ("unless otherwise set forth in the relevant town regulations, the special permit and the site plan are not inseparable and, therefore, do not meld into a single entity"). The court concluded in

Center Shops of East Granby, Inc., that the statutes prescribing automatic approval of a site plan when the zoning authority fails to issue a decision within the prescribed time limit; see General Statutes §§ 8-3 (g) and 8-7d; did not apply to a special permit that was jointly submitted with its related site plan. See *Center Shops of East Granby, Inc.* v. *Planning & Zoning Commission*, supra, 194. The court distinguished a prior case in which it had reached a contrary conclusion on its unique facts; see id., 189–91; and held that §§ 8-3 and 8-7d would apply to a special permit only "when the application for the special permit is integral to and virtually indistinguishable from the application for the site plan, and when the use sought is a permitted use such that a public hearing is not required . . . ." Id., 191. The court in *Center Shops of East Granby, Inc.*, emphasized the significance of the fact that, in the prior case, the parties had stipulated at trial that the site plan and special permit were inseparable. See id., 189.

Applying this logic to the present case, we see no basis to conclude that the time limit to complete construction in § 8-3, governing site plans, would apply by operation of law to special permits. There is no textual basis to draw this inference. The absence of a parallel condition on special permits would not impede operation of the time limitation in § 8-3. Although, as we explain subsequently in this opinion, there is a strong policy justification for imposing a similar time limitation as a condition of the related special permit, we cannot conclude that such a condition must arise by operation of law.

We therefore turn to the question of whether § 8-2 (a) grants zoning agencies the authority to adopt a regulation conditioning the validity of a special permit on completion of construction within a specified time period. Examination of this provision reveals no express authority to impose a time limit on the performance of

a permit condition, by regulation or otherwise. Cf. Mass. Ann. Laws c. 40A, § 9 (LexisNexis 2018) ("[z]oning ordinances or by-laws shall provide that a special permit granted under this section shall lapse within a specified period of time, not more than 3 years . . . from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause"); Mass. Ann. Laws c. 40A, § 9 (LexisNexis 2018) ("[special] permits may also impose conditions, safeguards and limitations on time or use"). Nor, however, is there text from which we can infer a prohibition on the exercise of such authority. Cf. *Builders League of South Jersey, Inc.* v. *Burlington County Planning Board*, 353 N.J. Super. 4, 21–22, 801 A.2d 380 (App. Div. 2002) (holding that local zoning authority lacked authority to mandate by regulation that site plan approval and subdivision approval expire after three years when statute provided that " 'standards shall be limited to' " five enumerated requirements and other statute provided that " 'procedures and standards shall be limited to' " five enumerated requirements, all specific in nature and none of which related to duration).

Section 8-2 (a) instead provides in general terms, consistent with the broad aims of zoning law, that zoning regulations may require a special permit to be "subject to standards set forth in the regulations and to conditions necessary to protect the public health, safety, convenience and property values." See *Irwin* v. *Planning & Zoning Commission*, supra, 244 Conn. 627 (citing "general considerations such as public health, safety and welfare" as relevant to special permit conditions). Because the grant of municipal authority to enact zoning regulations is in derogation of the common law, this court has held that "this grant of authority should receive a strict construction and is not to be extended,

modified, repealed or enlarged in its scope by the mechanics of [statutory] construction." (Internal quotation marks omitted.) *Kuchta* v. *Arisian*, supra, 329 Conn. 535; see, e.g., *Lord Family of Windsor, LLC* v. *Planning & Zoning Commission*, 288 Conn. 730, 739, 954 A.2d 831 (2008) (commission lacked authority to adopt regulation under which proposed development that satisfies district's land use regulations governing type and density of activity may be subject to additional regulations as a distinct " 'use of land' " because of its particular size).

In considering whether the temporal condition at issue advances the purposes of zoning laws as contained in § 8-2 (a), we return to the point that, "[w]hen considering an application for a special permit, the commission is called [on] to make a decision as to whether a particular application . . . would be compatible with the particular zoning district, *under the circumstances then existing*." (Emphasis altered.) *Barberino Realty & Development Corp.* v. *Planning & Zoning Commission*, supra, 222 Conn. 614. Those circumstances are not only the facts as they then exist but also the zoning laws then in effect. The greater the delay between approval and implementation of the permitted use, the greater the possibility that the circumstances and the zoning regulations will have materially changed. Although this possibility exists even when the property is timely put to the permitted use, the property owner's vested right in such cases must prevail.

The Appellate Court concluded in the present case that the temporal condition at issue vindicated the concerns in § 8-2 (a) because it would prevent the permit holder from unduly delaying the commencement of the use to a time when the surrounding circumstances may no longer support it. See *International Investors* v. *Town Plan & Zoning Commission*, supra, 202 Conn. App. 596–97. The defendants contended at oral argu-

ment before this court that the failure to timely complete construction is the result of economic conditions outside the control of developers, not *undue* delay. We note, however, that Tondro's treatise endorses a rationale similar to the Appellate Court's reasoning with respect to the statutory time limits to complete subdivision developments: "These provisions are designed to prevent landowners from securing development approval under one set of regulations several years in advance of actual construction, and avoid a more contemporary and potentially more demanding set of regulations which might be in place when the project is commenced."[18] T. Tondro, supra, pp. 520–21; see also *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, 553) ("Allowing stale permits to vest years later would undermine the effectiveness and benefits of engaging in contemporary special permit review. Although special permits are not personal to the owner of the subject property they are issued based on the particular circumstances presented to the [planning and zoning commission] at the hearing.").

Other jurisdictions have endorsed similar logic. See, e.g., *Lobisser Building Corp.* v. *Planning Board*, 454 Mass. 123, 127, 132, 907 N.E.2d 1102 (2009) (acknowledging concern that "a special permit should not ordinarily be warehoused indefinitely" and that preventing warehousing was aim of statute requiring zoning regulations to "provide that a special permit . . . shall lapse within a specified period of time, not more than two years . . . if a substantial use thereof has not sooner commenced except for good cause or, in the case of [a] permit for construction, if construction has not begun by such date except for good cause" (internal

[18] One treatise cites an extreme example of this problem in a case in which the permit holder proposed to build the development thirty years after it had secured subdivision approval. See T. Tondro, supra, p. 521 n.39.

quotation marks omitted)); *Bernstein* v. *Chief Building Inspector*, 52 Mass. App. 422, 428, 754 N.E.2d 133 (2001) ("[a] developer's mischief may run rampant absent the imposition of some time limits in the grant of a special permit"); *D.L. Real Estate Holdings, LLC* v. *Point Pleasant Beach Planning Board*, 176 N.J. 126, 136, 820 A.2d 1220 (2003) ("The time frame advances the public interest in prompt development of land in a manner consistent with the grant of preliminary approval . . . . It prevents the possibility that a future tentative 'potential' development, based on an earlier preliminary subdivision approval, would forever affect planning decisions concerning development in other areas." (Citation omitted.)).

Several other jurisdictions have treated similar temporal conditions as proper, at least if prescribed by regulation. See, e.g., *Cobbossee Development Group* v. *Winthrop*, 585 A.2d 190, 193–94 (Me. 1991) (town zoning ordinance providing that special permit "shall expire if the work or change involved is not commenced within one year of the date on which the . . . [c]onditional [u]se is authorized, or change is not substantially completed within [two] years" was proper exercise of authority because "use should be either acted [on] diligently or eliminated because of the nature of permits to build in areas that require special protection" (internal quotation marks omitted)); *Petrocci* v. *Zoning Board of Appeals*, 42 App. Div. 2d 676, 676, 344 N.Y.S.2d 291 (1973) (upholding denial of extension of two year time limit to complete project authorized by special permit); *Lucia* v. *Zoning Hearing Board*, 63 Pa. Commw. 272, 274, 437 A.2d 1294 (1981) (concluding that permit holder could not obtain extension of conditional use permit because permit had expired under ordinance providing that, "[i]f the work described in any application for zoning approval has not begun within six months from the date of issuance thereof, said permit shall expire

and it shall be cancelled by the [z]oning [a]dministrator" (internal quotation marks omitted)); see also *Roy* v. *Kurtz*, 357 So. 2d 1354, 1356 (La. App.) (considering whether actions taken by holder of variance were sufficient to satisfy ordinance providing that variance shall not be valid unless substantial construction has commenced in accordance with plans for which variance was authorized), writ denied, 359 So. 2d 1307 (La. 1978); *Kolt* v. *Zoning Board of Appeals*, 159 App. Div. 2d 625, 626, 553 N.Y.S.2d 24 (1990) (upholding dismissal of variance holder's appeal from zoning board's determination that variance had lapsed under ordinance providing that variance shall become null and void if work has not been "commenced and diligently prosecuted within one (1) year" after granting of variance (internal quotation marks omitted)); cf. *Demonbreun* v. *Metropolitan Board of Zoning Appeals*, 206 S.W.3d 42, 48–49 (Tenn. App. 2005) (The court concluded that the time limitation for the special permit was permissible because "[t]he governing ordinance authorizes the [Board of Zoning Appeals] to establish permit expiration dates. . . . The [board] has an interest in ascertaining whether a permit holder is abiding by its standards and conditions. Furthermore, nothing in the applicable zoning law precludes the [board's] establishment of a permit expiration date solely for the purpose of review and enforcement purposes." (Citation omitted.)), appeal denied, Tennessee Supreme Court (June 26, 2006).

Connecticut zoning regulations reproduced in the plaintiff's appendix to its brief to this court also demonstrate the ubiquity of the exercise of this authority by municipal zoning agencies all across this state.[19] When

[19] In addition to the type of temporal condition at issue in present case, the appendix to plaintiff's brief to this court reveals that many municipalities across the state have adopted regulations that impose other types of time-limited conditions relating to putting the property to the use for which the permit was issued. Some of the most common conditions provide that a permit will be extinguished if development has not commenced or if substantial development has not occurred by a specified period, if necessary zoning,

the legislature adopted the 2021 public acts extending deadlines for special permits that had not yet expired; see P.A. 21-34, § 7; P.A. 21-163, § 5; it necessarily manifested both its awareness and ratification of this practice.[20] Thus, whatever doubts might exist as to the validity of the exercise of this authority under § 8-2 (a), the pertinent text of which is unchanged since the effective date of Fairfield Commons' special permit, are dispelled by adoption of the 2021 public acts. Cf. *Pollio* v. *Planning Commission*, 232 Conn. 44, 56, 652 A.2d 1026 (1995) (concluding that planning commission had authority under General Statutes § 8-1c to adopt ordinance in light of subsequent amendment to another related statute that clarified legislature's original intent).

We therefore agree with the Appellate Court that the adoption of regulations conditioning the validity of special permits on completion of construction within a certain period falls within the commission's regulatory authority under § 8-2 (a). The Appellate Court's misstep was its failure to consider the effect of the statute prescribing the time limitation for completion of develop-

building, or other permits are not acquired by a specified period, or if the permitted use has been abandoned for a specified period of time.

[20] There is a scant legislative record relating to the emergency legislation that adopted the 2021 land use approval extensions. The first extensions proposed were added to the bill that was to become P.A. 21-34 after public hearings were held, and no public hearings were held on P.A. 21-163. The background section of the bill analysis for what became P.A. 21-34 does, however, note the Appellate Court's decision in the present case recognizing municipal authority to impose time limits on special permits. See Office of Legislative Research, Bill Analysis for Substitute House Bill No. 6531 (as amended by House "A" and Senate "A"), An Act Concerning the Right to Counsel in Eviction Proceedings, the Validity of Inland Wetlands Permits in Relation to Certain Other Land Use Approvals, and Extending the Time of Expiration of Certain Land Use Permits, p. 10, available at https://www.cga.ct.gov/2021/BA/PDF/2021HB-06531-R02-BA.PDF (last visited July 13, 2022). That decision had been issued a few months before the emergency legislation was proposed. Fairfield Commons acknowledged at oral argument before this court that the provision extending special permit deadlines was likely a reaction to that decision.

ment as a condition of the continuing validity of the site plan.

We agree with the defendants that the legislature has manifested a clear intention to afford property owners a substantial period of years to complete development necessary to put a plan or permit into effect. At the time the commission granted Fairfield Commons' special permit, this intention was reflected in the statutory scheme then in effect, which provided no less than five years but no more than ten years to complete work. See General Statutes (Rev. to 2005) § 8-3 (i). The legislature prescribed the same period of years to complete work in connection with subdivision plans as well as for the validity of wetlands permits; see General Statutes (Rev. to 2005) §§ 8-26c and 22a-42a (d) (2); and this consistency has continued to be reflected in increasingly longer extensions of time since provided to respond to economic downturns, including, in the most recent public acts, for special permits. See Public Acts 2009, No. 09-181; P.A. 11-5; P.A. 21-34; P.A. 21-163. A uniform time limitation not only aids enforcement of the plans and permits but also ensures notice to interested parties in the absence of any requirement that the nullification of a special permit must be recorded on the land records.[21] See General Statutes § 8-3 (i) ("[t]he certifi-

[21] Among the numerous municipal zoning regulations addressing special permits that the plaintiff has reproduced in the appendix to its brief, we found only two that provided for the expiration or nullification of the special permit to be recorded. See Derby Zoning Regs., § 195-47 C (2) ("[f]ailure to complete all work as approved under the granting of the special exception within five years from the date of approval or a lesser time period if so specified by the [Planning and Zoning] Commission shall result in the automatic expiration of the approval, provided that the [Planning and Zoning] Commission files notice of such expiration on the city land records"); East Hartford Zoning Regs., § 207.7 (a) ("Any *person*, firm or corporation having obtained approval of a special permit application under this section shall complete all work and comply with all conditions of approval of said site plan approval within two (2) years after said approval. In the event that all such work and/or all such conditions are not completed within said time, the approval granted shall become null and void. The Planning and Zoning Commission may file statement to that effect upon the land records if it deems necessary in its best interest." (Emphasis in original.)).

cate of approval of such site plan shall state the date on which such five-year period shall expire").

Providing in the special permit a shorter time limitation to satisfy the same condition attached to the site plan does not result in a mere lack of harmony with this statutory scheme. It would conflict with, and thereby impede operation of, the site plan statute, § 8-3. Invalidation of Fairfield Commons' special permit for failure to complete construction within the regulatory period in effect upon its April, 2009 approval (two years from approval) would effectively invalidate the site plan because the latter would have no operative effect in the absence of a valid special permit. Yet, the site plan statute then in effect provided a minimum of at least three more years to satisfy that condition.

Under preemption principles, "[a] local ordinance is preempted by a state statute . . . whenever the local ordinance irreconcilably conflicts with the statute. . . . Whether an ordinance conflicts with a statute or statutes can . . . be determined [only] by reviewing the policy and purposes behind the statute and measuring the degree to which the ordinance frustrates the achievement of the state's objectives. . . . [T]hat a matter is of concurrent state and local concern is no impediment to the exercise of authority by a municipality through [local regulation], so long as there is not conflict with the state legislation. . . . Where the state legislature has delegated to local government the right to deal with a particular field of regulation, the fact that a statute also regulates the same subject in less than full fashion does not, ipso facto, deprive the local government of the power to act in a more comprehensive, but not inconsistent, manner. . . . A regulation is not necessarily inconsistent because it imposes standards additional to those required by a statute addressing the same subject matter. . . . Where local regulation merely enlarges on the provisions of a statute

by requiring more than a statute, there is no conflict unless the legislature has limited the requirements for all cases. . . . As long as the local regulation does not attempt to authorize that which the legislature has forbidden, or forbid that which the legislature has expressly authorized, there is no conflict." (Citations omitted; internal quotation marks omitted.) *Rocky Hill* v. *SecureCare Realty, LLC*, 315 Conn. 265, 295–96, 105 A.3d 857 (2015).

There can be no question that, if a regulation provided for the expiration of a *site plan* for failure to complete work within a shorter period of time than that prescribed under § 8-3 (i) and (m), the regulatory time limitation would be preempted; the site plan statute confers discretion on zoning agencies to extend that deadline, not to shorten it. The statutorily guaranteed minimum period of validity assures a developer that it will not be required to comply with subsequent changes to zoning regulations, as long as the project is completed within that period. If a zoning regulation prescribes a shorter period of time to complete that same work as a condition of the validity of the special permit, the regulation effectively reduces the time limitation prescribed in § 8-3.[22] Cf. *Modern Cigarette, Inc.* v. *Orange*, 256 Conn. 105, 106–108, 127–31, 774 A.2d 969 (2001) (town ordinance banning all cigarette vending machines within its borders was not preempted by statute limiting placement of machines because both statute and ordi-

[22] Although the defendants emphasize that the time limits cannot differ, they do not elaborate on the practical implications of different time limitations; nor does the plaintiff. Nonetheless, it seems self-evident that, once the special permit is rendered null and void, the site plan has no practical effect. The property owner would be free, of course, to apply for another special permit, but there is no guarantee that the permit would be granted or would be granted subject to conditions acceptable to the owner, and a new site plan may be required. Zoning regulations may have changed in the intervening period. Even if the zoning authority grants the special permit and the owner can rely on the original site plan, construction could be delayed until a decision has been rendered on the special permit application.

nance were prohibitory, ordinance went further in its prohibition but neither authorized what legislature had forbidden nor forbid what legislature had authorized, and ordinance furthered legislative purpose of preventing minors access to cigarettes). Although there may be scenarios under which this effect could be avoided; see footnote 22 of this opinion; it is evident that the statutory scheme is intended to provide predictability when development plans are proposed.[23] Accordingly, a regulation that would impose a shorter time limit to satisfy the same condition thereby "frustrates the achievement of the state's objectives"; (internal quotation marks omitted) *Rocky Hill* v. *SecureCare Realty, LLC*, supra, 315 Conn. 295; and would be preempted.

In light of this conclusion, we need not consider the defendants' challenge to the propriety of the Appellate Court's "finding" that Fairfield Commons failed to request an extension of time before the original two year time limitation in its special permit expired in April, 2011. Even if the Appellate Court were correct, the two year time limitation in the regulation would not have been enforceable because the statutory site plan deadline for construction had not yet expired. The record indicates that the February, 2011 amendment to Fairfield's zoning regulations was an attempt to remedy this defect.

The only question remaining is whether the special permit regulation in effect in April, 2009, when Fairfield Commons' special permit and site plan approval went

[23] The 2021 public acts reflect this predictability and reinforce the conclusion that the legislature did not intend to confer unfettered discretion on local zoning agencies to impose time limits to complete construction as a special permit condition. Those acts extended special permit construction deadlines for a set period of years from the permit approval date, not from the construction deadline imposed by the local zoning authority. Special permits governed by the special act, consequently, would be subject to the same deadline regardless of whether the municipality's zoning regulation provided two years or ten years to complete construction.

into effect, should be deemed invalid or whether we should apply a judicial gloss to avoid the conflict with the site plan statute, § 8-3. We conclude that the latter course of action is more consistent with the commission's intent, as expressed in its 2011 zoning amendments and its 2018 decision granting Fairfield Commons' request for a five year extension of time for both the special permit and the site plan. See *Commissioner of Public Health* v. *Freedom of Information Commission*, 311 Conn. 262, 275–76, 86 A.3d 1044 (2014) ("In order to construe the regulations consistently . . . we would need to either treat as superfluous the language in [one federal] regulation referring to records created from a party's own files or engraft such language as a judicial gloss onto [another federal] regulation. . . . [T]here are strong indications that the latter is consistent with the intent of Congress and the federal agency implementing the federal acts." (Footnote omitted.)).

Because the statutory period governing development in connection with the defendant's site plan had not expired when Fairfield Commons requested an extension of time in 2018, the defendant's special permit could not have expired on that basis. Accordingly, the Appellate Court incorrectly concluded that Fairfield Commons' special permit expired in April, 2011. In accordance with the statutory amendments extending the time limits for site plans, the commission properly granted Fairfield Commons' request for an extension of time until April, 2023.

The judgment of the Appellate Court is reversed and the case is remanded to that court with direction to reverse the trial court's judgment and to remand the case to the trial court with direction to deny the plaintiff's appeal.

In this opinion the other justices concurred.

USSBASY GARCIA *v.* ROBERT COHEN ET AL.
(SC 20585)

Robinson, C. J., and McDonald, D'Auria,
Mullins, Ecker and Alexander, Js.

Submitted on briefs May 4—officially released July 19, 2022

Procedural History

Action to recover damages for, inter alia, the defendants' alleged negligence, and for other relief, brought to the Superior Court in the judicial district of Hartford, where certain counts of the complaint were withdrawn; thereafter, the case was tried to the jury before *Dubay*, *J.*; verdict and judgment for the defendants, from which the plaintiff appealed to the Appellate Court, *Lavine*, *Prescott* and *Bishop*, *Js.*, which affirmed the trial court's judgment; subsequently, the plaintiff, on the granting of certification, appealed to this court, which reversed the Appellate Court's judgment and remanded the case to that court for further proceedings; subsequently, the Appellate Court, *Prescott* and *Bishop*, *Js.*, with *Lavine*, *J.*, dissenting, reversed the trial court's judgment and remanded the case to that court for a new trial, and the defendants, on the granting of certification, appealed to this court. *Appeal dismissed.*

Keith S. McCabe submitted a brief for the appellants (defendants).

John Serrano submitted a brief for the appellee (plaintiff).

Opinion

PER CURIAM. The plaintiff, Ussbasy Garcia, filed a premises liability action against the defendants, Robert Cohen and Diane Cohen, alleging, in relevant part, that their negligent maintenance of an exterior staircase caused the plaintiff to slip, fall, and sustain physical injuries. The jury found in favor of the defendants, and

the plaintiff appealed, claiming that the trial court improperly had denied her request for a jury instruction on the nondelegable duty doctrine, pursuant to which property owners are held vicariously liable for the tortious conduct of their independent contractors. A majority of the Appellate Court agreed, holding that "[t]he proposed nondelegable duty charge was relevant to the issues in this case, was an accurate statement of the law, and was reasonably supported by the evidence adduced at trial." *Garcia* v. *Cohen*, 204 Conn. App. 25, 35, 253 A.3d 46 (2021).[1] The Appellate Court further determined that the instructional impropriety was not harmless in light of our reasoning in *Garcia* v. *Cohen*, 335 Conn. 3, 23–24, 225 A.3d 653 (2020),[2] that "the jury could have concluded that the [independent contractors], rather than

[1] Judge Lavine issued a dissenting opinion, in which he expressed his view that "this case falls outside the purview of the nondelegable duty doctrine" because the defendants did not "attempt to dodge or to deny responsibility for the condition of the stairway on which the plaintiff fell." *Garcia* v. *Cohen*, supra, 204 Conn. App. 39 (*Lavine*, *J.*, dissenting).

[2] In *Garcia* v. *Cohen*, supra, 335 Conn. 3, we addressed whether the Appellate Court properly declined to review the plaintiff's instructional claim under the general verdict rule "because the plaintiff had failed to object when the trial court denied her request to submit her proposed interrogatories to the jury"; id., 5; rendering it unclear whether the jury's verdict was predicated on a finding that the defendants were not negligent or on a finding that the plaintiff was contributorily negligent. See *Garcia* v. *Cohen*, 188 Conn. App. 380, 386, 204 A.3d 1245 (2019) (in light of defendants' special defense of contributory negligence, it was unclear whether jury "found that the defendants were not negligent or that the plaintiff was more than 50 percent negligent"), rev'd, 335 Conn. 3, 225 A.3d 653 (2020). We held that the general verdict rule did not bar appellate review of the plaintiff's claim "because the plaintiff had requested that the trial court submit her properly framed interrogatories to the jury and had objected when it denied her request." *Garcia* v. *Cohen*, supra, 335 Conn. 6. Additionally, the plaintiff's cause of action and the defendants' special defense were " 'intertwined' " such that the jury's "negligence determinations may have been different if the jury had been instructed that any negligence by the [independent contractors] should have been attributed to the defendants, a difference that could have tipped the balance in the defendants' favor." Id., 26. Accordingly, we reversed the judgment of the Appellate Court and "remanded the case to that court with direction to consider the plaintiff's claim of instructional error." Id., 28.

the defendants, acted negligently, and for that reason found that the defendants had *not* acted negligently or had acted less negligently than the plaintiff . . . [leaving the jury with] no untainted route to the verdict." (Emphasis in original; internal quotation marks omitted.) *Garcia* v. *Cohen*, supra, 204 Conn. App. 36–37. We granted the defendants' petition for certification to appeal to determine whether "the Appellate Court correctly conclude[d] that the trial court had committed reversible error by not giving the nondelegable duty charge . . . ." *Garcia* v. *Cohen*, 336 Conn. 944, 249 A.3d 737 (2021).

After examining the entire record on appeal and considering the parties' briefs,[3] we have determined that the appeal in this case should be dismissed on the ground that certification was improvidently granted.

The appeal is dismissed.

MALISA COSTANZO, ADMINISTRATRIX (ESTATE OF ISABELLA R. COSTANZO), ET AL. *v.* TOWN OF PLAINFIELD ET AL.
(SC 20537)

Robinson, C. J., and McDonald, D'Auria, Mullins, Kahn and Ecker, Js.

Syllabus

Pursuant to statute (§ 52-572h (o)), there shall be no apportionment claims between a party liable for negligence and a party liable on any basis other than negligence, including "liability pursuant to any cause of action created by statute, except that liability may be apportioned among parties liable for negligence in any cause of action created by statute based on negligence . . . ."

Pursuant further to statute (§ 52-557n (b)), "a political subdivision of the state or any employee, officer or agent acting within the scope of his employment or official duties shall not be liable for damages to person

[3] The parties agreed to waive oral argument and to have this appeal decided on the basis of the record and briefs.

or property resulting from . . . (8) failure to make an inspection or making an inadequate or negligent inspection of any property . . . to determine whether the property complies with or violates any law or contains a hazard to health or safety, unless the political subdivision had notice of such a violation of law or such a hazard . . . ."

The named plaintiff, as the administratrix of her daughter's estate, sought to recover damages from the defendants, a town and two of its employees, in connection with her daughter's drowning in a privately owned swimming pool. The plaintiff was a tenant of the property on which the incident occurred. The pool did not have a self-closing and self-latching gate or a pool alarm, both of which were required by the state building code. The plaintiff alleged, inter alia, that the defendants had issued a building permit for the pool prior to inspecting it to ensure that the mandated safety features were installed. The defendants thereafter filed a notice of intent to seek apportionment of liability against the owners of the property and an apportionment complaint against the former tenants of the property, who had the pool constructed. The plaintiff objected to the defendants' efforts to seek apportionment, claiming that her complaint set forth a cause of action alleging recklessness or an intentional act under § 52-557n (b) (8), rather than negligence and, therefore, that apportionment was precluded under § 52-572h (o). The trial court agreed and issued orders sustaining the plaintiff's objections and dismissing the defendants' apportionment complaint and notice of intent to seek apportionment. The defendants appealed to the Appellate Court, which reversed the trial court's orders. The Appellate Court determined that § 52-572h (o) did not prohibit the defendants from seeking apportionment in the present case, reasoning that the plaintiff set forth allegations in her complaint that fell within the first exception to municipal immunity in § 52-557n (b) (8), which subjects a municipality to liability for injuries that occur as a result of a failure to inspect or the inadequate or negligent inspection of a property to determine whether the property complies with or violates any law or contains a health or safety hazard when the municipality had notice of such a violation of law or such a hazard, and that that exception incorporated a negligence standard. On the granting of certification, the plaintiff appealed to this court. *Held*:

1. The trial court's orders dismissing the defendants' apportionment complaint and notice of intent to seek apportionment constituted a final judgment permitting interlocutory appellate review; the decisions of the trial court sustaining the plaintiff's objections to the defendants' apportionment complaint and notice of intent to seek apportionment resulted in judgment on the defendants' entire apportionment complaint and notice of intent to seek apportionment and, therefore, were appealable under the rule of practice (§ 61-2) providing that a judgment rendered on an entire complaint constitutes an appealable final judgment.
2. The Appellate Court correctly concluded that the trial court had improperly sustained the plaintiff's objections to the defendants' apportionment

complaint and notice of intent to seek apportionment, as the defendants should have been permitted to seek apportionment because the plaintiff alleged, at least in part, a cause of action created by statute based on negligence for purposes of § 52-572h (o): the plaintiff's cause of action against the defendants under § 52-557n (b) (8) was created by statute for purposes of § 52-572h (o), as this court previously had held that a municipality can be held liable under § 52-557n (b) (8) in the inspection context when it has notice of a hazardous condition; moreover, this court determined that the phrase "cause of action . . . based on negligence" in § 52-572h (o) means a cause of action that derives from a claim alleging that the defendant failed to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation, and, in light of the absence of any reference to recklessness or a reference to the terms "intentional," "wilful," or "wanton" in the first exception to municipal immunity in § 52-557n (b) (8) for the failure to inspect or the inadequate or negligent inspection when the municipality has notice of a violation of law or hazard, this court concluded that the legislature intended for a claim under that exception to be based on the negligence concepts; furthermore, the terms "failure," "inadequate," and "negligent" in that first exception also supported the conclusion that the conduct giving rise to a claim under that exception is based on negligence; in the present case, the plaintiff alleged that the defendants were liable under § 52-557n (b) (8) in part because the defendant town employees had notice of the pool, notice that it did not have a self-closing and self-latching gate, and notice that it did not have a pool alarm, and, because those allegations stated a cause of action created by statute based on negligence, § 52-572h (o) did not preclude the defendants from seeking apportionment of liability from the owners of the property and the former tenants who had the pool constructed.

Argued December 17, 2021—officially released July 19, 2022

Procedural History

Action to recover damages for the alleged failure to conduct a proper inspection of a pool, brought to the Superior Court in the judicial district of Windham at Putnam, where the defendants filed an apportionment complaint and a notice of intent to seek apportionment; thereafter, the court, *Hon. Leeland J. Cole-Chu*, judge trial referee, sustained the plaintiffs' objections to the defendants' apportionment complaint and the notice of intent to seek apportionment and dismissed the apportionment complaint and the notice of intent to seek apportionment, and the defendants appealed to the

Appellate Court, *DiPentima*, *C. J.*, and *Alvord* and *Keller*, *Js.*, which reversed the trial court's decisions and remanded the case to that court with direction to overrule the plaintiffs' objections and for further proceedings; subsequently, the plaintiffs, on the granting of certification, appealed to this court. *Affirmed.*

Stephen M. Reck, for the appellants (plaintiffs).

Ryan J. McKone, for the appellees (defendants).

Opinion

MULLINS, J. The apportionment statute, General Statutes § 52-572h, allows a party sued for damages resulting from personal injury, death or property damage caused by that party's negligence to file an apportionment complaint against additional parties, not named as defendants in the plaintiff's lawsuit, whose negligence caused the alleged losses. The statute expressly prohibits apportionment claims between a party liable for negligence and a party liable, among other things, "pursuant to any cause of action created by statute, except that liability may be apportioned among parties liable for negligence in any cause of action created by statute based on negligence . . . ." General Statutes § 52-572h (o).[1] The central issue in this certified appeal is whether the apportionment statute, by this language, permits municipal defendants whose liability is based on General Statutes § 52-557n (b) (8) to file an apportionment complaint sounding in negligence. Section 52-

[1] General Statutes § 52-572h (o) provides in relevant part that "there shall be no apportionment of liability or damages between parties liable for negligence and parties liable on any basis other than negligence including, but not limited to, intentional, wanton or reckless misconduct, strict liability or liability pursuant to any cause of action created by statute, except that liability may be apportioned among parties liable for negligence in any cause of action created by statute based on negligence including, but not limited to, an action for wrongful death pursuant to section 52-555 or an action for injuries caused by a motor vehicle owned by the state pursuant to section 52-556."

557n (b) (8) renders municipal actors liable for damages and injuries that occur due to the failure to inspect or the negligent or inadequate inspection of property if (1) the municipality had notice of a hazard or violation of law (first exception), or (2) the act or omission "constitutes a reckless disregard for health or safety under all the relevant circumstances" (second exception).

Resolution of this appeal thus requires us to consider whether a claim brought under § 52-557n (b) (8) is a "cause of action created by statute based on negligence," such that apportionment is allowed under § 52-572h (o). As we explain herein, because § 52-557n (b) (8) expressly abrogates the common-law doctrine of municipal immunity, and because the first exception thereunder allows for a cause of action that we determine is based on negligence, we conclude that claims brought pursuant to that exception do qualify for apportionment.

The named plaintiff, Malisa Costanzo, the administratrix of the estate of the decedent, Isabella R. Costanzo, brought claims against the defendants, the town of Plainfield (town), and two of its employees, Robert Kerr and D. Kyle Collins, Jr., under § 52-557n (b) (8), stemming from the drowning of the decedent in a pool located on privately owned property in the town.[2] Thereafter, the defendants filed a notice of intent to seek apportionment against the owners of the property where the pool was located and an apportionment complaint against the former tenants of the property, who had the pool constructed. The plaintiff objected to the defendants' efforts to seek apportionment, claiming

[2] Malisa Costanzo also brought claims of bystander emotional distress in an individual capacity and as parent and next of friend to her four children, Felicity Costanzo, Gabriel Costanzo, Xavier Costanzo and Giovanni Costanzo. Those claims are not the subject of this appeal. Therefore, we refer to Malisa Costanzo, in her capacity as the administratrix of the estate of the decedent, as the plaintiff.

that her complaint set forth a cause of action alleging recklessness or an intentional act under § 52-557n (b) (8), rather than negligence, and, therefore, that the apportionment statute did not apply. The trial court agreed and concluded that, "[i]f the defendants are found liable to the [plaintiff] on [the basis of] the [plaintiff's operative] revised complaint, it will be for reckless disregard for health [or] safety under all relevant . . . circumstances, not for negligence." (Internal quotation marks omitted.) Therefore, the trial court issued orders sustaining the plaintiff's objections and dismissing the defendants' apportionment complaint and notice of intent to seek apportionment. The defendants appealed to the Appellate Court, and that court reversed the orders of the trial court, concluding that the plaintiff's claims under § 52-557n (b) (8) fell within the first exception, which it held to incorporate a negligence standard. See *Costanzo* v. *Plainfield*, 200 Conn. App. 755, 770, 239 A.3d 370 (2020). Consequently, the Appellate Court determined that § 52-572h (o) authorizes apportionment in connection with such claims. See id. We agree with the Appellate Court and, accordingly, affirm its judgment.

The following facts and procedural history, as set forth in the opinion of the Appellate Court; see id., 757–63, 769–70; are relevant to this appeal. "The plaintiff alleged the following facts in her revised complaint dated August 28, 2018. The decedent drowned in an aboveground pool located at 86 Glebas Road in [the town] on June 22, 2016. At all relevant times, the town employed Kerr as a licensed building official and Collins as a licensed assistant building [official]. One of their employment duties was to inspect all pools constructed in the town to ensure compliance with the [Connecticut] State Building Code [building code]. See, e.g., General Statutes § 29-261 [b].[3] The defendants issued a building

[3] General Statutes § 29-261 (b) provides: "The building official or assistant building official shall pass upon any question relative to the mode, manner

permit for this aboveground swimming pool on July 25, 2013; however, Kerr and Collins, in violation of General Statutes § 29-265a,[4] issued that permit without having determined if a pool alarm had been installed. The plaintiff further alleged that the [building code][5] required the installation of a self-closing and self-latching gate for all new pools and that Kerr and Collins had failed to ensure the installation of such a gate prior to issuing the building permit. The purpose of these safety features was to prevent children from drowning." (Footnotes in original.) *Costanzo* v. *Plainfield*, supra, 200 Conn. App. 757–58. The plaintiff also alleged that "Kerr and Collins were aware that a pool had been constructed at 86 Glebas Road," that the pool could be seen from the public road that Kerr and Collins travelled on frequently, and that "they could see that a self-closing and self-latching gate had not been installed . . . ." Id., 769–70.

"The plaintiff further alleged that Kerr and Collins were aware of these requirements and that they knew,

of construction or materials to be used in the erection or alteration of buildings or structures, pursuant to applicable provisions of the State Building Code and in accordance with rules and regulations adopted by the Department of Administrative Services. They shall require compliance with the provisions of the State Building Code, of all rules lawfully adopted and promulgated thereunder and of laws relating to the construction, alteration, repair, removal, demolition and integral equipment and location, use, accessibility, occupancy and maintenance of buildings and structures, except as may be otherwise provided for."

[4] General Statutes § 29-265a provides: "(a) As used in this section, 'pool alarm' means a device which emits a sound of at least fifty decibels when a person or an object weighing fifteen pounds or more enters the water in a swimming pool.

"(b) No building permit shall be issued for the construction or substantial alteration of a swimming pool at a residence occupied by, or being built for, one or more families unless a pool alarm is installed with the swimming pool."

[5] See 2012 International Residential Code for One- and Two-Family Dwellings, app. G, § AG105.2 (8), p. 830 (adopted by the 2016 building code pursuant to General Statutes (Rev. to 2015) § 29-252, as amended by Public Acts 2016, No. 16-215, § 5) (aboveground swimming pools must have self-closing and self-latching gate installed).

or should have known, that an inspection of new pools was necessary to ensure compliance with these safety requirements. Finally, the plaintiff alleged that neither Kerr nor Collins had inspected or attempted to inspect the property to ensure that a pool alarm and a self-closing and self-latching gate had been installed.

"On July 27, 2018, prior to the filing of the [plaintiff's] revised complaint, the defendants moved for an order directing the plaintiff's counsel to provide a copy of the release agreement between the plaintiff and the owners of 86 Glebas Road, Jeanna Prink and Bruce Prink (Prinks).[6] The [trial] court, *Auger*, *J.*, granted the defendants' motion on August 23, 2018.

"On October 19, 2018, the defendants filed a notice of their intent to claim that the negligence of the Prinks was a proximate cause of the injuries claimed in the plaintiff's action against the defendants. See General Statutes § 52-102b (c).[7] Specifically, the defendants maintained that, as the owners of the property, the Prinks bore the responsibility for ensuring compliance with any requirements of the [building code], and that the Prinks had failed (1) to schedule an inspection of the pool by the defendants, (2) to obtain a certificate of occupancy for the pool, and (3) to prevent their tenants from using the pool [in the absence of] a certificate of occupancy.

[6] The plaintiff's claim against the Prinks resulted in a settlement and a release agreement.

[7] General Statutes § 52-102b (c) provides in relevant part: "If a defendant claims that the negligence of any person, who was not made a party to the action, was a proximate cause of the plaintiff's injuries or damage and the plaintiff has previously settled or released the plaintiff's claims against such person, then a defendant may cause such person's liability to be apportioned by filing a notice specifically identifying such person by name and last-known address and the fact that the plaintiff's claims against such person have been settled or released. Such notice shall also set forth the factual basis of the defendant's claim that the negligence of such person was a proximate cause of the plaintiff's injuries or damages. No such notice shall be required if such person with whom the plaintiff settled or whom the plaintiff released was previously a party to the action."

The defendants further noted that the plaintiff had rented the property in November, 2014, and that the Prinks knew that four minor children would be living on the property. [In addition], the defendants set forth the instances of the Prinks' negligence, including the failure to notify the town of the [completed] construction of the pool, the failure to seek an inspection, the failure to obtain a certificate of occupancy and the failure to warn the plaintiff of these omissions. Finally, the defendants contended that the Prinks could be liable for a proportionate share of the damages alleged in the [revised] complaint.

"A few days later, the defendants filed an apportionment complaint, pursuant to § 52-102b [a],[8] against Eric Guerin and Merissa Guerin (Guerins), former tenants of the Prinks who occupied the property in 2013 at the time the pool was built. In this one count apportionment complaint, the defendants alleged that the Guerins had prepared and submitted the application for the construction of the aboveground pool to the town. The defendants further claimed that the Guerins specifically were advised that the pool was required to have a self-closing and self-latching gate, that an inspection was necessary at the completion of the construction and that Eric Guerin had submitted an affidavit '[in which]

[8] General Statutes § 52-102b (a) provides: "A defendant in any civil action to which section 52-572h applies may serve a writ, summons and complaint upon a person not a party to the action who is or may be liable pursuant to said section for a proportionate share of the plaintiff's damages in which case the demand for relief shall seek an apportionment of liability. Any such writ, summons and complaint, hereinafter called the apportionment complaint, shall be served within one hundred twenty days of the return date specified in the plaintiff's original complaint. The defendant filing an apportionment complaint shall serve a copy of such apportionment complaint on all parties to the original action in accordance with the rules of practice of the Superior Court on or before the return date specified in the apportionment complaint. The person upon whom the apportionment complaint is served, hereinafter called the apportionment defendant, shall be a party for all purposes, including all purposes under section 52-572h."

he attested that he would install a [pool alarm].' The defendants alleged that the Guerins failed to notify them that the pool had been constructed and thus that an inspection was needed. The defendants alleged that these actions amounted to negligence and, additionally, the Guerins negligently failed to obtain a certificate of occupancy for the aboveground pool and failed to notify the Prinks that (1) the aboveground pool did not comply with the requirements of the building code, (2) the town and its officials had not been notified of its [completed] construction or the need for an inspection, and (3) there was no certificate of occupancy. In conclusion, the defendants claimed that the Guerins could be liable for a proportionate share of the damages alleged in the plaintiff's complaint.

"On October 22, 2018, the plaintiff filed an objection to the defendants' notice of intent to seek apportionment as to the Prinks. The plaintiff argued that her [revised] complaint set forth a statutory cause of action pursuant to . . . § 52-557n (b) (8) alleging recklessness [or intentional conduct], and that the apportionment statute . . . § 52-572h (o) . . . applied only to claims of negligence. On October 25, 2018, the plaintiff filed a similar objection to the defendants' apportionment complaint directed against the Guerins.

"The court, *Cole-Chu*, *J.*, held a hearing on November 19, 2018. At the outset, it noted that the objection to the apportionment complaint 'could reasonably be construed as a motion to strike.' In his argument, the plaintiff's counsel stated that he had not pleaded a negligence cause of action in the revised complaint but rather an intentional or reckless tort pursuant to § 52-557n (b) (8), and, as a result, the apportionment statute was inapplicable. He also indicated that the [plaintiff's] complaint was based on the second exception to municipal immunity contained in § 52-557n (b) (8) with respect to property inspections. The defendants' counsel took

the position that the [plaintiff's] complaint alleged negligence and not recklessness; he acknowledged that claims of recklessness are not subject to apportionment.

"On March 19, 2019, the court issued an order sustaining the plaintiff's objection to the defendants' notice of intent to pursue apportionment as to the Prinks. Specifically, it agreed with the plaintiff's contention that [her] complaint did not allege negligence such that the apportionment statute did not apply. The court stated that, '[i]f the defendants are found liable to the [plaintiff] on [the basis of] the revised complaint, it will be for reckless disregard for health [or] safety under all relevant [alleged] circumstances, not for negligence.' . . . In a separate order, the court dismissed the defendants' notice [of intent] to seek apportionment, stating that, in sustaining the plaintiff's objection, it had essentially [concluded] 'that it has no subject matter jurisdiction over the proceedings the defendants attempted . . . to set in motion.'

"The court also sustained the plaintiff's objection to the apportionment complaint filed against the Guerins. It again concluded that the plaintiff had alleged recklessness against the defendants and [therefore that] the apportionment statute was inapplicable. The court also issued a separate order dismissing the apportionment complaint against the Guerins on the basis of the lack of subject matter jurisdiction." (Footnotes in original; footnote omitted.) *Costanzo* v. *Plainfield*, supra, 200 Conn. App. 758–62.

The defendants appealed from the decisions of the trial court to the Appellate Court. On appeal, the defendants claimed that the trial court improperly had precluded them from seeking apportionment because, they claimed, the plaintiff's revised complaint asserted claims under both exceptions to municipal immunity

contained in § 52-557n (b) (8). See id., 762–63. The defendants further contended that, because the first exception to municipal immunity contained in § 52-557n (b) (8) employs a negligence standard, apportionment was not prohibited pursuant to § 52-572h (o).[9] See id., 763.

The Appellate Court agreed with the defendants, concluding that "the plaintiff's revised complaint sets forth allegations that fall within the first exception [in] § 52-557n (b) (8) and that that exception contains a negligence standard." Id. Accordingly, the Appellate Court concluded that the trial court improperly "sustain[ed] the plaintiff's objections to the defendants' efforts to seek apportionment." Id.

The plaintiff filed a petition for certification to appeal from the judgment of the Appellate Court, which we granted, limited to the following issues: (1) "Did the trial court's order dismissing the defendants' apportionment complaint constitute a final judgment permitting interlocutory appellate review?" And (2) "[i]f the answer to the first question is in the affirmative, did the Appellate Court correctly conclude that the trial court had improperly dismissed the defendants' apportionment complaint because the [plaintiff's] complaint was based in part on a claim of negligence against the defendants, and, therefore, the defendants were entitled, under . . . § 52-572h, to [file] an apportionment complaint sounding in negligence against additional parties not named in the

[9] General Statutes § 52-572h (o) provides: "Except as provided in subsection (b) of this section, there shall be no apportionment of liability or damages between parties liable for negligence and parties liable on any basis other than negligence including, but not limited to, intentional, wanton or reckless misconduct, strict liability or liability pursuant to any cause of action created by statute, except that liability may be apportioned among parties liable for negligence in any cause of action created by statute based on negligence including, but not limited to, an action for wrongful death pursuant to section 52-555 or an action for injuries caused by a motor vehicle owned by the state pursuant to section 52-556."

[plaintiff's] lawsuit?" *Costanzo* v. *Plainfield*, 335 Conn. 976, 242 A.3d 104 (2020).

I

The first issue in this appeal is whether the trial court's orders dismissing the defendants' apportionment complaint and notice of intent to seek apportionment constitute a final judgment permitting interlocutory appellate review. We agree with both parties that the orders constitute an appealable final judgment.

We begin by setting forth the applicable standard of review. "The lack of a final judgment implicates the subject matter jurisdiction of an appellate court to hear an appeal. A determination regarding . . . subject matter jurisdiction is a question of law [and, therefore] our review [as to whether the Appellate Court had jurisdiction] is plenary." (Internal quotation marks omitted.) *Rockstone Capital, LLC* v. *Sanzo*, 332 Conn. 306, 312–13, 210 A.3d 554 (2019). "Because our jurisdiction over appeals . . . is prescribed by statute, we must always determine the threshold question of whether the appeal is taken from a final judgment before considering the merits of the claim." (Internal quotation marks omitted.) *Halladay* v. *Commissioner of Correction*, 340 Conn. 52, 57, 262 A.3d 823 (2021).

In the present case, the parties agree that the trial court's interlocutory orders sustaining the plaintiff's objections to the defendants' apportionment complaint and notice of intent to seek apportionment are appealable under Practice Book § 61-2. That rule of practice provides that, "[w]hen judgment has been rendered on an entire complaint . . . such judgment shall constitute a final judgment." Practice Book § 61-2. We have explained that, "[w]hen [the rule set forth in Practice Book § 61-2] applies, there is no need to turn to the alternative, as set forth in [*State* v. *Curcio*, 191 Conn. 27, 31, 463 A.2d 566 (1983)], for establishing the finality

of the judgment, even though some aspects of the case remain interlocutory." *Saunders* v. *KDFBS, LLC*, 335 Conn. 586, 593, 239 A.3d 1162 (2020).

We agree with the parties that the orders of the trial court sustaining the plaintiff's objections to the defendants' apportionment complaint and notice of intent to seek apportionment resulted in judgment on the defendants' entire apportionment complaint and notice of intent to seek apportionment. Accordingly, we agree that the trial court's dismissal of the defendants' apportionment complaint and notice of intent to seek apportionment constitutes a final judgment for purposes of this appeal.

II

The plaintiff claims that the Appellate Court incorrectly concluded that the trial court should not have sustained the plaintiff's objections to the defendants' apportionment complaint and notice of intent to seek apportionment. Specifically, the plaintiff asserts that the apportionment statute, § 52-572h (o), allows for apportionment in connection with complaints that are based on a statute only if the statute creates a claim that is substantially similar to a common-law negligence claim and does not create additional statutory elements. The plaintiff further asserts that a cause of action under § 52-557n (b) (8) is not subject to apportionment because the two exceptions contained in the statute provide for claims based on either intentional or reckless conduct. The plaintiff argues that her revised complaint alleged claims under both the first and second exceptions contained in § 52-557n (b) (8), but she asserts that neither exception creates a cause of action based on negligence.

In response, the defendants assert that the Appellate Court correctly concluded that the trial court should not have sustained the plaintiff's objections to the

apportionment complaint and notice of intent to seek apportionment because the two exceptions in § 52-557n (b) (8) allow for two types of claims—one that employs a negligence standard and one that employs a recklessness standard. Therefore, the defendants assert, to the extent that the plaintiff's revised complaint stated a claim under the negligence standard, it satisfies the requirements of the apportionment statute because it is a "cause of action created by statute based on negligence . . . ." General Statutes § 52-572h (o). We agree with the defendants.

We begin by noting the applicable standard of review. The resolution of whether § 52-572h (o) allows for apportionment as to the plaintiff's claims under § 52-557n (b) (8) presents an issue of statutory construction. "In conducting this analysis, we are guided by the well established principle that [i]ssues of statutory construction raise questions of law, over which we exercise plenary review." (Internal quotation marks omitted.) *LaFrance* v. *Lodmell*, 322 Conn. 828, 833–34, 144 A.3d 373 (2016). "It is well settled that we follow the plain meaning rule in General Statutes § 1-2z in construing statutes to ascertain and give effect to the apparent intent of the legislature." (Internal quotation marks omitted.) *Commission on Human Rights & Opportunities* v. *Edge Fitness, LLC*, 342 Conn. 25, 32, 268 A.3d 630 (2022). "In interpreting statutes, words and phrases not otherwise defined by the statutory scheme are construed according to their 'commonly approved usage . . . .' General Statutes § 1-1 (a) . . . . In determining the commonly approved usage of the statutory language at issue, we consult dictionary definitions." (Citation omitted.) *Commission on Human Rights & Opportunities* v. *Edge Fitness, LLC*, supra, 32.

The language of the apportionment statute, § 52-572h (o), provides in relevant part that "there shall be no apportionment of liability or damages between parties

liable for negligence and parties liable on any basis other than negligence including, but not limited to, intentional, wanton or reckless misconduct, strict liability or liability pursuant to any cause of action created by statute, except that liability may be apportioned among parties liable for negligence in any cause of action created by statute based on negligence including, but not limited to, an action for wrongful death pursuant to section 52-555 or an action for injuries caused by a motor vehicle owned by the state pursuant to section 52-556."[10]

[10] This court previously has explained the history of § 52-572h (o). Specifically, in *Allard* v. *Liberty Oil Equipment Co.*, 253 Conn. 787, 756 A.2d 237 (2000), this court explained that subsection (o) was added to § 52-572h in 1999 through No. 99-69, § 1, of the 1999 Public Acts (P.A. 99-69). See id., 801. This court further explained that "[t]he general effect of P.A. 99-69, § 1 . . . was to make clear that the apportionment principles of § 52-572h do not apply [when] the purported apportionment complaint rests on any basis other than negligence . . . . The legislative history of P.A. 99-69 makes clear that its principal purpose was to overrule legislatively a portion of this court's decision in *Bhinder* v. *Sun Co.*, 246 Conn. 223, 717 A.2d 202 (1998)." (Footnote omitted; internal quotation marks omitted.) *Allard* v. *Liberty Oil Equipment Co.*, supra, 801.

In *Bhinder* v. *Sun Co.*, supra, 246 Conn. 223, this court allowed a defendant in a wrongful death action to apportion its liability to an apportionment defendant whose conduct was wilful and wanton. See id., 225–26, 234. In doing so, this court concluded that, "as a matter of common law, [this court] should extend the policy of apportionment to permit a defendant in a negligence action to cite in as an apportionment defendant a party whose conduct is alleged to be reckless, wilful and wanton." Id., 234.

In amending the apportionment statute, after this court issued its decision in *Bhinder*, to preclude apportionment on any basis other than negligence, the legislature "accomplished three purposes. First, the legislature reaffirmed that, as a matter of statutory interpretation, only negligent persons may be cited in as apportionment defendants pursuant to the statute. . . . Second, the legislature made clear its intent that apportionment principles would not apply [when] the basis of liability of the purported apportionment defendant was based on conduct 'other than negligence,' including but not limited to intentional, wanton or reckless misconduct, strict liability, and liability pursuant to any cause of action created by statute. Thus, in this respect, the legislature made clear its intent to overrule the common-law portion of *Bhinder*. It went beyond the facts of *Bhinder*, however, which had been limited to allegations of common-law intentional, wanton and reckless misconduct. The legislature also included a specific bar to appor-

In resolving the plaintiff's claim, the first question that we must address is whether the plaintiff's complaint is based on a "cause of action created by statute . . . ." General Statutes § 52-572h (o). In interpreting § 52-557n (b) (8), we do not write on a clean slate. This court previously has concluded that § 52-557n (b) (8) affirmatively creates a cause of action against a municipality in two enumerated circumstances. See *Ugrin* v. *Cheshire*, 307 Conn. 364, 378, 379, 54 A.3d 532 (2012) (rejecting claim of town that "§ 52-557n (b) (8) creates no cause of action because it is limited to defining the circumstances in which there is no municipal liability"). In doing so, this court expressly determined that "§ 52-557n (b) (8) abrogates the traditional common-law doctrine of municipal immunity, now codified by statute, in the two enumerated circumstances." Id., 382. This court explained that "the qualifying language in subsection (b) (8), beginning with the word 'unless,' describes two specific circumstances in which a municipality is not shielded from liability." Id., 385. This court further explained: "[I]f the town is not shielded from liability in the inspection context when it has notice of a hazardous condition or has engaged in conduct that constitutes reckless disregard [for] public health [or] safety, the lack of protection must mean that it is subject to liability in those circumstances. Accordingly, we conclude that

tionment principles [when] the apportionment defendant's purported misconduct was based on strict liability or on a statutory cause of action. Third, the legislature made clear its intent that, despite the specific bar to apportionment regarding statutory actions, liability may be apportioned among parties liable for negligence in statutory actions based on negligence, such as wrongful death actions and actions for injuries caused by [state owned] motor vehicles. Thus, the legislature in effect anticipated, and made clear its rejection of, a potential argument that statutory actions should not be considered to be actions 'based on negligence,' which is ordinarily understood to be a common-law, and not a statutory, concept, and also made clear that, [when] the statutory action in question is based on allegations of negligence, apportionment principles would apply." (Emphasis omitted.) *Allard* v. *Liberty Oil Equipment Co.*, supra, 253 Conn. 803–804.

the plaintiffs are not precluded from bringing a cause of action against the town under § 52-557n (b) (8) . . . .'' (Emphasis omitted.) Id., 387. On the basis of this court's conclusion in *Ugrin*, we conclude that the plaintiff's cause of action under § 52-557n (b) (8) is ''created by statute'' for the purposes of § 52-572h (o). Indeed, the parties do not dispute that the plaintiff's complaint is based on a ''cause of action created by statute . . . .'' General Statutes § 52-572h (o). Therefore, the only question we address is whether the cause of action created by § 52-557n (b) (8) is based on negligence.[11]

Section 52-572h (o) does not define the phrase ''based on negligence,'' and that phrase is not defined elsewhere in the statutes. Therefore, we turn to the dictionary definition. Black's Law Dictionary defines the term ''based on'' as ''[d]erived from, and therefore similar to . . . .'' Black's Law Dictionary (10th Ed. 2014) p. 180. Black's Law Dictionary defines the term ''negligence'' as ''[t]he failure to exercise the standard of care that a

[11] In her brief to this court, the plaintiff asserts that the defendants cannot apportion liability in light of her complaint due to their apportionment complaint not being '' 'in relative pari materia' '' because the apportionment complaint is based on common-law negligence and the plaintiff's claim under § 52-557n (b) (8) is based on either a statutory recklessness requirement or an intentional disregard of the law. In support of her position, the plaintiff points to *Allard* v. *Liberty Oil Equipment Co.*, 253 Conn. 787, 805–806, 756 A.2d 237 (2000). We disagree.

First, we disagree that the plaintiff's complaint and the defendants' apportionment complaint are not ''in relative pari materia . . . .'' Id. As we explained in this opinion, we conclude that the first exception in § 52-557n (b) (8) creates a statutory cause of action based in negligence. Therefore, the plaintiff's complaint and the defendants' apportionment complaint would be ''in relative pari materia,'' at least insofar as the plaintiff alleges a cause of action under the first exception in § 52-557n (b) (8).

Second, in *Allard*, this court concluded that the defendant could not apportion a cause of action based on product liability because such claims are based on strict liability, and the legislature specified that causes of action based on strict liability are not subject to apportionment. See *Allard* v. *Liberty Oil Equipment Co.*, supra, 253 Conn. 803–804; see also General Statutes § 52-572*l*. That conclusion has no applicability to whether a cause of action under the first exception in § 52-557n (b) (8) may be apportioned.

reasonably prudent person would have exercised in a similar situation; any conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is intentionally, wantonly, or [wilfully] disregardful of others' rights." Id., p. 1196. Accordingly, we conclude that the phrase "cause of action created by statute based on negligence" in § 52-572h (o) means a cause of action that derives from a claim alleging that the defendant failed to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation.

With this understanding of § 52-572h (o), we turn to § 52-557n (b) (8) to determine whether it created a cause of action derived from negligence. Section 52-557n (b) provides in relevant part: "Notwithstanding the provisions of subsection (a) of this section, a political subdivision of the state or any employee, officer or agent acting within the scope of his employment or official duties shall not be liable for damages to person or property resulting from . . . (8) failure to make an inspection or making an inadequate or negligent inspection of any property, other than property owned or leased by or leased to such political subdivision, to determine whether the property complies with or violates any law or contains a hazard to health or safety, *unless* the political subdivision had notice of such a violation of law or such a hazard or *unless* such failure to inspect or such inadequate or negligent inspection constitutes a reckless disregard for health or safety under all the relevant circumstances . . . ." (Emphasis added.)

In *Ugrin*, this court specified that "[t]he word 'unless' before each of these two exceptions unmistakably sets them apart from the preceding language that otherwise protects municipalities from liability for failure to make an inspection or for making an inadequate inspection

because it describes conditions under which there is no protection from liability." (Emphasis omitted.) *Ugrin* v. *Cheshire*, supra, 307 Conn. 382; see also, e.g., *Williams* v. *Housing Authority*, 327 Conn. 338, 356, 174 A.3d 137 (2017) ("[T]he municipal liability statute carves out two distinct exceptions to municipal immunity for failure to inspect: [1] when a political subdivision has notice of a violation or hazard, and [2] when it demonstrates a reckless disregard for health or safety under all the relevant circumstances. See General Statutes § 52-557n (b) (8)."). Accordingly, there are two distinct claims available under § 52-557n (b) (8)—one that requires notice of a violation or hazard and one that requires a reckless disregard for health or safety.

Bearing in mind that § 52-557n (b) (8) sets forth two distinct exceptions to municipal immunity and that the plaintiff in the present case has alleged alternative claims under each exception, we must determine whether either of the exceptions is "based on negligence" for purposes of the apportionment statute. The Appellate Court in the present case opined that "[t]he second exception set forth in § 52-557n (b) (8) indisputably requires recklessness." *Costanzo* v. *Plainfield*, supra, 200 Conn. App. 767. We agree. In fact, none of the parties in this case disputes that § 52-557n (b) (8) clearly requires a plaintiff to prove "reckless disregard for health or safety" in order to bring a claim under the second exception.

This court has explained that "the type of conduct that constitutes reckless disregard for purposes of § 52-557n (b) (8) is more egregious than mere negligence and requires that health and safety inspectors disregard a substantial risk of harm." *Williams* v. *Housing Authority*, supra, 327 Conn. 366. Section 52-572h (o) explicitly provides in relevant part that "there shall be no apportionment of liability or damages between . . . parties liable on any basis other than negligence including, but not limited to . . . reckless misconduct

. . . .'' Accordingly, we agree with the Appellate Court that the defendants are not entitled to apportionment for any aspect of the plaintiff's complaint that is based on the second exception in § 52-557n (b) (8). Nevertheless, as we explained, there are two explicit exceptions to municipal immunity under § 52-557n (b) (8). Therefore, we must consider whether the first exception is based on negligence.

As we examine this question, it is helpful to look at § 52-557n as a whole. ''As a matter of Connecticut's common law, the general rule . . . is that a municipality is immune from liability for negligence unless the legislature has enacted a statute abrogating that immunity.'' (Internal quotation marks omitted.) *Grady* v. *Somers*, 294 Conn. 324, 334, 984 A.2d 684 (2009). ''The tort liability of a municipality has been codified in § 52-557n.'' (Internal quotation marks omitted.) *Borelli* v. *Renaldi*, 336 Conn. 1, 11, 243 A.3d 1064 (2020). Section 52-557n (a) (1) provides in relevant part that, ''[e]xcept as otherwise provided by law, a political subdivision of the state shall be liable for damages to person or property caused by: (A) The negligent acts or omissions of such political subdivision or any employee, officer or agent thereof acting within the scope of his employment or official duties . . . .'' ''Section 52-557n (a) (2) (B) extends, however, the same discretionary act immunity that applies to municipal officials to the municipalities themselves by providing that they will not be liable for damages caused by negligent acts or omissions which require the exercise of judgment or discretion as an official function of the authority expressly or impliedly granted by law.'' (Internal quotation marks omitted.) *Borelli* v. *Renaldi*, supra, 11. ''Subsection (b) [of § 52-557n] . . . should be generally understood to define various circumstances in which a municipality is not subject to liability.'' *Ugrin* v. *Cheshire*, supra, 307 Conn. 381. In other words, ''[s]ubsection (a) [of

§ 52-557n] sets forth general principles of municipal liability and immunity, [whereas] subsection (b) sets forth [ten] specific situations in which both municipalities and their officers are immune from tort liability." (Internal quotation marks omitted.) *Elliott* v. *Waterbury*, 245 Conn. 385, 395, 715 A.2d 27 (1998).

Thus, § 52-557n, as a whole, is designed to set forth the circumstances in which municipalities and their employees are immune from liability for their negligent acts or omissions and creates certain exceptions to that immunity for some of their negligent acts, omissions and criminal or reckless conduct. See, e.g., *Ugrin* v. *Cheshire*, supra, 307 Conn. 387 (§ 52-557n does not shield municipality from "liability in the inspection context when it has notice of a hazardous condition or has engaged in conduct that constitutes reckless disregard [for] public health [or] safety, [and therefore] the lack of protection must mean that it is subject to liability in those circumstances" (emphasis omitted)); *Grady* v. *Somers*, supra, 294 Conn. 335 (§ 52-557n "permits a tort claimant to bring a direct cause of action in negligence against a municipality" in some circumstances (internal quotation marks omitted)). Indeed, the fact that § 52-557n is contained in chapter 925 of the General Statutes, which, in turn, contains numerous statutes providing for liability and statutory rights of action for injuries in some circumstances and defenses and immunity from liability in other circumstances, indicates that § 52-557n delineates the circumstances in which municipalities and their employees are immune from liability and the circumstances in which municipalities and their employees are liable, pursuant to an exception.

Returning to the specific provision at issue in the present case, we observe that the first exception contained in § 52-557n (b) (8) imposes liability if a party suffered damages to his or her person or property because the municipality, after having notice of the haz-

ard or a violation of law, "fail[ed] to make an inspection or ma[de] an inadequate or negligent inspection of any property . . . ."

Although we acknowledge that the second exception is based on this same negligent behavior, we emphasize that it also expressly provides that, in order to be actionable, the behavior must "[constitute] a reckless disregard for health or safety under all the relevant circumstances . . . ." General Statutes § 52-557n (b) (8). As the Appellate Court correctly pointed out, unlike the second exception in § 52-557n (b) (8), the first exception contained in that provision "does not contain any reference to recklessness." [12] *Costanzo* v. *Plainfield*, supra, 200 Conn. App. 768. We also observe that the legislature did not include the terms "intentional," "wilful," or "wanton" in the first exception. Instead, the first exception only requires notice of the violation or hazard. "[I]t is a well settled principle of statutory construction that the legislature knows how to convey its intent expressly . . . or to use broader or limiting terms when it chooses to do so." (Citation omitted; internal quotation marks omitted.) *Stafford* v. *Roadway*, 312 Conn. 184, 194, 93 A.3d 1058 (2014).

Therefore, if the legislature intended the first exception contained in § 52-557n (b) (8) to require something

[12] The plaintiff asserts that this court's discussion in *Williams* v. *Housing Authority*, supra, 327 Conn. 366, regarding what constitutes "reckless disregard" demonstrates that claims under § 52-557n (b) (8) may not be based on negligence and that the statute requires a plaintiff instead to show reckless disregard. In support of her claim, the plaintiff points to our conclusion in *Williams* that "the type of conduct that constitutes reckless disregard for purposes of § 52-557n (b) (8) is more egregious than mere negligence and requires that health and safety inspectors disregard a substantial risk of harm." Id. We disagree.

In *Williams*, the only question at issue was what standard applies for a claim under the second exception in § 52-557n (b) (8), which expressly requires that a plaintiff show reckless disregard. See id., 354. Therefore, the conclusion that the second exception requires something "more egregious than mere negligence"; id., 366; has no applicability to a claim under the other, distinct exception in § 52-557n (b) (8), which requires notice.

more than mere negligence, it would have conveyed that intent expressly, as it did in the second exception. The fact that the legislature did not use such terms as "intentional," "wanton," or "reckless" in the first exception but did choose to use "reckless" in the second exception indicates that the legislature knew how to express its intent that the claim be one involving more than "[t]he failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation . . . ." Black's Law Dictionary, supra, p. 1196.

Thus, we conclude that the absence of such language in the first exception indicates that the legislature intended for a claim under that exception to be based on the negligence concepts that are at issue in the rest of § 52-557n. See, e.g., *Stratford Police Dept.* v. *Board of Firearms Permit Examiners*, 343 Conn. 62, 64–65, 272 A.3d 639 (2022) (concluding that absence of language that is used in other statutes indicates that legislature intended not to include such requirement). Had the legislature intended for a claim under the first exception to require proof of more than negligence, it could have said so expressly, as it did in the second exception. Accordingly, the plain language of the statute supports the conclusion that a cause of action under the first exception in § 52-557n (b) (8) is a cause of action created by statute based on negligence.

Furthermore, an examination of each of the terms used in the statute regarding an inspection of property by a municipal actor—namely, "failure" to inspect and "inadequate" or "negligent" inspection—also supports the conclusion that the conduct giving rise to a claim under subsection (b) (8) of § 52-557n is based on negligence. First, the term "failure" is defined as "[a]n omission of an expected action, occurrence, or performance." Black's Law Dictionary, supra, p. 713. Second, the term "inadequate" is defined as "insufficient, deficient . . . ."

Webster's Third New International Dictionary (2002) p. 1139. Finally, as we explained previously, "negligence" is defined as "[t]he failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation . . . ." Black's Law Dictionary, supra, p. 1196. Therefore, whether it is a failure to inspect or an inadequate or negligent inspection, the very behavior that gives rise to a claim under § 52-557n (b) (8) is not only explicitly described as negligent behavior, but falls within the definition of negligence. Accordingly, we conclude that the action giving rise to a claim under the first exception in § 52-557n (b) (8) is "based on negligence . . . ." General Statutes § 52-572h (o).

We also disagree with the plaintiff's contention that the requirement of notice in the first exception renders a claim under that exception akin to an intentional tort rather than a negligence based claim. A comparison of the cause of action created in the first exception in § 52-557n (b) (8) to common-law negligence claims that expressly include a notice or knowledge requirement supports the conclusion that a cause of action under the first exception in § 52-557n (b) (8) is a cause of action created by statute based on negligence. It is well established that notice is a common element in a claim for negligence. Cf. 65 C.J.S. Negligence § 45 (2022) ("[i]n order for an act or omission to be negligent, the person charged therewith must generally have, or be reasonably chargeable with, knowledge that it involved danger to another").

For instance, at common law, a negligence action for an injury that an invitee sustains on another's property requires proof of notice but is still a claim deriving from negligence. In such a case, actual notice is necessary to prove that the owner of the premises owed a duty to the plaintiff. To be sure, this court has explained that "[i]t is well established that, in the context of a

negligence action based on a defective condition on the [defendants'] premises, [t]here could be no breach of the duty resting [on] the defendants unless they knew of the defective condition or were chargeable with notice of it . . . ." (Internal quotation marks omitted.) *Riccio* v. *Harbour Village Condominium Assn., Inc.*, 281 Conn. 160, 163, 914 A.2d 529 (2007).

Similarly, in a premises liability action, "[f]or [a] plaintiff to recover for the breach of a duty owed to [him] as [a business] invitee, it [is] incumbent [on him] to allege and prove that the defendant either had actual notice of the presence of the specific unsafe condition [that] caused [his injury] or constructive notice of it." (Internal quotation marks omitted.) *DiPietro* v. *Farmington Sports Arena, LLC*, 306 Conn. 107, 116–17, 49 A.3d 951 (2012); accord *Baptiste* v. *Better Val-U Supermarket, Inc.*, 262 Conn. 135, 140, 811 A.2d 687 (2002). Thus, we conclude that the legislature's decision to incorporate a notice requirement, which is also used in connection with common-law claims of negligence, in the first exception contained in § 52-557n (b) (8) supports the conclusion that the legislature intended to create a cause of action based on negligence. See, e.g., *Pacific Ins. Co., Ltd.* v. *Champion Steel, LLC*, 323 Conn. 254, 270, 146 A.3d 975 (2016) ("the legislature is presumed to be aware of the common law when it enacts statutes").

Furthermore, this court has explained that, "in the tort lexicon . . . intentional conduct and negligent conduct, although differing only by a matter of degree . . . are separate and mutually exclusive." (Citation omitted.) *American National Fire Ins. Co.* v. *Schuss*, 221 Conn. 768, 775, 607 A.2d 418 (1992). "In its most common usage, intent involves (1) . . . a state of mind (2) about consequences of an act (or omission) and not about the act itself, and (3) it extends not only to having in the mind a purpose (or desire) to bring about given

consequences but also to having in mind a belief (or knowledge) that given consequences are substantially certain to result from the act." (Emphasis omitted; internal quotation marks omitted.) Id., 776. "Negligent conduct, however, is a matter of risk." (Internal quotation marks omitted.) Id.

The mere inclusion of the requirement that the plaintiff prove that the municipal actor had notice of the hazard or defect does not raise the municipal actor's conduct to the level of intentional conduct. The statute does not require that the municipal actor who failed to inspect or who conducted a negligent inspection desired that a negative result would occur or believed that the result was substantially certain to occur from the failure to inspect or negligent inspection. Indeed, the plaintiff's revised complaint does not allege such facts. Instead, the first exception in § 52-557n (b) (8) creates a cause of action for a failure or omission by a municipal employee related to the inspection of property that created a sufficiently great risk of danger that would lead a reasonable person in the municipal actor's position to anticipate that risk and to act to guard against it, which is the foundation for a negligence claim. "In negligence, the actor does not desire to bring about the consequences [that] follow, nor does he know that they are substantially certain to occur, or believe that they will. There is merely the risk of such consequences, sufficiently great to lead a reasonable person in his position to anticipate them, and to guard against them . . . ." (Internal quotation marks omitted.) Id., 776–77. Accordingly, we conclude that the first exception in § 52-557n (b) (8) is directed at negligent conduct, not intentional conduct.

In her revised complaint, the plaintiff alleges that the defendants are liable under § 52-557n (b) (8), in part because Kerr and Collins had notice of the aboveground pool, notice that it had no self-closing and self-latching

gate and notice that it did not have a pool alarm. Accordingly, we conclude that the plaintiff alleged, at least in part, a cause of action created by statute based on negligence.[13] Therefore, we agree with the Appellate Court that the trial court improperly sustained the plaintiff's objections to the defendants' apportionment complaint and notice of intent to seek apportionment

The judgment of the Appellate Court is affirmed.

In this opinion the other justices concurred.

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[13] Given that we conclude that § 52-572h (o) is applicable to the plaintiff's revised complaint because the plaintiff alleged a cause of action based, in part, on negligence, the defendants could institute an apportionment action pursuant to § 52-102b. See footnotes 7 and 8 of this opinion.