

Received at  
NOV 10 2011  
P.& Z.C. Public Hearing

FST-CV-09-5012498 S

----- x  
ANN C. GILL, EDWARD B. GILL,  
ELIZABETH STILLINGER GUTHMAN,  
MARY H. TIRRENO, HEDI MANDEL,  
MARION LEAMAN, ALIZA MAURY WIND,  
HELGA RICHARDS and FRANK L. RICHARDS,

Plaintiffs,

VS.

THE PLANNING AND ZONING COMMISSION  
OF THE TOWN OF WESTPORT, THE TOWN  
OF WESTPORT AND THE PARKS AND  
RECREATION COMMISSION OF THE TOWN  
OF WESTPORT,

Defendants.

SUPERIOR COURT  
JUDICIAL DISTRICT OF  
STAMFORD/NORWALK  
(at Stamford)

x: November 10, 2011

**STIPULATION AND SETTLEMENT AGREEMENT**

Pursuant to Conn. Gen. Stat. §8-8(n), the Plaintiffs and the Defendants hereby stipulate to the entry of Judgment in settlement of all claims arising out of this appeal and the parties jointly represent to the court as follows:

WHEREAS, the Plaintiffs are owners of real property located in Westport, Connecticut;

WHEREAS, the Defendant Parks and Recreation Commission of the Town of Westport submitted Amendment #594, Application #09-039, a proposed text amendment to the Westport Zoning Regulations to add a new section 11-2.3.14, Lighted Athletic Fields on Town Owned Property;

WHEREAS, The Planning and Zoning Commission ("Commission") held public

hearings on the proposed amendment on May 7, 2009, May 14, 2009, May 28, 2009, June 11, 2009 and July 16, 2009, and also held work sessions on July 23, 2009 and July 30, 2009;

WHEREAS, following public hearings, on July 30, 2009, effective August 30, 2009, the Commission adopted the proposed text amendment with modifications (the "Lighting Regulations");

WHEREAS, the Plaintiffs timely commenced this appeal of the Lighting Regulations;

WHEREAS, during the pendency of this appeal the parties have had negotiations;

WHEREAS, the parties have agreed to certain modifications of and clarifications to the Lighting Regulations;

WHEREAS, following a public hearing on November 10, 2011, the Commission on November 10, 2011 voted to authorize the Town Attorney to enter into a Stipulated Settlement in accord with the agreed upon modifications and clarifications to the Lighting Regulations; and

WHEREAS, the attached modified Lighting Regulations shall replace the original Lighting Regulations effective August 30, 2009; and, *taken together*, this Stipulation and Settlement Agreement and the attached, modified Lighting Regulations shall state the full terms of these negotiations and the full resolution of this matter.

NOW THEREFORE, the parties agree to the following terms:

**A. STAPLES**

1. **Westport Athletic Special Event:** A "Westport Athletic Special Event" is any Westport team athletic practice or game, including, but not limited to, football, soccer, field hockey, and lacrosse, that utilizes the athletic field lighting after 8:00 p.m. Other conditions applying to Westport Athletic Special Events shall include the following:

- a) Such events must involve a Westport Board of Education or Westport Parks and Recreation Department sponsored or sanctioned team.
- b) Community athletic events are allowed (e.g. youth football, lacrosse, field hockey, soccer), but fairs, bands, concerts or other musical events where there is no game also occurring, or where music is not incidental or ancillary to the primary game, are not allowed. It is the intent of this provision to allow, for example, music from the high school bands during a football game, but “battles of the bands” or the like (including at half-time) and music-only concerts shall not be permitted.
- c) CIAC or FCIAC Playoff or Championship football playoff games for the Staples High School football team are in addition to the approved number of permitted Westport Athletic Special Events. Practices for such games shall also not be counted as Westport Athletic Special Events provided that they are concluded, and the lights are turned off for such practices, by 8:00 p.m.
- d) Any event that continues or otherwise occurs after 8:00 p.m. and utilizes the athletic field lights, including practices, shall constitute a Westport Athletic Special Event, except that regularly scheduled Staples High School Varsity games which are scheduled to begin at 6:00 p.m. or earlier, but which are delayed due to unforeseen circumstances (e.g. weather, travel delays), may be completed and will not be considered a Westport Athletic Special Event.
- e) Soccer, field hockey, lacrosse and other games may take place under lighting which is in compliance with Westport Zoning Regulation 32-19.4(d) and shall be completed before 8:00 p.m., and therefore shall not count toward the stipulated

number of Westport Athletic Special Events.

- f) No more than two (2) Saturdays during the calendar year may be used for a Westport Athletic Special Event. The parties agree that any use of the lights on a Saturday, whether for a game or practice, regardless of the hour, shall be a Westport Athletic Special Event. On such Saturdays, the lights must be off by 8:00 p.m., with no extensions beyond 8:00 p.m. for weather, overtime, travel problems or any other reason. In the event of a Westport Athletic Special Event on a Saturday, 1) there shall be no Westport Athletic Special Event on the preceding Friday night; and 2) the lights for any other games or practices shall be turned off on the preceding Friday no later than 7:00 p.m.
2. **Number of Events:** There shall be no more than eight (8) Westport Athletic Special Events during a year.
3. **Noise:** The four (4) recommendations in the JaffeHolden Noise Report dated April 29, 2010, which are set forth below, shall be implemented:
1. Re-aim the existing loudspeakers on the home side of the field to concentrate coverage on the home bleachers. This will reduce sound bleed to the community since the loudspeakers will not be relied upon to provide coverage of the away bleachers. For this same reason, the overall volume of the system can be reduced while still providing adequate volume at the home bleachers.
  2. Provide two new loudspeaker mounting poles behind the away bleachers similar to the existing poles on the home side. Mount two new loudspeakers to the new poles, aimed (away from the community) to provide coverage concentrated on the away bleachers.
  3. Determine system output levels that reduce impact on the community while maintaining adequate coverage of the spectator areas. Then program the existing dbx digital signal processor to limit output levels at which the system can be operated to those determined to be acceptable.

4. Reproduce music only through the loudspeakers covering the home bleachers. In addition, implement frequency equalization with the existing digital signal processor to “roll off” lower frequencies, i.e. to reduce the output level of music bass frequencies. This will reduce the perception of “rumble” in the surrounding community, which tends to carry farther unattenuated than mid and high frequency (e.g. speech) sounds.

The Defendants agree that following implementation of these recommendations (i) the sound will be properly retested to ensure that the recommendations were implemented correctly, and (ii) to discuss implementing sound monitoring similar to that which is utilized at the Levitt Pavilion.

In addition, there shall be no amplified music after half-time for any Westport Athletic Special Events. Nothing herein shall preclude the Plaintiffs from seeking or negotiating additional restrictions or limitations from the Board of Education with respect to amplified music or other sound issues.

4. **Practices:** Practices shall terminate no later than 8:00 p.m. and provided they do so are not Westport Athletic Special Events. Lighting which is in compliance with Westport Zoning Regulation 32-19.4(d) shall be used for practices and shall be turned off no later than 8:00 p.m. No amplified sound shall be permitted during practices.
5. **Games:** Westport Athletic Special Event games must be scheduled to begin no later than 7:00 p.m. Every effort shall be made to conclude games and provide for a complete and safe exit by teams, staff and fans by 10:00 p.m., thus allowing for the lights to go off at that time; however, it is understood that reasonable extensions beyond 10:00 p.m. are allowed in the event a game is delayed due to weather, overtime, travel problems, or other unforeseen circumstances. Users of the fields shall be directed that they must proceed in good faith. Extensions beyond 10:00 p.m.

shall be rare, and violations of this provision shall be reported to the Citizen's Review Committee set forth below for review and recommendations. Lights will be reduced after the game ends, but will remain sufficiently illuminated to allow for a safe exit.

6. **Lighting Study:** A lighting study shall be done as part of the Staples field special permit/site plan application. Best efforts shall be used to incorporate any recommendations made in that study. Plaintiffs have the right to review and comment on the light study including any proposed recommendations.
7. **Enforcement:** A Review Committee (the "Committee") shall be created to monitor and provide for enforcement and compliance with the Lighting Regulations, these conditions and any conditions set by the Commission. The Committee shall consist of four people: one selected by the Board of Education; one selected by the Westport First Selectman; and two representatives from the adjoining neighborhood, initially to be from the Plaintiffs in this action and at such time as there are no longer two Plaintiffs willing to serve any openings, shall be selected by the Westport First Selectman from interested neighbors who reside within 500 feet of Staples. The Committee shall be empowered to meet as necessary to investigate and make factual findings regarding any such complaints. The Committee has the option of discussing the complaint directly with any party alleged to have caused a violation in lieu of referring the matter to the Zoning Enforcement Officer. However, the complaint shall be referred to the Zoning Enforcement Officer for investigation, if necessary, and enforcement, in his/her discretion, in the event that at least two members of the Committee vote for such referral. The Zoning Enforcement Officer is charged with enforcement of the Lighting Regulations and may rely on factual findings of the

Committee without the need for any further investigation. The Committee shall meet at least once per year and review compliance with the Lighting Regulations and this Stipulation and provide a report to the Commission regarding the same.

8. **Restrictions on Future Easing of Restrictions:** The terms of this Stipulation and Settlement Agreement shall be binding on the parties for a period of 12 years from the date of entry of the Stipulation.
9. **Miscellaneous Modifications and Clarifications to the Lighting Regulations:** In an effort to clarify or modify the Lighting Regulations, the text of the Lighting Regulations is modified as reflected on Exhibit A attached hereto.
10. Should there be any conflict between the provisions of this Stipulation and Settlement Agreement and the terms of the attached Lighting Regulations, the provisions of this Stipulation and Settlement Agreement shall govern.

**B. AGREEMENT NOT TO TESTIFY**

1. The Plaintiffs agree not to testify in opposition at any subsequent site plan/special permit hearing with respect to an application to install permanent lights at the Staples High School football field provided (i) they have had the reasonable opportunity to review and comment, in advance, on the special permit/site plan application and that such comments shall be considered in good faith by the applicant and (ii) such application is in accord with the attached Lighting Regulations. Further, Plaintiffs agree that they shall not file an appeal in the Superior Court challenging any approval of such application to install permanent lights at the Staples High School football field.
2. Notwithstanding the above, it is agreed that the Planning and Zoning Commission of

the Town of Westport shall exercise its independent authority in accordance with the law in reviewing any such site plan/special permit application for the Staples field.

**C. JUDGMENT**

1. The Lighting Regulations are hereby amended as set forth in the attached Exhibit A. In addition, the terms herein shall modify the Lighting Regulations.
2. Judgment may be entered upon joint motion of the parties in accordance with the terms of this Stipulation.

**THE PLAINTIFFS**

By: \_\_\_\_\_  
Matthew C. Mason  
For: Gregory and Adams, P.C. (#24954)  
190 Old Ridgefield Road  
Wilton, CT 06897  
(203) 762-9000  
(203) 834-1648 Fax  
Juris No.  
[mmason@gregoryandadams.com](mailto:mmason@gregoryandadams.com)

**THE DEFENDANTS**

By : \_\_\_\_\_  
Ira W. Bloom  
For: Berchem, Moses & Devlin, P.C.  
27 Imperial Avenue  
Westport, CT 06880  
(203) 227-9545  
(203) 226-1641  
Juris No. 065850  
[ibloom@bmdlaw.com](mailto:ibloom@bmdlaw.com)

## **Exhibit A**

PROPOSED REVISIONS FOR SETTLEMENT

---

REVISIONS FOR SETTLEMENT: 11/9/11 FINAL

§5 DEFINITIONS 5-2 Specific Terms

<i>TERM</i>	<i>DEFINITION</i>
<i>Westport Athletic Special Event:</i>	<p>A “Westport Athletic Special Event” is any Westport team athletic practice or game, including, but not limited to, football, soccer, field hockey, and lacrosse that utilizes the athletic field lighting after 8:00 p.m. between September 1<sup>st</sup> and December 1<sup>st</sup>, or any event that uses athletic field lighting after December 1<sup>st</sup> through August 31<sup>st</sup>, or any event utilizing field lighting that exceeds a measurement of 0.3 foot candles at the property line. Other conditions applying to Westport Athletic Special Events shall include the following:</p> <ul style="list-style-type: none"><li>• Such events must involve a Westport Board of Education or Westport Parks and Recreation Department sponsored or sanctioned team.</li><li>• Any event that continues or otherwise occurs after 8:00 p.m. and utilizes the athletic field lights, including practices, shall constitute a Westport Athletic Special Event; except that regularly scheduled Staples High School Varsity games which are scheduled to begin at 6:00 p.m. or earlier, but which are delayed due to unforeseen circumstances (e.g. weather, travel delays), may be completed and will not be considered a Westport Athletic Special Event.</li><li>• Soccer, field hockey, lacrosse, other games and practices for any sport may take place under lighting which is in compliance with §32-19.4(d), herein and shall be completed before 8:00 p.m., and therefore shall not count toward the stipulated number of Westport Athletic Special Events.</li><li>• Football Games associated with CIAC or FCIAC playoff or Championship playoffs for the Staples High School football team are permitted and shall not be counted as Westport Athletic Special Events. Practices for such games shall also not be counted as Westport Athletic Special Events provided that they are concluded by 8:00 p.m.</li></ul>

*Town of Westport Zoning Regulations*

11-6 Coverage

The total coverage shall not exceed twenty-five percent (25%) of the area of the lot. Total coverage shall include 50% of the surface area of tennis courts. Permanent and temporary light poles for lighted athletic fields on town owned public school property as defined in §11-2.4.8 shall be exempt from coverage.

12-6 Coverage

The total coverage shall not exceed twenty-five percent (25%) of the lot area. Total coverage shall include fifty percent (50%) of the surface area of tennis courts. Permanent and temporary light poles for lighted athletic fields on town owned public school property as defined in §11-2.4.8 shall be exempt from coverage.

13-6 Coverage

The building coverage shall not exceed fifteen percent (15%) of the lot area. Total coverage shall not exceed twenty-five (25%) percent of the area of the lot. Total coverage shall include fifty (50%) percent of the surface area of tennis courts. Permanent and temporary light poles for lighted athletic fields on town owned public school property as defined in §11-2.4.8 shall be exempt from coverage.

**32-19 Permanent Lighted Athletic Fields on Town Owned Public School Property**

**32-19 Purpose**

The purpose of this regulation is to encourage expanded use of Town owned public school property athletic fields while not causing unreasonable adverse impacts to surrounding residential neighborhoods. Permanent Lighted Athletic Fields on Town Owned Public School Property may be permitted on properties that have a minimum of 20 acres and a minimum of 200 parking spaces. The amount of lighting required shall achieve safe conditions for athletes, coaching staff and spectators. Permanent Lighted Athletic Fields on Town Owned Public School Property are subject to a Special Permit and Site Plan approval in accordance with §43 & §44, herein, and subject to the following conditions:

**32-19.1 Application Requirements**

An application for Site Plan and Special Permit shall be submitted as required under §43 & §44 of the regulations. In addition the applicant must submit the following:

- (a) photometric plans for the entire area to be lighted including a separate plan for Westport Athletic Special Events and a separate

*Town of Westport Zoning Regulations*

plan for practices. These plans shall show all property lines that abut the area to be lighted. The values to be measured are to be the vertical and horizontal foot candles measured at the property line on a ten foot vertical grid at ground level up to the highest elevation of any lighting structure or luminary;

- (b) a design plan for the sound system and sound mitigation that minimizes the impacts on adjacent properties.

**32-19.2 Considerations**

When considering Permanent Lighted Athletic Fields on Town Owned Public School Property, the Planning and Zoning Commission shall consider and determine in each case the following:

- (a) the impact that such approval shall have on the general health and welfare of the residents of the Town;
- (b) the effects of light and noise that this approval will have upon surrounding residential neighborhoods;
- (c) the proposal will not adversely affect public safety;
- (d) the proposal will be consistent with the current Town Plan of Conservation and Development and the Westport zoning regulations;
- (e) the proposal will be consistent with the Special Permit standards in §44-6.

**32-19.3 Commission Action**

After the required public hearing is held and findings are made, the Commission may, at its sole discretion:

- (a) approve the application as proposed or introduce additional requirements or conditions to insure that surrounding residential areas are not unreasonable adversely impacted as a result of the application;
- (b) deny any application that would cause unreasonable adverse impacts to surrounding residential areas.

**32-19.4 Conditions of Approval**

Any Special Permit for a Permanent Lighted Athletic Fields on Town Owned Public School Property approved by the Planning and Zoning Commission under this regulation shall be subject to the following.

- (a) The property shall be a minimum 20 acres in size and have a minimum of 200 parking spaces.

*Town of Westport Zoning Regulations*

- (b) All structures used to light athletic fields shall achieve a minimum 50 foot setback from all residential property boundaries.
- (c) The structures used to light athletic fields shall not exceed 80 feet in height measured from ground elevation at the center of the field to the highest point of the structure including any attached fixture.
- (d) Lighting structures shall be designed to avoid light spillage onto and minimize offensive glare visible from surrounding residential properties. All lighting must be down directed to the greatest extent possible. No measurement of luminance taken at the property line as a result of lighting sources located on the subject property shall exceed 0.3 foot candles as measured in the photometric plan required in §32-19.1a. The 0.3 foot candles may be achieved by using evergreen screening and/or fencing or other types of screening acceptable to the Commission.
- (e) All athletic field lighting must be turned off at the later of either a) 30 minutes after the end of any, Westport Athletic Special Event, practice or other activity, or b) 8:00 p.m. No game or event may be scheduled to start later than 7:00 p.m. The lighting control system shall have provisions acceptable to the Commission in order to guarantee these limited use restrictions which must be specified in a special permit application.
- (f) The Commission may, at its discretion, permit a limited number of exceptions to the 0.3 foot candle limitation and the 8:00 p.m. curfew for Westport Athletic Special Events provided that a) the measurement of luminance at the at the property line as a result of lighting sources at the subject property may not exceed 1.0 foot candle as measured in the photometric plan specified in §32-19.1a for Westport Athletic Special Events and b) all athletic field lighting is turned off by 11:00 p.m.
- (g) (1) No athletic field lighting may be used on Saturdays, except as follows: No more than two (2) Saturdays during the calendar year may be used for a Westport Athletic Special Event. Any use of the lights on a Saturday, whether for a game or practice, regardless of the hour, shall be a Westport Athletic Special Event. On such Saturdays, the lights must be off by 8:00 p.m., with no extensions beyond 8:00 p.m. for weather, overtime, travel problems or any other reason. In the event of a Westport Athletic Special Event on a Saturday, 1) there shall be no Westport Athletic Special Event on the preceding Friday night; and 2) the lights for any other games or practices will be turned off on the preceding Friday no later than 7:00 p.m.  
(2) No athletic field lighting may be used at any time on Sundays.  
(3) No athletic field lighting may be used between December 1<sup>st</sup> and September 1<sup>st</sup> except for Westport Athletic Special Events or

*Town of Westport Zoning Regulations*

games and practices associated with CIAC or FCIAC Playoff or Championship football playoffs for the Staples High School football team.

(4) Athletic field lighting for practices associated with CIAC or FCIAC Playoff or Championship football games for the Staples High School football team shall not be used past 8:00 p.m.

- (h) There shall be no more than 8 lighted Westport Athletic Special Events at any particular facility during any 12 month period that begins September 1<sup>st</sup> of each year. No later than August 15<sup>th</sup> for the fall season and February 15<sup>th</sup> for the spring and summer seasons of each year a list of upcoming Westport Athletic Special Events shall be submitted to the Planning & Zoning Department. CIAC or FCIAC Playoff or Championship football playoffs for the Staples High School football team are in addition to the approved number of permitted Westport Athletic Special Events.
- (i) There shall be no more than 2 properties with permanent or temporary lighted athletic fields constructed after the effective date of this amendment (10-5-11)
- (j) There shall be no more than 1 permanent or 2 temporary lighted athletic(s) fields per property but not a combination of permanent and temporary lights.
- (k) The use of gas or diesel power generators, except as emergency backup, shall be prohibited except if specifically approved by the Planning & Zoning Commission as temporary athletic field lighting pursuant to §32-19A.
- (l) The applicant shall provide information about sound and noise as part of any special permit application. Any application shall demonstrate that noise and sound effects on surrounding residential properties shall be to the minimum extent possible. If deemed necessary by the Commission sound attenuation measures shall be installed. When athletic field lighting is in use, a public address system may only be used for Staples High School varsity games. There shall be no amplified music for any Westport Athletic Special Event after halftime. There shall be no amplified sound during practices.
- (m) Any additional requirements or restrictions the Commission determines at its discretion are necessary to insure that adjacent properties are not significantly adversely impacted by the proposed special permit.
- (n) All special permit applications under this section shall provide guidelines for controlling, air horns, bull horns and similar devices.

*Town of Westport Zoning Regulations*

- (o) The lighted fields shall only be used for Westport team athletic practices and games (except for required league reciprocity) as sponsored or sanctioned by the Board of Education or the Westport Parks and Recreation Department. Community athletic events are allowed (e.g. youth football, lacrosse, field hockey, soccer). Fairs, concerts, "battles of the bands" or other musical events are not allowed, but nothing shall prohibit school bands from performing during games or at halftime.
- (p) Prior to the issuance of a Zoning Certificate of Compliance the applicant shall submit a final engineer's certification of luminance measurements at the property line.