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Supreme Court of Connecticut.  
**VIP OF BERLIN, LLC**  
 v.  
**TOWN OF BERLIN et al.**  
**No. 18039.**

Argued April 14, 2008.  
 Decided May 27, 2008.

**Background:** Property owner brought declaratory judgment action against **town** and **town** manager, alleging that **town's** ordinance, restricting sexually-oriented businesses in residential zones, is ultra vires. The Superior Court, Judicial District of New Britain, Robert B. Shapiro, J., 2007 WL 2428944, granted summary judgment to defendants. Owner appealed, and the appeal was transferred from the Appellate Court.

**Holding:** The Supreme Court held that statutory power of town planning and zoning commission, to regulate the location and use of buildings and land in town, was not exclusive, and thus, town council, pursuant to town's statutory regulatory and police powers with respect to buildings in town, could enact an ordinance imposing locational restrictions for sexually-oriented businesses in residential zones in town. Affirmed.


West Headnotes

**Zoning and Planning 414**  **13**

414 Zoning and Planning

414I In General

414k13 k. Who May Exercise Power. Most Cited Cases

**Zoning and Planning 414**  **76**

414 Zoning and Planning

414II Validity of Zoning Regulations

414II(B) Regulations as to Particular Matters  
414k76 k. Particular Uses. Most Cited Cases

Statutory power of town planning and zoning commission, to regulate the location and use of buildings and land in town, was not exclusive, and thus, town council, pursuant to town's statutory regulatory and police powers with respect to buildings in town, could enact an ordinance imposing locational restrictions for sexually-oriented businesses in residential zones in town. C.G.S.A. §§ 8-2, 8-3, 7-148(c)(7). \*\*1247 Daniel A. Silver, New Britain, for the appellant (plaintiff).

Erika L. Amarante, New Haven, with whom were Robert G. Huelin, Hartford, and, on the brief, Robert F. Weber, Jr., New Britain, for the appellees (defendants).

ROGERS, C.J., and NORCOTT, KATZ, PALMER and SCHALLER, Js.

PER CURIAM.

\*142 The plaintiff, **VIP of Berlin, LLC**, brought this action against the defendants, the **town of Berlin (town)**, and the **town** manager, Herman Middlebrooks, Jr., seeking a judgment declaring that the **town's** enactment of § 14-291(c) of the **Berlin** municipal code <sup>FN1</sup> constitutes an ultra vires act, and that the provision is, therefore, unenforceable. The parties filed cross motions for summary judgment and the trial court rendered summary judgment in favor of the defendants. \*143 The plaintiff then filed this appeal. <sup>FN2</sup> We affirm the judgment of the trial court.

<sup>FN1</sup>. Section 14-291(c) of the **Berlin** municipal code provides: "No sexually oriented business shall be permitted on a site that is less than 250 feet from any residentially zoned land as defined in the **town** zoning regulations."

<sup>FN2</sup>. The plaintiff appealed from the judgment of the trial court to the Appellate Court, and we transferred the appeal to this court pursuant to General Statutes § 51-199(c) and Practice Book § 65-1.

For purposes of ruling on the parties' motions for

summary judgment, the trial court assumed the truth of the following allegations made by the plaintiff in its complaint. The plaintiff owns property at 717 Berlin Turnpike in Berlin. The property is zoned for retail use and the existing building and parking constitute a valid nonconforming use.<sup>FN3</sup> The plaintiff wanted to operate a retail business on the property for the purpose of selling “ ‘lingerie, club wear, women's shoes, lotions, oils, greeting cards, gag gifts, as well as sexually explicit DVDs, books, magazines,’ and other products.” Middlebrooks determined that the proposed use of the property constituted a sexually oriented business under § 14-242 of the municipal code<sup>FN4</sup> and, therefore, required a license under § 14-261(a) of the municipal code.<sup>FN5</sup> Because\*\*1248 the location of the property was within 250 feet of a residence, the plaintiff was ineligible to receive a license under § 14-291(c) of the municipal code.<sup>FN6</sup>

FN3. The record does not reveal in what respect the existing use of the property is nonconforming.

FN4. Section 14-242 of the **Berlin** municipal code provides in relevant part: “Sexually oriented business means: (1) An ... adult oriented store....”

FN5. Section 14-261(a) of the **Berlin** municipal code provides in relevant part: “[I]t shall be unlawful for any person to engage in, conduct or carry on or permit to be engaged in, conducted or carried on, in or upon any premises in the **town**, the operation of a sexually oriented business without first obtaining a license to operate from the **town**.”

FN6. The plaintiff alleged in its complaint that it did not apply for a license to operate a sexually oriented business because doing so would have been futile.

The plaintiff brought this action for a declaratory judgment, contending that the town lacked authority to adopt § 14-291(c) of the municipal code because the provision constituted a zoning ordinance and the town \*144 planning and zoning commission had exclusive authority to adopt zoning ordinances. Accordingly, the plaintiff argued, the ordinance was unenforceable. Thereafter, the plaintiff filed a motion for summary judgment, claiming that there was no genu-

ine issue of material fact that the ordinance was unenforceable. The defendants objected to the plaintiff's motion for summary judgment and filed a cross motion for summary judgment. The trial court denied the plaintiff's motion for summary judgment and rendered judgment for the defendants on the plaintiff's complaint.<sup>FN7</sup> This appeal followed.

FN7. In their cross motion for summary judgment, the defendants claimed that they were entitled to a declaratory judgment upholding the validity of the challenged ordinance as a matter of law. The trial court concluded that, because the defendants had not brought a counterclaim seeking a declaratory judgment, they could not prevail on that portion of their claim.

Our examination of the record on appeal, and the briefs and arguments of the parties, persuades us that the judgment of the trial court should be affirmed. Because the trial court's memorandum of decision fully addresses the arguments raised in the present appeal, we adopt the trial court's concise and well reasoned decision as a statement of the facts and the applicable law on these issues. See *VIP of Berlin, LLC v. Berlin*, 50 Conn. Sup. 542, 951 A.2d 714 (2007). It would serve no useful purpose for us to repeat the discussion therein contained. See, e.g., *Lagassey v. State*, 281 Conn. 1, 5, 914 A.2d 509 (2007); *Cashman v. Tolland*, 276 Conn. 12, 16, 882 A.2d 1236 (2005).

The judgment is affirmed.

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