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KATZ, J., concurring. I agree with the majority's conclusion that the trial court's judgment, reversing the decision of the named defendant, the zoning board of appeals of the town of Killingworth (board), that upheld a cease and desist order requiring the plaintiff, Nicole S. Graff, to reduce the number of pet dogs on her property to four, must be reversed. I write separately, however, to address an important aspect of the plaintiff's claim of right to keep her fourteen dogs, which the majority does not address directly.

The principal thrust of the plaintiff's claim is that the board expressly has *exempted* household pets from its regulatory scheme and, therefore, the number of dogs the plaintiff may keep is limited only by the common law of nuisance or by municipal health and sanitation laws. As evidence of the board's intent to relinquish its authority over this matter, the plaintiff points to the following town zoning regulation, set forth under the category of ''General Principal Uses,'' which provides in relevant part: ''The keeping of animals *other than household pets* shall be permitted subject to the following conditions and limitations.'' (Emphasis added.) Killingworth Zoning Regs., § 61A.1 (G). The plaintiff's interpretation of the proviso excluding household pets as exempting such pets from zoning regulations altogether is untenable for several reasons.

By its nature and very definition under the regulatory scheme, the keeping of household pets cannot be deemed a ''principal use'' of the property.[1] See Killingworth Zoning Regs., § 20A (defining ''household pet'' as ''any domesticated animal kept for pleasure rather than utility or profit which is normally kept within a residence''). As that definition clearly indicates, the keeping of pets is subordinate to the principal use of property for a residential dwelling. See also *Kaeser* v. *Zoning Board of Appeals*, 218 Conn. 438, 443, 589 A.2d 1229 (1991) (concluding that household pet ''connotes to us an animal reasonably capable of dwelling within a household, presumably under the same roof and living as a member of a family''); cf. Killingtworth Zoning Regs., § 61A.2 (I) (requiring commercial dog kennels to keep dogs in buildings, enclosures or runs located not less than 500 feet from dwellings).[2] Therefore, had the board intended to exempt household pets from regulation, it surely would not have provided such an exemption under the zoning regulations setting forth principal uses. Indeed, a logical explanation for including the proviso ''other than household pets'' in § 61A.1 (G) that is consistent with its placement in the general principal use section of the regulations is simply to make clear that the board was intending to prescribe therein the conditions and limitations applicable to *only* those ani-

mals the keeping of which constitutes a principal use of the land.

In addition, the fundamental principal is uncontested that, barring some self-imposed limitation or one imposed by Killingworth, the board properly can regulate this matter.[3] Accordingly, if the board had intended to exempt pets from the regulatory scheme and thereby relinquish all control over that matter, one would expect a far clearer manifestation of such an intent. Indeed, because the zoning scheme is a permissive one; see Killingworth Zoning Regs., § 40A;[4] were we to give literal effect to the regulation providing that ''[t]he keeping of animals other than household pets shall be permitted''; Killingworth Zoning Regs., § 61A.1 (G); by implication, the keeping of household pets would not be a permissible use of the property. For all the reasons discussed in the majority opinion, both the dominant practice nationally and common sense dictates that such a use must be permitted and therefore must be considered to be an accessory use of the property. Furthermore, the board uniquely is situated to interpret its own regulations as to what that use entails.[5] See *Lawrence* v. *Zoning Board of Appeals*, 158 Conn. 509, 514, 264 A.2d 552 (1969) (''[e]ven though the board was not acting in a legislative capacity as would a zoning commission in making a change of zone, nevertheless its determination of the applicability of the [accessory use] ordinance, as we have construed it, to [the plaintiff's] situation lay within its sound discretion''). Therefore, I agree with the majority opinion's conclusion that the keeping of dogs as household pets is limited by the requirements attendant to an accessory use and that the keeping of fourteen dogs is not customarily incidental to residential property.

As a related note on that point, I am mindful that the record indicates that, because the plaintiff took the position that the board could not regulate the number of dogs she kept, she did not suggest to the board an alternative method by which the Killingworth zoning officer could ascertain the number of dogs that are ''customarily incidental'' to residential property as an accessory use under § 20A of the Killingworth zoning regulations. As the party seeking to demonstrate that the board acted improperly in affirming the zoning officer's cease and desist order, the plaintiff bore the burden of proving that keeping fourteen dogs as household pets was a valid accessory use of her property. See *Wood* v. *Zoning Board of Appeals*, 258 Conn. 691, 698, 784 A.2d 354 (2001). Evidence of such an alternative method would have been relevant not only to the board's ultimate decision that keeping fourteen dogs was not a valid accessory use, but also to its decision that the plaintiff must get rid of all but four dogs to comply with the zoning regulations. The sole evidence before the board, however, was the current licensing records relied on by the zoning officer. Those records

reflected that, of 250 residents licensing more than one dog, only five residents had more than four dogs. In the absence of evidence that these records were not indicative of customary practice, I cannot conclude that the board's decision upholding the zoning officer's cease and desist order, based solely on the officer's examination of current licensing records, necessarily was arbitrary and capricious.

I question, however, whether the number of dogs presently licensed to Killingworth residents provides a sufficient basis for reaching a well founded conclusion as to the limits of that accessory use. Indeed, this court indicated in *Lawrence* v. *Zoning Board of Appeals*, supra, 158 Conn. 509, that the term ''customarily'' indicates a practice continued over a period of time. See id., 512–13 (''[t]he use must be further scrutinized to determine whether it has commonly, habitually and by long practice been established as reasonably associated with the primary use''). The picture presented to the board may have been markedly different had licensing records covering a longer period been considered.

Finally, I would like to underscore that, in light of express limitations in the zoning regulations on the number of animals—other than household pets—that could be kept, the absence of any such limitation on household pets, the absence of any limit on dogs that may be kept as part of a commercial kennel and the absence of any limit on the number of dogs that may be licensed by Killingworth, it was not irrational for the plaintiff to conclude, when moving to a rural town like Killingworth and purchasing nine acres of land, that there was no prohibition on her keeping fourteen dogs. Indeed, the plaintiff reasonably could have concluded that such use would create far fewer noise and odor issues than that which would have ensued had she used her property to the full extent permitted as of right by keeping other animals as a principal use of the property.[6] When confronted with noise complaints from neighbors, the plaintiff took measures, although ultimately not adequate, to address those concerns, including the extraordinary measure of having several of her dogs surgically ''debarked.'' Although the law dictates that, despite these actions, the plaintiff nonetheless may be compelled to relinquish the company of ten of her fourteen canine companions, it would seem to be a wiser and more compassionate course of action for Killingworth zoning authorities to provide a clearer indication of limits they intend to enforce with respect to household pets.

[1] Although the Killingworth zoning regulations do not define ''principal use,'' the prevalent meaning ascribed to that term in other jurisdictions, consistent with the definition set forth under the Killingworth zoning regulations for an ''accessory use,'' is the dominant, main or primary use of the land. See *Worth* v. *Watson*, 233 Ill. App. 3d 974, 980, 599 N.E.2d 967 (1992) (''[p]rincipal use is defined by the ordinance as the main use of the property; it is not defined as a necessary use''); *Sherwood* v. *Kennebunkport*, 589 A.2d 453, 454 (Me. 1991) (' '[p]rincipal use' is defined by the Ordinance to mean '[t]he primary use to which the premises are devoted or for which the

premises are arranged, designed or intended to be used' "); *Kowalski* v. *Lamar*, 25 Md. App. 493, 499, 334 A.2d 536 (1975) ("[a] principal use is defined under this section to be a 'main use of land, as distinguished from an accessory use' "); *Sun Co.* v. *Zoning Board of Adjustment*, 286 N.J. Super. 440, 444, 669 A.2d 833 (1996) (" '[P]rincipal use' means the primary or 'main use' of the property, which comports with the traditional and plain meaning of the term 'principal.' See Webster's Third New International Dictionary, Unabridged, 1802 [1971] [defining 'principal' as 'first,' 'chief,' or 'most important'] . . . ." [Citation omitted.]); *Sprint Spectrum, L.P.* v. *Zoning Hearing Board*, 823 A.2d 258, 261 (Pa. Commw. 2003) ("[p]rincipal use is defined by the Zoning Ordinance as a 'dominant use(s) or main use on a lot, as opposed to an accessory use' "); *Board of Supervisors* v. *Zoning Hearing Board*, 717 A.2d 1, 3 (Pa. Commw. 1998) (" '[p]rincipal use' is defined as the 'main use of land or structures, as distinguished from a secondary or accessory use' "); *Avon* v. *Oliver*, 253 Wis. 2d 647, 653, 644 N.W.2d 260 (App. 2002) ("[t]he ordinance defines a 'principal use' as a 'main or primary use of land . . . as distinguished from a conditional, subordinate or accessory use, as specified and permitted by the regulations of the district in which it is located' "); see also Killingworth Zoning Regs., § 20A (defining accessory use as "any use, which is attendant, subordinate and customarily incidental to the principal use on the same lot").

[2] Section 61A.2 (I) of the Killingworth zoning regulations authorizes maintaining a commercial dog kennel as a special principal use, subject to certain acreage and set back requirements. Section 20A of the Killingworth zoning regulations defines a commercial kennel as "the housing of one or more dogs overnight for a fee or the keeping of three or more dogs with the purpose of selling their progeny."

[3] Although the plaintiff points to the fact that Killingworth does not limit the number of dogs that may be licensed to support her proposition that there is no such limit, that fact also evidences that the town has not withdrawn authority from the defendant to set that limit. Cf. *Holcomb* v. *Denver*, 199 Colo. 251, 256–58, 606 P.2d 858 (1980) (concluding that, although defendant city constitutionally could enforce broad accessory use ordinance that did not refer expressly to dogs, fact that city had enacted numerous ordinances regulating possession and ownership of dogs evidenced that city had not delegated authority to zoning administrator to prescribe number of dogs that could be kept in residential district as accessory use).

[4] Section 40A of the Killingworth zoning regulations provides: "Except as expressly and specifically permitted by these regulations, no land or improvement thereon within the Town shall be used for any purpose."

[5] With respect to the plaintiff's claim that the four dog limit adopted by Killingworth in the planning and zoning commission's April, 2001 meeting was an action requiring notice and a public hearing to be valid, because the zoning regulations did not exempt household pets, this action did not result in a change to the regulations, but, rather, an interpretation of the accessory use regulation. See Killingworth Zoning Regs., § 20A. Although a change to the regulation would have been subject to the notice and hearing requirements, zoning commissions are not required to follow such procedural requirements when interpreting a regulation, unlike other agencies subject to the Uniform Administrative Procedure Act (UAPA), General Statutes § 4-166 et seq. Compare General Statutes §§ 4-166 (13) (defining regulation under UAPA to encompass "each agency statement of general applicability . . . that implements, *interprets*, or prescribes law or policy" [emphasis added]) and 4-168 (setting forth notice requirements prior to adopting regulation) with General Statutes § 8-3 (imposing notice and hearing requirements for changing or establishing zoning regulations).

[6] The plaintiff would have been permitted, as of right, to devote her nine acre parcel of land to the keeping of the following animals: 100 chickens or rabbits; three mature swine and a litter of suckling pigs less than ten weeks old; and up to twenty-four donkeys, burros, sheep, goats, horses, ponies, llamas or cattle. See Killingworth Zoning Regs., § 61A.1 (G).