DOCKET NO. LLI-CV-15-6013033-S	:	SUPERIOR COURT
LIME ROCK PARK, LLC	:	JUDICIAL DISTRICT OF LITCHFIELD
v.	:	
PLANNING & ZONING COMMISSION OF THE TOWN OF SALISBURY	:	JANUARY 19, 2015

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO INTERVENE OF LIME ROCK CITIZENS COUNCIL, LLC

This Memorandum of Law is submitted pursuant to Connecticut Practice Book § 11-10(1) in support of the Motion of Lime Rock Citizens Council, LLC ("LRCC") to intervene as a party defendant in the zoning appeal filed pursuant to General Statutes § 8-8 by the plaintiff Lime Rock Park, LLC ("Lime Rock Park" or "racetrack"), challenging amendments to the Salisbury zoning regulations adopted by the defendant Planning & Zoning Commission of the Town of Salisbury ("PZC"). The amendments pertain to the operation of racetracks and uses accessory to racetracks, within an area classified by the zoning regulations as the Rural Enterprise District. The zoning amendments are in large part codifications of existing court judgments that relate to the operation of Lime Rock Park racetrack, a motor sport road racing venue. For the reasons discussed below, LRCC's Motion to Intervene should be granted.

I. LRCC'S MOTION TO INTERVENE SHOULD BE GRANTED.

A. LRCC Meets The Standards For Associational Standing.

The Connecticut Supreme Court has recognized that associational standing (also referred to as "representative standing") is "particularly applicable in zoning cases," because it

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serves "[o]ne of the purposes of representative standing [which is] to provide individuals with a method for cooperatively financing litigation affecting their interests that a few could otherwise afford." *Timber Trails Corp. v. Planning and Zoning Commission*, 222 Conn. 380, 395 (1992).

The basic prerequisites that an association must meet to establish its standing to protect the interests of its members are set forth in *Connecticut Association of Health Care Facilities, Inc. v. Worrell*, 199 Conn. 609, 616 (1986) ("*Worrell*"), as follows:

> [A]n association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

Citations omitted.

With regard to the first prerequisite, it is not necessary that all members of an association be similarly injured. *Timber Trails Corp. v. Planning and Zoning Commission*, 222 Conn. at 395. As long as at least one member has standing, the organization has standing. *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell*, 2014 WL 6920879 *13 (Judicial District of Hartford) (Dubay, J.); *Campformio v. Greenwich Planning and Zoning Commission*, 2002 WL 983142 *3 (D'Andrea, JTR).[1]

The first *Worrell* prerequisite is easily satisfied here. Two of LRCC's institutional members, the Church and the Cemetery, own and/or manage property immediately across the street from a racetrack entrance and would, based on their meeting the requirements for intervention discussed below in Subsection B, have standing to sue in their own right, because

[1] All Superior Court cases cited in this Memorandum are included, in the order cited, in the attached Appendix.

of the harm that will be caused to their interests if the zoning amendments adopted by the PZC are invalidated and because they are statutorily aggrieved pursuant to General Statutes § 8-8(a). Many individual LRCC members, including Peter Wolf, own property abutting or within 100 feet of the racetrack and are also statutorily aggrieved pursuant to General Statutes § 8-8(a). In addition, they and other members of LRCC (including Music Mountain, Inc.) who own property in the vicinity of the racetrack will be directly and injuriously affected in the quiet enjoyment and the value of their properties by the increased noise and traffic generated if the racetrack's appeal is sustained, thus meeting the requirements for classical aggrievement. *See Fort Trumbull Conservancy, LLC v. City of New London*, 265 Conn. 423, 435 (2003).

With respect to the second *Worrell* prerequisite, all that is required to satisfy the germaneness requirement is "a mere pertinence between litigation subject and organizational purpose." *Paucatuck Eastern Pequot Indians of Connecticut v. Connecticut Indian Affairs Council,* 18 Conn. App. 4, 11 (1989). LRCC's Articles of Organization identify its purpose as "to protect, promote and develop property rights and interests of residents, business owners and neighbors of the hamlet of Lime Rock...." Where, as here, it is established that the purpose of an association is to protect and enhance the neighborhood, that purpose is germane to an action that involves a threat to the quality of that neighborhood. *See Kulos v. Commission of City Plan of Town of Norwich*, 2003 WL 22705516 *2 (Purtill, JTR).

The third *Worrell* prerequisite – whether the claim for relief requires participation of individual members – ordinarily involves an examination of the relief sought. "If in a proper case the association seeks a declaration, injunction, or some other form of prospective relief, it can reasonably be supposed that the remedy, if granted, will inure to those members of the

association actually injured...." *Fairfield Heights Residents Ass'n, Inc. v. Fairfield Heights, Inc.*, 310 Conn. 797, 822-23 (2014), citing *Worrell.* Connecticut cases discussing third prerequisite usually focus on whether money damages are being sought. Damages are not a component of relief in a zoning appeal, and are not sought in the present proceedings.

Thus, all three prerequisites for associational standing are met in this appeal.

B. Standing In Land Use Appeals.

In *Handsome, Inc. v. Planning and Zoning Commission of Town of Monroe*, 317 Conn. 515, 525-527 (2015), the Connecticut Supreme Court reiterated the principles applicable to standing and aggrievement in land use appeals, in pertinent part, as follows:

> Standing is the legal right to set judicial machinery in motion. Standing requires no more than a colorable claim of injury; a [party] ordinarily establishes ... standing by allegations of injury. Similarly, standing exists to attempt to vindicate arguably protected interests.... Standing is established by showing that the party claiming it is authorized by statute to bring an action, in other words, statutorily aggrieved, or is classically aggrieved.... The fundamental test for determining [classical] aggrievement encompasses a well-settled twofold determination: [F]irst, the party claiming aggrievement must successfully demonstrate a specific, personal and legal interest in [the challenged action], as distinguished from a general interest, such as is the concern of all members of the community as a whole. Second, the party claiming aggrievement must successfully establish that this specific personal and legal interest has been specially and injuriously affected by the [challenged action].... Aggrievement is established if there is a possibility, as distinguished from a certainty, that some legally protected interest ... has been adversely affected....

Citations omitted.

C. Intervention In Land Use Appeals.

As explained by Judge Fuller, *Land Use Law and Practice,* § 27:21, intervention in land use appeals is governed by General Statutes §§ 52-201, 52-107 and 52-108 and by sections 9-6, 9-18 and 9-19 of the Connecticut Rules of Court. There are two types of

intervention: intervention as of right and permissive intervention. To intervene as of right, the following elements must be present:

> (1) the motion to intervene must be timely; (2) the movant must have a direct and substantial interest in the subject matter of the litigation; (3) the movant's interest must be impaired by disposition of the action without the movant's involvement; (4) the movant's interest must not be represented by one of the existing parties to the action.

According to Judge Downey in *One Hundred Nine North, LLC v. New Milford Planning Commission*, 2008 WL2168994 *2 (Downey, Jr.), the essence of this test as articulated by the Supreme Court in *Horton v. Meskill*, 187 Conn. 187 (1982) is that intervention as of right under Practice Book § 9-18 will be recognized "if the person will either gain or lose by the direct legal effect of the judgment."

Permissive intervention is authorized based upon the consideration of a number of factors including timeliness of the intervention, the interest of the movant in the controversy, the adequacy of the representation of such interests by existing parties, the delay in the proceedings or other prejudice to the existing parties, and the necessity for or value of the intervention in terms of resolving the controversy before the court. See Fuller, *Land Use Law and Practice, id.*, citing *Horton v. Meskill*, 187 Conn. at 197.

As further explained by Judge Downey in *One Hundred Nine North, LLC v. New Milford Planning Commission*, *id.*, the test for establishing the right to intervene in a zoning appeal pursuant to Practice Book § 9-18 "parallels" the test for standing to appeal a land use decision by a municipal agency as an aggrieved person. To establish classical aggrievement, a person must establish a property interest which will be directly and adversely affected in a manner distinct from the general public. However, General Statutes § 8-8 recognizes the direct impact of land use decisions upon those in close proximity to property subject to an application by granting "statutory aggrievement" to abutters and those within 100 feet of the property.

Judge Downey, citing numerous examples routinely granted intervention motions, some involving abutters and others involving persons owning property within 100 feet of the subject property, held that an abutting neighbor seeking to intervene was both a necessary and indispensable party to the appeal and therefore entitled to participate as of right and was also qualified for permissive intervention. The court noted, at *4:

> Approval of a development plan, whether by a land use agency or the Superior Court, has the same impact on the property rights of the abutting landowner. For that reason, **Connecticut courts have routinely granted motions to intervene by persons owning property abutting property that is subject to an appeal** seeking judicial approval of a land use or a development plan. [Emphasis added].

See also Walker v. Branford Planning and Zoning Commission, 2010 WL 4276686 (Corradino, JTR) (plaintiff appealed denial of subdivision application; abutters allowed to intervene as party defendants); *301 Eagle Street, LLC v. Zoning Board Appeals of City of Bridgeport*; 2011 WL3276738 (Dooley, J.) (plaintiff appealed cease and desist order issued by the ZBA; neighbors and others allowed to intervene).

Generally, when intervention by abutters is sought early in the proceedings rather than when settlement is imminent, it is granted. *See* Fuller, *supra* at § 27.21; *Wykeham Rise, LLC v. Zoning Commission of Town of Washington*, 2013 WL 812494 (Pickard, J.), denying motions to intervene filed by abutting property owners late in the proceedings and discussing the previous granting of motions to intervene as party defendants filed by abutting property owners filed close to the time of the commencement of the appeal.

D. LRCC Meets The Requirements For Intervention.

In this case, the factors relied upon by the courts in determining whether to allow intervention in land use appeal militate strongly in favor or intervention. First, this application

is obviously timely, coming less than a month after the December 22, 2015 Return Date, and before the first court conference, scheduled for January 19, 2016, has taken place.

Moreover, in terms of establishing the nature of the movant's direct interest in the controversy, it is well established that the court must assume that the statements in the motion to intervene are true "and the question is whether those statements if true establish that the proposed intervenor has a direct and immediate interest . . ." Fuller, *supra* at § 27.21. Here, members of LRCC own land abutting, across the street from, and within range of noise and traffic from the racetrack. They are also beneficiaries of prior court judgments that have been codified by the adoption of the zoning amendments. They, therefore, have a direct, substantial and immediate interest in the outcome of this appeal which is separate and distinct from other property owners in town. Thus, members of LRCC are both statutorily and classically aggrieved.

Another relevant factor to be examined is whether the movant's interest is adequately protected by another party to the case. The fact that the PZC and the movant "both want the same result does not however make their interest identical," and where they are not identical "the burden for establishing inadequate representation is minimal." *301 Eagle Street, LLC v. Zoning Board of Appeals of City of Bridgeport*, *supra* at *2; *Kobyluck v. Planning & Zoning Commission*, 2002 WL 112523 *4 (Hurley, JTR). Moreover, any "doubts should be resolved in favor of intervention." *Rosado v. Bridgeport Roman Catholic Diocesan Corp.*, 60 Conn. App. 134, at 149-150 (2000). As held by the court in *301 Eagle Street, LLC v. Zoning Board of Appeals of City of Bridgeport*, *supra*, at *2:

> The Zoning Board does not have a separate or independent obligation to represent the unique and identifiable interests of these movants. As such, the Zoning Board's interest in enforcing the zoning regulations for the benefit of all of the inhabitants of Bridgeport is not coextensive with the particular and unique concerns and interests of these movants.

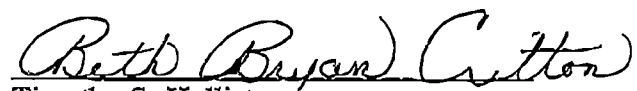
The same is obviously true here. The PZC's general interest in protecting the community as a whole may be inadequate to protect the movant's specific property and personal interests at stake in this litigation. See *Kobyluck v. Planning & Zoning Commission*, *supra*.

Finally, if the zoning regulation amendments had not been approved by the PZC, the movant would have had the statutory right to appeal that decision. If intervention is not allowed and the plaintiff prevails in this appeal, or if the plaintiff and the PZC negotiate a settlement of the appeal that results in the modification or invalidation of the amended zoning regulations, the movant will have been denied the opportunity to appeal the PZC's denial or participate in the settlement negotiations. In order to avoid such a patently unfair result, LRCC should be permitted to intervene to ensure that the interests of its members are represented and protected in this matter.

II. CONCLUSION.

For all these reasons, the Motion to Intervene of the LRCC should be granted. LRCC represents persons who will gain or lose by the direct legal effect of any judgment in this appeal, warranting intervention as of right under General Statutes § 52-107 and Practice Book § 9-18. The interests of justice will be served by the addition of LRCC as a party defendant, supporting intervention pursuant to General Statutes § 52-108 and Practice Book § 9-19. Finally, there is no prejudice to any party to this action by permitting LRCC to intervene as a party defendant at this early stage in the proceedings.

MOVANT
LIME ROCK CITIZENS COUNCIL, LLC



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CERTIFICATION

This is to certify that a copy of the above was or will be immediately mailed or delivered electronically on January 19, 2016 to all counsel and self-represented parties of record and that written consent for electronic delivery was received from all counsel and self-represented parties of record who were or will immediately be electronically served.

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