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VIA PDF TO N. BRUSIE
AND REGULAR MAIL

Dr. Michael Klemens, Chair,
and Commission Members
Planning and Zoning Commission
Town of Salisbury
27 Main Street
Salisbury, CT 06068

Charles R. Andres, Esq.
LeClairRyan
545 Long Wharf Drive
Ninth Floor
New Haven, CT 06511

Re: Lime Rock Park Racetrack

Dear Chair Klemens, Commission Members, and Attorney Andres:

As you know, we represent the Lime Rock Citizens Council, LLC (the "Council"), whose institutional members include Trinity Episcopal Church, the Lime Rock Cemetery Improvement Association (both abutters of Lime Rock Park), and Music Mountain, and whose individual members and supporters are hundreds of owners of property in the vicinity of the Lime Rock Park racetrack (the "Track"). We are writing today to protest the manner in which the Track is (1) continuing to violate the Salisbury Zoning Regulations by operating the Track and scheduling new on-site events without having applied for or obtained a special permit and site plan approval, thus avoiding PZC review and oversight of the potential noise, traffic, environmental, and other impacts of its auto racing and ancillary events and operations; (2) continuing to exceed its limited rights as a non-conforming use by expanding and modifying its event schedule, and making physical modifications to the Track's property; and (3) asking Administrator Nancy Brusie to approve events without public notice, or PZC review, or action. The PZC needs to inform the Track that its current *modus operandi* violates the Zoning Regulations, and that the Track needs to submit to the statutory and regulatory land use permit process forthwith, or face zoning enforcement action. As set forth below, this letter should be regarded as a formal complaint to the PZC and a request for enforcement action.

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The Track's Current Status

Several overall points need to be understood at this juncture. First, the Track has conceded on several occasions that it currently operates as a non-conforming use. Attorney Andres, in his December 31, 2015 letter, accurately noted that the Track is non-conforming because, even though a "track for racing motor vehicles" has been a permitted use in the RE Zone since 1985, Lime Rock Park has never applied for and obtained a special permit, or even site plan approval. The legal consequence of this status is that the Track is not permitted to operate at all, let alone to expand or increase its activities without first coming into compliance with the Salisbury Zoning Regulations. (The Council notes that in the PZC's files are two extensive inventories of the Track's operations, equipment, and structures, prepared in 2008-09, when Lime Rock Park LLC became the owner. It is not clear why this process did not proceed to a special permit application based on these compilations, as it should have, but it should do so now. Much of the application work has already been done.)

A second critical dimension of the current situation is that the Track's non-conforming use rights at most permit the Track to continue those uses that existed before the first enactment of Zoning Regulations in 1959 and have not subsequently been abandoned. Thus, it is recognized that basic motor vehicle racing was conducted on site pre-1959, but the "grandfathering" ends there, and does not include any uses that have been terminated by court order, settlement, or stipulated judgment since 1959, such as Sunday racing, or uses which began after regulations were adopted. Moreover, it is the Council's understanding that the Track in 2015 widened several paved areas used for racing or race support, which is an expansion, without seeking or obtaining PZC approval.

Required Process

The legally-required process at this point is that Lime Rock Park LLC must apply for a special permit and site plan approval to continue to operate a track for racing motor vehicles. The Track needs to fully explain all of its existing and proposed operations, events, structures, and equipment, and their impacts. The PZC must conduct a public hearing on the special permit application, at which the Track will be required to demonstrate that its uses comply with §§ 221.1 through 221.5, satisfy the standards for special permits in § 803, and document the impacts of its operations on neighboring owners and uses. The PZC must hear from the public, who will have an opportunity to agree with, question, or challenge the Track's representations. In issuing a special permit, the PZC has the authority to impose conditions intended to mitigate impacts, such as operational controls that will mitigate off-site noise impacts.

Apparently lost on the Track, and the answer to Attorney Vail's misinformed January 11, 2016 request for PZC approval of its event schedule, is that if a special permit is issued *for the overall use of the property*, then the Track may schedule activities that comply with the Regulations and special permit conditions *without further sign-off from the PZC*. In

other words, once the Track applies for and receives a special permit, and the PZC imposes conditions and limitations (including mechanisms for compliance oversight and enforcement), neither the PZC nor the Council nor the public should have to micro-manage the special permit going forward. We assume that this aspect is what Chair Klemens referred to in his January 22, 2016 letter to Attorney Vail when he described the opportunity that the Track has by working within the newly-amended regulations.

Accessory Uses

One key aspect of delineating what the Track can and cannot do is § 221.2 regarding accessory uses. The key element of "accessory use" is that it means accessory to a track for racing motor vehicles. In other words, the Track cannot propose a car show and then claim that live music is accessory to that car show. That is improper bootstrapping.

Accessory uses must also comport with the definition of such uses – *i.e.*, they must be "incidental and subordinate to, and customarily used in connection with, and located on the same lot as" the principal use. Although the introduction to amended regulation § 221.1 speaks of "private auto and motorcycle club events, car shows and certain other events identified is section 221.2" as being permitted, § 221.2 clearly identifies these as "accessory uses" and thus they are not permitted as principal uses of the property.

The Track's Tactics

The Track's recent illegal positions include the following: First, the Track's pending Superior Court appeal of the regulation amendments that were effective December 1, 2015 does not give it the authority or choice, as asserted in Attorney Vail's January 11, 2016 letter, to comply or not, because the regulations as amended are in full force and effect; the appeal does not stay the amendments. Second, the Track cannot, as it has in Attorney Vail's January 11, 2016 letter, simply submit an event schedule for 2016 (a schedule which the letter concedes is incomplete and evolving) and ask the PZC or Ms. Brusie to approve it separate from a special permit application. Third, the Track cannot claim, without proof, that it has grandfathered rights to uses as having occurred in the past or before 1959. Fourth, the Track cannot assert that "contracts executed prior to the adoption of the regulations" somehow provide a legal exemption. Fifth, the Track cannot ask for permission to conduct activities that are not auto racing, not accessory to auto racing, or not permitted by § 221.4 except with special permit approval (several in this category are listed on pp. 4-5 of Attorney Vail's January 11, 2016 letter). Finally, Attorney Vail's January 11, 2016 letter impermissibly asks the PZC to approve the Track's schedule "as expeditiously as possible," which appears to ask to bypass the permit process.

The Council's concern is that *this conduct evades the review of legality and impacts that is the essence of the land use permitting process*. In essence, the Track is asking the PZC, whose authority to control land use is based on the RE Zone Regulations, to approve an incomplete, season-long schedule of uses in violation of the applicable Zoning Regulations and without regard to the Track's non-conforming status; without submitting to the special permit and site plan application and review process; and without any public disclosure or review of potential impacts in a public meeting.

Attorney Vail's repeated requests to Ms. Brusie to make binding decisions about the jurisdiction of the PZC are also improper. The PZC itself, not Ms. Brusie, must evaluate whether a particular use falls within PZC jurisdiction and to interpret its regulations to determine which sections of its regulations apply to any proposed use.

Round Hill Highland Games

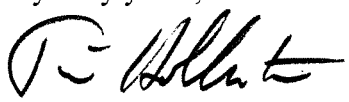
As an example of all of the above, Attorney Vail's February 5, 2016 letter, asserting that the Track should be able to conduct the 2016 Round Hill Highland Games on its property on June 25 and 26, 2016, without a permit, is manifestly improper and inaccurate. First and foremost, it strains credibility that the Track is proposing an event of the magnitude of the Round Hill Highland Games without *any* review of impacts. In any event, § 215.a is clearly intended solely for events by "*local*" churches, schools and non-profit organizations. "Local" means an organization or institution that currently exists within the Town of Salisbury. While the Round Hill Highland Games may be a charitable event, its sponsor is not a local organization, and the Round Hill Highland Games are not a local event. Section 215 is not authority for the Round Hill Highland Games. The Games also do not, as Attorney Vail concedes, fit under any category in § 221.4.

Action Request

In conclusion, the Council, on behalf of its members, asks the PZC and its zoning enforcement officer to (1) establish a deadline by which the Track must submit a special permit and site plan application; (2) make clear to the Track that its January 2016 request for approval of the Track's event schedule is not a proper land use application; (3) inform the Track that, with respect to any use established as non-conforming and for which special permit approval is required, such use is not allowed without such approval, and in no case is the Track entitled to expand or increase such use; (4) make clear that a signed private contract provides no land use rights; (5) clarify that all claims to "grandfathered" rights require submission of proof in compliance with legal standards for establishing vested rights; and (6) make clear that, absent compliance, the PZC is authorized and prepared to exercise its statutory enforcement powers.

The Council respectfully asks that the PZC discuss these concerns at the Commission's next regularly scheduled meeting and to issue a written response addressing this complaint and the action steps requested.

Very truly yours,



Timothy S. Hollister

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c: Nancy Brusie, Planning and Zoning Administrator (via pdf)
Emily D. Vail, Esq. (via pdf)
Richard L. Street, Esq. (via pdf)
Lime Rock Citizens Council Legal Committee (via pdf)