

NO. LLI-CV15-6013033-S : SUPERIOR COURT
LIME ROCK PARK, LLC : JUDICIAL DISTRICT OF
LITCHFIELD
VS. : AT LITCHFIELD
PLANNING AND ZONING
COMMISSION OF THE TOWN
OF SALISBURY : FEBRUARY 2, 2016

**OBJECTION TO LIME ROCK CITIZEN COUNCIL, LLC'S
MOTION TO INTERVENE**

INTRODUCTION

The plaintiff, Lime Rock Park, LLC, objects to the motion to intervene filed by the Lime Rock Citizen Council, LLC (the "Council"). The Council cannot satisfy the prerequisites for intervention as of right or for permissive intervention. Further, the Council's apparent goal of having multiple court vehicles for challenging the plaintiff's use of its property is not a legitimate reason to allow intervention. Finally, the Council's intervention would likely delay this appeal and undercut the possibility of the parties resolving the issues that underlie it. Plaintiff respectfully asserts that the Council's motion should be denied.

LEGAL STANDARD

To intervene as of right the moving party must prove all four of the following elements:

"(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."

Fuller, Land Use Law and Practice, §27:21, citing Washington Trust Co. v. Smith, 42 Conn. App. 330, 336, 680 A.2d 988, 992 (1996), judgment rev'd on other grounds, 241 Conn. 734, 699 A.2d 73 (1977) (overruled on other grounds by Kerrigan v. Commissioner of Public Health, 279 Conn. 447, 904 A.2d 137 (2006)) and Kerrigan v. Commissioner of Public Health, 279 Conn. 447, 904 A.2d 137 (2006). As Judge Fuller notes, “[i]ntervention as a matter of right would rarely apply to nearby property owners.” *Fuller*, §27.21.

The factors that a court considers for permissive intervention include the timeliness of the intervention, the proposed intervenor’s interest in the controversy, the adequacy of representation of such interests by other parties, the delay in the proceedings or other prejudice the intervention may cause, and the necessity for or the value of the intervention in resolving the controversy. Horton v. Meskill, 187 Conn. 187, 445 A.2d 579 (1982).

As set forth below, the Council cannot establish the prerequisites for either intervention as a matter of right or permissive intervention.

ARGUMENT

A. The Council cannot establish the prerequisites for intervention as a matter of right.

Although the Council appears to claim both intervention as a matter of right and permissive intervention, it does not even address the third of the four elements that must be proven to establish intervention as a matter of right, that the Council’s interest would be impaired by disposition of the action without the its involvement, and is unpersuasive in its efforts to establish the fourth element, that its interests are not represented by another party to the action.

That the Council cannot establish the third element is made clear by the Council's references to the other legal actions that the Council intends to use to control Plaintiff's use of its land. *See* references to other litigation at Council's Motion, pp. 1-2 and Council's Memorandum of Law, p. 7 wherein the Council states that its members are "beneficiaries of prior court judgments that have been codified by the adoption of the zoning regulations." The Council's argument that its interests have been addressed in other litigation makes clear that its interests will not be undercut if it is not allowed to intervene in this appeal.

The Council also fails to show that its interests are not represented by another party to the litigation. This failure is easily explained: it would be nigh impossible to establish that the Commission that drafted and approved the amendments at issue in this appeal does not share the Council's goal of defeating the Plaintiff's challenge to those amendments.

The Council's failure to establish these two necessary elements defeats its claim for intervention as of right.

B. The Council cannot establish the prerequisites for permissive intervention.

1. The Commission and its counsel can adequately represent the Council's interests.

The Council also fails to establish a claim to permissive intervention. Indeed, all of the factors to be considered when deciding whether to grant permissive intervention weigh against allowing the Council to intervene.¹ As set forth above, the proposed intervenor's interests in the

¹ Plaintiff does not dispute that the motion to intervene was timely, but asserts that timely filing does not convert an improper claim for intervention into a proper claim.

controversy can be more than adequately represented by the Commission. Indeed, the Council does not argue that the Commission's counsel cannot adequately represent the issues.

The Council does not have the right to regulate land use via zoning regulations. Here the Council not only seeks to regulate land use despite having no authority to do so, it also seeks to regulate such use beyond any authority the Commission may have.² Plaintiff respectfully asserts that the Council should not be able to use the vehicle of a zoning appeal to usurp the role of the Commission and, indeed, to exceed the powers the Commission has.

2. Allowing intervention would delay the case and prevent or obstruct any efforts towards a possible settlement.

Among the reasons Judge Fuller cites for denying permissive intervention is that it allows an intervenor to "sabotage what is objectively a reasonable settlement". *Fuller*, § 27.21. As Judge Fuller notes, most opponents have had the opportunity to express their position at the public hearings, and that "[i]n most situations, it is unfair to the appellant and the agency and unreasonable for intervenors to be allowed to control the terms of a settlement or to preclude it altogether." *Id.*

Here the Council expressly states its concern that the Plaintiff and Commission may negotiate a settlement of the appeal and admits that one of its reasons for seeking intervention is to participate in any settlement negotiations. *See Council's Memorandum of Law*, p. 8. This argument ignores that fact that the Council had the opportunity to express its opinion at the public

² It is clear that one of the Council's main goals is the regulation of noise. The Commission, which only enjoys the powers afforded it via legislation, does not have the authority to regulate noise without prior approval of any such regulation by the Commissioner of Environmental Protection. See Berlin Batting Cages, Inc. v. Planning and Zoning Comm'n of Berlin, 76 Conn. App. 199, 216-17 (2003).

hearings and ignores the fact that under C.G.S §8-8(n), any settlement must be reviewed and approved by the Court. The Council does not (and cannot) present any argument that the review under §8-8(n) would be inadequate to protect any legitimate interests that the Council may have.

CONCLUSION

The Council cannot establish the necessary elements for intervention into this land use appeal. It is indisputable that the Commission is represented by counsel that can adequately and fully represent both the Commission's and the Council's legitimate interests. The Council should not be allowed intervenor status to expand land use regulation beyond that permitted under the General Statutes or to impede a possible settlement. The Council's motion to intervene should be denied.

THE PLAINTIFF,
LIME ROCK PARK, LLC

By: _____



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CERTIFICATION

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