

DOCKET NO. LLI-CV-58-0015459-S	:	SUPERIOR COURT
	:	
ANN ADAMS, ET AL.	:	JUDICIAL DISTRICT OF LITCHFIELD
	:	
v.	:	AT LITCHFIELD
	:	
B. FRANKLIN VAILL, ET AL.	:	OCTOBER 26, 2015

**LIME ROCK'S OBJECTION TO LIME ROCK CITIZENS' COUNCIL LLC'S  
MOTION TO INTERVENE**

Lime Rock Park LLC ("Lime Rock"), the owner and operator of Lime Rock Park, has filed this motion to modify the injunction entered in 1988 in the above-captioned nuisance action. This action was originally commenced in 1958, and an injunction was entered in 1959 that has been modified several times over the years as circumstances have changed. Lime Rock Citizens Council, LLC ("Council") is not a party to the action, but, instead of commencing its own nuisance action, has instead moved to intervene as a plaintiff in this one. The Council's motion to intervene should be denied for the following three reasons. First, the Council lacks standing in this matter. The Council itself appears to own no land, and does not have a direct claim for nuisance. Therefore, the Council would only have standing by virtue of its members. However, the Council cannot assert associational standing because the claim it wishes to assert will require the participation of individual members in the lawsuit. Second, the Council cannot intervene because it does not meet the standard for intervention.

**FACTS**

A prior owner and operator of Lime Rock Park was sued in 1958 for nuisance and noise abatement by various neighboring property owners because of noise produced by Lime Rock's race track. In 1959, the Court entered an injunction that, among other things, specified days and hours of operation for Lime Rock's racetrack. That injunction was subsequently modified

several times, most recently in 1988 when Lime Rock Associates had been substituted as a defendant. Lime Rock now seeks to modify that injunction based on changed legal and factual circumstances. The Council has moved to intervene. Upon information and belief, the Council is made up of people interested in maintaining the current injunction, none of whom were parties to the original nuisance action.

## **ARGUMENT**

### **I. The Council Lacks Association Standing**

In *Connecticut Ass'n of Health Care Facilities, Inc. v. Worrell*, 199 Conn. 609, 614 (1986), the Supreme Court “adopt[ed] the federal standards for association standing that provide for efficient, expeditious and vigorous resolution of controversies affecting similarly situated persons.” Associational standing has three elements: “An 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.” *Id.* at 616.

Here, the Council lacks standing because the claim asserted, nuisance, requires the participation of individual members of the Council. Causation and damages are required elements of a claim for common law nuisance. *Tomasso Bros, Inc. v. October Twenty-Four, Inc.*, 221 Conn. 194, 197 (1992); *Filisko v. Bridgeport Hydraulic Co.*, 176 Conn. 33, 36 (1978). Thus, unlike constitutional or declaratory judgment claims where associational standing often is allowed, the Council’s nuisance claim will require its members to participate in the litigation and to submit evidence concerning whether circumstances have changed to warrant modifications of the injunction. Second, the noise produced by Lime Rock’s racetrack does not uniformly affect

the members of the Council, unlike in other cases where the organization asserts a claim that affects all its members in the same way. Consequently, the “variant experiences” of the Council’s members can affect whether some Council members are entitled to relief and others are not. *Worrell*, 199 Conn. at 617. Third, a nuisance suit is inherently personal to the entity asserting it. In determining the existence of a nuisance, the Court must necessarily consider the “interests of the person harmed” as well as the interests of the “community as a whole.” *Pestey v. Cushman*, 259 Conn. 345, 352 (2002). In other words, the use to which individual members of the Council put their land and their proximity to the race track is intrinsically relevant to whether noise produced by a racetrack is a nuisance. Noise might affect a quarry owner less than a homeowner. Noise might affect certain types of homes differently from others. The disparate impact on individual members of the Council is relevant to the Court’s consideration of whether to allow the Motion to Intervene, and ultimately may be a factor in the Court’s equitable consideration of whether to modify the injunction.

For these reasons, since the individual Council members and their use of the land and proximity to the race track are inseparable parts of the Council’s claim of nuisance, the Council does not have associational standing.

## **II. The Council Does Not Meet the Standard for Intervention**

The Council appears to rely on the intervention as of right standard under Conn. Gen. Stat. § 52-102(2), which only mandates intervention if required by a person that “is necessary for a complete determination or settlement of any question involved therein.” In order to meet the requirements of the statute, the Council “must satisfy a well-established four element conjunctive test.” *BNY Western Trust v. Roman*, 295 Conn. 194, 205 (2010). “The motion to intervene must be timely, the movant must have a direct and substantial interest in the subject matter of the

litigation, the movant's interest must be impaired by disposition of the litigation without the movant's involvement and the movant's interest must not be represented adequately by any party to the litigation." *Id.* "Failure to meet any one of the four elements, however, will preclude intervention as of right." *Id.* at 206.

Here, the Council lacks a direct and substantial interest in the subject matter of the litigation. As discussed above, the Council lacks associational standing. But, moreover, the Council lacks a direct and substantial interest in this Court's judgment, which it was never a party to. The Council has no interest in a personal judgment because it is fundamental that "courts are established to resolve actual controversies" between specific parties. *Office of Governor v. Select Committee of Inquiry*, 271 Conn. 540, 568 (2004). This Court entered its judgment of injunction to resolve a specific dispute between specific plaintiffs and Lime Rock. If the Council believes that it has a controversy with Lime Rock, then it is incumbent on the Council to bring a suit so that its own rights can be adjudicated under this court's judicial powers.

Second, the Council's interests will not be impaired by disposition of the litigation. Since the Council is not a party, this Court's disposition of Lime Rock's motion to modify the judgment will not have *res judicata* or collateral estoppel affects as to the Council. The simple *stare decisis* effect of this Court's adjudication of the motion to modify is not sufficient to justify joinder of a party that may be affected by it. *See D'Appollonio v. Griffo-Brandao*, 138 Conn. App. 304, 317 (2012) ("the stare decisis impact of this ruling" does not justify joinder of a party who could be affected by the ruling in bringing its own "future declaratory judgment or injunctive relief" action). If members of the Council believe, after the Court adjudicates the

motion to modify the injunction, that Lime Rock's conduct constitutes a nuisance, they should bring their own action.

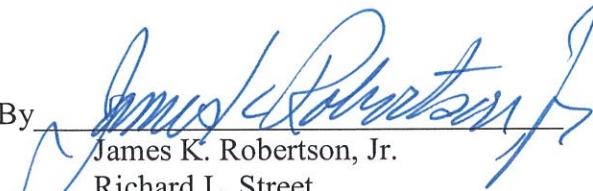
Third, the Council has no basis on which to contend that its interests will not be adequately represented by the current parties to the litigation. Not all of the original plaintiffs have died or moved away. Lime Rock gave in-hand service to a Church and a Cemetery Association which were original plaintiffs in this matter. Since the Church and Cemetery are still in existence at the same location, they can adequately represent the Council's interests, and the Council points to no reasons to believe otherwise.

Therefore, intervention as of right is not appropriate because the Council has failed to meet at least three of the four elements of the conjunctive test.

### CONCLUSION

The Council should not be permitted to intervene because it lacks associational standing and because it has failed to satisfy three of the four requirements for intervention. Therefore, the Council's motion must be denied.

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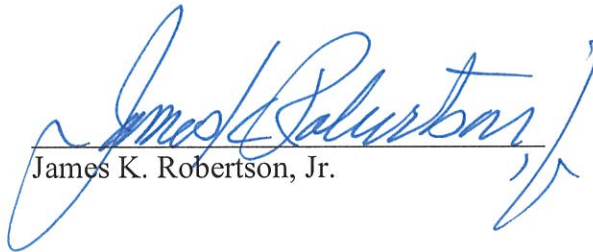
**CERTIFICATION**

This is to certify that a copy of the foregoing has been mailed, postage prepaid, and/or electronically mailed on the above date, to:

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DATE, TIME	10/27 09:51
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PAGE(S)	07
RESULT	OK
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