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JD-CL-73 Rev. 5-10

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Title of document faxed <u>Motion of Lime Rock Citizens Council LLC for Stay of Proceedings</u>	
Number of pages <u>8</u>	(Unless otherwise directed by the court, documents shall not be more than 20 pages (including cover sheet) .)

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DOCKET NO. LLI-CV-58-0015459-S	:	SUPERIOR COURT
	:	
ANN ADAMS, ET AL.	:	JUDICIAL DISTRICT
	:	OF LITCHFIELD
	:	
v.	:	
	:	
B. FRANKLIN VAILL, ET AL.	:	OCTOBER 6, 2015

MOTION OF LIME ROCK CITIZENS COUNCIL, LLC
FOR STAY OF PROCEEDINGS

The intervening plaintiff, Lime Rock Citizens Council, LLC, (“Council”) respectfully moves this Court to enter a stay of court proceedings initiated by Lime Rock Park, LLC to modify a long-standing injunction and judgment originally entered by this Court in 1959, based on its findings that the activities of Lime Rock Park racetrack (“racetrack”) caused irreparable injury to its neighbors and constituted a nuisance. See *Adams v. Vaill*, 158 Conn. 478, 480, 485 (1969), discussing earlier court proceedings relating to the racetrack. In particular, by Order of Notice signed September 4, 2015, this Court has scheduled for hearing on October 26, 2015 to act on Lime Rock Park, LLC’s Motion to Modify Injunction and Judgment (“Motion to Modify”). For the reasons discussed below, the Council asks this Court to stay any hearing on the Motion to Modify until such time as the Town of Salisbury Planning and Zoning Commission, *which is currently considering amendments to its zoning regulations directly related to the racetrack’s activities and days and hours of operation* (the very same issues that Lime Rock Park, LLC is asking this Court to determine), renders a decision and any court appeal relating to such decision is concluded by a final decision.

As discussed in more detail below, the Council moves to stay of the proceedings based on the doctrine of primary jurisdiction, which provides that where a matter is within the

jurisdiction of, and is being considered by, a municipal administrative agency, a Court should not act until the agency action is complete, as the agency action may supplant or moot any proceedings initiated directly in court.

I. THE DOCTRINE OF PRIMARY JURISDICTION REQUIRES THIS COURT TO STAY THE PROCEEDINGS.

A. The Doctrine of Primary Jurisdiction

Connecticut has an “extensive body of case law - such as the exhaustion and primary jurisdiction doctrines - establishing the general principle that, whenever possible, courts will stay their hand with respect to addressing matters that are within the cognizance of administrative agencies.” Citation omitted. *Financial Consulting, LLC v. Commissioner of Insurance*, 315 Conn. 196, 212 (2014). The primary jurisdiction doctrine is “triggered when courts and administrative agencies have concurrent subject matter jurisdiction over a case.” *Id.*, p. 222, n. 23.

“The doctrine of primary jurisdiction is a rule of judicial administration created by court decision in order to promote 'proper relationships between the courts and administrative agencies charged with particular regulatory duties.'” Citation omitted. *City of Waterbury v. Town of Washington*, 260 Conn. 506, 574 (2002). “Primary jurisdiction ... applies where a claim is originally cognizable in the courts, and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body; in such case the judicial process is suspended pending referral of such issues to the administrative body for its views.” Citation omitted. *Id.*

“Ordinarily, a court should not act upon subject matter that is peculiarly within the agency’s specialized field without giving the agency an opportunity to apply its expertise, for otherwise parties who are subject to the agency’s continuous regulation may become the victims of uncoordinated and conflicting requirements.” Citation omitted. *Sharkey v. City of Stamford*, 196 Conn. 253, 256 (1985). “In deciding whether to apply the primary jurisdiction doctrine to a given case, a court must take into account the need for uniform decisions and the specialized knowledge of the agency involved.” *City of Waterbury v. Town of Washington*, 260 Conn. at 575.

Connecticut’s municipal powers act authorizes municipalities to, *inter alia*, “[p]rohibit, restrain, license and regulate all sports, exhibitions, public amusements and performances and all places where games may be played” and to “[m]ake and enforce ... regulations and protect or promote the peace, safety, ... and welfare of the municipality and its inhabitants.” General Statutes §§ 7-148(c)(7)(H)(vii) and (xiii). General Statutes § 8-2, Connecticut’s Zoning Enabling Act, authorizes the zoning commission of each municipality to regulate uses of land with regulations “made with reasonable consideration as to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality.” In the Town of Salisbury, in which the racetrack is located, zoning authority is vested in its Planning and Zoning Commission.

B. Relevant Factual Background.

On May 12, 1959, when this Court entered its injunction specifying permitted activities and days and hours of operation of the racetrack, the Town of Salisbury had no zoning. Its

first regulations were adopted on June 8, 1959, rendering the racetrack a nonconforming use, subject to both local regulations and judicially created principles regarding nonconforming uses.

Since 1959, the injunction has been modified several times, generally in response to changes in the General Statutes. The most recent iteration of the injunction, entered by Stipulation of the parties in 1988, is incorporated by reference in the Town's current zoning regulations. Were this Court to modify the injunction and 1988 judgment, as Lime Rock Park, LLC requests, it would be, in effect, amending the Salisbury zoning regulations - a responsibility clearly vested solely in the Planning and Zoning Commission by General Statutes § 8-2. And the Court would be amending the regulations without complying with the requirements of the General Statutes and local regulations with respect to notice, application, public hearing, regional referral, consideration of the Town's plan of conservation and development, or any of the other procedural safeguards mandated by the General Statutes and the local regulations.

More important, the Commission is currently in the process of considering amendments to its regulations, which, if adopted, would address the very elements (types of activities, hours and days of operation) that Lime Rock Park, LLC is asking this Court to adjudicate. In other words, Lime Rock is seeking to do an "end run" around the Planning and Zoning Commission. Lime Rock Park, LLC has been participating in the public hearing on the proposed zoning regulation amendments, which hearing opened on September 8, 2015 and is continued until October 19, 2015.

C. The Doctrine Of Primary Jurisdiction Requires This Court To Stay the Proceedings.

Because the Planning and Zoning Commission is the administrative agency with sole responsibility for the promulgation of land use regulations in Salisbury and because there are both existing and proposed zoning regulations dealing with the activities and operations of the racetrack (the subject of Lime Rock Park, LLC's Motion to Modify), the Commission, not this Court, has primary jurisdiction.

Therefore, this Court should stay any proceedings on the Motion to Modify until the Planning and Zoning Commission has rendered a decision on the proposed zoning regulation amendments relating to the racetrack and, should such decision be appealed, until such appeal is finally determined.

II. CONCLUSION AND RELIEF REQUESTED.

For the reasons discussed above, this Court should enter a stay continuing the hearing presently scheduled for October 26, 2015 until the proceedings of the Town of Salisbury Planning and Zoning Commission on proposed amendments to the zoning regulations relating to the racetrack are concluded and any appeal relating to the Commission's decision is finally determined.

INTERVENING PLAINTIFF,
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CERTIFICATION

I hereby certify that a copy of the foregoing was transmitted by e-mail and first-class mail, postage prepaid, on this 6th day of October 2015, to:

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