

\* \* \* COMMUNICATION RESULT REPORT ( MAR. 27. 2007 6:03PM ) \* \* \*

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Fax number of above Court <b>860-567-4779</b>	(Include prefix: for example, CI, CP, CR, CV, FA, HC, JV, MI, MV, SC, SP)
Docket number <b>L.I.-CV-77-0016404-6</b>	
Title of document faxed <b>Motion to Intervene of the Lime Rock Citizens Council, LLC</b>	
Number of pages <b>13</b>	(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-77-0016404-6	:	SUPERIOR COURT
	:	
LIME ROCK FOUNDATION, INC.	:	JUDICIAL DISTRICT
	:	OF LITCHFIELD
	:	
v.	:	
	:	
ZONING BOARD OF APPEALS OF THE	:	
TOWN OF SALISBURY	:	OCTOBER 6, 2015

**MOTION TO INTERVENE OF THE LIME ROCK CITIZENS COUNCIL, LLC**

Pursuant to Connecticut General Statutes ("General Statutes") §§ 52-102, 52-107 and 52-108 and Connecticut Practice Book §§ 9-18 and 9-19, Lime Rock Citizens Council, LLC ("Council") hereby moves to intervene as a party defendant in this action and, in particular, in proceedings in which Lime Rock Park, LLC is seeking to modify a Stipulation signed on or about May 31, 1979 on behalf of Lime Rock Protection Committee, Herbert O. Berdahl, Joan C Berdahl, the Lime Rock Foundation, Inc., and the Zoning Board of Appeals of Salisbury in a consolidated action that included this appeal and two other related appeals, Docket Nos. LLI-CV-77-16416-D and LLI-CV-78-16920-D, and a Judgment of this Court entered in this appeal on September 19, 1979. The Stipulation and Judgment specifically identified the geographic area to which camping and camping vehicles were limited and established rules for outfield parking and for the use of White Hollow Road, an entranceway to the racetrack.

The Council is a Connecticut limited liability company, comprised of residents and neighbors of the Lime Rock area of Salisbury and organized for "the purpose of promoting and protecting the interests of those adversely affected by the activities of Lime Rock Park, a motorsport road racing venue located in Lime Rock." See Exhibit A, attached. The Council

was formed in August 2015 to ensure that interests, including those previously represented by the Lime Rock Protection Association, Inc., are properly and vigorously protected.

The Council was notified of the pending Motion to Modify Injunction and Judgment (“Motion to Modify”) by an Order of Notice signed by the Court on September 4, 2015. The Order of Notice prepared by Lime Rock Park, LLC specifically directed that notice of hearing on the Motion to Modify be served on Peter Wolf, the Council's agent for service. Pleadings filed by Lime Rock Park, LLC included the Council's letter of August 25, 2015 (Exhibit A to this Motion), which advised this Court, Lime Rock Park and the Chair of the Town of Salisbury Planning and Zoning Commission of the Council's interests in this matter.

I. FACTUAL BACKGROUND.

Issues relating to the racetrack have been the subject of litigation as long ago as 1958 when owners of properties near the racetrack and others affected by racetrack operations filed an injunction action, alleging irreparable harm and nuisance based on racetrack operations. According to a 1969 Supreme Court decision that reviewed previous court proceedings, the trial court found that in 1959 “unrestricted racing events on defendant’s track constituted a nuisance and caused irreparable injury to the plaintiffs.” *Adams v. Vaill*, 158 Conn. 478, 480, 485 (1969).

The injunction has been modified several times over the years, and Lime Rock Park, LLC has recently moved, in another action, to further modify the Injunction and a 1988 Stipulation signed by Lime Rock Protection Committee Inc. and Lime Rock Associates, Inc., upon which Judgment entered on May 3, 1988.

In 1977 and 1978, three separate appeals (collectively, the “ZBA Appeals”) were filed relating to the extent and location of accessory uses (camping, camp vehicles and parking) to the racetrack, a nonconforming use, and regarding use of White Hollow Road, which provides one entranceway to the racetrack. This appeal, the first of the three ZBA Appeals, was filed in Superior Court on December 6, 1977 by the plaintiff, Lime Rock Foundation, Inc., challenging a decision by the Zoning Board of Appeals of the Town of Salisbury (Docket No. 16,404 6).

The second of the ZBA Appeals was filed by plaintiffs Lime Rock Protection Committee, Inc., Herbert Bergdahl and Joan Bergdahl against defendants Lime Rock Foundation, Inc. and the Zoning Board of Appeals of the Town of Salisbury (Docket No. 16,416 D).

The third of the ZBA Appeals was filed by plaintiffs Lime Rock Protection Committee, Inc., Joan Bergdahl, and Jack Olson (who later withdrew as a plaintiff) against defendants Lime Rock Foundation, Inc. and the Salisbury Zoning Board of Appeals (Docket No. 16,920 D).

All parties to the ZBA Appeals (Lime Rock Protection Committee, Herbert O. Bergdahl, Joan C. Bergdahl, Lime Rock Foundation, Inc. and the Zoning Board of Appeals of the Town of Salisbury) entered into a Stipulation for Judgment on or about May 31, 1979. With reference to Docket Nos. 16,404 6 (this appeal) and 16,416 D, the Stipulation permitted camping and camp vehicles within a defined infield area of the racetrack, limited parking in the outfield area of the racetrack, and limited use of a road to one racetrack entrance. The Stipulation also provided that No. 16,920 D would be dismissed “with prejudice.”

On September 19, 1979, the Court, noting that it had considered the Stipulation for Judgment signed by all parties, entered Judgments dismissing No. 16,920 D with prejudice and incorporating the terms of the Stipulation, with clarifications, into separate Judgments in Nos. 16,404 6 (this appeal) and 16,416 D, as follows:

1. All camping and camping vehicles shall be limited to the Race Track infield. The Race Track infield is defined as the area inside of the 1.53 mile asphalt track, as said track existed on May 1, 1979.
2. No motor vehicles shall be parked in the Race Track outfield during the hours of 10:00 p.m. and 6:00 a.m., except those which are a) on official track business; and b) parked in the parking lot area adjacent to the track office, as it now exists;
3. The back road and Race Track entrance, which presently runs past that property now known as the Williams' property shall be closed between the hours of 11:00 p.m. and 6:00 a.m. to all traffic except emergency and service vehicles.

Lime Rock Park, LLC, which seeks to modify the Judgment(s), was not a party to the original proceedings and, on knowledge and belief, has filed no motion to intervene or otherwise become a party to the actions. Counsel representing Lime Rock Park, LLC has filed an Appearance in this appeal on behalf of "The Lime Rock Corporation," which was never a party in the ZBA Appeals, and was, according to records of the Office of the Secretary of State, dissolved in 1984.

In its Motion, Lime Rock Park, LLC seeks to substantially and materially modify the Judgments entered by the Court on September 19, 1979.

## II. LEGAL ANALYSIS.

General Statutes § 52-102 provides, in pertinent part, that, "[u]pon motion by any party or nonparty to a civil action, . . . the nonparty so moving . . . (2) shall be made a party by the

court if that person is necessary for a complete determination or settlement of any question involved therein." General Statutes § 52-107 provides: "The court may determine the controversy as between the parties before it, if it can do so without prejudice to the rights of others; but, if a complete determination cannot be had without the presence of other parties, the court may direct that such other parties be brought in. If a person not a party has an interest or title which the judgment will affect, the court, on his application, shall direct him to be made a party." See also Practice Book § 9-18. General Statutes § 52-108 and Practice Book § 9-19 provide for the addition of parties "at any stage of the action, as the court deems the interests of justice require."

In considering motions to intervene or to add parties, Connecticut courts have recognized a distinction between "necessary" and "indispensable" parties. In *1525 Highland Associates, LLC v. Fohl*, 62 Conn. App. 612, cert. denied, 256 Conn. 919 (2001), our Appellate Court said it this way:

Parties are considered indispensable when they not only have an interest in the controversy, but an interest of such a nature that a final decree cannot be made without either affecting that interest, or leaving the controversy in such condition that its final [disposition] may be... inconsistent with equity and good conscience ... Indispensable parties must be joined because due process principles make it essential that [such parties] be given notice and an opportunity to protect [their] interests by making [them] a party to the [action] ... Necessary parties, in contrast, are those [p]ersons having an interest in the controversy, and who ought to be made parties, in order that the court may act on that rule which requires it to decide on, and finally determine the entire controversy, and do complete justice, by adjusting all the rights involved in it .... (Internal quotation marks omitted.)

*Id.*, at 618.

In moving to intervene as of right, the intervenor must satisfy four requirements. *See, e.g., Kerrigan v. Commissioner of Public Health*, 279 Conn. 447, 456–57 (2006). The motion to intervene must be timely, the moving party must have a direct and substantial interest in the subject matter of the litigation, the moving party's interest must be impaired by disposition of the litigation without that party's involvement and the moving party's interest must not be represented adequately by any other party to the litigation. *Id.*

"For purposes of judging the satisfaction of [the] conditions [for intervention] we look to the pleadings, that is, to the motion ... to intervene and to the proposed complaint or defense in intervention, and ... we accept the allegations in those pleadings as true. The question on a petition to intervene is whether a well-pleaded defense or claim is asserted. Its merits are not to be determined. The defense or claim is assumed to be true on [a] motion to intervene, at least in the absence of sham, frivolity, and other similar objections. Thus, neither testimony nor other evidence is required to justify intervention, and [a prospective] intervenor must allege sufficient facts, through the submitted motion and pleadings, if any, in order to make a showing of his or her right to intervene. The inquiry is whether the claims contained in the motion, if true, establish that the [prospective] intervenor has a direct and immediate interest that will be affected by the judgment." (Citation omitted; internal quotation marks omitted.) *Id.*, p. 457.

Lime Rock Citizens Council, LLC meets the four conditions for intervention as of right. Its Motion to Intervene is timely. Both in this Motion and in its letter of August 25, 2015, which Lime Rock Park, LLC itself provided to the Court, the Council has indicated that it was formed, *inter alia*, to ensure that interests of the Lime Rock Protection Association, Inc.



“are properly represented and vigorously protected.” These interests will be impaired if the Council is not permitted to intervene and present legal analysis and evidence to the Court regarding the harm and inequity that neighbors and the community will face if the Council is not permitted to protect those interests. Because the Lime Rock Protection Committee, Inc. no longer exists, there is no original party who can adequately represent the Council's interests.

For all these reasons, the Motion to Intervene of the Lime Rock Citizens Council, LLC should be granted. Lime Rock Citizens Council, LLC is a person necessary for the complete determination or settlement of the issues, warranting intervention pursuant to General Statutes § 52-102, and represents persons whose interests will be affected by any judgment, 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 the Council, 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 the Council to intervene as a party plaintiff.

### III. CONCLUSION AND RELIEF REQUESTED.

Lime Rock Citizens Council, LLC is both a necessary and indispensable party to the ZBA Appeals and to the attempted Motion to Modify of Lime Rock Park, LLC and should be permitted to intervene pursuant to General Statutes §§ 52-102, 52-107 and 52-108 and Practice Book §§ 9-18 and 9-19. Contrary to the representations of Lime Rock Park, LLC (see Motion to Modify Stipulation and Judgment), the ZBA Appeals do not involve an injunction or other Court decision subject to modification. What Lime Rock Park, LLC is asking this Court to do is to authorize the illegal expansion of a nonconforming use, the extent of which was

determined by Stipulation of the parties on May 31, 1979 with reference to the racetrack as it existed on May 1, 1979, and pursuant to which the Court entered final Judgments that are not subject to modification at the behest of Lime Rock Park, LLC, if at all. Therefore, Lime Rock Citizens Council, LLC respectfully moves this Court to grant its Motion to Intervene and order that it may be added as a party defendant in Docket No. 16404-6.<sup>1</sup>

MOVANT,  
LIME ROCK CITIZENS COUNCIL, LLC



Beth Bryan Critton  
Shipman & Goodwin LLP  
One Constitution Plaza  
Hartford, CT 06103  
Telephone: 860-251-5000  
Facsimile: 860-251-5318  
[bcritton@goodwin.com](mailto:bcritton@goodwin.com)  
Juris No. 057385  
Their Attorneys

---

<sup>1</sup> By separate motions, the Council is moving to intervene as a party plaintiff in Docket No. 16416 D and Docket No. 16920 D. The Council acknowledges that No. 16920 D was dismissed on September 19, 1979. However, Lime Rock Park, LLC has included it in its Motions for Order, Order of Notice, Motion to Modify and Proposed Order. Therefore, the Council is asking to intervene in No. 16920 D.

CERTIFICATION

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

John L. Cordani, Jr., Esq.  
Richard L. Street, Esq.  
Carmody Torrance Sandak & Hennessey LLP  
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New Haven, CT 06509  
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Beth Bryan Critton  
Commissioner of the Court

# **EXHIBIT A**

Re: *Ann Adams, et al., v. B. Franklin Vaill, et al., No. 15,459*

**LIME ROCK CITIZENS COUNCIL** (formerly known as the "Lime Rock Protection Association")  
c/o Peter S. Wolf  
45 White Hollow Rd.  
Lakeville, CT 06039

August 26, 2015

By Registered Mail:

Mr. Brandon Pelegano, Chief Clerk of Court  
Clerk's Office, Litchfield County Superior Court  
15 West Street  
Litchfield, CT 06759

*With copies to:*

By Email:

Ms. Georgia Blades  
Lime Rock Park  
60 White Hollow Rd.  
Lakeville, CT 06039

By Hand Delivery:

Dr. Michael Klemens, Chairman  
Salisbury Planning and Zoning Commission  
Town Hall  
Salisbury, CT 06068

Re: *Ann Adams, et al., v. B. Franklin Vaill, et al., No. 15,459*

Dear Mr. Pelegano,

Please be advised that a group of residents and concerned neighbors of Lime Rock have organized to form the **LIME ROCK CITIZENS COUNCIL, LLP** ("LRCC") with the purpose of promoting and protecting the interests of those adversely affected by the activities of Lime Rock Park, a motorsport road racing venue located in Lime Rock, Connecticut (the "Track"). The LRCC is a limited liability corporation established under the laws of the State of Connecticut (Business ID 1181805).

It recently has come to the attention of the LRCC that the Track intends to seek amendments to an Order and Injunction entered by the Superior Court of Litchfield County in 1959 (amended by stipulation in 1966 and 1988), in *Ann Adams, et al., v. B. Franklin Vaill, et al., No. 15,459* (the "Injunction"). This Injunction imposes significant restrictions on the Track's activities, which in

LIME ROCK CITIZENS COUNCIL  
Re: *Ann Adams, et al., v. B. Franklin Vaill, et al., No. 15,459*

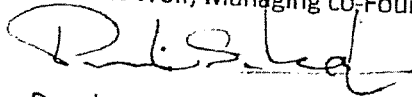
turn protect the rights and interests of those home owners, business owners, residents, and concerned citizens represented by the LRCC. The LRCC understands, on information and belief, that the entity that most recently represented the interests of Lime Rock's residents and neighbors in this court action, the "Lime Rock Protection Association, Inc." is no longer in existence. The LRCC therefore has formed to ensure that those interests are properly represented and vigorously protected.

Accordingly, the LRCC respectfully requests that the Clerk of Court provide notice to the LRCC of any activity on this docket (*Ann Adams, et al., v. B. Franklin Vaill, et al., No. 15,459*, a copy of which is attached hereto) or any action filed by or on behalf of the Lime Rock Park seeking to amend or challenge the provisions of the Injunction (as amended). Notice may be provided to the LRCC's legal agent, Peter Wolf of 45 White Hollow Road, Lakeville, CT 06039, (860-435-9411), and by email to: [limerockcitizenscouncil@gmail.com](mailto:limerockcitizenscouncil@gmail.com).

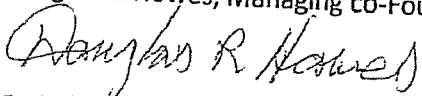
Please also be advised that should the Track decide to take any legal or administrative action to modify the terms of the 1959 Injunction (as amended), the LRCC fully intends to oppose any such action.

Sincerely,

Peter S. Wolf, Managing co-Founder



Douglas R. Howes, Managing co-Founder



On behalf of the LIME ROCK CITIZENS COUNCIL