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Fax number of above Court <u>860 567 4779</u>
Docket number <u>LLI CV 77 0016404-S</u>
Title of document faxed <u>Motion of Lime Rock Citizens Council, LLC for Stay of Proceedings</u>
Number of pages <u>9</u>

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

The intervening defendant, Lime Rock Citizens Council, LLC, (“Council”) respectfully moves this Court to enter a stay of court proceedings initiated by Lime Rock Park, LLC to re-open and modify Judgments entered by this Court in 1979 in this appeal and in two separate but interrelated appeals (collectively, the “ZBA Appeals”). The ZBA Appeals dealt with the extent and location of accessory uses (camping, camp vehicles and parking) to the racetrack, a nonconforming use, and the use of White Hollow Road, which leads to one entranceway to the racetrack.

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”) in the ZBA Appeals. Lime Rock Park, LLC, which seeks to modify the Judgment(s), was not a party to the original ZBA Appeals 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.

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 camping, camping vehicles, parking, and the use of White Hollow Road in connection with the racetrack* (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.

As noted above, Lime Rock Park, LLC is asking the Court to reopen the ZBA Appeals and enter an Order substantially modifying the terms Judgments originally entered in 1979. This appeal, the first of the 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 (No. 16,404 6). The second of the ZBA Appeals was filed on December 13, 1977 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 (No. 16,416 D).

The third of the ZBA Appeals was filed on June 20, 1978 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 (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 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 D (this appeal) and 16,416, as follows:

1. All camping and camping vehicles shall be limited to the Race Track infield. The 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.

The Commission is currently in the process of considering amendments to its regulations, which, if adopted, would address the very elements (geographic extent of racetrack-related camping and camping vehicles; outfield parking; and the use of White Hollow Road) 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 Salisbury 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.

In addition, Lime Rock Park is asking this Court to approve an enlargement and expansion of a nonconforming use, in violation of Salisbury's zoning regulations and Connecticut law. Pursuant to Salisbury Zoning Regulation § 503.1, "[n]o non-conforming use of land . . . shall be extended to occupy a greater area, space or portion of such land than was occupied or manifestly arranged for the use on the date that its non-conforming status was established." The racetrack became a nonconforming use in 1959 when Salisbury first adopted zoning regulations. With respect to these appeals, the parties stipulated and the Court entered judgment defining the the "Race Track infield" as "the area inside the 1.53 mile asphalt track as said track existed on May 1, 1979" and providing that "[a]ll camping and camping vehicles shall be limited to the Race Track infield." Lime Rock Park now asks this Court to illegally extend this camping area to the "race track outfield." Proposed Order, ¶ 1.

Further, although Salisbury Zoning Regulation § 501 allows for a change of non-conforming use, the determination of whether such a change should be allowed is delegated to the Commission (not to the Superior Court), which pursuant to § 501.1, may approve such change only if it is found "not [to] have an adverse effect on the zone, the neighborhood and surrounding properties greater than the effect of the current non-conforming use," giving consideration to "any new or increased activity on the property such as traffic, noise, lighting and other external factors affecting the zone, neighboring or surrounding properties."

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; because there are currently proposed zoning regulation amendments dealing with camping, camp vehicles,



parking, and the use of White Hollow Road (issues that are the subject of Lime Rock Park, LLC's Motion to Modify); and because authority over proposed changes to any nonconforming use is expressly within Commission jurisdiction, 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 DEFENDANT,  
LIME ROCK CITIZENS COUNCIL, LLC



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Juris No. 057385  
Its Attorneys


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:

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Commissioner of the Court