

No: LLI CV 58 0015459 : SUPERIOR COURT
ANN ADAMS :
V. : JUDICIAL DISTRICT OF LITCHFIELD
B. FRANKLIN VAILL ET AL : AT LITCHFIELD, CONNECTICUT

No: LLI CV 77 0016404 :
LIME ROCK FOUNDATION : DECEMBER 9, 2015
V. :
ZONING BOARD OF APPEALS :

No. LLI CV 78 0016920
LIME ROCK PROTECTION COMMITTEE INC.
V.
THE LIME ROCK FOUNDATION

No. LLI CV 77 0016416
LIME ROCK PROTECTION COMMITTEE INC.
V.
THE LIME ROCK FOUNDATION

BEFORE THE HONORABLE JOHN D. MOORE, JUDGE

APPEARANCES:

ATTORNEY TIMOTHY S. HOLLISTER
ATTORNEY BETH BRYAN CRITTON
SHIPMAN & GOODWIN, LLP
ONE CONSTITUTION PLAZA
HARTFORD, CT 06103-1919

ATTORNEY STEVEN E. BYRNE
BYRNE & BYRNE
2-B FARMINGTON COMMONS
790 FARMINGTON AVE
FARMINGTON, CT 06032

ATTORNEY JOSHUA J. DEVINE
UPDIKE, KELLY & SPELLACY P.C.
100 PEARL STREET
P.O. BOX 231277
HARTFORD, CT 06123

ATTORNEY RICHARD L. STREET
ATTORNEY JOHN CORDANI
CARMODY TORRANCE SANDAK & HENNESSEY LLP
195 CHURCH STREET
P.O. BOX 1950
NEW HAVEN, CT 06509

Recorded & Transcribed By:
Patricia Russo
Court Recording Monitor
Litchfield, Ct 06759

1 THE COURT: Good afternoon, everybody; please
2 have a seat.

3 We're here today on four matters which include
4 the following:

5 Ann Adams versus B. Franklin Vaill, V-a-i-l-l,
6 et al, LLI CV 58 0015459.

7 The second matter is Lime Rock Foundation versus
8 the Zoning Board of Appeals, docket number LLI CV 77
9 0016404.

10 The third matter is Lime Rock Protection
11 Committee, Inc. versus The Lime Rock Foundation,
12 bearing docket number LLI CV 78 0016920.

13 And the forth matter is Lime Rock Protection
14 Committee, Inc. versus Lime Rock Foundation, bearing
15 docket number LLI CV 77 0016416.

16 First of all, will counsel please identify
17 themselves for the record and tell me who you
18 represent, please.

19 ATTY. HOLLISTER: Good afternoon, Your Honor.
20 I'm Tim Hollister, from Shipman & Goodwin,
21 accompanied by my colleague, Beth Critton, we
22 represent the proposed intervening plaintiff, The
23 Lime Rock Citizens Counsel and its institutional
24 members, which are Trinity Episcopal Church, the Lime
25 Rock Cemetery Improvement Association and Music
26 Mountain, Incorporated.

27 COURT: Good afternoon.

1 ATTY. STEVEN BYRNE: Attorney Steven Byrne for
2 the Salisbury Zoning Board of Appeals.

3 THE COURT: Hello, Mr. Byrne.

4 ATTY. BYRNE: Good afternoon.

5 ATTY. STREET: Good afternoon, Your Honor.
6 Richard Street, for Lime Rock Park, LLC; also with me
7 is John Cordani.

8 ATTY. DEVINE: Good afternoon, Your Honor.
9 Attorney Joshua Devine, with Updike, Kelly and
10 Spellacy, for Lime Rock Protection Committee, Inc.
11 and the Bergdahl's, regarding our motion to withdraw
12 appearance.

13 THE COURT: Very well, thank you. Good
14 afternoon, everybody.

15 On the first note what I wanted to talk about is
16 an administrative matter.

17 Prior to this hearing the clerk's office
18 received a binder and a cover letter from Carmody and
19 Torrance, the attorneys for the race track. The
20 stated purpose of that package was to be helpful to
21 the judge in terms of identifying important
22 pleadings. The binder was not initially sent to all
23 parties nor was it filed with the Court. The Court
24 wants to make one thing perfectly clear about this
25 matter and that is: that any documents that are going
26 to be filed in this case are going to be filed
27 properly and are going to be sent to all parties.

1 The Court initially asked the clerk to send -- to
2 make sure that Carmody and Torrance send copies of
3 the binder to everybody, but on second thought the
4 Court just sent the binder and the cover letter back
5 to the clerks' office and never took a look at it.
6 All things that are going to be filed in this case
7 are going to be properly filed as pleadings and
8 notice will be sent to all parties. I want to make
9 that perfectly and absolutely clear before we begin
10 today.

11 Second matter of business I have to do is sort
12 of some of the simple administrative matters.
13 Counsel for Updike, Kelly, I know you're here on
14 behalf -- you want to move to withdraw from the
15 representation of the Bergdahl's. Is that correct?

16 ATTY. DEVINE: Yes, Your Honor.

17 THE COURT: And tell me again -- I know we
18 talked about this during the status conference, but I
19 thought it would be important for the record to
20 reflect the reasons behind that.

21 ATTY. DEVINE: Well, Your Honor, our -- our
22 position is that Lime Rock Protection Committee, Inc.
23 in the CV 77 0016416-S and the CV 78 0016920-S, is no
24 longer a viable entity within the State of
25 Connecticut, they dissolved in 1989 or 1990 -- 1990,
26 they were forfeited according to the Secretary of
27 State's commercial recording division. And we have

1 spoken with Mrs. Bergdahl directly and she no longer
2 resides in an area in the vicinity of Lime Rock, the
3 track itself, and has not retained our services for
4 current representation.

5 THE COURT: Okay. Is it my understanding too,
6 that Mr. Bergdahl is deceased?

7 ATTY. DEVINE: He is; yes, Your Honor.

8 THE COURT: Okay. And to represent -- in -- in
9 the -- in the matter that ends, 6920, do you
10 represent both the Protection Committee and Mrs.
11 Bergdahl?

12 ATTY. DEVINE: Yes, Your Honor.

13 THE COURT: Mr. Bergdahl as well on that one, or
14 just those two?

15 ATTY. DEVINE: Umm --

16 THE COURT: That's in the one that ends 6920.

17 ATTY. DEVINE: Mr. Bergdahl was a party in the
18 6920 matter, not -- Mrs. Bergdahl was not.

19 THE COURT: Okay. So, in 6920 it was Mr.
20 Bergdahl?

21 ATTY. DEVINE: Yes.

22 THE COURT: Okay. And then in the matter that
23 ends in 6416, it was the Protection Committee and
24 which of the Bergdahl's?

25 ATTY. DEVINE: Ms. Bergdahl.

26 THE COURT: Okay. So, that was the one with Ms.
27 Bergdahl.

1 ATTY. DEVINE: Yes.

2 THE COURT: Any of the other parties care to be
3 heard on the motion to withdraw that's been brought
4 by Updike, Kelly?

5 ATTY. BYRNE: No, Your Honor.

6 THE COURT: Okay. The Court is going to grant
7 that motion on both of those matters. I'm going to
8 do an electronic ruling on that, Mr. Clerk, just so
9 it's clear for the record.

10 THE CLERK: Sure.

11 THE COURT: But, thank you very much, sir.

12 ATTY. DEVINE: Thank you, Your Honor.

13 THE CLERK: Your Honor, I think the parties are
14 reversed.

15 ATTY. DEVINE: And I -- yeah, I -- now that I'm
16 looking at my notes I believe I do have the --

17 THE CLERK: I think --

18 THE COURT: Okay.

19 THE CLERK: -- I think they're reversed.

20 THE COURT: That's what I thought.

21 THE CLERK: The file ending in 16 --

22 THE COURT: Yup.

23 THE CLERK: -- was Mr. Bergdahl --

24 ATTY. DEVINE: Yes.

25 THE CLERK: -- and the file ending in 20 was
26 Mrs. Bergdahl.

27 THE COURT: That's what my notes indicate --

1 ATTY. DEVINE: Yeah, that -- yeah --

2 THE COURT: -- as well. I was relying on
3 counsel.

4 ATTY. DEVINE: I was looking at the footnotes --
5 I apologize.

6 THE COURT: Okay. That's all right. We'll --
7 we'll make sure that's straightened out. You won't
8 be in for any Bergdahl's or for the Protection
9 Committee when all this is said and done, on those
10 two matters.

11 ATTY. DEVINE: All right. Thank you, Your
12 Honor.

13 THE COURT: Okay.

14 ATTY. DEVINE: If I may inquire, am I needed any
15 more this afternoon?

16 THE COURT: You are not needed, you may be free
17 to go, counsel.

18 ATTY. DEVINE: All right. Thank you, Your
19 Honor.

20 THE COURT: The other matter was, Attorney
21 Martha Miller had filed a motion to intervene, my
22 understanding, she -- she's sick today, Mr. Clerk?

23 THE CLERK: She called this morning, said she
24 was ill and would not be attending today.

25 THE COURT: Anybody care to be heard on her
26 motion to intervene?

27 ATTY. BYRNE: No, Your Honor.

1 THE COURT: Okay. The Court's reviewed the
2 papers and the Court is going to grant Attorney
3 Miller's motion to intervene.

4 Okay, that takes us to the heart of what we're
5 here about today. The Court's had the opportunity to
6 drill down deeply on the four files in the last
7 couple of days and take a look at the issues. The
8 Court wants to indicate to everybody here that there
9 are many fascinating legal issues in this case. But,
10 the problem is that we have a threshold problem that
11 we have to deal with first. It arises in no small
12 part from the passage of time. The case -- the Ann
13 Adams case, which was the one pursuant to which the
14 permanent injunction was initially entered, was filed
15 in 1958, some 57 years ago, on behalf of twenty-six
16 individuals and a couple of institutional clients.
17 No doubt many of these individuals are deceased or
18 perhaps no longer living in the homes they lived in
19 at that time. And the Court wants to make absolutely
20 sure that the proper parties are before it in this
21 case. And the Court wants to make absolutely sure
22 that all or as many as possible of the proper parties
23 have received notice and an opportunity to be heard
24 in the case.

25 What the Court does not want to have happen in
26 this case is to go through a lot of lengthily
27 lawyering, a lot of lengthily discussions in front of

1 the court for the Court to make a decision and for
2 that decision to be attacked on a collateral basis
3 because somebody who should have been a party to this
4 case was not a party to this case.

5 And just so everybody who is here understands
6 it, I -- I see standing as a very pragmatic concept.
7 It has to be flexible enough to serve the interest of
8 justice. And when we have a situation where --
9 again, like I said before on the main case, the Ann
10 Adams case, probably many of the twenty-six
11 individuals, for whatever reason, who initially filed
12 the case in 1958, are either not here or no longer
13 interested, although of course, the Cemetery
14 Improvement Association of the Trinity Episcopal
15 Church is still here. And because of the fact that
16 many of those -- or I should say, the release that
17 was granted in that -- in that case, the injunction
18 that was issued to limit the uses to which the
19 racetrack could be put, affects not only the twenty-
20 six individuals who brought the case, but it also
21 affects many of the neighbors in the vicinity to the
22 racetrack as to all -- as to the successors to Mr.
23 Vaille and to the institutional defendant at that
24 time, which was the Lime Rock Corporation.

25 And in reviewing the records in all four of
26 these files, the Court finds out that in 1977 there
27 were a couple of zoning cases and a Superior --

1 zoning appeals, rather, and a regular Superior Court
2 case brought that involves spectators and camping at
3 the racetrack facility. And in those days, as
4 counsel for Updike has pointed out to us in his
5 motion to withdraw, the plaintiff in those cases was
6 the Lime Rock Protection Committee, Inc. including
7 Mr. and Mrs. Bergdahl and a fellow named Mr. Olson.
8 And the defendant in 1977 and 78, the actual
9 racetrack owner, appears to be an entity called the
10 Lime Rock Foundation. By the time 1988 rolled
11 around, when the last round of stipulated judgments
12 took place, the defendant, owner of the racetrack,
13 was no longer the Lime Rock Foundation, but was Lime
14 Rock Associates, Inc. as the entity that signed the
15 stipulation.

16 So, now the problem that we have is that the
17 movant in this case -- the Lime Rock Park, LLC, has
18 not filed an appearance on behalf of itself, it has
19 file an appearance on behalf of Lime Rock
20 Corporation, which as far as the Court can tell, is a
21 defunct corporation. And each and every pleading
22 that's been filed on behalf of the moving party in
23 this case has been filed on behalf of an entity
24 that's not appearing in the case, and that's a
25 problem. And that includes the notice for order in
26 this case as well.

27 And I do want to point out for the record that

1 Lime Rock Park, LLC has objected to the Citizen
2 Counsel -- for example, to their motion to intervene,
3 claiming -- at least in part, that the Citizens
4 Counsel is not the original party to the original
5 injunction case -- the nuisance case. Of course,
6 even though the Citizens Counsel now includes the two
7 intuitional clients, Trinity Episcopal and Cemetery
8 Association.

9 I also want to point out that the pleadings that
10 have been filed on behalf of Lime Rock Park represent
11 that the Lime Rock Associates, Inc. had been
12 substituted in as a proper party before the 1988
13 stipulation. That being said, the racetrack has not
14 file, first of all, an appearance on behalf of itself
15 in its present state and has not filed a motion to
16 intervene. And there for the unfortunate thing -- I
17 know we have a lot of substantive issues the Court
18 would like to take up today, but we have to get our
19 ducks in a row and make sure that we have the proper
20 parties before the Court.

21 And before that happens, the first thing that
22 has to happen is that Lime Rock Park, LLC must file
23 an appearance on behalf of itself, and Lime Rock
24 Park, LLC must file a motion to intervene connecting
25 the dots between it -- and at the very least, the
26 last entity which appeared in the case, Lime Rock
27 Associates, which filed the '88 stipulation. And the

1 Court would also be interested in knowing what
2 happened before that, how you got from Lime Rock
3 Corporation to Lime Rock Foundation and to Lime Rock
4 Associates.

5 And again, the Court wants to do this because
6 the Court wants to insure that when we get to a
7 decision on many of the very interesting and
8 important issues in this case, which have a
9 significant regional impact, that the proper parties
10 were before the Court.

11 So, that being said, what I'd like to do is --
12 and again, I think for me the most important thing
13 is, before we come to decisions in this case I want
14 to make sure that anybody who has an interest in this
15 case has notice of this case and the right to be
16 heard in the case.

17 So I think -- what I see -- things -- I see
18 things happening in two stages, the next stage -- the
19 next round of motion practice we're going to have in
20 this case is going to be the motions to intervene by
21 the Citizens Counsel and by the racetrack.

22 We're also going to take up an amended order of
23 notice because since the original order of notice --
24 of course, that date has passed, and there have been
25 other pleadings that the public may have to be made
26 aware of that have been filed since the original
27 order of notice was issued.

1 And the next round we'll also take up the motion
2 to consolidate these four matters.

3 So, I see basically the next round being a
4 procedural round where we decide who's the plaintiff,
5 who's the defendant, we get a proper order of notice
6 to the proper parties that need to get notice in this
7 case, and we rule upon the motion to consolidate the
8 four motions.

9 After we have that set up then we move on to a
10 subsequent round of substantive motions which would
11 include the motions to stay that have been filed by
12 the zoning board of appeals and by the Citizens
13 Counsel, the motion to strike filed by the Citizens
14 Counsel and the motion that we're really all hear
15 about, which is the motion to modify filed by -- by
16 the Park, LLC.

17 So that's the way I see things going. Does
18 anybody have anything they'd like to say for the
19 record on that?

20 ATTY. STREET: I would, Your Honor.

21 THE COURT: Certainly.

22 ATTY. STREET: You identified, with respect to
23 the racetrack two kinds of threshold issues, one is
24 the appearance issue, that can be taken care of
25 immediately.

26 THE COURT: Yeah.

27 ATTY. STREET: So I will -- I will remedy that.

1 Before I leave the courthouse today I will have an
2 appearance for us for Lime Rock Park, LLC.

3 THE COURT: Thank you.

4 ATTY. STREET: As to the -- the second issue,
5 the motion to intervene, that you were inviting, we
6 have been spending a lot of time and voting a lot of
7 resources to try to figure all this out in -- in the
8 exact right way. And it is -- it is an enormously
9 complicated issue, Your Honor, when -- when you look
10 at all the entities that were at one time registered
11 with the Secretary of State and the various
12 transactions -- underlying transactions.

13 What we would propose to do is I think we need
14 to take some discovery on that issue to -- to get
15 this straightened out so that we can present all the
16 facts to the Court. So, we would like an order that
17 allows Lime Rock Park, LLC to take discovery to -- to
18 figure out who the predecessor entities were and are
19 and -- and whether all those dots connect or not, as
20 the case may be.

21 THE COURT: Okay. Who do you envision taking
22 discovery of?

23 ATTY. STREET: There's a gentleman in Florida
24 that we've identified named Jim -- James Haynes, who
25 was a one-time owner of the track in the 1960's and I
26 believe remained involved in the track even after the
27 track had been subsequently sold around 1970. So he

1 -- he may have a lot of pertinent information about
2 the entities that -- the original entities in the
3 1960's and the subsequent entities. And that's
4 really where we need to get a handle on -- on these
5 things. So, we have spoken to Mr. Hayne's attorney,
6 we have not spoken directly to Mr. Haynes, and told
7 him that we would be asking for Your Honor to allow a
8 deposition of Mr. Haynes and he -- he's indicated
9 that that would be possible to arrange.

10 THE COURT: Okay.

11 Let me just ask Attorney Hollister and Attorney
12 Byrne, you're the titular opponents, at least at this
13 point in time, in your mind -- and again, we know the
14 stipulation was signed in 1988 in the Ann Adams case
15 by Lime Rock Associates, Inc.

16 ATTY. HOLLISTER: Right.

17 THE COURT: Even though the Court mentioned the
18 Court would be interested in knowing the various
19 iterations that go all the way back to the beginning
20 of the case. In another respect it seems conceivable
21 that all we'd have to do is connect the dots between
22 that entity -- and again, unfortunately, I couldn't
23 find in the clerk's file, and again, we're keeping
24 things manually back then, a substitution -- a motion
25 to substitute associates -- Lime Rock Associates,
26 Inc, in. But, does anybody feel we need to go
27 farther back than Lime Rock Associates? I guess

1 that's the question.

2 ATTY. HOLLISTER: Okay. Well, Your Honor, I'm
3 not sure farther back is the word I would use, but
4 what's become evident in the last few days -- and
5 very evident in your very accurate summary of the
6 four Lime Rock Park entities going back to 1959, is
7 that Lime Rock, I'll use that term as a whole, needs
8 to get its house in order before it sets the judicial
9 machinery in motion. They're -- we have a complete
10 disarray because we have four cases, we have
11 different entities in each case. Mr. Street may be
12 able to remedy the fact that there's no appearance on
13 file for Lime Rock Park, LLC, but -- you know, I
14 think to say, we're just going to connect the dots,
15 as though that can be done magically in a Court
16 today, is not -- is not accurate. And the main
17 reason, legally, that it's not accurate is because
18 the notice has already been given and in the name of
19 Lime Rock Park, LLC. What I would respectfully
20 suggest is -- and this is sort of, frankly addressing
21 our motion to strike is, I think Lime Rock Park needs
22 to get its procedural house in order then they can
23 come back and apply for an order of notice which
24 certainly Mr. Byrne and -- and Attorney Critton and I
25 -- sitting at the table, and we have made a
26 suggestion in our motion to strike as to what the
27 content -- these are all curable defects.

1 THE COURT: Right.

2 ATTY. HOLLISTER: We -- we've made a
3 suggestion, we can agree on who needs to get notice,
4 but Lime Rock Park needs to -- we need to know who is
5 the proper entity to set that in motion. Then we can
6 get a proper notice and then we can move on to the
7 other issues that Your Honor addressed. But, I don't
8 think that we can -- we can un-ring the bell --

9 THE COURT: No, we're not --

10 ATTY. HOLLISTER: -- as far as notice.

11 THE COURT: -- we're not going to un-ring the
12 bell, Attorney Hollister. I was actually
13 contemplating another order of notice.

14 ATTY. HOLLISTER: Um-hum.

15 THE COURT: To make sure that we have the proper
16 parties in.

17 ATTY. HOLLISTER: Right.

18 THE COURT: To make sure that everybody knows
19 who's giving the notice and to make sure that that
20 contemplates not only the motion to modify the
21 injunction, but the other motions that have been
22 filed at the same time.

23 ATTY. HOLLISTER: I -- I would think though,
24 respectfully, Your Honor, that -- that since the
25 notice that has already been given is not just in the
26 name of Lime Rock Park, LLC clearly whether that's
27 the right entity, it's also as per our motion to

1 strike procedurally and substantively defective, I
2 would suggest that what they should do is start over
3 and -- and start out with the right plaintiff.

4 THE COURT: Okay. Well whether -- you know, the
5 case -- the case has been opened since 1958, so --
6 umm --

7 ATTY. HOLLISTER: But it's the September motions
8 to modify --

9 THE COURT: I know --

10 ATTY. HOLLISTER: -- that brought us here.

11 THE COURT: -- I know, but I think --

12 ATTY. HOLLISTER: I think we need to start that
13 process.

14 THE COURT: Yeah, I wasn't -- I hope -- I'm glad
15 you weren't suggesting starting the case over.

16 That's kind of what I had in mind. You may have
17 said it --

18 ATTY. HOLLISTER: This case is already a
19 missioner novel; we don't need to replicate
20 everything of it.

21 THE COURT: You may have said it more
22 articulately than me, Attorney Hollister, but that's
23 what I meant to say.

24 Attorney Byrne.

25 ATTY. BYRNE: Your Honor, I'm in agreement with
26 Attorney Hollister's summation. To me it's curious
27 that here we are -- this was started in -- back in

1 September and we still don't know who the proper
2 party is that filed this motion to reopen which has
3 brought quite a few people here to Court today and
4 stirred up the Town of Salisbury. So, again you
5 would think they would have done that first and
6 foremost before even filing that motion. So, I agree
7 with the Court that that's where we start. We just
8 want to make sure that the proper party to start this
9 process -- restart this again, give due notice for a
10 hearing and -- and -- before we even --

11 THE COURT: I mean, to play devil's advocate --

12 ATTY. BYRNE: -- get to anything.

13 THE COURT: -- with that for a moment, and again
14 I want to hear from everybody about that, I'm
15 assuming that Lime Rock Park, LLC is the entity that
16 feels it needs to comply with the injunction. Is
17 that a fair statement?

18 ATTY. STREET: Well, I don't know what position
19 they're taking. I mean I think -- I think we came
20 here in an exercise of -- of caution, came to -- came
21 to the Court and -- and now we're in a position where
22 we're being criticized for that. Well, maybe that's
23 not the right entity. If we're not subject to the
24 injunction we probably don't need to be here.

25 THE COURT: And do what you want to do, yet.

26 ATTY. STREET: I'm not sure Mr. Byrne or Mr.
27 Hollister is taking that position.

1 THE COURT: No, I don't either. But, I do think
2 that --

3 ATTY. STREET: So, I -- I -- I agree this needs
4 to be straightened out so that all the right parties
5 and -- and everybody's houses is in order. I think
6 we need discovery on that. We have gotten to a point
7 where we've done -- as I said, an enormous amount of
8 work on this.

9 THE COURT: Um-hum.

10 ATTY. STREET: But we need discovery.

11 There's another issue, you asked the question
12 whether we need to go beyond Lime Rock Associates.

13 THE COURT: Yes.

14 ATTY. STREET: I -- my -- my look at the file,
15 an I'm -- I'm not sure I've seen everything in the
16 file, but I didn't see a motion to intervene. It's --
17 - it's a -- it's an anomaly so I'm not -- I'm not
18 quite sure how that plays out. We have to figure
19 that out.

20 In the --

21 THE COURT: You mean for -- on behalf of
22 Associates?

23 ATTY. STREET: On behalf of Associates.

24 THE COURT: Yeah.

25 ATTY. STREET: Nor did I see it granted, so --

26 THE COURT: I didn't see it either, but that
27 file seems to be incomplete to me.

1 ATTY. STREET: I agree.

2 THE COURT: There's really nothing in it between
3 -- you know, like, '68 and '88. And that strikes me
4 as -- well, I guess it's not unusual because there
5 was a judgment and injunction that people were living
6 up to. But, I don't -- I don't have great faith that
7 that file that we have now --

8 ATTY. STREET: Right.

9 THE COURT: -- contains everything.

10 ATTY. STREET: But the -- you know, the
11 stipulation was --

12 THE COURT: Yeah.

13 ATTY. STREET: -- signed on behalf of an entity
14 called Lime Rock Associates.

15 THE COURT: Right.

16 ATTY. STREET: I've seen that and the order
17 applies to that -- to that entity.

18 THE COURT: Right.

19 ATTY. STREET: I do think we need to go beyond
20 that entity, Lime Rock Associates because the ZBA
21 camping cases, I'll call them --

22 THE COURT: Yeah.

23 ATTY. STREET: -- from the -- from 1978 -- 1979,
24 they all involve an entity called Lime Rock
25 Foundation.

26 THE COURT: Right.

27 ATTY. STREET: And -- and we -- we need to

1 figure that out, too.

2 THE COURT: Let me ask this too. I -- maybe
3 this goes to Attorney Byrne with anybody else, What
4 issues are still alive in the so-called camping
5 cases? I know that basically everybody has filed all
6 the same motions in all four of these cases, but I
7 guess the question is from a practical perspective,
8 What's still alive in regard to the camping cases?

9 ATTY. BYRNE: Well I think what the racetrack
10 wants to is just expand the areas that are open to
11 camping.

12 THE COURT: Oh, is that part of your motion to
13 modify as well?

14 ATTY. STREET: That is --

15 ATTY. BYREN: Yes.

16 ATTY. STREET: -- there is --

17 ATTY. BYRNE: An access to --

18 ATTY. STREET: -- we -- we are seeking to modify
19 both the -- the orders that apply to the Adams v
20 Vaille litigation and the orders that apply to the --

21 THE COURT: Okay.

22 ATTY. BYRNE: ZBA.

23 ATTY. STREET: -- ZBA cases I'll call them.

24 ATTY. BYRNE: Yea.

25 THE COURT: Well, if that's the case then I
26 would agree we should go back at least to Lime Rock
27 Foundation, Inc. as well.

1 ATTY. STREET: Yea.

2 ATTY. HOLLISTER: Your Honor, may I chime in
3 that on the ZBA cases there's one very important
4 other twist. Attorney Street's office has
5 characterized those as injunctions. They are not
6 injunctions, those were zoning appeals --

7 THE COURT: Right.

8 ATTY. HOLLISTER: -- that were based on
9 administrative record, those were stipulated
10 judgments in record appeals. So, we have to be
11 careful to not take injunction law and apply it to
12 the zoning case without recognizing that distinction.

13 THE COURT: Yes. I did notice that as well, but
14 thank you Attorney Hollister.

15 Okay. Attorney Street, how long do you think
16 it's going to take for the discovery that you're
17 contemplating?

18 ATTY. STREET: I think it can be done within 30
19 days.

20 THE COURT: Okay.

21 ATTY. STREET: Unless it leads down some
22 unexpected rabbit hole.

23 THE COURT: Okay.

24 ATTY. STREET: In which case we'll notify the
25 Court.

26 THE COURT: Okay. In which case -- yeah, file a
27 case flow request.

1 ATTY. STREET: We'll do that.

2 THE COURT: The Court will grant the motion once
3 the appearance is filed. Maybe you should do that
4 before we leave today.

5 ATTY. STREET: I will do that today.

6 THE COURT: But -- on behalf of the Park, LLC to
7 take discovery in this matter in regard to the issues
8 pertaining to appropriate entity to appear on behalf
9 of the racetrack in this case and the relationship
10 between the Park, LLC and the previous defendants in
11 the other cases -- the Foundation and Associates.

12 After that point I anticipate that you will file
13 the motions that I discussed and the parties should
14 make sure that they claim them for argument before
15 the Court at a special session by means of the case
16 flow request.

17 And at that point in time I would contemplate
18 taking up the motions to intervene on behalf of
19 Attorney Hollister's client, the motion to stay on
20 behalf of Attorney Hollister's client and Attorney
21 Byrne's client, and the motion to modify on behalf of
22 Mr. Street's client.

23 I did notice, too, Attorney Hollister, that you
24 felt there may need to be some evidence taken in
25 regard to your motion to intervene. Am I correct?

26 ATTY. HOLLISTER: Yes, Your Honor, I -- I --

27 THE COURT: Would that be in terms of

1 identifying some of the property owners, perhaps?

2 ATTY. HOLLISTER: Well, I -- I'm prepared to
3 make the argument -- and there is case law saying you
4 can decide intervention on the basis of
5 representations made in the pleadings. But, I do
6 have, here today, and if we ever need them, four
7 brief witnesses on the institutional -- the Counsel
8 itself and the three main institutional entities that
9 might take fifteen-minutes of total testimony.

10 THE COURT: Okay. Yeah, all right.
11 Unfortunately, I would like to do that today but I
12 can't because of the procedural issues --

13 ATTY. HOLLISTER: I think you're right.

14 THE COURT: -- I've spotlighted. I have to wait
15 until those are taken care of.

16 What I would appreciate counsel doing, however,
17 is there's no reason counsel can't talk to each other
18 during all of this. And if counsel could agree on
19 the motions to intervene that would be wonderful.
20 Submit them by consent, if counsel could agree on
21 order -- an order of notice and who the appropriate
22 parties are. Again, given the -- the general
23 understanding the Court provided to all attorneys
24 today that I want to make sure that anybody who has a
25 reasonable interest in this matter is given an
26 opportunity to be heard in this Court. I think it
27 shouldn't be too big of a stretch for intelligent

1 attorneys, like yourself, to work together and try to
2 come up with an agreement on that. And if that's the
3 case then we can move right into the substantive
4 issues at the next hearing.

5 Okay. Is there anything further we need to
6 discuss?

7 ATTY. STREET: I did have just one question
8 about the procedure. From here we're going to do
9 discovery over the next 30 days and then you said at
10 that point you contemplated that we would file our
11 motion to intervene. Are you also contemplating at
12 that point we would propose a new order of notice?

13 THE COURT: Yes.

14 ATTY. STREET: Yes.

15 THE COURT: Perhaps agreed on, perhaps not.

16 THE COURT: Yes.

17 ATTY. STREET: But -- so it would be at that
18 point that we would --

19 THE COURT: Yes.

20 ATTY. STREET: -- we would file that before the
21 hearings got scheduled so that everyone had notice?

22 THE COURT: Yeah, the first round I see as the
23 two motions to intervene, the motion to consolidate,
24 and the order of notice. That would be the first
25 round. And again, if you guys could agree with that
26 that would be wonderful.

27 ATTY. STREET: All right. So, we don't need the

1 order of notice done before we have the arguments on
2 the motions to intervene?

3 THE COURT: I don't think it should -- well,
4 it's going to be taken up that day.

5 ATTY. STREET: Taken -- it will be taken up at
6 the same time.

7 THE COURT: Yes.

8 ATTY. STREET: The order of notice would then be
9 published --

10 THE COURT: After that point.

11 ATTY. STREET: -- prior to the motion to modify
12 being heard on the merits?

13 THE COURT: That's correct.

14 ATTY. STREET: Thank you.

15 THE COURT: Anything further for today?

16 ATTY. BYRNE: No, Your Honor.

17 ATTY. HOLLISTER: No, Your Honor.

18 THE COURT: Okay. Thank you all very much.

19 Court stands in recess.

20 (The matter was concluded for the day.)

21

No: LLI CV 58 0015459 : SUPERIOR COURT
ANN ADAMS :
V. : JUDICIAL DISTRICT OF LITCHFIELD
B. FRANKLIN VAILL ET AL : AT LITCHFIELD, CONNECTICUT

No: LLI CV 77 0016404 :
LIME ROCK FOUNDATION : DECEMBER 9, 2015
V. :
ZONING BOARD OF APPEALS :

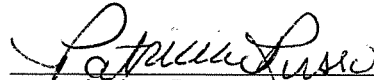
No. LLI CV 78 0016920
LIME ROCK PROTECTION COMMITTEE INC.
V.
THE LIME ROCK FOUNDATION

No. LLI CV 77 0016416
LIME ROCK PROTECTION COMMITTEE INC.
V.
THE LIME ROCK FOUNDATION

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of Patricia Russo of the above-referenced case, heard in Superior Court, Judicial District of Litchfield, Litchfield, Connecticut, before the Honorable John D. Moore, Judge, on the 9th day of December, 2015.

Dated this 15th day of December, 2015, in Litchfield, Connecticut.



Patricia Russo
Court Recording Monitor