

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

Igor Zbitnoff, Eileen Andreoli, Jeffrey Frost,
Richard Joseph, Juliet Beth Buck, Ray Gonda,
and Stop the F-35 Coalition,

Plaintiffs,

v.

Civil Action No. 5:14-cv-132

Deborah Lee James, Secretary of the Air Force,

Defendant.

**STIPULATED MOTION BY THE CITY OF WINOOSKI
FOR PERMISSION TO INTERVENE AND JOIN AS A PLAINTIFF**

NOW COMES the City of Winooski, by and through its attorneys, Paul Frank + Collins P.C., and hereby moves for permission to join this action as a plaintiff, pursuant to Federal Rules of Civil Procedure (“F.R.C.P.”) 20(a)(1) and 24(b)(1)(B).

I. Factual Background

On April 13, 2012, the United State Air Force issued a Draft Environmental Impact Statement (“DEIS”) regarding the basing and operation of F-35 aircraft at several locations, including the Burlington International Airport (“BIA”). In response to the DEIS, the Winooski City Council passed a resolution on May 21, 2012, which requested that the Air Force (i) review the noise and economic impacts of the F-35 basing at BIA on the City of Winooski and its residents, (ii) explain why BIA is a preferred location for the aircraft, and (iii) condition operating procedures for the F-35 at BIA to mitigate the impacts of increased noise. Thereafter, on June 18, 2012, the City Council issued a formal statement expressing its opposition to any

activity that would increase noise in a manner that would have a detrimental effect on the City of Winooski.

After a subsequent version of the DEIS was released in May 2013, the City Council passed another resolution, on July 12, 2013, in which the Council noted that the revised DEIS did not adequately address the concerns posed in the 2012 resolution and formal statement. The Winooski City Council reiterated its opposition to activities that would increase noise in such a manner as to negatively impact the community. It further demanded that noise impacts from the F-35 basing be mitigated to ensure that maximum levels not exceed those caused by F-16 operations in the area. The Air Force issued a Final Environmental Impact Statement (“FEIS”) in September of 2013. On December 3, 2013, the Air Force announced that it plans to base the F-35 aircraft at BIA.

Plaintiffs, including residents of the City of Winooski, brought this action alleging, in part, that the United States Air Force violated the National Environmental Protection Act (“NEPA”) by failing to adequately address certain issues in the DEIS and FEIS, including noise impacts and mitigation, which the Winooski City Council raised in its May 21, 2012 and July 12, 2013 resolutions and its July 18, 2012 formal statement. In January of 2015, a group of registered voters petitioned the City to include on the ballot at the City’s annual meeting an article advising the Council to enter into this action. In light of its past actions and resolutions, the City Council voted to put the article on the ballot. On March 3, 2015, the article passed by a vote of 572 to 475. At its April 20, 2015 meeting, the Council voted to move the Court to permit the City of Winooski enter this action as a party plaintiff.

II. Standard of Review For Permissive Joinder and Intervention

F.R.C.P. 20(a)(1) provides:

Persons may join in one action as plaintiffs if: (A) they assert any right to relief, jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all plaintiffs will arise in the action.

Furthermore, the F.R.C.P. encourages hearing the “broadest possible scope of action consistent with fairness to the parties; joinder of claims, parties and remedies is strongly encouraged.”

United Mine Workers of Am. v. Gibbs, 383 U.S. 715, 724 (1966).

F.R.C.P. 24(b)(1)(B) provides that anyone may be permitted to intervene in an action who “has a claim or defense that shares with the main action a common question of law or fact”.

III. The City of Winooski Should be Joined as a Party Plaintiff to this Action

The City of Winooski asserts against the Defendant a right to relief jointly with Plaintiffs requiring the United States Air Force to comply with NEPA and with the National Historic Preservation Act. The City’s claims arise out of the same occurrences as those on which Plaintiffs base their claims, namely Defendant’s failure to address mitigation of adverse impacts in its DEIS or its FEIS. *See Fragrancenet.com, Inc. v. Fragrancex.com, Inc.*, 679 F.Supp.2d 312, fn. 8 (E.D.N.Y. 2010) (permitting joinder where any claims held by the party seeking to be added as a plaintiff arise out of the same occurrence as the already-named plaintiff).

Moreover, there are numerous questions of law and fact common to Plaintiffs and the City of Winooski in this action. As a landowner, the City is similarly situated to several of the current Plaintiffs, who are residents of Winooski. Additionally, the questions of law that arise from City’s claims are the same as Plaintiffs’ in that they flow from Defendant’s failure to comply with NEPA and the NHPA. *See Russo v. Bache Halsey Stuart Shields, Inc.*, 554 F.Supp. 613, 617 (N.D.Ill. 1982) (stating the joinder of a plaintiff is appropriate where the party seeking

to be joined presents common questions of law under the statutes, regulations and rules that the already-named plaintiffs have evoked).

Finally, there is no prejudice to Defendant in the City of Winooski joining as a plaintiff in this action, because the claims in which the City has an interest are encompassed within the existing complaint. In addition, the City understands that the Plaintiffs will be filing a motion to amend the complaint to add claims, an indication that the case is in its early stages. The addition of the City as a party plaintiff will not delay the progress of the case. Pursuant to F.R.C.P. 24(c), the City of Winooski hereby gives notice that it intends to rely on the complaint of the Plaintiffs. It does not intend to file a separate request for relief.

The City of Winooski has made a good faith attempt to obtain agreement from Plaintiffs and Defendant to the relief requested herein, pursuant to Local Rule 7(a)(7). Through their respective counsel, Plaintiffs have stipulated to this motion, and the United States does not oppose the City's intervention.

WHEREFORE, the City of Winooski respectfully requests the Court permit it to intervene and join as a plaintiff in the current action.

Dated this 29th day of April, 2015

CITY OF WINOOSKI

By: PAUL FRANK + COLLINS, P.C.

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CERTIFICATE OF SERVICE

I, Robert S. DiPalma, hereby certify that on April 29, 2015, I electronically filed the foregoing Certificate of Service with the Clerk of Court using the CM/ECF system, where it is available for viewing and downloading.

/s/ Robert S. DiPalma
Robert S. DiPalma

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