UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

River of Life Kingdom Ministries,	)	
Plaintiff,	)	Case No. 08C 0950
v.	)	Judge Gottschall
	)	
Village of Hazel Crest, Illinois,	)	Magistrate Judge Ashman
Defendant.	)	

VILLAGE OF HAZEL CREST'S REPLY MEMORANDUM IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

I. Introduction

Because of the simultaneity of the briefing, the Village was required to anticipate the arguments to be made by Plaintiff. We anticipated correctly,

Plaintiff's entire case hinges on the language of the B-2 zoning ordinance, which allows "meeting halls" while prohibiting churches. Contrary to plaintiff's contention (at 2), the only "comparable" B-2 use permitted as a matter of right is the "meeting hall" use as set forth in Section 8.3B(10). The other two "comparable uses" identified by plaintiff (schools and community centers) are allowable in B-2 only as special uses. None of these uses actually exist in the HCP TIF District.

Plaintiff's brief does not allege a Substantial Burden or Free Exercise claim. Those claims cannot serve as a basis for injunctive relief. Plaintiff's entire case hinges on the presence of "meeting halls" in the B-2 permitted use catalog. As we said in our opening memo, the Village anticipates eliminating this claimed inequality by amending its zoning ordinance to make it clear that B-2 is a limited-purpose business district. Neither secular nor religious "meeting halls" will be allowed in this district, particularly in light of the goals of the HCP TIF District.

This Reply will not reprise our earlier arguments. What we believe will be of assistance to the Court is to first focus on the limitations of Digrugilliers v. Consolidated City of Indianapolis, 506 F.3d 612 (7th Cir. 2007); the different posture of that case; and the unwarranted, expansive reading Plaintiff would have the Court give that case. We will then discuss the remaining preliminary injunction factors in response to Plaintiff's argument.

What is not productive is Plaintiff's use of pejorative terms such as "corporate welfare packages" (Pltf Br. at 4) when describing the Village's efforts. Such rhetorical excesses are not productive to a reasoned analysis of a difficult issue.

II. *Digrugilliers* does not Compel the Issuance of a Mandatory Preliminary Injunction

Because Plaintiff places such reliance on Digrugilliers, it is important to outline the numerous distinctions between that case and ours.

First is the issue of preservation of the status quo. In Digrugilliers, the church had been conducting its religious operations in the building for years when it received notice from the city of the zoning violation. The 7th Circuit (at 618) observed that "if [the] church must vacate its premises while [its] case wends its way to completion, the church''s religious activities will be hampered." The church "has been in its present premises since the middle of 2005 without … causing any trouble to anyone including other users of land in its vicinity." Allowing the church to remain in place was preservation of the status quo.

In the present case, plaintiff is seeking to drastically alter the status quo by forcing the Village to allow a land use which violates the Village zoning ordinance to locate in the B-2 district. As we discuss below, Plaintiff has not made the extraordinary showing necessary to obtain an order effectively granting it all of its claimed relief at the preliminary stage.

Second, the zoning district where the church was located in Digrugilliers was much more expansive than the one presented to this Court. The Indianapolis C-1 zoning district is not a special purpose zone like the Hazel Crest TIF District. Indianapolis C-1 is a buffer district "between residential districts on the one hand, and entirely commercial and industrial districts on the other hand." 506 F.3d at 614.

Third, the Indianapolis zoning district permitted a much wider array of comparable uses as a matter of right. These permitted uses made no distinction between profit or non-profit, commercial or tax-exempt. These permitted uses included assisted living facilities, auditoriums, assembly halls, community centers, senior citizen centers, daycare centers, nursing homes, art galleries, civic clubs, libraries, junior colleges, schools and nurseries. 614-615. A church use was indistinguishable from this wide array of potentially comparable uses. Many of these other uses are tax exempt. This array represents a conscious choice by Indianapolis to allow a full range of similarly situated gathering places to locate in the same zoning district.

In the present case, the Hazel Crest B-2 District does not allow a wide range of similarly situated uses as a matter of right. The only comparator—"meeting halls" is a use that does not even exist in Hazel Crest (we read Plaintiff's memo to steer away from any claim that the VFW bar is comparable for Equal Terms purposes). The Hazel Crest ordinance does not reflect a conscious legislative intent to welcome comparable nonreligious uses while treating religious uses on unequal terms. The HCP TIF District creation and implementation initiatives point in the opposite direction. Therefore the zoning environment in Hazel Crest is not comparable to that in Indianapolis.

Contrary to Plaintiff's wishes, Digrugilliers' preliminary discussion does not nullify the significant analytical impact of Lighthouse Institute for Evangelism v. City of Long Branch, 510

F.3d 253 (3rd Cir. 2007), which favors the Village's position. Digrugilliers did not involve a municipality with a specific, pro-active and targeted economic development plan for a small segment of its community. But the Lighthouse case did, and this case does. Contrary to Plaintiff's attempted brush-off, the Third Circuit's decision is of much more than mere "academic interest" to this Court. Lighthouse holds that when a municipality engages in specific and targeted economic redevelopment plans, churches are not similarly situated with other "nonreligious assemblies" in the targeted area for Equal Terms purposes, and the religious assembly's presence is contrary to the purposes of the city's economic development plans. This issue was not before the Court of Appeals in Digrugilliers, so it was not addressed. The Lighthouse decision cannot be dismissed as lightly as Plaintiff claims. It is not contrary to 7th Circuit precedent, and is compelling authority for the Village's redevelopment preservation position.

Finally, Plaintiff has repeatedly overstated the holding of Digrugilliers. At the end of the day, the Court of Appeals (at 618) held only that plaintiff's claim "has at least some, and possibly great, merit." The Court then directed the District Court to engage in the process of "striking the balance of irreparable harms (the harm to the plaintiff is preliminary relief is denied [against] the harm to the city if it is granted)." Id.

Therefore, the reach of Digrugilliers is not nearly as long as claimed by the "meeting hall" argument which lies at the heart of plaintiff's case. The meeting hall language is (at least for now, pending curative legislation) a factor which the Court must consider. But it is not the only factor.

III. The Balance of Harms and Public Interest Both Tip in Favor of the Village

As we predicted, Plaintiff belittles the interest of the Village in preserving one small area of our town for economic redevelopment. We respectfully submit that the Village's interest in community revitalization is a significant one.

Dealing first with the balance of harms, the record does not support plaintiff's contention that an injunction is necessary to prevent Plaintiff and its congregation from freely exercising their right to worship. The record is undisputed that the congregation has access to the same place of worship now that it has had for years. Plaintiff offered no "imminent eviction" testimony. This is not, as Plaintiff would argue, a case where an injunction is necessary for plaintiff "to engage in worship and worship-supporting activities." Pltf's Br. at 10. Plaintiff's congregation will continue to worship when and as desired. The only difference is location.

Plaintiff is wrong to argue that by denying the motion for preliminary injunction, this Court would be stating that "no church would ever be eligible for an injunction under RLUIPA, because the government could always point to other locations where a church could locate." Pltf's Br. at 10. The granting of a permanent injunction may be appropriate after both sides have had a full and fair opportunity to present their case. Under that circumstance, the remedial purpose of RLUIPA would be served. But the extraordinary mandatory preliminary injunction must result from a careful balancing of all the individual factors. The bottom line is that if the preliminary injunction is denied, the Church will continue to worship from Chicago Heights (a few miles away from Hazel Crest) while this case is being litigated.

The Village, on the other hand, will suffer irreparable harm if this Court grants an extraordinary mandatory preliminary injunction. The Village has spent years attempting to prime the pump for economic revitalization. The Village has rationally concluded that religious

and similar uses are not appropriate in the HCP TIF District. As Magistrate Nolan recognized in Presbyterian Church v. Village of Northbrook, 2003 WL 22048089 (N.D. Ill. 2003), aff'd, 489 F.3d 846 (7th Cir. 2007), it is perfectly reasonable for a Village to "determine that churches are better suited for residential areas, and that membership organizations are not well-suited for [commercial] districts. Thus, religious institutions are now permitted as of right in two residential districts, which arguably 'recognizes the historical connection between strong and healthy residential communities and churches.'" Id. at *8 (internal citations omitted).

If this Court enters an order opening the door for this and any other church to locate in the HCP TIF District, it is rational to conclude that the commercial redevelopment goals of the Village will be eroded. That will injure the Village's long-held and important plans. That injury is irreparable for two obvious reasons. First, it is an injury that cannot be calculated in monetary damages. Second, there is nobody from whom the Village can obtain any sort of "monetary relief" in the event of (i) a proliferation of incompatible land uses devalues the commercial viability of HCP TIF in the marketplace; and (ii) the Village's legal position is ultimately sustained. If this Court grants the injunction, the Village will suffer an injury which cannot be compensated by monetary damages. This is classic irreparable injury.

Finally, the Court must also weigh the public interest, an interest the Plaintiff ignores in its opening salvo. In the preliminary injunction context, "public interest" means "the effect that granting or denying the injunction will have on nonparties." Grossbaum v. Indianapolis-Marion County Building Authority, 63 F.3d 581, 585 (7th Cir. 1995). The "public interest" balancing factor recognizes that sometimes "an order granting or denying a preliminary injunction will have consequences beyond the immediate parties. If so, those interests—the 'public interest' if

you will—must be reckoned into the weighing process . . ." Roland Machinery Company v. Dresser Industries, Inc., 749 F.2d 380, 388 (7th Cir. 1984).

In doing this balancing, the Court must define the "relevant 'public' whose interests may be affected." McCormick v. Zero, 110 F.Supp.2d 716, 741 (N.D. Ill. 2000), vacated on mootness grounds, 2 Fed.Appx. 559 (7th Cir. 2001). The Plaintiff is a Church whose members have important constitutional and statutory rights. The Defendant in this case is a corporation, a municipal corporation to be precise. Who, then, are the "relevant public" whose interests must be reckoned with? We think the answer is obvious.

The relevant nonparties in this case are the past, present and future residents and taxpayers of the Village of Hazel Crest. Our people, exercising their First and Thirteenth Amendment rights to associate and vote, have chosen (through representative democratic government) to commit millions of their tax dollars toward a long-term effort to revitalize an area of critical importance to the Village. These people deserve recognition. This public interest needs to have a seat at the deliberative table when this Court engages in the difficult balancing process this case presents. A decision granting allowing the church to locate in HCP TIF District will potentially damage the interests of the relevant public. The public interest, therefore, weighs in favor of the Village.

IV. Conclusion—a Mandatory Preliminary Injunction is Not Warranted

Plaintiff has failed to respond to another issue which this Court must consider. As we stated in our opening brief, plaintiff is seeking a mandatory preliminary injunction. It is seeking an order which will effectively rezone the Subject Property, grant a special permit inconsistent with existing zoning, and grant building and occupancy permits to allow a tax-exempt religious use to locate in a commercial zone targeted for precisely the opposite land uses.

A mandatory preliminary injunction like this, which essentially accords the movant all of the relief that it could recover at the conclusion of a full trial on the merits, is particularly disfavored. Schrier v. University of Colorado, 427 F.3d 1253, 1258-9 (10th Cir. 2005). In this district, mandatory preliminary injunctions are "cautiously viewed and sparingly issued," and granted "only upon the clearest equitable grounds." Bowen Engineering Corporation v. Village of Channahon, 2003 WL 21525254 (N.D. Ill. 2003) (internal citations omitted). Because of the significant interest demonstrated by the Village, those "clearest equitable grounds" do not exist.

We end where we began a few weeks ago. The Village of Hazel Crest is welcoming to churches throughout the Village. HCP TIF is one of the few areas in the Village where churches are not allowed. To the extent there is a surface violation of Equal Terms because the B-2 zoning district allows meeting halls, that surface comparability is overridden by the Village's sincere and nondiscriminatory efforts to revitalize HCP. Those efforts should not be scuttled on this record.

The Motion should be denied.

Respectfully submitted,

VILLAGE OF HAZEL CREST

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CERTIFICATE OF SERVICE

I hereby certify that on April 2, 2008, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of said filing to all parties listed below:

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