

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

| | | |
|-------------------------------|---|---------------------------|
| TOBY DIGRUGILLIERS, |) | |
| |) | |
| Plaintiff, |) | |
| vs. |) | NO. 1:06-cv-00952-SEB-VSS |
| |) | |
| CONSOLIDATED CITY OF |) | |
| INDIANAPOLIS, |) | |
| METROPOLITAN BOARD OF ZONING |) | |
| APPEALS OF MARION COUNTY, |) | |
| DEPARTMENT OF METROPOLITAN |) | |
| DEVELOPMENT OF MARION COUNTY, |) | |
| DIVISION OF COMPLIANCE, |) | |
| |) | |
| Defendants. |) | |

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

TOBY DIGRUGILLIERS,)
Plaintiff,)
)
vs.) 1:06-CV-952-SEB-VSS
)
CONSOLIDATED CITY OF INDIANAPOLIS,)
et al.,)
Defendants.)

**ENTRY DIRECTING FURTHER ACTION PRIOR TO RULING ON REQUEST FOR
PRELIMINARY INJUNCTION**

This case is before the Court on the Motion for Preliminary Injunction [Docket No. 5] filed by Plaintiff, Toby Digrugilliers (“Digrugilliers”), on June 16, 2006, pursuant to Fed. R. Civ. P. 65. We conducted a hearing to receive evidence and hear argument regarding these matters on November 3, 2006. In reviewing the parties’ briefs, submissions, and oral arguments in support of and in opposition to the Motion, we have determined that further preliminary steps must be completed before the Motion is ripe for a decision, which we explain below.

Factual Background

Plaintiff is the pastor and trustee of the Baptist Church of the West Side, a church located at 6411 W. Thompson Road, in Indianapolis, Indiana (“the Thompson Road property”). He has brought this action in his capacity as an individual, member of the Church, and pastor and trustee of the Church, and on behalf of the Church and its members.¹

¹ Mr. Digrugilliers maintains that he is empowered to bring this suit pursuant to the Declaration of Trust adopted by the Church. Joint Exs. A, B. Section C.2 of the trust document empowers the trustee to “[c]ommence or defend litigation with respect to this Church . . . or any (continued...) ”

The church has had a leasehold interest in the Thompson Road property since July 1, 2005, when it signed a lease agreement with the lessor, Walton Properties, LLC (Joint Ex. I). Paragraph 6 of the Lease states that “[t]he lessee covenants that the premises shall be used for the purpose of [a meeting facility], and shall not be used or permitted to be used for any other purpose; [and] that said premises shall not be used for any unlawful purpose and no violations of law or ordinance shall be committed thereon.” The Lease expired on July 1, 2006, but according to Plaintiff’s counsel, it has been extended month-to-month since its expiration, pursuant to Paragraph 14 of the Lease, which states that a holding over of the lease beyond its expiration shall operate as an extension of the lease from month to month. See id.

The Thompson Road property is located within a “C-1” zoned district. A C-1 district is zoned for “office-buffer commercial” use.² City Code § 732-201. Permitted C-1 uses are delineated in § 732-201(a) of the City Code, and include auditoriums, assembly halls,

¹(...continued)

property of the Trust Estate, as the Trustee may deem advisable,” but requires that he “shall first consult the congregation prior to the exercise of” such power. Though Plaintiff has made the trust document and the resolution adopting it part of the record in this cause, he has not demonstrated in any evidentiary submission that he has consulted the congregation prior to instituting this suit and has received their explicit permission, as required by the trust agreement. In order to ensure Mr. Digrugilliers’s proper standing to bring this suit on behalf of the Church, this evidentiary loop must be closed. Therefore, we hereby grant Plaintiff fourteen (14) days in which to supplement the record with evidence that his claim is properly authorized pursuant to this provision of the trust agreement.

² The purpose of a C-1 district, as described in the City Code, is:

to provide specific areas where office uses, compatible office-type uses, such as medical and dental facilities, education services, and certain public and semi-public uses may be developed with the assurance that retail and other heavier commercial uses with incompatible characteristics will not impede or disrupt this district’s function as a buffer.

City Code § 732-201.

community centers, certain health services, membership organizations or clubs, mortuaries, any type of office use, radio and television studios, museums, and certain types of specialized schools. Id.

Plaintiff stipulates that the Church is engaged in religious land use at the Thompson Road property. See Joint Stipulation ¶¶ 8, 9, 24. Religious uses³ are not permitted as of right in a C-1 district. A religious use would be permitted at the Thompson Road location if the Board of Zoning Appeals (“BZA”) were to grant a use variance, pursuant to the Rules of Procedure of the BZA (Joint Ex. E), or if the land were rezoned as an SU-1 district (a special use district dedicated to religious use). See Joint Stipulation ¶ 11.

On February 6, 2006, the Church was notified by letter from the City of Indianapolis that it was in violation of the City Code for conducting an activity not permitted in a C-1 district (Joint Ex. F). Walton Properties, LLC, received an identical letter (Joint Ex. H). Plaintiff was informed by a zoning official that the Church must apply for a use variance to the zoning ordinance if it wishes to continue operating in its present location. Pl.’s Br. at 3. However, Plaintiff indicated to the zoning official that the Church is unwilling to apply for a use variance due to the “burdensome and costly nature of the application process.” Id. at 4. Plaintiff argues that, by requiring the Church to undergo this variance process while functionally similar nonreligious uses are entitled to locate in C-1 zones as of right, the Zoning Code unduly burdens

³ Religious use is defined in the City Code as:

a land use and all buildings and structures associated therewith devoted primarily to the purpose of divine worship together with reasonably related accessory uses, which are subordinate to and commonly associated with the primary use, which may include but are not limited to, educational, instructional, social or residential uses.

City Code § 731-102(152).

religious practice and expression.

Therefore, Plaintiff brought this action against the Consolidated City of Indianapolis, the Metropolitan Board of Zoning Appeals of Marion County, and the Department of Metropolitan Development of Marion County – Division of Compliance (collectively, “the City”), asserting that the City’s Zoning Code violates the First and Fourteenth Amendments to the U.S. Constitution, the Religious Land Use and Institutionalized Persons Act (RLUIPA), and Article I, Sections 2 and 3 of the Indiana Constitution. Plaintiff brings both facial and as-applied challenges in his complaint. However, the preliminary injunction sought by Plaintiff is confined solely to his as-applied challenges under the U.S. Constitution and RLUIPA. He seeks a preliminary injunction “enjoining enforcement of the discriminatory treatment of religious uses in the City’s Zoning Code.” Pl.’s Mot. at 1.

Zoning and Leasehold Interests

Indiana courts have previously considered the issue of whether a lessee has a sufficient property interest to seek a zoning variance. In Bowen v. Metro. Bd. of Zoning Appeals in Marion County, 317 N.E.2d 193 (Ind. Ct. App. 1974), a commercial lessee under a ninety-nine-year lease sought a land use variance over the objection of the lessors. The lessors argued that, as “owners” of the property, their consent was necessary in order for the BZA to properly hear the request. The Indiana Court of Appeals upheld the BZA decision granting the variance to lessees, stating that “notwithstanding the variance statute’s silence, an applicant for a variance must be one who has such an interest that he can qualify as the real party in interest.” Id. at 197. Generally, the court stated, this person will be the owner of the fee; however,

if the feeholder has put a lessee into unrestricted use possession under a long term lease, the case is not that simple because it then appears that for the next many years

. . . the lessee may be the only person who will suffer the hardship (if any) if the variance is denied, or conversely, the lessee may be the only person who can benefit by the grant of the variance.⁴

The court in Bowen cited cases from other jurisdictions in which tenants-at-will and holders of mere options to purchase were held to be insufficient interests to apply for a use variance. Id. at 198-99. However, based on the distinction that the Bowen lessees were entitled to exclusive possession and enjoyment of the land for a ninety-nine year lease term, the court held that those lessees were effectively “owners” of the land for purposes of seeking a use variance. Id. at 200.

In Pequinot v. Allen County Bd. of Zoning Appeals, 446 N.E.2d 1021 (Ind. Ct. App. 1983), the Indiana Court of Appeals confronted a related issue – whether the lessee had standing to seek a special exception when the terms of the lease arguably prohibited the use the lessee sought. Here, it was not the lessee’s status as a lessee that gave rise to the conflict, but the specific terms of the lease. Id. at 1024. The court did not decide the merits regarding whether the lease terms prohibited the desired land use, but rather deferred to the administrative determination that the use was not prohibited under the lease. However, in reaching its determination, the court in Pequinot stated that “a condition of the lessee’s interest in the property being sufficient for standing purposes is that the lease not prohibit the use of the property in the manner which the variance would permit.” Id.

Applying these holdings to the case at bar, we conclude that Plaintiff’s current interest in the leased property to which the zoning restrictions attach may be insufficient to support this challenge to its zoning classification, but we will only be able to make this determination once

⁴ Id. at 198.

the lessor of the property is made a party to this case, under Rule 19, Fed. R. Civ. P.

Federal Rule of Civil Procedure 19 provides for joinder of persons needed for a just adjudication. Rule 19(a) states, in relevant part, that:

A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may . . . as a practical matter impair or impede the person's ability to protect that interest[.]⁵

Under Rule 19(a), joinder of necessary parties is ordered if such joinder can be feasibly effected.⁶ The purpose of Rule 19(a)(2)(i) is the protection of the absentee's interests. See, e.g., Codest Eng'g v. Hyatt Int'l Corp., 1995 WL 683505 (N.D. Ill. 1995). The impact of the adjudication on the interest of the absentee must be "direct and immediate." Janney Montgomery Scott, Inc. v. Shepard Niles, Inc., 11 F.3d 399, 407 (3d Cir. 1993).

In our view, the interests of Walton Properties, LLC – the lessor (and we assume the owner) of the Thompson Road property – are such as to necessitate their compulsory joinder in this litigation under Rule 19. We know of no basis on which Walton Properties would not be amenable to service of process nor of any way in which inclusion in this cause would deprive the Court of jurisdiction over this case. Clearly, the adjudication of this cause directly and immediately impacts Walton Properties's interests, both as *owner* of the Thompson Road

⁵ Fed. R. Civ. P. 19(a). See also Shields v. Barrow, 58 U.S. 130, 139 (1855). The classic definition of the necessary absentee is one who "[has] an interest in the controversy, and who ought to be made [a party], in order that the court may act." Id.

⁶ A court may raise compulsory party joinder on its own motion. See, e.g., Gonzalez v. Cruz, 926 F.2d 1, 5 n.6 (1st Cir. 1991).

property and as *lessor* to the Church. We can readily imagine that there may be ways in which Walton Properties's interests might not be identical to or coincident with those of Plaintiff.

As the Bowen court held, a lessee who seeks to occupy land for uses other than that for which it is zoned must be a real party in interest to challenge the zoning. In that case, the length of the lease term sufficed to make the lessee such a party – an “owner” as it were for purposes of the variance. Here, though, the Church's property interest is significantly smaller (perhaps nonexistent, if the Lease actually expires). Whereas the Bowen lessees had a ninety-nine year lease, the lease interest here is limited to Plaintiff's use of the property on a hold-over, month-to-month basis. Under these circumstances, the Church obviously could cease to have *any* interest in the Thompson Road premises in a very short period of time. Therefore, whether they qualify as “owners” of the land for purposes of challenging the zoning classification is an open question. Correspondingly, where the Bowen feeholders had a very small practical interest in the use of their property, the interest of Walton Properties is much greater and more immediate here. The disposition of the case at bar will surely affect to some extent Walton Properties's interest. Therefore, Walton Properties is a necessary party to ensure that its interests are sufficiently protected and to permit the Court to issue a just adjudication.

Walton Properties's interests as a lessor are no less important than its interests as an owner. As discussed supra, the lease agreement requires that the premises not be used for any other purposes other than that designated (a “meeting facility”). It also states that no violations of law or ordinance shall be committed on the premises. As the Court ruled in Pequinot, “A condition of the lessee's interest in the property being sufficient for standing purposes is that the lease not prohibit the use of the property in the manner which the variance would permit.” 446

N.E.2d at 1024. We do not address, much less decide here, whether either of these lease provisions has actually been violated by the Church. But we do find, given the holding in Pequinot, that the lessor's involvement in the case at bar is required to ensure that its interests as a landlord (as well as owner) are fully protected. Further, its presence is necessary to permit adequate relief and a full resolution of this dispute.

Therefore, we hereby STAY our ruling on preliminary injunction in this cause, in order to afford Plaintiff the opportunity to join Walton Properties, LLC, as a necessary party, and to supplement the record with documentation as discussed in note 1, supra. Plaintiff shall be granted fourteen days within which to accomplish these tasks. Failing that, the request for injunctive relief shall be denied. IT IS SO ORDERED.

Date: _____

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