

STATE OF MICHIGAN
In the Circuit Court for the County of Wayne

ROSALIND and MICHAEL GIETZEN,
a married couple,

CASE NO. **18-008104-CZ**
HON. JOHN H. GILLIS,

JR.

Plaintiffs,

-v-

CITY OF GROSSE POINTE, a
Michigan Municipal Corporation,

Defendants.

**OPINION AND ORDER DENYING PLAINTIFFS’
REQUEST FOR A PERMANENT INJUNCTION**

At a session of said Court, held in the
Coleman A. Young Municipal Center, Detroit, Michigan

On 8/10/2018

PRESENT: **HON. JOHN H. GILLIS, JR.**
Wayne County Circuit Judge

THIS CAUSE having come before the Court upon a Ex Parte Motion for Temporary Restraining Order and Injunctive Relief (“TRO”) filed by Plaintiffs ROSALIND GIETZEN and MICHAEL GIETZEN on July 16, 2018. Plaintiffs sought and were granted a TRO against Defendant CITY OF GROSSE POINTE (“the City”), which enjoined the City from issuing bonds to construct an expanded Department of Public Works facility located at 17145 Maumee (“the Property”). The Property serves as a storage area for garbage trucks, chemicals, gasoline and equipment, and is currently owned and operated by the City. The Court granted Plaintiffs’ Ex Parte Motion for TRO and scheduled the matter for hearing on August 9, 2018. For the reasons stated below, the Court will dissolve the TRO granted on July 16, 2018, deny Plaintiffs’ motion for a permanent injunction, and dismiss Plaintiffs’ case with prejudice.

Factual Background and Findings

Plaintiffs own a home and additional property on Neff Road adjacent to City Hall and the Property at issue. The Property is surrounded by a residential area on three sides. On August 8, 2017, a ballot proposal was included in a city-wide vote asking voters to approve the issuance of general obligation bonds to fund certain improvements for housing police and fire departments,

municipal court offices and a public services building. Plaintiffs alleged in their TRO Motion that the voters voted on and approved the relocation of the DPW storage facility on the Property from 17145 Maumee to a medical records warehouse at 4849 Canyon in Detroit. The Court finds that this does not accurately represent the ballot proposal voted upon and approved by residents of the City.

At a Special Meeting of the City Council on May 1, 2017, the members voted in favor of drafting a resolution that called for a Special Election on August 8, 2017. A resolution was drafted to request a millage for repayment of a bond to fund improvements for the Public Safety and Public Service Departments. On May 8, 2017, the City Council considered the language to be voted upon in the August 8th election. The proposed ballot language read, in pertinent part, as follows:

“EXHIBIT A – Public Safety and Public Services Facilities Bond Proposal

“Shall the City of Grosse Pointe, County of Wayne, Michigan, borrow the principal sum of not to exceed Twelve Million Nine Hundred Sixty Thousand Dollars (\$12,960,000), and issue its unlimited tax general obligation bonds, in one or more series, payable in not to exceed twenty-three (23) years from the date of issue, to pay the cost of acquiring, constructing, reconstructing, furnishing and equipping a public safety building to house the police and fire departments and a public services building, and for repairs and renovation of the existing public safety building for municipal court offices and other City purposes, including all necessary demolition, site acquisition, site improvements and related infrastructure improvements? * * * *” [Exhibit A, City Council Meeting Minutes, 5/8/17.]

The resolution was unanimously adopted by the City Council members at the May 8, 2017 meeting. The City Council certified the exact wording to be used on the ballot. Contrary to Plaintiffs’ assertions, the language used in the ballot did not specify whether any particular buildings would be constructed or reconstructed at any particular address. There were no such restrictions in the ballot proposal.

The Minutes of the City Council meeting on May 8, 2017 demonstrate that the City Manager advised the Council members that the proposed construction was contingent on the City’s ability to obtain “financing for the purchase [of additional property]” and to complete “due diligence efforts such as environmental assessments and municipal approvals as may be required”. The City Manager further advised the Council that the City had some flexibility as to the location of the improvements and the costs of the projects covered by the bond.

The voters approved the Public Safety and Public Services Facilities Bond Proposal as a result of the Special Election. The City began the process of developing construction plans for the new Public Safety Building, and researching the acquisition of land in the City of Detroit to repurpose an existing warehouse. The City obtained conditional approval for use of the property at 4849 Canyon to house the general operations of the City’s Department of Public Works on October 19, 2017.

On January 26, 2018, the Director of Detroit’s Buildings, Safety, Engineering & Environmental Department rescinded its prior approval. The Director stated that the proposed

property on Canyon is zoned B4 (General Business), and did not allow waste-related activity or overnight storage of garbage trucks. Further, the City of Detroit failed to notify all residents within 300 feet of the property of the public hearing on October 11, 2017. At a Council meeting on March 19, 2018, the City Manager informed the City Council that Detroit officials refused to withdraw the rescission of its conditional approval. The Council voted to terminate further consideration of the Canyon site.

On June 18, 2018, the City Manager made a presentation to Council members on options for the Public Works building, and other City buildings. Three options involved using the existing location and a fourth option was to build a new Public Works facility at an unknown location. The City Architect proposed construction of a new Public Works building at the existing location, and retaining some of the Public Works staff offices and a training room in the existing City Hall, to reduce the size and cost of a new building. At the June 18th meeting, the City Council adopted a motion to approve preliminary designs and issuance of a single bond. The final designs for the Public Works building has not been submitted to the City Planning Commission for approval.

Argument

The party seeking injunctive relief has the burden of establishing why a permanent injunction should be issued. MCR 3.310(A)(4). The Michigan Supreme Court has held that an injunction should not be issued unless the moving party can establish the following four factors:

Whether a preliminary injunction should issue is determined by a four-factor analysis: Harm to the public interest if an injunction issues; whether harm to the applicant in the absence of a stay outweighs the harm to the opposing party if a stay is granted; the strength of the applicant's demonstration that the applicant is likely to prevail on the merits; and demonstration that the applicant will suffer irreparable injury if a preliminary injunction is not granted. *State Employees Ass'n v Dept of Mental Health*, 421 Mich 152, 157–158 (1984).

Plaintiffs allege that the City Council had no authority to approve the issuance of a tax bond to fund expansion of the existing Public Works Building on Maumee Avenue in the City. Plaintiffs state that the voters voted and approved the issuance of bond monies for a new facility to be built on Canyon Road in Detroit. Plaintiffs argue that when the conditional approval of the Canyon facility fell through, City Council should have taken the issue back to the voters for consideration. The Court finds that Plaintiffs' statement is factually untrue and without legal merit.

Article 9, Section 6 of the Michigan Constitution provides that a city may levy tax of an unlimited rate and amount to pay principal and interest on bonds where the proposal is approved by a majority of the electorate. This Court finds that the City's actions were constitutional, and strictly complied with the mandates of MCL 211.24(f)(3) for the content of ballot language in bond and millage proposals. That provision does not include a requirement that a location, address or legal description of the proposed project be included on the ballot. The evidence shows that the City painstakingly developed a construction budget that took into account contingencies for the cost of land acquisition, zoning approvals and public building construction. The voters lawfully authorized the City to issue bonds for the construction of a Public Services building. The Court holds that Plaintiffs cannot prevail on the merits of their claim.

Plaintiffs complain that construction of the proposed Public Services Building will violate the City's zoning ordinance. The Court disagrees. Municipalities are not restricted by their own zoning limitation as to the height and size of buildings because use of the property is in furtherance of a governmental, not proprietary, function. The City must have the freedom to construct municipal buildings within its borders to properly serve the community. City structures are not regulated by parking, road access, height, or setback regulations. *Morrison v City of Lansing*, 255 Mich App 505 (2003). The Court also observes that Plaintiffs' argument that the proposed Maumee structure constitutes a nuisance *per se* has no legal basis. A building that has as its purpose a governmental function cannot be in violation of the City's zoning ordinance, so it cannot be construed as a nuisance *per se* under MCL 125.3407.

Plaintiffs argue that a permanent injunction should issue because the harm to them outweighs harm to the City. Plaintiffs state that the new plan has a storage facility buttressing adjacent residential homes. The new structure will allegedly have "equipment, gasoline, salt and other chemicals" located near patios, swimming pools and play structures. The Court finds that just the opposite is true. Gasoline, chemicals, equipment and garbage trucks are currently sitting in an open lot, as they have for decades. The proposed structure would enclose all of these items in one large, covered facility, thereby improving the functionality of the area. This will be accomplished without expanding the property lines by using the same footprint for the existing structure and surrounding parking lot.

A preliminary or permanent injunction granted to Plaintiffs would essentially cause more harm to Defendants. Financial harm could befall taxpayers if the City is prohibited from issuing bonds. If prime interest rates increase, any delay in issuance of bonds by the City could result in costing taxpayers substantial interest over the life of the bonds. It is likely that the taxpayers will experience increased construction costs if the Public Safety building and Public Services building are not constructed as a single project. Plaintiffs have not demonstrated that harm to the public interest will result if a permanent injunction is not granted.

Conclusion

For the reasons stated above, the Court holds that Plaintiffs have not carried the burden of establishing that a permanent injunction should be issued by the Court under MCR 3.310(A)(4), or the factors established by the Michigan Supreme Court in *State Employees Ass'n v Dept of Mental Health, supra*. For the reasons stated above, the Court will dissolve the TRO granted on July 16, 2018, deny Plaintiffs' motion for a permanent injunction, and dismiss Plaintiffs' case with prejudice.

This is a final Order that resolves all pending claims and hereby closes the above-captioned matter.

/s/ John H. Gillis, Jr. 08/10/2018
Judge, Wayne County Circuit Court