

COMMONWEALTH OF KENTUCKY
WARREN CIRCUIT COURT
DIVISION II
CIVIL ACTION NO. 19-CI-01714

FILED

2019 DEC 18 P 1:35

WARREN CIR/DIST
BRANDY DUVALL, CLERK
PLAINTIFFS

BY: _____ D.C.

DEBORAH ANTHONY
1043 Kenton Street
Bowling Green, KY 42101

FELICIA BLAND
1043 Kenton Street
Bowling Green, KY 42101

11TH STREET BAPTIST CHURCH
Rev. Carl Whitfield, Pastor
1035 Kenton Street
Bowling Green, KY 42101

NEW BIRTH MISSIONARY BAPTIST CHURCH
Rev. Fred Hill, Pastor
874 E. 11th Street
Bowling Green, KY 42101

SEVENTH STREET BAPTIST CHURCH
Rev. Don G. Duvall, Pastor
1101 Fair Street
Bowling green, KY 42101

vs.

CITY OF BOWLING GREEN, KENTUCKY
BOARD OF COMMISSIONERS
1001 College Street
Bowling Green, KY 42101
Serve: Bruce Wilkerson, Mayor
1001 College Street
Bowling Green, KY 42101

DEFENDANTS

CITY-COUNTY PLANNING COMMISSION of
WARREN COUNTY, KY
1141 State Street
Bowling Green, KY 42101
Serve: Velma Runner, Chair
1141 State Street
Bowling Green, KY 42101

CSR BG INVESTMENTS LLC
1049 US 31W Bypass
Bowling Green, KY 42101
Serve: Christopher Robertson
1049 US 31W Bypass
Bowling Green, KY 42101

COMPLAINT AND APPEAL

* * * * *

Come the Plaintiffs by counsel, and, for their Complaint and Appeal, state as follows:

PARTIES

1. Plaintiffs Deborah Anthony and Felicia Bland are residents of and owners of property at 1043 Kenton Street, Bowling Green, KY, which is adjacent to the property which is the subject of this action. They are adversely affected, aggrieved and injured by the recent actions of the City-County Planning Commission of Warren County, KY (hereinafter "Planning Commission") and the City of Bowling Green, Kentucky Board of Commissioners (hereinafter "City").

2. Plaintiff 11th Street Baptist Church, of 1035 Kenton Street, Bowling Green, KY, is an adjacent property owner to the site proposed to be rezoned. Its membership includes many persons who are residents on Kenton Street, Greenwood Alley and other streets in the neighborhood. It and its members are adversely affected, aggrieved and injured by the recent actions of the Planning Commission and the City.

3. Plaintiff New Birth Missionary Baptist Church, of 874 E. 11th Street, Bowling

Green, KY, is a nearby property owner to the site proposed to be rezoned. Its membership includes many persons who are residents of the surrounding neighborhood. It and its members are adversely affected, aggrieved and injured by the recent actions of the Planning Commission and the City.

4. Plaintiff Seventh Street Baptist Church, of 1101 Fair Street, is a nearby property owner to the site proposed to be rezoned. Its membership includes many persons who are residents of the surrounding neighborhood. It and its members are adversely affected, aggrieved and injured by the recent actions of the Planning Commission and the City.

5. The City of Bowling Green, Kentucky Board of Commissioners (hereinafter City) is the legislative body for the City of Bowling Green, Kentucky.

6. City-County Planning Commission of Warren County, KY (hereinafter Planning Commission) is the designated planning commission for the city of Bowling Green, Kentucky, Warren County, Kentucky and other cities in Warren County, KY under KRS Chapter 100.

7. CSR BG Investments LLC (hereinafter CSR) is the applicant for rezoning of real property which it owns at 0, 1024, 1028 & 1032 Kenton Street and 1023, 1027, 1031 & 1033 Greenwood Alley in Bowling Green, Warren County, Kentucky.

JURISDICTION AND VENUE

8. This Court has proper jurisdiction and venue of Plaintiffs' claims, which involve the following:

The conduct of Defendants Planning Commission and City in violation of Kentucky law in regards to property located in Warren County, Kentucky.

FACTUAL HISTORY AND ALLEGATIONS

9. The original pre-application by CSR for a zoning map amendment was from RM-2 (Two-Family Residential) to RM-3 (Townhouse/Multi-Family Residential) with apartments to be constructed on property at 0, 1024, 1028 & 1032 Kenton Street and 1023, 1027, 1031 and 1033 Greenwood Alley in Bowling Green, Warren County, Kentucky.

10. On or about August 22, 2019, CSR made a final application for a zoning map Amendment from RM-2 (Two-Family Residential) to GB (General Business) on property at 0, 1024, 1028 & 1032 Kenton Street and 1023, 1027, 1031 & 1033 Greenwood Alley in Bowling Green, Warren County, Kentucky.

11. At some point in time, a notice was sent to adjacent landowners which did not state that the proposal had changed from apartments to contractors garages.

12. On September 19, 2019, the Planning Commission held a public hearing on the request for rezoning of the Subject Property. At the conclusion of the public hearing on the rezoning request, the Planning Commission voted to make a recommendation of approval of the rezoning,

13. At the September 19, 2019, Planning Commission meeting, the applicant CSR presented revised Development Plan Conditions which were supposed to be submitted weeks earlier. No staff, no neighbors nor opponents, nor any other members of the public were allowed to see those revisions until or at the Planning Commission meeting. They were merely discussed during the hearing. This was a lack of due process.

14. At the September 19, 2019 meeting of the Planning Commission, the Chair

never asked for those opposed to the proposal to raise their hands or visibly indicate opposition as is the normal procedure at Planning Commission hearings. This was a lack of due process.

15. At the September 19, 2019 meeting of the Planning Commission, the confused testimony of the members of the public and the sparse turnout of opponents or supporters showed that notice of the hearing was extremely lacking, and misleading given the original proposal for the property. The testimony of Ms. Deborah Anthony is an example of this confusion. This is evidence of a lack of due process.

16. On November 5, 2019, the City had a first reading of Ordinance No. BG2019-47 to rezone the Subject Property from RM2 to GB.

17. Also, on November 5, 2019, the City voted, by a three to two vote, to deny the rezoning of the subject property.

18. On November 19, 2019, the City had a second reading of Ordinance No. BG2019-47. The City voted, by a two to one vote, to approve the rezoning of the subject property.

19. At the November 19, 2019 meeting of the City, Deborah Anthony and Kita Clement, who had spoken at the Planning Commission meeting, spoke in strong opposition to the rezoning. Other opponents of the rezoning, mostly minority residents, were not allowed to speak.

20. At the November 19, 2019 meeting of the City, Commissioner Beasley-Brown spoke strongly against the rezoning and listed at least six ways the rezoning did not comply with the adopted Focus 2030 Comprehensive Plan (hereinafter Comp. Plan).

21. Neither the minutes of the Board meeting on November 19, 2019, nor the

body of the actual Ordinance No. BG2019-47 made any findings of fact or conclusions of law.

22. Kentucky Revised Statute 100.213(1) states the findings necessary for a proposed map amendment as follows:

“Before any map amendment is granted, the planning commission or the legislative body or fiscal court must find that the map amendment is in agreement with the adopted comprehensive plan, or, in the absence of such a finding, that one (1) or more of the following apply and such finding shall be recorded in the minutes and records of the planning commission or the legislative body or fiscal court:

- (a) That the existing zoning classification given to the property is inappropriate and that the proposed zoning classification is appropriate;
- (b) That there have been major changes of an economic, physical, or social nature within the area involved which were not anticipated in the adopted comprehensive plan and which have substantially altered the basic character of such area.

23. The minutes of the November 19, 2019, City meeting which adopted Ordinance BG2019-47, amending the zoning map and rezoning the Subject Property, contained no finding that any of the required findings outlined in KRS 100.213(1) were found to be true by the City legislative body.

24. The decision of the City did not comply with LU-1.1.3. of the Comp. Plan because the proposal is not compatible with the area.

25. The decision of the Board did not comply with LU-2.5 of the Comp. Plan because it does not protect the nearby neighborhoods.

26. The decision of the Board did not comply with LU-2.5.2. and HN-1.2 of the Comp. Plan because the proposed infill development is not compatible with the surrounding area.

27. The decision of the Board did not comply with NCR-2.5 and NCR-2.5.3. of the Comp. Plan because the proposal includes demolition of historic houses.

28. The decision of the Board did not comply with HN-1 and HN-1.3. of the

Comp. Plan because the proposal is not a suitable infill project and does not maintain or improve the existing character and pattern of development within the area or strengthen the nearby neighborhoods.

29. The decision of the Board did not comply with HN-2.3 of the Comp. Plan because of the plan to demolish the existing historic homes and not proposing any housing for low to moderate income families.

30. The decision of the Board amounts to exclusionary zoning because it allows removal of existing historic and affordable homes and replacing them with commercial structures rather than with affordable housing units, which primarily, if not exclusively, impacts minority residents of the neighborhood. An example of this is the testimony of Mr. Anthony Monroe, a resident of 1027 Greenwood Alley, one of the houses proposed for demolition.

31. The adoption of Ordinance BG2019-47 was an arbitrary, capricious and unreasonable act by the City as evidenced by its failure to give any reasons at all, including the findings required by KRS 100.213(1) no less.

32. The adoption of Ordinance BG2019-047 was an arbitrary, capricious and unreasonable act as evidenced by the numerous violations of the Comp. Plan.

33. The Plaintiffs in this case are injured and aggrieved because, if the rezoning is allowed and the proposed development is constructed, the existing character of their neighborhood will change drastically. In addition, their property values will decline because the intense and dense commercial use of the land adjacent and near to them will be a radical change from the existing situation. In addition, Plaintiffs and other neighbors have built their homes and churches and used their properties in reliance on all

neighborhood properties being in compliance with the adopted Comprehensive Plan. The adopted ordinance denies them that right.

CAUSE OF ACTION

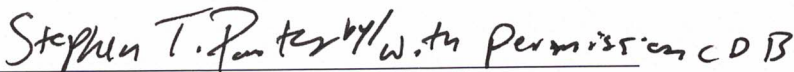
34. Because of the arbitrary, capricious and unreasonable decisions made by the Planning Commission and the City in complete violation of state law and its own Comprehensive Plan and the lack of due process at the hearings, the Plaintiffs have been injured and aggrieved and will suffer immediate and irreparable injury and will be deprived of the use, value and enjoyment of their property without due process of law.

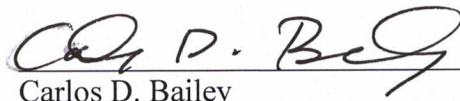
RELIEF

WHEREFORE, Plaintiffs respectfully demand the following relief:

1. That the Court declare the decision of the City on November 19, 2019, regarding the application for rezoning of property at 0. 1024. 1028 & 1032 Kenton Street and 1023, 1027, 1031 & 1033 Greenwood Alley in Bowling Green, Warren County, Kentucky, in Ordinance No. BG2019-47, null and void,
2. That the Court grant Plaintiffs a reasonable attorney's fee and all costs expended herein to be paid by the Defendants, and
3. All other proper relief to which the Plaintiffs may be entitled.

Respectfully Submitted,


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