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ZONING - LOUISIANA

Faubourg Marigny Imp. Ass'n, Inc. v. City of New Orleans

Court of Appeal of Louisiana, Fourth Circuit - May 25, 2016 - So.3d - 2016 WL 3013765 - 2015-1308 (La.App. 4 Cir. 5/25/16)

Neighborhood association brought action against city, seeking to declare city council's adoption of mayor's amendment to zoning ordinance invalid and to permanently enjoin its implementation.

The Civil District Court denied request for issuance of preliminary injunction. Neighborhood association appealed.

The Court of Appeal held that:

- Absent violation of prohibitory law, requirement of irreparable injury to support issuance of preliminary injunction was not excused;
- Speculative and hypothetical evidence of irreparable harm would not support issuance of preliminary injunction; and
- City could amend its comprehensive zoning ordinance (CZO) only after the contents of such amendment had been reviewed by planning commission.

The requisite showing of irreparable injury to support issuance of preliminary injunction is dispensed with when the conduct sought to be restrained is unconstitutional or unlawful, i.e., when the conduct sought to be enjoined constitutes a direct violation of a prohibitory law and/or a violation of a constitutional right. Thus, once a plaintiff has made a prima facie showing that the conduct to be enjoined is reprobated by law, the petitioner is entitled to injunctive relief without the necessity of showing that no other adequate legal remedy exists.

Requirement of irreparable injury to support issuance of preliminary injunction was not excused for neighborhood association challenging city council's adoption of mayor's amendment to zoning ordinance, as association's actual request for injunctive relief did not seek to enjoin the violation of a prohibitory law. While association argued that the city council was without lawful authority to adopt the zoning ordinance amendment, the association did not assert that the statute as applied by the city violated any prohibitory law.

Neighborhood association challenging city council's adoption of mayor's amendment to zoning ordinance presented only speculative and hypothetical evidence of irreparable harm, and thus was not entitled to preliminary injunction. Although association alleged that development allowed under amended ordinance would affect its members' quality of life, such claims were entirely predicated upon the happening of a series of uncertain, future events.

Provision of municipal code stating that "A proposed ordinance shall not be altered or amended during its consideration so as to nullify its original purpose or so as to accomplish an object not germane to its original purpose" does not supersede or obviate statutory procedural requirements that zoning amendments be reviewed by planning commission so as to authorize city council to amend a pending zoning ordinance without first referring it to the planning commission if the

amendment is germane to the ordinance's original purpose.

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