IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

KAMAL ANWIYA YOUKHANNA, *et al.*,

Plaintiffs,

v.

CITY OF STERLING HEIGHTS, *et al.*,

Defendants.

No. 2:17-cv-10787-GAD-DRG

Hon. Gershwin A. Drain

PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

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Defendants oppose Plaintiffs' request for a preliminary injunction, but in their opposition (Doc. No. 14) they make multiple and fatal concessions. To begin, they do not argue that the challenged Consent Judgment was "*necessary* to rectify a *violation of federal law*." *See Perkins v. City of Chi. Heights*, 47 F.3d 212, 216 (7th Cir. 1995). In fact, they have steadfastly denied any wrongdoing. (Defs.' Opp'n at 6). Defendants further concede that pursuant to the City's Zoning Ordinance, in order for the City Council to approve a special approval land use permit, it too must comply with *all* of the same zoning standards that the Planning Commission must follow. (Defs.' Opp'n at 11-13; *see also* Zoning Ordinance § 25.01 [stating that before the City Council can approve a special approval land use permit pursuant to a consent judgment, it "*shall* consider the same *standards*[1] as the Planning Commission *under the special approval land use criteria applicable to such use* in the particular zoning district and Article 25"] (emphasis added)). This is mandatory. And it makes eminent sense, otherwise a consent judgment

[1] Because a standard is "discretionary" doesn't mean it's optional and can therefore be ignored or simply "worked around" via a consent decree. On its face, the Consent Judgment fails to meet the standards set forth in § 25.02 of the Zoning Ordinance. For starters, the proposed Mosque is not in harmony with the surrounding neighborhood; it will make vehicular and pedestrian traffic more hazardous; it will interfere with the use of adjacent land; its construction undermines public health, safety, and welfare; and its construction and operation are detrimental and injurious to the local neighborhood. *See id*. The Consent Judgment doesn't even address traffic, and the overflow parking provisions are illusory, unenforceable, and will inevitably fail as foreseen by the Consent Judgment itself, which shifts the burden to local residents by the imposition of a permit-based parking ordinance. (Consent Judgment § 2.2 [Ex. E, Doc. No. 9-2]).

could become a convenient way to circumvent local and state zoning laws—laws that are enacted for the benefit of the public, specifically including adjacent landowners (*i.e.*, Plaintiffs). *League of Residential Neighborhood Advocates v. City of Los Angeles*, 498 F.3d 1052, 1055-56 (9th Cir. 2007) ("Municipalities may not waive or consent to a violation of their zoning laws, *which are enacted for the benefit of the public*.") (emphasis added).

Defendants also cannot reasonably refute the *legal* basis[2] for Plaintiffs' challenge to the Consent Judgment (*i.e.*, that the consent decree circumvented zoning laws and was *not* necessary to rectify a violation of federal law—Defendants do not contest the latter point, having denied any wrongdoing throughout).[3] *See, e.g.*, *League of Residential Neighborhood Advocates*, 498 F.3d at 1052; *Perkins*, 47 F.3d at 216; *St. Charles Tower, Inc. v. Kurtz*, 643 F.3d 264, 270 (8th Cir. 2011) (invalidating a consent decree and stating that "[s]tate actors cannot enter into an agreement allowing them to act outside their legal authority,

[2] Defendants attempt to distinguish the case law cited by Plaintiffs based on the facts presented and not the law itself. (*See, e.g.*, Defs.' Opp'n at 14 ["[T]he facts of these cases are entirely distinguishable from the present action because approval of the Consent Judgment did not violate the SHZO or the MZEA."] [Doc. No. 14]).

[3] During the February 21, 2017 City Council meeting, the Mayor stated that he fully supported the Planning Commission, that the commission had arrived at the right decision based upon legitimate planning and zoning issues, and that he vehemently denies that the commission operated in any way to discriminate or violate the rights of AICC, further stating that he "will stand by that until the day I die," or words to that effect. (Defs.' Opp'n, Ex. J [Video at approx. 3 hrs. 19 mins. 14 secs. to approx. 3 hrs. 21 mins.] [Doc. No. 14-11]).

even if that agreement is styled as a 'consent judgment' and approved by a court"); *Kasper v. Bd. of Election Comm'rs*, 814 F.2d 332, 341-42 (7th Cir. 1987) ("A consent decree is not a method by which state agencies may liberate themselves from the statutes enacted by the legislature."); *Cleveland Cnty. Ass'n for Gov't by the People v. Cleveland Cnty. Bd. of Comm'rs*, 142 F.3d 468, 477-79 (D.C. Cir. 1998) (vacating a consent decree implementing an election plan); *Keith v. Volpe*, 118 F.3d 1386, 1393 (9th Cir. 1997) (stating that a consent decree could not "exceed [the parties'] authority and supplant state law"); *see also Vestevich v. W. Bloomfield Twp.*, 245 Mich. App. 759, 764-65 (Mich. Ct. App. 2001) (affirming decision to set aside a consent judgment in a zoning dispute).

The crux of Defendants' argument is that the Consent Judgment, and the way in which the City approved it, was in ***full*** compliance with the applicable laws, including the City's Zoning Ordinance, the Michigan Zoning Enabling Act, and the Michigan Open Meetings Act. (Defs.' Opp'n at 11-14). Defendants are mistaken. Indeed, they concede, perhaps unwittingly, this crucial point by making a glaring admission. Per Defendants, "The proposed Consent Judgment, therefore, considered and positively addressed ***most*** [*i.e.*, it admittedly did ***not*** address ***all*** as required by law] of the discretionary concerns that were ***raised by the Planning Commission*** . . . ." (Defs.' Opp'n at 7-8) (emphasis added). Thus, Defendants admit here (and the facts show) that they did not fulfill their statutory duty as the

approval authority for a special approval land use permit (*i.e.*, the requirement to consider all of the same standards, not simply some or even "most"). Additionally, as Plaintiffs pointed out in their motion, there are many *other* considerations that the Planning Commission is required to address, but had not yet had a chance to do so because AICC refused to cooperate even with regard to the commission's initial concerns. (Pls.' Mot. for Prelim. Inj. at 5-10 [Doc. No. 9] [observing that because AICC filed its lawsuit, "the Planning Commission did not have an opportunity to pursue the remaining concerns . . . that AICC was required to satisfy before the Planning Commission could have fulfilled its duty under the Zoning Ordinance . . ."]; Norgrove Decl. ¶¶ 21-29 [Doc. No. 9-4]). Consequently, the Planning Commission itself had yet to ***fully*** address all of the considerations required by law because the entire process was truncated by AICC. Thus, Defendants acknowledge that the Consent Judgment did ***not*** address *all* of the concerns the Planning Commission was required to consider by law, but only ***some*** of the *initial* concerns "*raised by the Planning Commission*." In other words, the Zoning Ordinance doesn't simply require the City Council to consider what ***this*** Planning Commission considered in its initial denial, but what the law requires ***a*** Planning Commission to *fully* consider before a special approval land use permit can be approved. This is fatal to Defendants' opposition, demonstrating that Plaintiffs will likely succeed on the merits.

Regarding irreparable harm, there is nothing speculative about the harm Plaintiffs will suffer absent an injunction. Because of the imminent harm caused by the proposed Mosque construction, Plaintiff Rrassi put her house up for sale immediately following the February 21, 2017 City Council meeting where the Consent Judgment was approved. Now that we filed this lawsuit, she has removed her house from the market, hoping that she will be able to stay in her home and not be forced to move because of the construction. (*See* Rrasi Supplemental Decl. ¶¶ 1-9, Exs. A, B at Ex. 1). In short, Plaintiffs' harm is not speculative.

Defendants' argument under its "harm to others" section is similarly misplaced. Here, Defendants assert that Rule 19 of the Federal Rules of Civil Procedure requires the inclusion of AICC and the Department of Justice in this case as necessary parties. (Defs.' Opp'n at 24). Defendants are mistaken. To begin, AICC has requested to appear in this case as *amicus curiae* in opposition to Plaintiffs' motion for a preliminary injunction (Doc. No. 12) and, quite tellingly, did not present *any* argument or evidence that granting the injunction would cause it harm. AICC currently has a place of worship, and it will continue to use this location while this case proceeds. Also, the Department of Justice is not a party to the challenged Consent Judgment, and there is no "Consent Judgment" entered in the case between the City and the United States. Rather, the Court entered a "Consent Order," and the order merely requires the City to "abide by the terms of

the Consent Judgment" challenged here. (*See* Consent Order, *United States v. City of Sterling Heights*, No. 2:16-cv-14366 (E.D. Mich. Mar. 1, 2017), ECF No. 7)). Consequently, should Plaintiffs succeed in their challenge to the Consent Judgment, this provision of the "Consent Order" is meaningless.

Nonetheless, Defendants are wrong about Rule 19. *See Hartford Cas. Ins. Co. v. TRE Servs.*, Case No. 09-14634, 2010 U.S. Dist. LEXIS 118351, at *9-11 (E.D. Mich. Nov. 5, 2010) (stating that a party "is only indispensable, within the meaning of Rule 19, if (1) it is necessary, (2) its joinder cannot be effected, and (3) the court determines that it will dismiss the pending case rather than proceed in the case without the absentee" and finding that certain defendants were "dispensable parties" because "a resolution of the insurance coverage dispute in this matter will not prejudice the absent" defendants "because existing parties will adequately represent their interests"). A resolution of whether the Consent Judgment is valid will not prejudice the absent parties because Defendants will adequately represent their interests. It cannot be disputed that Defendants' "litigation goals [*i.e.*, to validate the Consent Judgment] are completely aligned" in this case with those of AICC and the Department of Justice. *See id.* at *12. Moreover, none of the allegedly necessary and absent parties has moved to join the instant litigation, and AICC's request to participate simply as an *amicus curiae* entirely undermines Defendants' argument. *See, e.g.*, *Peregrine Myanmar Ltd. v. Segal*, 89 F.3d 41, 48

(2d Cir.1996) ("[Defendant's] attempt to assert on behalf of the Ministry its supposed concern about the dilution of its interest . . . falls outside the language of the rule. It is the absent party that must 'claim an interest.'").

Regarding the public interest issue, the evidence presented by Defendants (Defs.' Opp'n, Ex. J [Video] [Doc. No. 14-11]) overwhelmingly demonstrates the public interest in granting the requested injunction. The strong public opposition to the AICC Mosque construction was evident during the City Council meeting (despite the Mayor's unlawful speech restrictions, *see* Compl. ¶¶ 87-96 [Doc. No. 1]) and during the prior Planning Commission hearings (*see* Norgrove Decl. ¶¶ 15, 16 [citing numerous concerns expressed by many residents]). Additionally, because the Consent Judgment itself is vague and inadequate, lacks standards, inspection criteria, and enforcement mechanisms, it leaves residents and the general public at great risk of future harm. (Norgrove Decl. ¶ 27 [Doc. No. 9-4]; *see also* n.1, *supra*). In short, the public interest supports granting the requested injunction.

CONCLUSION

Plaintiffs respectfully request that this Court grant their motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 10, 2017, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the court's electronic filing system. Parties may access this filing through the court's system.

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