


FILED
IN THE EIGHTH CIRCUIT COURT FOR THE TWENTIETH JUDICIAL DISTRICT
AT NASHVILLE

2016 OCT 28 PM 3: 29

RACHEL AND P.J. ANDERSON)
)
) PLAINTIFFS,)
)
) VS.)
)
) THE METROPOLITAN GOVERNMENT)
) OF NASHVILLE AND DAVIDSON)
) COUNTY,)
)
) DEFENDANT.)

RICHARD R. ROOKER, CLERK


DOCKET NO. 15C3212

ORDER

This matter came to be heard on October 21, 2016 before the Honorable Judge Kelvin D. Jones, III, upon Plaintiffs, Rachel and P.J. Anderson (“the “Plaintiffs”), and Defendant’s, Metropolitan Government of Nashville & Davidson County (“Defendant”) motions for summary judgment.

Plaintiffs contend they are entitled to summary judgment on claims one, two, four and six of their complaint because:

Claim One: The Short Term Residential Property ordinances do not apply to plaintiffs’ property, or in the alternative their property is exempt from the ordinances.

Claim Two: The ordinances are unconstitutionally vague in violation of Article I, Section 8 of the Tennessee Constitution and the Fourteenth Amendment of the U.S. Constitution.

Claim Four: The ordinances violate the equal protection clauses of Article I, Section 8 and the Fourteenth Amendment of the U.S. Constitution.

Claim Six: The ordinances create a monopoly in violation of Article I, Section 22 of the Tennessee Constitution.

On the other hand, the Defendant contends it is entitled to summary judgment on claims one, two, four and six of the complaint because:

Claim One: The Short Term Residential Property ordinances apply to plaintiffs’ property.

Claim Two: The ordinances are not unconstitutionally vague in violation of Article I, Section 8 of the Tennessee Constitution and the Fourteenth Amendment of the U.S. Constitution.

Claim Four: The ordinances do not violate the equal protection clauses of Article I, Section 8 or the Fourteenth Amendment of the U.S. Constitution because they serve a rational, legitimate government interest.

Claim Six: The ordinances do not create a monopoly in violation of Article I, Section 22 of the Tennessee Constitution.

The Court finds, and the parties agree, there are no genuine issues of material facts in dispute. Based upon a review of the parties' motions, responses, replies, Statement of Undisputed Material Facts, oral arguments and the entire record in this case, summary judgment is appropriate. Thus, summary judgment is denied in part to plaintiffs, and granted in part to plaintiffs. Summary judgment is also denied in part to defendant, and granted in part to defendant. The Court's grounds for granting and denying summary judgment to the parties is set forth below.

I. CLAIM TWO: VAGUENESS¹

The Court concludes that the definition of Short Term Residential Property ("STRP") contained within sections 6.28.030(A) and 17.04.060 of Metro's Code is unconstitutionally vague. A law which "either forbids or requires the doing of an act in terms so vague that men of ordinary intelligence must necessarily guess as to its meaning and differ as to its application" is unconstitutionally vague. *Connally v. General Construction Co.*, 269 U.S. 385, 391 (1926); *Davis-Kidd Booksellers, Inc. v. McWherter*, 866 S.W.2d 520, 532 (Tenn. 1993); *Bean v. McWherter*, 24 S.W.3d 325, 329 (Tenn. Ct. App. 1999). Additionally, laws also "must provide explicit standards" for those who apply them; laws which do not set such standards "impermissibly delegate basic policy matters to policemen, judges, and juries for

¹ Because the Court's determination of the applicability of Metro's ordinance to the plaintiffs' property necessarily entails interpretation of the ordinance in question, the Court will discuss the parties' vagueness arguments first.

resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application” and are therefore unconstitutionally vague. *Grayned v. City of Rockford*, 408 U.S. 104, 108-09 (1972); *Davis-Kidd Booksellers, Inc.*, 866 S.W.2d at 531. Further, zoning ordinances specifically “should be free from vague terms and imprecise language because of the importance of the property interests involved,” and “any ambiguity in a zoning ordinance should be resolved in favor of an owner's unrestricted use of his or her property.” *City of Jackson v. Shehata*, No. W2005-01522-COA-R3CV, 2006 WL 2106005, at *6 (Tenn. Ct. App. July 31, 2006).

The definitions of STRP, bed and breakfast, boarding house, and hotel overlap, such that a single property could fall into one, several, or all of the aforementioned property classifications. The Court concludes that the definition of STRP is unconstitutionally vague because a person of average intelligence would not be able to understand the differences and/or distinctions between STRPs and hotels, bed and breakfasts, and boarding houses.

II. CLAIM ONE: APPLICABILITY OF ORDINANCES

Due to the Court’s conclusion that the definition of STRP contained within sections 6.28.030(A) and 17.04.060 of Metro’s Code is unconstitutionally vague, the Court cannot conclude that plaintiffs’ property is exempt from the STRP ordinances, nor can it conclude that the ordinances applies to the plaintiffs’ property.

III. CLAIM FOUR: EQUAL PROTECTION

Metro’s Code contains a restriction on the number of non-owner-occupied STRP use permits available in a single census tract: “No more than three percent of the single-family or two-family residential units within each census tract shall be permitted as non-owner-occupied short-term rental use as determined by the zoning administrator.” Metro Code § 6.28.030(Q). The plaintiffs claim this cap violates equal protection guarantees under the U.S. and Tennessee Constitutions. The Court disagrees.

The Court finds that owner-occupied STRPs and non-owner-occupied STRPs are similarly situated for the purposes of equal protection analysis.

The ordinance being challenged here does not involve any fundamental rights, nor does it involve a suspect class; therefore, the equal protection question presented by this ordinance is analyzed under the rational basis test, i.e., “whether the classifications have a reasonable relationship to a legitimate state interest.” *Riggs v. Burson*, 941 S.W.2d 44, 53 (Tenn. 1997); *State v. Tester*, 879 S.W.2d 823, 828 (Tenn. 1994) (quoting *Tennessee Small School Systems v. McWherter*, 851 S.W.2d 139, 153 (Tenn. 1993)). Under this test, “[i]f some reasonable basis can be found for the classification [in the statute] or if any state of facts may reasonably be conceived to justify it, the classification will be upheld.” *Riggs*, 941 S.W.2d at 53 (quoting *Tennessee Small School Systems*, 851 S.W.2d at 153).

The Court concludes that this ordinance passes the rational basis test. Metro has a legitimate interest in balancing the interest between the citizens who want to achieve benefits from renting their property on a short term basis against the interest of citizens who want to protect the residential character of their neighborhoods. The three percent cap on use permits granted to non-owner-occupied STRPs is a reasonable method of accomplishing this goal. The Court further finds that the purposes for enactment of the ordinances still exists.

IV. CLAIM SIX: MONOPOLY

The plaintiffs claim the three percent cap contained in section 6.28.030(Q) also violates Article I, Section 22 of the Tennessee Constitution (the “Anti-Monopoly Clause”). A monopoly under the Anti-Monopoly Clause is defined as an exclusive right granted to a few, which was previously a common right.” *City of Watauga v. City of Johnson City*, 589 S.W.2d 901, 904 (Tenn. 1979). “If there is no common right in existence prior to the granting of the privilege for franchise, the grant is not a

monopoly.” *Id.* The Court concludes that a residential property owner’s ability to operate a non-owner-occupied STRP was not a common right before the passage of the ordinance in question.

The Court further concludes that, even if the three percent cap constitutes a monopoly, the monopoly created would be a permissible monopoly. The Anti-Monopoly Clause of the Tennessee constitution does not prohibit the granting of a monopoly if such monopoly “has a reasonable tendency to aid in the promotion of the health, safety, morals and well-being of the people.” *Checker Cab Co. v. City of Johnson City*, 216 S.W.2d 335, 337 (1948). Assuming the three percent cap creates a monopoly, the monopoly is not an impermissible one because it has a reasonable tendency to further those goals. The alleged monopoly specifically furthers the well-being of Metro citizens because it balances the interest between the citizens who want to achieve benefits from renting their property on a short term basis against the interest of citizens who want to protect the residential character of their neighborhoods.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that:

1. The Plaintiffs’ Motion for Summary Judgment on Claim One is **DENIED**.
The Plaintiffs’ Motion for Summary Judgment on Claim Two is **GRANTED**.
The Plaintiffs’ Motion for Summary Judgment on Claim Four is **DENIED**.
The Plaintiffs’ Motion for Summary Judgment on Claim Six is **DENIED**.

2. The Defendant’s Motion for Summary Judgment on Claim One is **DENIED**.
The Defendant’s Motion for Summary Judgment on Claim Two is **DENIED**.
The Defendant’s Motion for Summary Judgment on Claim Four is **GRANTED**.
The Defendant’s Motion for Summary Judgment on Claim Six is **GRANTED**.

Costs are taxed to the Metropolitan Government. It is so ORDERED.

ENTERED this 28th day of October, 2016.



JUDGE KELVIN D. JONES, III
CIRCUIT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been forwarded via electronic mail to:

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on this 28th day of October, 2016.



JAMES B. JOHNSON, SPECIAL MASTER