UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISON

SECOND BAPTIST CHURCH, a nonprofit organization, Plaintiff, v. THE CITY OF SAN ANTONIO, a Texas municipal organization, Defendant,	§ § § § § § § § § § § §	Case No. 5:20-CV-00029-DAE

PROPOSED DEFENDANT-INTERVENORS' MOTION FOR LEAVE TO INTERVENE AND MEMORANDUM IN SUPPORT

Proposed Defendant-Intervenors Lettye Watson and Renee Watson (collectively referred to as "the Watsons") respectfully request that the Court grant them leave to intervene as defendants in this action as of right pursuant to Federal Rule of Civil Procedure 24(a)(2) or, in the alternative, grant them permissive intervention pursuant to Federal Rule of Civil Procedure 24(b)(1)(B). The Watsons file this motion along with their supporting declarations and proposed motion to dismiss.

BACKGROUND

The Watsons are long-time residents of the Coliseum/Willow Park neighborhood, a historic neighborhood in the City of San Antonio. Lettye Watson has a living trust in her home and her daughter Renee Watson is a beneficiary of the living trust. The Watsons live together in their home and enjoy the amenities of the neighborhood, including access to the public library, roads, on-street parking for residents and their guests. The Watsons' family has resided in the neighborhood since the 1960's.

In 2003, the local Metropolitan Planning Organization[1] adopted a community plan for several neighborhoods in the Arena District and Eastside San Antonio to revitalize the neighborhoods with economic development,[2] including Coliseum/Willow Park. The properties in the neighborhood are zoned as Arts and Entertainment and Residential districts.[3]

VisionQuest, a Tucson-based company, operates six immigrant detention centers in five states. In 2019, it received a $14.6 million federal contract to open two child immigration detention centers in the San Antonio area. VisionQuest entered into an agreement with Plaintiff Second Baptist Church (hereinafter "Second Baptist") in which Second Baptist would lease one of its properties to VisionQuest to operate a for-profit child immigrant detention center.

The building that VisionQuest seeks to rent from Second Baptist is located at 3310 E. Commerce St., San Antonio, Texas and is in the Watson's neighborhood of Coliseum/Willow Park. The Watsons' home is less than half a mile away from Second Baptist's building ("the property").

The property is currently zoned as Arts and Entertainment Historic Landmark district which prevents VisionQuest from opening the child immigrant detention center. On November 5, 2019, Vision Quest, on behalf of Second Baptist, applied to rezone the property from an Arts and Entertainment Historic Landmark district to a Commercial Historic Landmark district.[4] After

[1] A Metropolitan Planning Organization (MPO) is an agency created by federal law to provide local direction for urban transportation planning and the allocation of federal transportation funds to cities with populations greater than 50,000. 23 U.S.C. § 134 (b)(2).
[2] Bexar County, City of San Antonio, Community Economic Revitalization Agency, San Antonio Spurs, and the Arena District/Eastside Community Transportation Executive Summary, Arena District/Eastside Community Plan (Dec. 2003), https://www.sanantonio.gov/Portals/0/Files/Planning/NPUD/adopted_arenaeastside_FINAL.pdf.
[3] San Antonio, Texas, Municipal Legislation Details, 19-8542 at 2 (Dec. 5, 2019), https://sanantonio.legistar.com/ViewReport.ashx?M=R&N=Master&GID=350&ID=4245462&GUID=79FD408F-2326-4249-94F6-CD0592F8B3B1&Extra=WithText&Title=Legislation+Details+(With+Text).
[4] San Antonio, Texas, Municipal Legislation Details, 19-8542 (Dec. 5, 2019), https://sanantonio.legistar.com/ViewReport.ashx?M=R&N=Master&GID=350&ID=4245462&GUID=79FD408F-2326-4249-94F6-CD0592F8B3B1&Extra=WithText&Title=Legislation+Details+(With+Text).

public comment, the Zoning Commission recommended to the San Antonio City Council that the zoning request be denied. On December 5, 2019, after a public hearing, the City Council denied the zoning request. Ms. Renee Watson was present at both the Zoning Commission and City Council hearings and opposed the zoning request because of the negative effects that the proposed child immigrant detention center would have on the Watsons' property and neighborhood.

Second Baptist quickly filed this lawsuit against Defendant City of San Antonio (hereinafter "the City") to challenge the denial of the rezoning. The Watsons now move this Court for leave to intervene in order to protect their interests in the value of their home and to protect their neighborhood.

ARGUMENT

A. The Watsons are Entitled to Intervention as of Right

Federal Rule of Civil Procedure 24(a)(2) provides:

> On timely motion, the court must permit anyone to intervene who . . . claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

To intervene as of right under Rule 24(a)(2), an applicant must meet four requirements:

> (1) the motion to intervene is timely;
> (2) the potential intervenor asserts an interest that is related to the basis of the controversy in the underlying case;
> (3) the disposition of the case may impair or impede the potential intervenor's ability to protect his interest; and
> (4) the existing parties do not adequately represent the potential intervenor's interests.

See Saldano v. Roach, 363 F.3d 545, 551 (5th Cir. 2004).

The Fifth Circuit has construed Rule 24(a) broadly in favor of intervenors. *Edwards v. City of Houston*, 78 F.3d 983, 999 (5th Cir. 1996) (internal quotation and citation omitted); *Texas*

v. United States, 805 F.3d 653, 657 (5th Cir. 2015) ("Federal courts should allow intervention where no one would be hurt and the greater justice could be attained" (citing *Sierra Club v. Espy*, 18 F.3d 1202, 1205 (5th Cir. 1994)) (internal quotation marks omitted)); *see also John Doe No. 1 v. Glickman*, 256 F.3d 371, 375 (5th Cir. 2001) ("[T]he inquiry under subsection (a)(2) is a flexible one, which focuses on the particular facts and circumstances surrounding each application"); *Edwards*, 78 F.3d at 999 ("[I]ntervention of right must be measured by a practical rather than technical yardstick") (internal quotation and citation omitted)).

I. The Watsons' Motion to Intervene is Timely

In determining whether a motion for intervention is timely under Fed. R. Civ. P. 24(a)(2), courts consider: (1) the length of time between the potential intervenor's learning that its interest is no longer protected by the existing parties and its filing of a motion to intervene, (2) the extent of prejudice to the existing parties from allowing late intervention, (3) the extent of prejudice to the potential intervenor if the motion is denied, and (4) any unusual circumstances. *See Stallworth v. Monsanto Co.*, 558 F.2d 257, 264-66 (5th Cir. 1977); *In re Lease Oil Antitrust Litig.*, 570 F.3d 244, 247-48 (5th Cir. 2009).

Here, Second Baptist filed its complaint and motion for preliminary injunction on January 10, 2020. The City filed its response to the motion for preliminary injunction on January 30, 2020 and answered the complaint on January 31, 2020. The City's response to the motion for preliminary injunction focused on the City's interest in protecting its zoning ordinance and did not focus on the property interests of residents in the neighborhood. Dkt. 17 at 1.[5] Thus, the Watsons learned in late January that their interest in preserving their property value and the character of

[5] "[T]he City of San Antonio regulates land use and building development to help maintain a vibrant and safe quality of life for its residents. The City's land-use regulations assure that development progresses in a thoughtful manner, protecting residential areas while allowing for commercial growth, and that the City's residents have reasonable expectations of the types of uses they and their neighbors may engage in on their property."

their neighborhood was not included in City's briefing on the preliminary injunction motion and moved within three weeks to intervene in this action.

The timing of this intervention is early and does not prejudice the existing parties. On the other hand, the Watsons will be prejudiced if they are denied intervention because they will be unable to participate in the case to protect their property value and their neighborhood. There are no unusual circumstances and therefore, this motion is timely.

II. The Watsons Possess a Protectable Interest

The protectable interest does not have "to be of a legal nature identical to that of the claims asserted in the main action." *Diaz v. S. Drilling Corp.*, 427 F.2d 1118, 1124 (5th Cir. 1970). "In other words, an interest is sufficient if it is of the type that the law deems worthy of protection, even if the intervenor does not have an enforceable legal entitlement or would not have standing to pursue her own claim." *Texas v. United States*, 805 F.3d 653, 659 (5th Cir. 2015). Ultimately, "the interest 'test' is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *Ross v. Marshall*, 426 F.3d 745, 757 (5th Cir. 2005).

The Watsons' protectable interest is in preserving their property value and the quality of life that they enjoy in their neighborhood. *See* Ex. A at 2; Ex. B at 2. VisionQuest and Second Baptist seek to rezone a property from an Arts and Entertainment zone to a Commercial zone to allow for the operation of a for-profit immigrant child detention center. The detention center will harm the property values of the Watsons and will have adverse effects on the character of the neighborhood. *See Planned Parenthood v. Citizens for Cmty. Action*, 558 F.2d 861, 869 (8th Cir.1977) (holding that a neighborhood association, whose "professed purpose ... is to preserve property values and insure that abortion facilities do not affect the health, welfare and safety of

citizens," was entitled to intervene in an action challenging the constitutionality of a local ordinance imposing a moratorium on the construction of abortion clinics); *see also Franconia Minerals (US) LLC v. United States*, 319 F.R.D. 261, 267 (D.Minn.2017) (finding that there was significant protected interest when organization members who owned property adjacent to or near the land covered by the leases alleged that property values will be impaired).

The proposed detention center would have to construct fencing or some other barrier to keep the children detained on the center's property when they are outdoors.[6] The barrier will interfere with Ms. Renee Watson's enjoyment of the Carver Library, a public library located adjacent to Second Baptist's property. The Watsons also enjoy access to the roads in their neighborhood that allow them to travel across town and also allow them and their guests to park near their home. The current parking lot at Second Baptist's property only has 50 parking spaces available. Second Baptist's proposal requires up to 165 parking spaces, which that property cannot accommodate, thus forcing detention center employees, vendors and other visitors to park their cars in the streets in the Watsons' neighborhood.[7] As a result, traffic and parking overflow will negatively affect the on-street parking currently available in the neighborhood. Ex. A, ¶ 9; Ex. B, ¶ 8. The Watsons also expect their local streets to become more dangerous as a result of the increased vehicular traffic in the neighborhood caused by the detention center. *See Planned Parenthood*, 558 F.2d at 869; *see also Franconia Minerals (US) LLC*, 319 F.R.D. at 267 (further

[6] San Antonio, Texas, Municipal Legislation Details, 19-8542 at 4 (Dec. 5, 2019), https://sanantonio.legistar.com/ViewReport.ashx?M=R&N=Master&GID=350&ID=4245462&GUID=79FD408F-2326-4249-94F6-CD0592F8B3B1&Extra=WithText&Title=Legislation+Details+(With+Text) ("Adverse Impacts on Neighboring Lands: Staff finds evidence of likely adverse impacts on neighboring lands in relation to this zoning change request due to the intensity of the commercial use adjacent to a residential neighborhood without appropriate buffers.").

[7] San Antonio, Texas, Municipal Legislation Details, 19-8542 at 3 (Dec. 5, 2019), https://sanantonio.legistar.com/ViewReport.ashx?M=R&N=Master&GID=350&ID=4245462&GUID=79FD408F-2326-4249-94F6-CD0592F8B3B1&Extra=WithText&Title=Legislation+Details+(With+Text).

finding that there was significant protected interest when nearby homeowners alleged health and safety concerns); Ex. A, ¶ 10; Ex. B, ¶ 9.

Second Baptist claims in its complaint that the Coliseum/Willow Park Neighborhood Association consented to the agreement between Second Baptist and VisionQuest. Compl. at ¶ 70 ("[T]he Coliseum Willow Park Neighborhood Association is in support of the shelter."). The Watsons are active members of the Coliseum/Willow Park Neighborhood Association. Ex. A, ¶ 6; Ex. B, ¶ 4. Neither the Watsons nor a majority of the membership of the Coliseum/Willow Park Neighborhood Association consented to the agreement between VisionQuest and Second Baptist. Ex. A, ¶ 11; Ex. B, ¶ 10. The Watsons, as homeowners and members of the Coliseum/Willow Park Neighborhood Association, have a protectable interest in maintaining the neighborhood's character and, thus, have an interest in participating in this litigation. *See City of Pharr v. Tippitt*, 616 S.W.2d 173, 177 (1981) (recognizing that affected residents may bring a claim for an unacceptable amendatory ordinance that singles out a single tract for treatment that differs from that accorded similar surrounding land without proof of changes in conditions); and Ex. A, ¶ 12; Ex. B, ¶ 11.

III. The Watsons' Interest Would be Subject to Impairment if Intervention is Denied

The Watsons are "so situated that the disposition of the action may as a practical matter impair or impede [their] ability to protect [their] interest." Fed. R. Civ. P. 24(a)(2). The advisory committee notes to Rule 24(a) instruct: "[i]f an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene." Fed. R. Civ. P. 24 advisory committee note to 1966 Amendment.

To demonstrate "impairment," a prospective intervenor "must show only that impairment of its substantial legal interest is possible if intervention is denied." *Grutter v. Bollinger*, 188 F.3d

394, 399 (6th Cir. 1999) (citing *Mich. State AFL-CIO v. Miller*, 103 F.3d 1240, 1247 (6th Cir. 1997) (emphasis added)). "This burden is minimal." *See Grutter*, 188 F.3d at 399 (rejecting the notion that Rule 24(a)(2) requires a specific legal or equitable interest).

The Watsons have a stake in the outcome of the litigation because their property value, their use of their property and the neighborhood in which they live will be directly and indirectly affected by the opening of a detention center near their home. Their property will decrease in value and the Arts and Entertainment district in which they live will no longer attract the type of businesses and residents they hope it will attract to promote economic development and increased property values. Their use and enjoyment of the neighborhood and its amenities such as the local library will also be negatively affected by the detention center. These interests are substantially affected by the outcome of the litigation and thus the Watsons' interests are subject to impairment by the disposition of this case.

IV. The Watsons' Interest Cannot Adequately be Represented by the Existing Parties

The burden under this prong is "satisfied if [the proposed intervenor] shows that representation of [his] interest 'may be' inadequate; and the burden of making that showing should be treated as minimal." *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972). Courts have recognized that "[i]nadequate representation is most likely to be found when the applicant asserts a personal interest that does not belong to the general public." *Forest Conservation Council v. U.S. Forest Serv.*, 66 F.3d 1489, 1490 (9th Cir. 1995) (internal citation omitted), *rev'd on other grounds by Wilderness Soc'y v. U.S. Forest Serv.*, 630 F.3d 1173 (9th Cir. 2011). Intervention is warranted when the proposed intervenors "occup[y] a different position and [have] different interests" than the existing defendants. *Sierra Club v. Fed. Emergency Mgmt. Agency*, No. 07-0608, 2008 U.S. Dist. LEXIS 47405, at *18-19 (S.D. Tex. June 11, 2008).

The Watsons' protected interests in avoiding the direct and indirect negative effects on their property and their neighborhood caused by the immigrant child detention center differ from those of the City of San Antonio. The City's defense seeks to vindicate its interest in enforcing its Development Code, the Zoning Commission's decision, and its police powers generally. By contrast, the Watsons' interest is individual to them; the Watsons seek to protect the value of their property and their use and enjoyment of their neighborhood. The Watsons' interest does not belong to the general public and is not related to the City's interest in upholding its zoning decisions. *See Texas v. United States*, 805 F.3d 653, 663 (5th Cir. 2015) (permitting intervention and holding that although both the government and the proposed defendant-intervenors sought to preserve the challenged executive policy, their interests were not the same).

B. Permissive Intervention is Also Appropriate

Even if this Court were to conclude that the Watsons do not satisfy the requirements for intervention as of right, permissive intervention is appropriate. Rule 24(b)(1)(B) allows permissive intervention upon timely motion by anyone who "has a claim or defense that shares with the main action a common question of law or fact." The Fifth Circuit has recognized that permissive intervention may be granted in the Court's discretion if (1) the motion is timely; (2) an applicant's claim or defense has a question of law or fact in common with the existing action; and (3) intervention will not delay or prejudice the adjudication of the rights of the original parties. Fed. R. Civ. P. 24(b); *see United States v. LULAC*, 793 F.2d 636, 644 (5th Cir. 1986) ("Although the court erred in granting intervention as of right, it might have granted permissive intervention under Rule 24(b) because the intervenors raise common questions of law and fact.").

In sum, the Watsons' motion to intervene is timely. *See supra* Section A.I. The Watsons' defenses will share substantial questions of law and fact with the main action as the Watsons seek

to preserve the value of their property and the character of their neighborhood. Intervention will not create delay or prejudice the existing parties. *See id.* Adding the Watsons as defendant-intervenors at this juncture of the lawsuit will not needlessly increase cost, delay disposition of the litigation, or prejudice the existing parties.

Of note, the Watsons' participation in this lawsuit will provide evidence and argument, including a motion to dismiss, that will assist the Court in resolving the claims before it. At a minimum, therefore, the Watsons ask the Court to exercise its broad discretion and grant them permissive intervention.

CONCLUSION

For the foregoing reasons, the Watsons respectfully request that the Court grant their motion to intervene in this action as defendants.

Dated: February 18, 2020

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

I, the undersigned, hereby certify that on February 18, 2020, I conferred by electronic mail with counsel for Plaintiff and Defendant regarding this motion. Defendant advised that it does not oppose the motion to intervene. Plaintiff did not respond to the request to confer before the filing of this motion.

/s/ Nina Perales
Nina Perales

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on the 18th day of February, 2020, I electronically filed the above and foregoing document using the CM/ECF system, which automatically sends notice and a copy of the filing to all counsel of record.

/s/ Nina Perales
Nina Perales