

FILED
CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA 1303

NO: 15 - 5179

DIVISION: L-6

FAUBOURG MARIGNY IMPROVEMENT ASSOCIATION, INC.

VERSUS

THE CITY OF NEW ORLEANS, THE NEW ORLEANS CITY COUNCIL, AND THE
NEW ORELANS CITY PLANNING COMMISSION

FILED: _____

DEPUTY CLERK

PETITION FOR DECLARATORY RELIEF AND PERMANENT INJUNCTION

NOW COMES Petitioner, Faubourg Marigny Improvement Association, Inc., by and through undersigned counsel, who respectfully alleges the following:

BACKGROUND

1.

The City of New Orleans was the first major American city to take historic preservation seriously. The preservation of historic neighborhoods has in turn helped preserve New Orleans culture, and together this preservation has served as one of the foundational reasons that the city is enjoying an economic resurgence. Tourists visit and fall in love with the charm of neighborhoods like the Faubourg Marigny. Throughout the city's history, various preservationists have stood up to some developments that would be incompatible to the city's historic culture, and through their efforts the city as a whole is much better off.

The Faubourg Marigny Improvement Association, Inc. ("FMIA") rises today to challenge a small but important part of the newly enacted Comprehensive Zoning Ordinance. This small part of the zoning ordinance would cause severe changes to the Marigny, and it was pushed through in a last-minute City Council maneuver that blocked the City Planning Commission from engaging in its specialized review process, and also blocked the citizens from engaging in a public comment process. Because referral to the Planning Commission and engagement in public comment are both legally required and fundamental to good governance, the FMIA now takes a stand to challenge the small but important amendment to the new zoning ordinance.

FMIA also challenges the amendment to the Comprehensive Zoning Ordinance which would give to developers—as a matter of right—the ability to exceed height and density limitations in certain contexts. This gift to developers runs afoul of the city’s Master Plan’s force-of-law provisions that the existing height, scale, density, and character of neighborhoods must be respected.

PARTIES

2.

Petitioner, Faubourg Marigny Improvement Association, Inc. is a Louisiana non-profit corporation that has its principal place of business in Orleans Parish, Louisiana. FMIA was incorporated in 1972. The stated mission of FMIA is:

To protect, maintain and support Faubourg Marigny in the City of New Orleans and particularly that portion of it lying between the Mississippi river and St. Claude and between Esplanade Avenue and Press Street, including all buildings, improvements and properties adjoining said avenues and situated in the areas immediately adjacent to same; to promote the physical, cultural, architectural and historical values of said section and to secure adequate enforcement of all laws of the City of New Orleans and the State of Louisiana affecting or pertaining to it.

FMIA is a neighborhood association that has been active in regularly supporting historic preservation issues. The membership of FMIA is comprised of individual residents and property owners who use, enjoy, and derive aesthetic, architectural, cultural, and historic values and benefits from the preservation of the Faubourg Marigny.

3.

The members of FMIA are able to bring this lawsuit in their own right. The interests the FMIA seeks to protect are pertinent to the purposes of the FMIA. Neither the claims asserted nor the relief sought by the Petitioner requires the participation of individual members in this lawsuit.

4.

Made defendants herein are as follows:

- a) **The City of New Orleans**, a political subdivision of the State of Louisiana, organized pursuant to the authority of the Constitution of the State of Louisiana and the Home Rule Charter for the City of New Orleans;
- b) **The New Orleans City Council**, the legislative body of the City of New Orleans, comprised of seven council members: Nadine M. Ramsey, Stacy Head, Jason Roger Williams, Susan G. Guidry, LaToya Cantrell, Jared C. Brossett, James Austin Gray, II (“City Council”); and
- c) **The New Orleans City Planning Commission**, an unattached board of the City of New Orleans, comprised of nine members created under Section 5-401 of the City Charter (“Planning Commission”).

JURISDICTION

5.

This Court has jurisdiction pursuant to the Louisiana Constitution Article V, §16; Louisiana Revised Statute 33:4721; and Comprehensive Zoning Ordinance Section 16.9.9.5.

VENUE

6.

This Court has venue pursuant to Louisiana Code of Civil Procedure articles 42 and 80.

FACTS RELATING TO CITY COUNCIL'S FAILURE TO SEEK PLANNING COMMISSION REVIEW AND PUBLIC INPUT

7.

Under New Orleans City Charter section 5-406(1), "Except when adopted pursuant to a zoning plan proposed and recommended by the Commission, the City Council shall refer all proposed zoning ordinances and amendments to the Commission for its recommendations." *See also* Comprehensive Zoning Ordinance 16.2.3.2 (requiring the Commission to make a recommendation on all requests for zoning amendments prior to City Council action).

8.

The Planning Commission proposed and recommended a zoning ordinance on September 9, 2014 (the "Planning Commission's Proposed Ordinance").

9.

The City Council took the Planning Commission's Proposed Ordinance and subsequently added *new* ordinances and made new amendments (together, the "Last-Minute Amendments"). These Last-Minutes Amendments include, among others, Mayor Mitch Landrieu's Amendment MJL-6 to Ordinance Calendar Number 30,637 ("MJL-6"). The Last-Minute Amendments were not referred to the Planning Commission for review, public comment, and recommendation.

10.

On May 14, 2015, the City Council adopted Ordinance Calendar No. 30,637, a new Comprehensive Zoning Ordinance ("New CZO"). According to the City Council's website, "[t]he new CZO replaces the former CZO in its entirety and will take effect 90 days from adoption. The CZO governs land use throughout New Orleans and lays out permitted land uses for each of the City's zoning districts, building height limits, setback requirements, urban design standards,

operational rules, and other land use regulations.” The New CZO incorporated the Last-Minute Amendments, including MJL-6.

11.

Amendment MJL-6 included, among other changes, the following change to the zoning ordinance: creates “gateways to the riverfront,” within which, if a development incorporates “superior design elements,” that development qualifies “for consideration of an increase height and/or density.” Any development proposal which incorporates the design standards “shall be entitled” to (1) an increase in height limit, (2) an increase in Floor Area Ratio limit, and (3) elimination of any otherwise applicable Minimum Lot Area per dwelling unit requirement (together, the “Height and Density Variances”).

12.

The FMIA is caused irreparable injury, loss, and damage by the City Council’s failure to refer MJL-6 to the Planning Commission for review, public comment, and recommendation.

13.

By failing to refer the last-minute proposed zoning ordinances and amendments to the Planning Commission for its recommendations, the City Council removed the amendments from the public participation process. *See* City Charter Section 5-411.

14.

By failing to refer the last-minute proposed zoning ordinances and amendments to the Planning Commission, the City Council removed the amendments from the Planning Commission’s review and recommendation process.

15.

The Planning Commission’s consideration and related public participation process are both critical and legally mandated components of the zoning amendment process.

16.

Failure to refer MJL-6 to the Planning Commission prior to adoption of the amendment is a violation of City Charter Section 5-406, which requires referral to the Planning Commission of zoning amendments prior to adoption of those amendments.

17.

Despite the Council’s alleged “consideration” of the Last-Minute Amendments, MJL-6 is null and void and must therefore be rescinded, according to the City Charter, Section 5-406, which requires public hearings and an opportunity for interested persons to be heard before adopting amendments

to the zoning ordinance, and which requires that proposed amendments must be referred to the Planning Commission for review and recommendation.

**FACTS RELATING TO THE HEIGHT AND DENSITY VARIANCES'
INCONSISTENCY WITH MASTER PLAN**

18.

Prior to new development of the comprehensive zoning ordinance, the city created and adopted in August 2010 a master plan, formally titled the “Plan for the 21st Century: New Orleans 2030” (the “Master Plan”). According to the City’s website, the Master Plan “is a City Charter-mandated planning framework for the core systems that shape New Orleans’ physical, social, environmental, and economic future.” The Master Plan was a prerequisite for a new zoning ordinance because the Master Plan establishes the principles, goals, strategies, and actions that guide the development of a new zoning ordinance.

19.

The Master Plan has the force of law. All zoning law, including the entirety of the New CZO and all amendments thereto, must adhere to the Master Plan as a matter of law. Changes to the CZO are “land use actions”, and as such, must be consistent with and not interfere with the Master Plan’s Land Use Plan (Chapter 14). *See* City Charter Sections 5-402(3)(c); 5-404(3)(c); 5-406(1). Under the 2008 Master Plan charter amendment, a Land Use Action is consistent with the Master Plan if the action “(1) Furthers, or at least does not interfere with, the goals, policies, and guidelines, including design guidelines, that are contained in the Land Use Element of the Master Plan. (2) Is compatible with the proposed future land uses, densities, and intensities designated in the Land Use Element of the Master Plan.” A Land Use Action includes zoning ordinance text changes. *See* City Charter Section 5-412.

20.

The Master Plan’s Chapter 14 (“Land Use Plan”) provides for “Preservation of neighborhood residential character” in that “Prevailing character, in terms of scale, massing and density, are reinforced so that infill development must be compatible with existing patterns.” *See* Master Plan at 14.2. The Master Plan consistently reiterates this important limitation – that new development must adhere to the scale and character of existing development, including adherence to height, mass, and density requirements. *See, e.g.*, Master Plan at 14.1, 14.2, 14.3, 14.4, 14.5, 14.9, 14.11-14, 14.20, 14.23, 14.24, 14.26, and 14.28.

21.

The Faubourg Marigny is included within the Master Plan's "Planning District 7." The Master Plan's Land Use Plan for Planning District 7 (Section D, "Future Land Use by District") provides that "Development must respect existing historic neighborhood character and scale." *See* Master Plan at 14.20.

22.

Amendment MJL-6's Height and Density Variances change the zoning ordinance at Section 18. These zoning ordinance changes apply in the Faubourg Marigny. Amendment MJL-6's gives developers—as a matter of right—the ability to exceed existing height and density requirements, including in the Faubourg Marigny.

23.

Amendment MJL-6's grant to developers to exceed height and density limitations is in violation of the Master Plan's limitations on scale, character, height, mass, and density.

24.

The City Council's amendments are inconsistent with, and interfere with, the goals, policies and guidelines of the Master plan, in violation of City Charter Section 5-404(3)(c) & (d).

RELIEF

25.

Pursuant to La. C.C.P. art. § 1871, et seq., FMIA requests that this court issue a declaratory judgment that:

- a) Amendment MJL-6 to Ordinance Calendar Number 30,637 was made without referral to the New Orleans City Planning Commission and without related neighborhood participation
- b) Amendment MJL-6 to Ordinance Calendar Number 30,637 was made in violation of City Charter Section 5-406.
- c) The content of MJL-6 is null and void and without legal effect.
- d) Amendment MJL-6 is inconsistent with, and in violation of, the Master Plan's character, scale, height, mass, and density limitations.

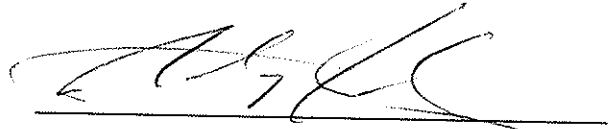
26.

Pursuant to La. C.C.P. art. § 3601, et seq., FMIA requests this court to issue an order of permanent injunction restraining the enforcement and application of Amendment MJL-6 to Ordinance Calendar Number 30,637.

PRAYER FOR RELIEF

WHEREFORE, Petitioner, the Faubourg Marigny Improvement Association, Inc. prays that a copy of this petition be served on each defendant herein; that they be duly cited to appear and answer same that, after all legal delay and due proceedings, there be judgment issued in favor of petitioner for all general and equitable relief.

Respectfully Submitted:



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Counsel for Petitioner

PLEASE SERVE:

THE CITY OF NEW ORLEANS, THE NEW ORLEANS CITY COUNCIL, and the NEW
ORLEANS CITY PLANNING COMMISSION
through the Office of the City Attorney
1300 Perdido Street
New Orleans, LA 70112

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VERIFICATION

STATE OF LOUISIANA

PARISH OF ORLEANS

BEFORE ME, the undersigned Notary Public, personally came and appeared

Lisa Suarez, President, Faubourg Marigny Improvement Association, Inc.,

Who, after being duly sworn, did depose and state:

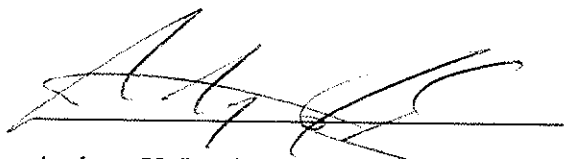
That she is the petitioner in the above and foregoing Petition for Declaratory Relief and Injunction and that all of the allegations of fact contained therein are true and correct to the best of her information, knowledge, and belief.

ANDREW KARL JACOBY
Notary Public, Bar No. 32512
Notary No. 90902
State of Louisiana
My Commission is issued for Life



Lisa Suarez
President, Faubourg Marigny Improvement Association, Inc.

SWORN TO AND SUBSCRIBED BEFORE ME this 28th day of May, 2015.



Andrew K. Jacoby, La. Bar No. 32512

NOTARY PUBLIC