

FILED

IN THE COURT OF COMMON PLEAS
2019 APR -8 AM 10: 02 LAKE COUNTY, OHIO

MAUREEN G. KELLY
LAKE CO. CLERK OF COURT
CITY OF PAINESVILLE, et al.) CASE NO. 02CV002053
Plaintiffs)
vs.) JUDGMENT ENTRY
CITY OF MENTOR)
Defendant)

The within cause came on for hearing on April 4, 2019, upon Plaintiff City of Painesville's ("Plaintiff") Motion for Preliminary Injunction, filed April 3, 2019.

On April 3, 2019, this court granted Plaintiff's *Ex Parte* Motion for Temporary Restraining Order to prohibit Defendant City of Mentor ("Defendant") from enforcing Ordinance No. 19-O-018-"An Ordinance to Proceed with the Closure of Diamond Centre Drive at the Mentor/Painesville Municipal Boundary, and Declaring an Emergency" ("Ordinance").

"To be entitled to a preliminary injunction, the moving party must establish, by clear and convincing evidence, that (1) there is a substantial likelihood of ultimately prevailing on the merits, (2) irreparable injury will occur if the injunction is not granted, (3) the rights of third parties will not be harmed if the injunction is granted, and (4) the injunction will serve the public interest." (Citations omitted.) *Arndt v. P & M Ltd.*, 11th Dist. Portage No. 2007-P-0038, 2008-Ohio-2316, ¶ 64. Whether to grant or deny an injunction is a matter within the discretion of the trial court. *Electronic Classroom of Tomorrow v. Ohio Dept. of Edn.*, 2017-Ohio-5607, 92 N.E.3d 1269, ¶ 33 (10th Dist.). Based upon the testimony and evidence presented, the court finds Plaintiff's motion for preliminary injunction well taken.

Likelihood of success on the merits. The June 6, 2003 Judgment Entry ("Agreed Judgment Entry") established that Shamrock Business Center would consist of three phases. Phase 1 permitted the construction of three hundred (300) dwelling units and included extending Diamond Centre Drive. The Agreed Judgment Entry states that

as a condition of extending Diamond Centre Drive to the western boundary of Painesville, Shamrock Business Center, Ltd. ("Shamrock") was required to: (1) submit to the Mentor Planning Commission a final dedication plat for the extension of Diamond Centre Drive; (2) construct necessary road improvements pursuant to the Gorove/Slade Traffic Impact Study; (3) provide a bond to Mentor in an amount equal to 100% of the cost of the Phase 1 Improvements; and (4) remove at its expense, a cul-de-sac at the eastern terminus of Diamond Centre Drive. There is no dispute that Shamrock met these conditions.

Mentor's City Manager, Kenneth J. Filipiak, testified that the Ordinance was passed because Diamond Centre Dr. has reached its maximum traffic capacity and significant gridlock will result once Menard's opens in May or June 2019. Mentor alleges the gridlock is caused by (1) Shamrock's failure to complete road improvements, including constructing two left-turn lanes from Diamond Centre Dr. to Heisley Rd., and (2) Shamrock (with Painesville's consent) building a residential nursing facility in violation of the terms of the Agreed Judgment Entry Phase II provisions, and First Amendment to Agreed Judgment Entry ("First Amendment"). The court finds that even if Mentor's claims are accurate, there is no basis within the terms of the Agreed Judgment Entry to close Diamond Centre Dr. As noted previously, the road extension was a condition of Phase I and the parties met their obligations for that phase. Because the court finds no basis within the Agreed Judgment Entry or the First Amendment to blockade Diamond Centre Dr., it appears that Plaintiff has a substantial likelihood of success on the merits.

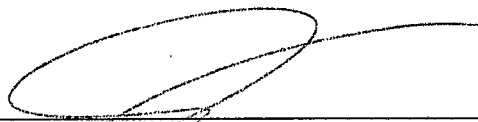
Irreparable harm. Donald Ashcroft, owner of the Easy Stop Mini Mart in Mentor, testified that a significant portion of his business comes from residents of the Cobblestone Court Apartments ("Cobblestone") in Painesville. If Diamond Centre Dr. is closed to thru traffic, he anticipates that his business will close within a few months because a mini-mart store "is not a destination" and current customers will go to more convenient locations. Accordingly, the court finds that irreparable harm will occur if the preliminary injunction is not granted.

Injunction will serve the public interest. Ross Willkoff, Administrator of the skilled nursing facility Grand River Health & Rehab, testified that the closure of Diamond Centre Dr. would increase the commute time for its employees as well as the 104 visitors to its residents, many of whom are long-term care residents. This would likely result in reduced visits to many residents. Additionally, Eric Bell, principal of Goldberg Co. (owner of Cobblestone) testified that approximately 360 residents of Cobblestone work in Mentor, and 80% use Diamond Centre Dr. as the primary route to their places of employment. Based on the evidence and testimony presented, the court finds that the public interest would be served by granting the preliminary injunction.

Rights of third parties will not be harmed. Plaintiffs did not address this argument or present any evidence or testimony regarding this factor during the hearing. Based on the evidence and testimony presented, the court finds that granting the preliminary injunction would not harm third parties.

WHEREFORE, it is the order of this court that Plaintiff's motion for preliminary injunction is granted.

IT IS SO ORDERED.



JOHN P. O'DONNELL, JUDGE

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