IN THE SUPERIOR COURT OF BIBB COUNTY, GEORGIA

Lindsay D Holliday
Plaintiff
v.
Georgia Department of Transportation (GDOT)
Defendant(s)

Civil Action No. 12-CV-58472

COMPLAINT FOR INJUNCTION AND TEMPORARY RESTRAINING ORDER

1- Plaintiff's Answer to Defendant's First Defense: (page2/11)

The Plaintiff's claim is that appropriate design of the project consistent with Georgia DOT's own guidelines and policies would produce the relief sought by avoiding unnecessary damage to the tree canopy, the adjacent property and neighborhoods, and the safety of the general public, and other natural and cultural resources.

GDOT's design for Forest Hill Road (FHR) requires moving the utility poles away from the roadway to allow higher speeds through the FHR neighborhood. Higher speeds through residential neighborhoods are dangerous. This is inconsistent with the stated goals in the Purpose and Need document that justifies the project. Moving the utility poles will cause the cutting of an enormous swath of mature tree canopy. This cutting is unnecessary if GDOT follows their policies of "Complete Streets" and "Context Sensitivity". Over a thousand citizens have signed comments supporting a redesign. City Council has passed resolutions asking for a redesign. Macon-Bibb Tree Commission has repeatedly asked for a redesign. Numerous citizen organizations (neighborhood organizations) have asked for a redesign. Several internationally recognized urban road engineers/designers have written letters to roads officials explaining the benefit of redesigning specific aspects of this project. The plaintiff claims that GDOT has failed due-diligence to study the above criticisms. And if GDOT did study the criticisms, GDOT's choice to ignore this evidence was arbitrary and capricious.

A compromise design drafted by Mr. Rick Chellman was submitted to GDOT's agent and contractor MAAI (Moreland Altobelli Associates, Inc) by the Plaintiff. This design was drafted by a renowned planner and engineer and is acceptable to the Plaintiff (and the FHR Mediation Team) as adequate relief.

2- Plaintiff's Answer to Defendant's Second Defense: (page2/11)

The premise of Sovereign Immunity is protection of governmental entities from monetary damage claims, not from challenges to proposed actions that are in the realm of public interest and relative to issues that are of significant public interest; it is not intended to shield public officials or entities from their responsibility to act in the public interest. The negative effects of the FHR project as currently proposed damages the general public as well as adjacent residents and neighborhoods.

GDOT admits that their Sovereign Immunity fails in the case of arbitrary and capricious behavior. Plaintiff can show several instances of this type of behavior from GDOT during the long course of the development of the FHR plans.

3- Plaintiff's Answer to Defendant's Third Defense: (page2/11)

Bibb Superior Court has subject matter jurisdiction in this case because it is the court of General Jurisdiction for this area. GDOT has a Substantial Presence in Bibb County with permanent offices and numerous ongoing projects here. More specifically, the project in dispute, FHR, is physically within the court's area of jurisdiction.

4- Plaintiff's Answer to Defendant's Second Defense: (page2/11)

Bibb Superior Court has personal jurisdiction over GDOT regarding any state road project in Bibb County.

5- Plaintiff's Answer to Defendant's Fifth Defense: (page3/11)

Defendant Clinton Ford lacks the defenses of sovereign immunity and qualified immunity, because he is jointly/severally liable for the arbitrary and capricious actions that have occurred during and on the FHR project. Mr Ford is the Project Manager for FHR. He is the lead GDOT person responsible for all aspects of this project. Whistleblower's protections were available to Clinton Ford had he only chosen to expose bad behavior, and arbitrary and capricious actions of GDOT and its subcontractors.

6- Plaintiff's Answer to Defendant's Sixth Defense: (page3/11)

Plaintiff and the numerous citizens and groups he speaks for are entitled to injunctive relief. Relief is described in the consensus of the numerous signed comments available as evidence. Plaintiff needs a temporary restraining order to prevent irreparable and immediate harm that would occur if the project proceeds and neighborhood trees are destroyed unnecessarily.

7- Plaintiff's Answer to Defendant's Seventh Defense: (page3/11)

There is adequate remedy at law. The Plaintiff asks the court to instruct the Defendant to implement the Chellman compromise plan.

8- Plaintiff's Answer to Defendant's Eighth Defense: (page3/11)

The residential property and neighborhoods adjacent to the project will suffer direct economic loss in the value and marketability of their property, as reflected in the often significant decreases in appraised value by the Bibb County Appraiser.

Defendants have not addressed the problems of increased run-off from this project. There is already a problem with flooding along this roadway, and the city/county have successfully been sued by citizens who suffered damages from flooding. If this project is built as designed these existing problems will be exacerbated. The Defendants are aware of these problems, but chose to ignore them in violation of the rules promulgated by their department. Rules state that flooding will be assessed within the project area. The Defendants used the much larger area of the drainage basin as the basis for examining changes to run-off.

Increased speed along this road will compromise safety. There is a disconnect between the design speed and the intended posted speed. This condition leads to speeding, and is recognized as a problem in standard road design manuals. To persist with this dangerous design when there is a remedy at hand will cause irreparable harm.

The tree canopy has value both aesthetically and economically. Numerous studies back up this statement. Loss of quality of life is an economic blow to the entire community. The loss of canopy will last a generation or more, and certainly the natural lives of most of the people involved in this case. This can be prevented by simple changes to the design speed of the current plan. Such changes will obviate the need to move the power poles. In addition to saving the signature tree canopy it will also save the taxpayers all the money required to move these poles. It will cause the Plaintiff and the community harm that can not be remedied.

9- Plaintiff's Answer to Defendant's Ninth Defense: (page3/11)

GDOT has enjoyed a gracious plenty of service of (warning about) this Complaint. GDOT was warned months ahead of time that this Complaint would be submitted to the Court if GDOT began to let the contracts for this extremely controversial design This warning was sent several times to numerous levels of the GDOT bureaucracy. Rarely has GDOT been so fully warned and informed about a nascent Complaint. Years ago, with only Postal, snail-mail paper documents, it made sense to specify the destination for the limited copies of paper Complaints. However, now with email, everyone at GDOT can have a copy of this Complaint within seconds.

10- Plaintiff's Answer to Defendant's Tenth Defense: (page3/11)

See answer above in #9.

11- Plaintiff's Answer to Defendant's Eleventh Defense: (page3/11)
Specific responses to the Defendant's arguments:

Mediation

The Defendant's narrative describing mediation is incorrect. No representative from the Department of Transportation was present. Only representatives from MAAI, the county engineer, and the county attorney were in attendance.

The Defendants entered mediation in bad faith. They announced at the initial meeting that they would not entertain any changes to the Southern section of the project, and would only entertain cosmetic

changes to the Northern section. There was never any intention on the part of the Defendants to compromise. They made this abundantly clear from the beginning, and it is not a surprise that mediation produced no results. Perhaps the outcome might have been different if GDOT had been in attendance.

[Lee Martin, Tom Scholl and Lindsay Holliday went to Atlanta (early 2008) and specifically asked GDOT and FHWA to get involved with the Mediation. We met with Ben Buchan. He said GDOT had a "wait and see" attitude, and would not get involved at that time... they hoped things would get resolved in Mediation]

The community hired an internationally recognized planner and engineer to represent their position during mediation. The name of this man is Rick Chellman. During his background investigation he examined the assumptions made by GDOT in the Purpose and Need statement that justifies the project. Flawed plans flow from flawed assumptions, and there were many in the Environmental Assessment (EA). Mr. Chellman's investigation refuted their assumptions point by point.

On page 10, #5. "The Purpose of the Project" the Defendant states "Due to the present congestion that is on FHR, the design approved is the most appropriate." Mr. Chellman's expert examination showed that there is no congestion along the road itself, and none at all on the Northern section. There is congestion at two intersections in the Southern section. Traffic counts have not increased along the road, as the defendants state. Along most of the road traffic has actually decreased. Mr. Chellman also refuted the projections made by GDOT and their contractors. He used standard accepted programs. It is unclear what methodology was used by the Defendant to arrive at their numbers. Accident data was flawed as well. FHR is actually safer than comparable roads in the state.

Mr. Chellman submitted a true compromise. It was bigger than the community wished, and it was smaller than GDOT's flawed plan. It meets all design criteria set out by the American Association of State Highway and Transportation Officials (AASHTO). AASHTO is a standards setting body which publishes specifications, test protocols and guidelines which are used in highway design and construction throughout the United States. Mr. Chellman produced a compromise plan for both the Southern and Northern section, even though the Defendant's agents refused to discuss it.

The Defendants state that they have complied with the National Environmental Policy Act (NEPA) -- the United States environmental law that established a U.S. national policy promoting the enhancement of the environment. This is not correct. They failed to minimize the flood hazard from this plan, and to address damage to existing streams from changes in volume and velocity of increased run-off. Damage to water quality in the streams will in turn damage the water quality of the Ocmulgee River. Almost every stream in Bibb County has compromised water quality, including the streams within the project area. Compromised water quality can be found in TMDL (Total Maximum Daily Load) maps of the county. (TMDL) is a regulatory term in the U.S. Clean Water Act, describing a value of the maximum amount of a pollutant that a body of water can receive while still meeting water quality standards. Under the Clean Water Act, counties are required to address these deficiencies. Failure to address the volume of water is discussed above.

The Environmental Assessment (EA) also acknowledges that there will be damage to historic structures and there will be elevated noise levels along the project. None of these will be mitigated. However,

the compromise plan will mitigate these damages. And this will be consistent with GDOT's "Context Sensitivity" policies.

Respectfully submitted this 18th day of February, 2013.

Lindsay Holliday, Plaintiff, pro se.

Certificate of Service

This is to certify that I have this day served a copy of the above Answer by US Postal Service upon the following:

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This 18th day of February, 2013.

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