

IN THE SUPERIOR COURT

PINAL COUNTY, STATE OF ARIZONA

Date: 08/09/2017

FILED
AMANDA STANFORD
CLERK OF SUPERIOR COURT

2017 AUG -9 PM 4: 56

BY KF
DEPUTY

THE HON ROBERT CARTER OLSON.

By Judicial Administrative Assistant: NORMA CRUZ

MARICOPA CITIZENS PROTECTING
TAXPAYERS, A POLITICAL ACTION
COMMITTEE FORMED AND REGISTERED
PURSUANT TO A.R.S. §16-905, ROBERT
REBICH, INDIVIDUALLY AND AS CHAIRMAN OF
MARICOPA CITIZENS PROTECTING
TAXPAYERS; DAVID PROM, INDIVIDUALLY
AND AS TREASURER OF MARICOPA CITIZENS
PROTECTING TAXPAYERS,

Plaintiff(s),

vs.

CHRISTIAN PRICE, IN HIS OFFICIAL CAPACITY
AS MARICOPA MAYOR; MARVIN L. BROWN, IN
HIS OFFICIAL CAPACITY AS MARICOPA
COUNCILMAN; PEGGY CHAPADOS, IN HER
OFFICIAL CAPACITY AS MARICOPA
COUNCILWOMAN; VINCENT MANFREDI, IN HIS
OFFICIAL CAPACITY AS MARICOPA
COUNCILMAN; NANCY SMITH IN HER
OFFICIAL CAPACITY AS MARICOPA
COUNCILWOMAN; HENRY WADE, IN HIS
OFFICIAL CAPACITY AS MARICOPA
COUNCILMAN, VANESSA BUERAS, IN HER
OFFICIAL CAPACITY AS MARICOPA CITY
CLERK; CITY OF MARICOPA, ARIZONA, A
PUBLIC ENTITY, AND PRIVATE
MOTORSPORTS GROUP, LLC, AN ARIZONA
LIMITED LIABILITY COMPANY,

Defendant(s).

) S1100CV201701220

) JUDGMENT

Maricopa Citizens Protecting Taxpayers, a political action committee, brought this action to compel the City Clerk of the City of Maricopa to forward a random sample of referendum petition signatures to the County Recorder, pursuant to A.R.S. § 19-122, but the City Clerk maintains that the relevant action of the City Council was administrative, not legislative, and therefore not referable.

As secondary issues, the Committee also alleges that twelve signatures are improperly excluded by the City Clerk, and the real party in interest claims that the referendum petition is non-conforming and fatally defective.

The subject of the referendum is the decision by the City Council to grant a conditional use permit or industrial use permit to Private Motorsports Group, LLC, for the purpose of developing a motor sports facility and restaurant. The parties stipulate that the lawful authority of the City Council to take this particular action is not before this Court in this action, but the parties do not waive that issue in any subsequent or parallel action; an evidentiary hearing was not requested and the parties have stipulated to the relevant facts, which the Court incorporates and adopts as its findings.

The property at issue was zoned by Pinal County prior to being annexed into the City of Maricopa, and the City of Maricopa originally adopted a substantially identical zoning ordinance to the Pinal County code, which had the effect of retaining the original classification and administrative procedures during the early years following incorporation and annexation.

During 2014, the City of Maricopa adopted a new zoning code that replaced the old code but did not change the prior classification or modify the permitted uses of the property at issue, such that the property remains classified as "CI-2 – Industrial Zone". It is undisputed that the old code zoning classification is not replicated in the new code.

The question before the Court is whether the grant of the use permit that is the subject of the referendum petition was a legislative or administrative action. This requires a review of the mechanism to grant the use permit, and it appears that the parties presented arguments that can be summarized along three possible lines of authority:

- (1) A conditional use permit may be granted by the policy adopted by the new code, specifically *Article 504 Use Permits*;
- (2) The new code preserved the right to apply for an industrial use permit under the old code;
- (3) The new code abrogated the right to obtain an industrial use permit without rezoning the land in compliance with the new code, such that the council's grant of a use permit restored or created a right of a landowner to seek a use permit under the old code.

The first possible interpretation is moot, since no party claimed that the use permit was granted under the authority of *Article 504*. The Court also notes that this provision does not reference an industrial use permit, applies to the new zoning framework, and grants the decision-making authority to the Planning & Zoning Commission, not the City Council, subject to a set of objective standards. This provision in the new code substantially mirrors the language of *Redelsperger v. City of Avondale*, 207 Ariz. 430,

87 P.3d 843 (Ct. App. 2004), such that a use permit so issued will presumably be an administrative action, but it is not relevant to this litigation, since this decision-making authority was not available or was not utilized.

The City of Maricopa argues the second interpretation, claiming that the new code preserved not only the old zoning classification but also the prior right to apply to the City Council for an industrial use permit. If this be the case, the Court notes that the old code provides virtually unlimited discretion to the City Council when considering an application for an industrial use permit, as contrasted with the substantial limitations in the new code or as described in *Redelsperger*. Likewise, the old code empowers the City Council to exercise its authority to approve such a permit directly, as it did, while relegating the Planning & Zoning Commission to an advisory role. Such discretion is only one factor in determining whether the action was legislative or administrative, but the Court observes that the effect of this exercise of discretion is similar in magnitude and character to a zoning decision. Additionally, the Court notes that the action is permanent, since there is no provision for an expiration date or periodic review, as may be an option with conditional use permits, although the use agreement admittedly applies to an individual parcel of land. While such determinations are complex, taken together, the Court **FINDS** that this action was legislative, not administrative.

The third interpretation describes a policy decision by the City Council to modify, supplement, or even harmonize the new code (by stipulation, the Court is not reviewing whether the City Council has authority to make such a decision in this manner). However, such a policy decision is clearly a legislative act for all the reasons stated above, plus the added effect of having general application to other parcels of land, whether currently within the city limits or annexed in the future.

Thus, whether the new code preserved the right to apply for an industrial use permit, or if the City Council made a policy decision to restore that right, the Court **FINDS** the grant of the use permit is a legislative action and, therefore, subject to referendum.

As to the remaining issues, the Court notes that the City Clerk has given courtesy notice of her intent to disqualify twelve signatures for failing to provide a city or zip code, and this Court **FINDS** that such disqualification exceeds the permitted scope of the initial review that the City Clerk is authorized to conduct. Additionally, the Court rejects the argument of the real party in interest that the petitions are fatally defective; the Court **FINDS** that the referendum petition strictly complies with A.R.S. §§ 19-101(A) and 19-121(A), as reasonably construed to supplement its constitutional purpose.

It is therefore **ORDERED** granting judgment on the *Petition*, denying the *Counter-claims*, and expressly directing the City Clerk to include the twelve signatures in the count of eligible signatures, include those signatures in the pool of eligible signatures for random selection, and promptly forward the legally required random sample of the subject referendum petition to the County Recorder.

IT IS FURTHER ORDERED that this is a final judgment as to all claims and parties, pursuant to Civil Rule 54(c).

Dated this 9th day of August, 2017.



Superior Court Judge

Mailed/distributed copy: 8/09/2017

TIMOTHY A. LASOTA
ATTORNEY AT LAW
2198 E CAMELBACK RD STE 305
PHOENIX, AZ 85016

DENIS FITZGIBBONS (BOX 15)
ATTORNEY AT LAW
1115 W COTTONWOOD LN STE 150
CASA GRANDE, AZ 85122

ROOPALI DESAI
ATTORNEY AT LAW
2800 N CENTRAL AVE STE 1200
PHOENIX, AZ 85004

Office Distribution:
JUDGE/OLSON