

*Rebecca G. Crowe*  
Rebecca Crowe, Clerk  
Bryan County, Georgia

IN THE SUPERIOR COURT OF BRYAN COUNTY  
STATE OF GEORGIA

HOME BUILDERS ASSOCIATION OF )  
SAVANNAH, INC. d/b/a HOME )  
BUILDERS ASSOCIATION OF )  
GREATER SAVANNAH, )

Plaintiff, )

Civil Action File No.: SUV2019000044

v. )

BRYAN COUNTY, GEORGIA, a political )  
subdivision of the State of Georgia; and )  
CARTER INFINGER, NOAH )  
COVINGTON, WADE PRICE, STEVE )  
MYERS, BRAD BROOKSHIRE, and )  
GENE WALLACE, in their official )  
capacities as current Bryan County )  
Commissioners, and constituting the Board )  
of Commissioners of Bryan County, )  
Georgia, )

Defendants. )

**ORDER DENYING PLAINTIFF'S MOTION TO ENJOIN THE ENFORCEMENT  
OF THE INTERIM DEVELOPMENT ORDINANCE**

This matter comes before the Court on multiple motions: 1) Plaintiff's request for an interlocutory injunction enjoining enforcement of Bryan County, Georgia's Interim Development Ordinance (the "IDO") and Bryan County, Georgia's Development Impact Fee Ordinance (the "DIFO"); and 2) Defendants' Motion to Dismiss.

The parties, represented by counsel, came before the Court for a hearing on May 10, 2019 and May 24, 2019 and presented arguments and evidence supported by the record. After considering the pending motions, pleadings, the evidence presented on May 10, 2019 and May 24,

2019, the credibility of the witnesses, arguments of counsel, the controlling law, and all other matters of record, the Court hereby makes the following finds of fact and conclusions of law:

## **I. PROCEDURAL HISTORY.**

Plaintiff, the Homebuilders Association of Savannah, Inc. d/b/a Homebuilders Associations of Greater Savannah (hereinafter “Plaintiff” or “HBA”), a self-described “trade association,” filed the above styled Complaint for Declaratory Judgment and Injunction (the “Complaint”) against the Defendants, Bryan County, Georgia (“Bryan County”), Carter Infinger, Noah Covington, Wade Price, Steve Myers, Brad Brookshire, and Gene Wallace in their official capacities as the current County Commissioners of Bryan County (Messrs. Covington, Price, Myers, Brookshire and Wallace are hereinafter collectively referred to as the “BOC”) on February 7, 2019. HBA asks this court to determine the validity and constitutionality of Bryan County’s recently adopted Development Impact Fee Ordinance (DIFO) and its Interim Development Ordinance (IDO) and to enjoin the Defendants from implementation and enforcement of either ordinance. HBA alleges that it is entitled to declaratory judgment and injunctive relief praying specifically that the court declare the DIFO and the IDO unlawful and unconstitutional and to enter an injunction to enjoin the implementation of both ordinances. Plaintiff filed its First Amendment to its Complaint for Declaratory Judgment on February 13, 2019 (the “1<sup>st</sup> Amended Complaint”) to clarify its position that the individual commissioners “are identified and named therein only in their official capacities as current Bryan County Commissioners and constituting the Board of Commissioners of Bryan County, Georgia and not individually.”

Plaintiff filed its Second Amended Verified Complaint for Declaratory Judgment and Injunctive Relief on March 8, 2019 (the “2<sup>nd</sup> Amended Complaint”) adding a tenth count seeking a temporary restraining order and other injunctive relief.

Defendants acknowledged service of the Complaint and timely filed their Answer and Affirmative Defenses to the Plaintiff’s Complaint on March 18, 2019. Defendants filed their Motion to Dismiss Plaintiff’s Complaint pursuant to O.C.G.A. §§ 9-11-12 (b) (1) and 9-11-12 (b) (6) simultaneously therewith on multiple grounds, including sovereign immunity as to Bryan County and the BOC in their official capacities.

On March 28, 2019, Plaintiff filed a Motion to Add Party Defendants pursuant to O.C.G.A. §§ 9-11-21 and 9-11-15 now seeking to add the individual members of the BOC in their individual capacities. Plaintiff’s Motion to Add Party Defendants was unopposed by the Defendants and was granted on May 10, 2019.

## **II. FINDINGS OF FACT.**

Plaintiff HBA is by its own admission “a trade association whose members are comprised of home builders, real estate agents, bankers, and others transacting business in the greater Savannah area, including, without limitation, Bryan County, Georgia.” Complaint ¶ 2 (emphasis added). Plaintiff has asserted a facial challenge to the DIFO and the IDO as zoning ordinances. Complaint ¶ 1.

It is undisputed that HBA does not own or have an interest in any property that is within Bryan County and has not been impacted by the DIFO or the IDO. Nor is there any evidence that HBA or any individual contractor or other “member” of the HBA have applied for and been

denied a building permit pursuant to the IDO; nor is there any evidence that HBA or any of its members have been assessed impact fees pursuant to the DIFO.

### **III. CONCLUSIONS OF LAW.**

Plaintiff asserts a facial challenge to the DIFO and the IDO as zoning ordinances.

Complaint ¶ 1. It alleges that “there is an actual and justiciable controversy between the Plaintiff and the Defendants as presented by the facts ... because it creates uncertainty and harm on the part of Plaintiff’s members with respect to their rights, status, duties, obligations and legal relations toward Defendants.” Complaint ¶ 12. Plaintiff purports to bring this Complaint for declaratory and injunctive relief on behalf of itself, its members and all “others similarly situated.”

The court must consider several criteria on whether to grant an interlocutory injunction as requested by the Plaintiff. The court is required to consider whether (1) there is a substantial threat that the moving party will suffer irreparable injury if the injunction is not granted; (2) the threatened injury to the moving party outweighs the threatened harm that the injunction may do to the party being enjoined; (3) there is a substantial likelihood that the moving party will prevail on the merits of her claims at trial; and (4) granting the interlocutory injunction will not disserve the public interest. SRB Inc. Services, LLLP v. Branch Banking & Trust Co., 289 Ga. 1, 5 (2011).

Georgia uses a balancing test to determine whether the zoning power is properly exercised. This test weighs the benefit to the public against the detriment to the individual. The IDO as a zoning ordinance is presumptively valid and the Plaintiff can only overcome this presumption by presenting clear and convincing evidence that the IDO presents a significant

detriment to the landowner and that it is insubstantially related to the public health, safety, morality and welfare. Parking Ass'n of Georgia, *supra* 264 Ga. at 765, *citing* Gradous v. Board of Commrs., 256 Ga. 469, 470 (1986); *see also* Diversified Holdings, LLP v. City of Suwanee, 302 Ga. 597, 612 (2017) (a zoning ordinance is presumptively valid).

The IDO does not exceed the police power just because it restricts the use of property, diminishes value, or imposes additional costs to develop the property. Parking Ass'n of Georgia, *supra* 264 Ga. at 765, *citing* Gradous, 256 Ga. at 471. “An ordinance is not unreasonable even if designed only to improve aesthetics.”

“[L]egislation based on aesthetics is within the public welfare aspect of the police power. ‘The concept of the public welfare is broad and inclusive. (Cit.) The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.’”

Parking Ass'n of Georgia, *supra* 264 Ga. at 765-66 *citing* H & H Operations, Inc. v. City of Peachtree City, 248 Ga. 500, 501 (1981).

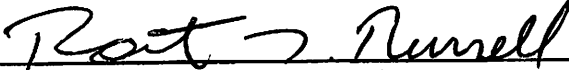
The Plaintiff has the initial burden of showing both significant detriment because of the IDO that it bears an insubstantial relationship to the public health, safety, morality and welfare. If the Plaintiff fails to meet this burden, then the Defendants need not present any evidence to justify the IDO. Diversified Holdings, 302 Ga. 597 at 612; *citing* Parking Ass'n of Georgia, *supra* 264 Ga. at 765. Moreover, the validity of a zoning ordinance's application to a particular property must be determined on a case-by-case basis. Id. In the instant case, Plaintiff presented no evidence of the effect of the IDO on any particular property.

While the HBA is authorized to bring this action on behalf of one or more of its members without actually joining them as a party to the lawsuit, there is no direct evidence that any of the

HBA members have been assessed impact fees pursuant to the DIFO or have applied for and been denied a building permit to develop a particular property impacted by the IDO, or that any member has requested a waiver of any of the objectionable requirements of the IDO, or that any request for a waiver has been denied. On the contrary, there are several interests that will support a restriction on land use, including, but not limited to “aesthetics, environmental impact, injury to neighboring property, traffic impacts and potential hazards to pedestrians, and the long-range planning goals for the area.” Diversified Holdings, 302 Ga. 597 at 612 (citations omitted).

Plaintiff has failed to meet its initial burden to show significant detriment to any property or that the IDO bears an insubstantial relationship to public health, safety, morality and welfare. Therefore, Plaintiff’s demand to enjoin the enforcement of the IDO stands DENIED.

SO ORDERED, this 31 day of July, 2019.

  
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Robert L. Russell, III, Chief Judge  
Superior Court of Bryan County, Georgia