

CITY OF BATON ROUGE/
PARISH OF EAST BATON ROUGE

NUMBER 610359 SEC. "D"
19TH JUDICIAL DISTRICT COURT

VERSUS

PARISH OF EAST BATON ROUGE

STEPHEN C. MYERS

STATE OF LOUISIANA

STEPHEN C. MYERS'S MOTION FOR SUMMARY JUDGMENT

NOW INTO COURT, through undersigned counsel, comes defendant/plaintiff-in-reconvention, STEPHEN C. MYERS ("**MYERS**"), who files his Motion for Summary Judgment in the above-referenced matter as follows:

1.

On or about September 13, 2011, the CITY OF BATON ROUGE / PARISH OF EAST BATON ROUGE ("**the CITY-PARISH**"), through its Complaint Manager, Neal Bezet, sent a letter to MYERS stating that an inspection of the premises located at 1977 Cherrydale Ave., Lot: 116 [sic], Sq: 11, in the subdivision of University Gardens ("**the Property**") revealed a violation of the Unified Development Code Title 7, Chapter 2, which defines family as "an individual or two (2) or more persons who are related by blood, marriage or legal adoption living together and occupying a single housekeeping unit with single culinary facilities; or not more than two (2) persons, or not more than four (4) persons (provided the owner lives on the premises) living together by joint agreement and occupying a single housekeeping unit with single culinary facilities on a nonprofit, cost-sharing basis." The letter also indicated that "[n]on-related persons occupying a single family dwelling located in the A-1, A-2, or Rural zoning district is prohibited." Furthermore, the letter stated that "[w]henver, the Building Official has cause to believe a violation iof [sic] Section 8.201, single family permissible uses and Chapter 2 definitions has occurred, the owner and/or occupants is required to furnish affidavits, executed before a Notary Public, under penalty of law attesting to the number of unrelated occupants of the house. Failure to do so shall constitute prima facie evidence that a violation of the single family zoning restriction has occurred." The letter also indicated that MYERS was required to remove the alleged violation by September 27, 2011.

2.

On or about December 8, 2011, the CITY-PARISH, through Assistant Parish Attorney, Maimuna Magee, sent a letter to MYERS indicating that the Cherrydale Property was in violation of the Unified Development Code of the City of Baton Rouge and the Parish of East Baton Rouge, the “violations consist[ing] of having more than two (2) unrelated persons residing in an A-1 zone.” The letter further stated that MYERS had ten (10) days to correct the violation or the CITY-PARISH would take legal action to force compliance.

3.

On or about March 20, 2012, the CITY-PARISH filed a Petition for Preliminary Injunction and Permanent Injunction, in which it asserted (1) that MYERS is the owner/occupant of “a certain piece of property located at 1977 Cedardale [sic] Ave., more particularly referred to as Lot 16, Square 11, University Gardens Subdivision, in the Parish of East Baton Rouge” and (2) that MYERS is in violation of a certain ordinance, to wit, the Unified Development Code Title 7, Chapter 8, Section 8.201, Appendix H, Permissible Uses of the City of Baton Rouge and Parish of East Baton Rouge (“*the zoning regulation*”), “said violation consist[ing] of having more than two (2) unrelated persons residing in an A-1 zone on said premises.” In its Petition, the CITY-PARISH seeks the issuance of a permanent injunction and a preliminary injunction during the pendency of these proceedings, ordering MYERS to immediately cease his alleged violation of the zoning regulation, and that MYERS be cast for all costs of these proceedings and for all general and equitable relief.

4.

On April 16, 2012, the CITY-PARISH filed an Amended Petition in order to change the street name of the property located on Lot 16, Square 11, University Gardens Subdivision, in the Parish of East Baton Rouge from “1977 Cedardale Ave.” to the correct address of “1977 Cherrydale Ave.”

5.

On April 26, 2012, MYERS filed his Affirmative Defenses, Answer, and Reconventional Demand. On May 3, 2012, MYERS filed an Answer to the Amended Petition for Preliminary and Permanent Injunction, and on May 16, 2012, MYERS filed his Amended Affirmative

Defenses, Answer, and Reconventional Demand. In addition, on June 14, 2012, MYERS filed a Motion for Leave to file his Second Amended Affirmative Defenses, Answer, and Reconventional Demand, which the Court granted on June 18, 2012. In these pleadings, MYERS submits that the zoning regulation of which he is accused of violating is unconstitutional, as more fully set forth in the accompanying Memorandum in Support of MYERS' Motion for Summary Judgment.

6.

On May 9, 2012, in accordance with La. C.C.P. art. 1880 and La. R.S. 13:5107, MYERS requested service of his Affirmative Defenses, Answer, and Reconventional Demand, on the Office of the Attorney General, State of Louisiana, so that the Attorney General will have the opportunity to be heard in this matter, which concerns the constitutionality of a municipal ordinance.

7.

At the June 25, 2012, hearing on the CITY-PARISH's Petition for Preliminary Injunction, the CITY-PARISH stated for the record that it would dismiss its Petition for Preliminary Injunction in this matter.

8.

As stated by the Louisiana Supreme Court in *Fransen v. City of New Orleans, et al.*, 2008-0076, p. 11 (La. 7/1/08); 988 So.2d 225, 234:

Because statutes are presumed constitutional, the party challenging the statute bears the burden of proving its unconstitutionality. *Wooley v. State Farm Fire and Cas. Ins. Co.*, 04-0882, p. 19 (La.1/19/05), 893 So.2d 746, 762. A party seeking a declaration of unconstitutionality must show clearly and convincingly that it was the constitutional aim to deny the legislature the power to enact the statute in question. *World Trade Ctr.*, 05-0374 at 12, 908 so.2d at 632; *Caddo-Shreveport Sales and Use Tax Comm'n*, 97-2233 at 5-6, 710 So.2d at 779; *Polk v. Edwards*, 626 So.2d 1128, 1132 (La.1993). However, a constitutional limitation on legislative power may either be express or implied. *Caddo-Shreveport Sales and Use Tax Comm'n*, 97-2233 at 6, 710 So.2d at 779-780; *Board of Comm'rs of North Lafourche Conservation Levee and Drainage Dist. v. Bd. of Comm'rs of Atchafalaya Basin Levee Dist.*, 95-1353, p. 4 (La.1/16/96), 666 So.2d 636, 639. When a constitutional challenge is made, the question is whether the constitution limits the legislature, either expressly or impliedly, from enacting the statute at issue. *Board of Dir. of the Indus. Dev. Bd. of the City of Gonzales v. All Taxpayers, Property Owners*, 05-2298, p. 14 (La.9/6/06), 938 So.2d 11, 20; *World Trade Ctr.*, 05-0374 at 12, 908 So.2d at 632. The constitution is the supreme law, to which all legislative acts must yield. *World Trade Ctr.*, 05-0374 at 12, 908 So.2d at 632; *Caddo-Shreveport Sales and Use Tax Comm'n*, 97-2233 at 6, 710 So.2d at 780; *Macon v. Costa*, 437 So.2d 806, 810 (La.1983). When a

statute conflicts with a constitutional provision, the statute must fall. *Caddo-Shreveport Sales and Use Tax Comm'n*, 97-2233 at 6, 710 So.2d at 780.

9.

MYERS seeks a summary judgment from this court:

- 1) Dismissing the CITY-PARISH's Petition for Permanent Injunction, with prejudice, and at the CITY-PARISH's cost;
- 2) Declaring that the that the zoning regulation which MYERS is accused of violating, to wit, Unified Development Code Title 7, Chapter 8, Section 8.201, Appendix H, Permissible Uses of the City of Baton Rouge and Parish of East Baton Rouge, is unconstitutional on its face and as applied and contrary to federal and state law; and
- 3) Ordering the CITY-PARISH to pay all costs of these proceedings, and for all other just and equitable relief.

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La. C.C.P. art. 966 provides, in pertinent part:

A.(1) The plaintiff or defendant in the principal or any incidental action, with or without supporting affidavits, may move for a summary judgment in his favor for all or part of the relief for which he has prayed. The plaintiff's motion may be made at any time after the answer has been filed. The defendant's motion may be made at any time.

(2) The summary judgment procedure is designed to secure the just, speedy, and inexpensive determination of every action, except those disallowed by Article 969. The procedure is favored and shall be construed to accomplish these ends.

B....The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to material fact, and that mover is entitled to judgment as a matter of law.

C.(1) After adequate discovery or after a case is set for trial, a motion which shows that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law shall be granted.

11.

MYERS submits that there are no genuine issues of material fact in this matter and that he is entitled to judgment as a matter of law regarding his alleged violation of the zoning regulation set forth in the CITY-PARISH's Petition for Preliminary and Permanent Injunction.

12.

Additionally, MYERS submits that there are no genuine issues of material fact in this matter and that he is entitled to judgment as a matter of law regarding the unconstitutionality of the CITY-PARISH's application of the Uniform Development Code's definition of "family" to the zoning regulation.

13.

In conclusion, MYERS asserts that this Court should grant the instant Motion for Summary Judgment because, for the reasons stated above and also for the reasons set forth in the attached supporting Memorandum and exhibits, there are no genuine issues of material fact and MYERS is entitled to judgment as a matter of law.

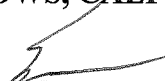
WHEREFORE, for the reasons stated above and also for the reasons set forth in the attached supporting Memorandum and exhibits, there being no genuine issue of material fact in this matter, MYERS respectfully requests that this Honorable Court grant his Motion for Summary Judgment and issue a judgment:

- 1) Dismissing the CITY-PARISH's Petition for Permanent Injunction, with prejudice, and at the CITY-PARISH's cost;
- 2) Declaring that the that the zoning regulation which MYERS is accused of violating, to wit, Unified Development Code Title 7, Chapter 8, Section 8.201, Appendix H, Permissible Uses of the City of Baton Rouge and Parish of East Baton Rouge, is unconstitutional on its face and as applied and contrary to federal and state law; and
- 3) Ordering the CITY-PARISH to pay all costs of these proceedings, and for all other just and equitable relief.

Signature on next page.

RESPECTFULLY SUBMITTED,

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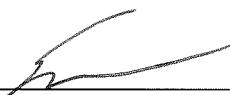
CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served on the CITY OF BATON ROUGE / PARISH OF EAST BATON ROUGE and the OFFICE OF THE ATTORNEY GENERAL, STATE OF LOUISIANA, through their counsel of record listed below, by hand delivery, e-mail, facsimile transmission, and/or by depositing same in the United States Mail, properly addressed and postage prepaid, this 21st day of December, 2012:

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