

STATE OF INDIANA)
) SS:
COUNTY OF SPENCER)

IN THE SPENCER CIRCUIT COURT

2007 TERM

CAUSE NO: 74C01-0512-MI-482

SPENCER COUNTY PLAN COMMISSION
and
SPENCER COUNTY BOARD OF COMMISONERS
Plaintiffs

vs.
PLAZA GROUP PROPERITIES, LLC
and
ROBERT W. ALLEN
and
FUEL IN DALE, LLC.

Defendants

FILED
SPENCER CIRCUIT COURT

MAR 09 2007

Ann L. Jecklin
CLERK SPENCER CIRCUIT COURT

PARTIAL SUMMARY JUDGMENT AND ORDER

This cause is before the Court on the Plaintiffs' Motion for Summary Judgment and the Defendants' Cross Motion for Summary Judgment.

The Court will first address the constitutionality of Spencer County Ordinances 2005-8, 2005-9, 2005-10, 2005-11. Some matters are beyond dispute. Hours of operation restrictions for adult businesses, many of which are more restrictive than those in question, have been upheld as constitutional in numerous federal appellate decisions. Similarly, federal appellate courts have upheld interior configuration operational requirements as a valid means of preventing illegal sexual behavior in adult business. And stripper-patron buffers have passed constitutional muster.

The ordinances contain procedural safeguards. That is, the licensing requirements provide for a relatively quick decision and allow for prompt judicial review of that decision. The county ordinances allow for alternative sites. And there has been no real argument that the ordinances are in any way vague, overbroad or violative of anyone's equal protection rights.

In passing the ordinances cited above, the County relied on numerous studies, reports and appellate cases. The defendants argued that these reports must be significantly tailored to the locality in question. The Court rejects this argument.

In adopting regulations, the Supreme Court in Renton said that the County may rely upon evidence "reasonably believed to be relevant" to the secondary effects of sexually oriented businesses. The County's reliance satisfied this requirement.

Finally, the defendants rely on the New Albany II case for the proposition that the County ordinances are not narrowly tailored as to the location requirements. That case was the decision of a trial court. This Court rejects the reasoning in that decision. The fact that there may be imagined less-restrictive alternatives does not negate the fact that the ordinances provide reasonable alternative avenues of communication. Adult businesses have not been denied a reasonable opportunity to open and operate. The regulations restricting operations within 1,000 feet of a residence are valid.

Based on the above, the Court concludes that the ordinances in question are constitutional.

The Court will next address the building ordinance/building permit issue. Spencer County Ordinance 2005-02 is a valid ordinance requiring owners of real property to apply for and obtain a building permit prior to the alteration or remodeling of any building or structure the cost of which exceeds \$5,000. The Court is eliminating any costs for painting or carpeting or anything that might be considered redecorating. Even in so doing, the evidence is overwhelming through affidavits and photographs of the many alterations done to the main building that the reasonable cost of those alterations far exceeded \$5,000. The affidavits of the plaintiff identify many and numerous alterations and the estimated cost therefore which were totally ignored by the defendants' affidavits.

The evidence before the Court can only lead to the conclusion that the defendant began extensive alterations and remodeling of the main building without first obtaining the required building permit. Any use of the main building was unlawful and thus the defendants have not lawfully used the main building as a sexually oriented business.

The defendants did not use the C-store to sell anything until December 12, 2005. Spencer County Ordinance 2005-10 was already in effect at that time. The Court has already found said ordinance to be constitutional. Said ordinance is applicable with regards to any operation of the C-store.

When the motel was first operated as a motel after the defendants acquired the property is in question.

There are competing affidavits on that question. The answer to that question could very well be dispositive of the issue. However, the evidence is not so clear on either side which would allow this Court to find that there are undisputed facts.

Summary judgment is inappropriate with regard to the motel. A short evidentiary hearing will be necessary.

The Court finds that summary judgment is not appropriate with regard to fines. An evidentiary hearing will be necessary at which time the defendants may have the opportunity to give any evidence which might mitigate potential fines. It is the Court's preference that this matter be held in abeyance until any appellate activity in this cause is concluded.

IT IS THEREFORE ORDERED that the plaintiff receive a summary judgment that the Spencer County ordinances in question are constitutional.

IT IS FURTHER ORDERED that the plaintiffs receive a summary judgment that the defendants have violated the County building code and a summary judgment that the defendants have not established any lawful, non-conforming sexually oriented business at the main building.

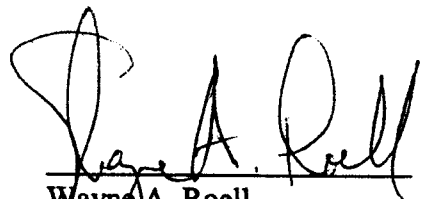
IT IS FURTHER ORDERED that the plaintiffs receive summary judgment that the ordinances in question are applicable to any operation within the C-store.

IT IS FURTHER ORDERED that the plaintiffs are entitled to a summary judgment granting a permanent injunction against the defendants from operating a sexually oriented business at the main store or the C-store.

IT IS FURTHER ORDERED that either party may request an evidentiary hearing with regard to the operation of the motel.

IT IS FURTHER ORDERED that the defendants' Cross Motion for Summary Judgment be denied.

IT IS FINALLY ORDERED that there is no just reason for delay and the Court directs entry of judgment on all of the issues ruled upon by this Court.

A handwritten signature in black ink, appearing to read "Wayne A. Roell". The signature is written in a cursive style with a large initial "W" and "R".

Wayne A. Roell
Judge, Spencer Circuit Court