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City of Louisville v. The Women's Club of Louisville

CARSON P. PORTER*

In 1973, the City of Louisville created the Landmarks Commission under an ordinance modeled after the New York City ordinance.¹ Mayor Harvey Sloan, who was dedicated to the cause of preservation, had appointed me to be General Counsel of the Landmarks Commission. In that office, I became embroiled in the first test case of the Louisville ordinance. There were many problems, but with the help of Frank Gilbert and others at the National Trust for Historic Preservation, we have weathered the storm. I will tell you about one of our problems.

In 1973, the Women's Club of Louisville, which owned an absolutely gorgeous old building and two Victorian houses adjacent to that building, petitioned the newly created Landmarks Commission for approval to demolish those houses and replace them with a "parking garden." Once this petition had been filed, it became incumbent upon me, the new General Counsel to this new organization, to determine whether the Commission had the authority to stop the Club from demolishing the houses. It did not. It had the authority to negotiate with the Club, and therefore, we entered into negotiations — unproductive negotiations that lasted nine months. At that point, the Mayor, concerned citizens, members of the Commission and I petitioned our Board of Aldermen to take a significant step. We asked Louisville's governing body to file a lawsuit utilizing its constitutional authority of eminent domain to condemn and acquire these two houses in order to preserve them and to prevent their demolition. In Kentucky, that was a unique proposal. Generally, condemnation is used in Kentucky only to destroy things and to replace them with the likes of parking lots. In this case, we were trying to reverse that trend by proposing to use condemnation to preserve; in the process we were up against one of the most venerable organizations in our community, a club totally dedicated to public service.

The Board of Aldermen wisely and unanimously approved the filing of that lawsuit. Litigation commenced on March 4, 1975. The saga of this litigation is divided into three parts. We lost the first part, the skirmish. Counsel for the Women's Club contended that there was no constitutional authority to condemn in order to preserve. We felt somewhat comfortable in that three decisions of the United States Supreme Court with a total ruling of 27 to 0, happened to be in our favor. Judge Thomas A. Ballantine of Jefferson Circuit Court, however, ignored those decisions and ruled in favor of the Club. Nonetheless, we had obtained a temporary restraining order, paving the way for an injunction. Judge Ballantine did continue the injunction throughout the appeal and throughout any further litigation because, after all, if the Club had demolished the houses, our appeal would have been moot.

We won the second part. Although it took about a year, we finally received a determination from the Kentucky Supreme Court that they did not know whether it was permissible to condemn for historic preservation, and in fact, they did not really care. The case, as it was presented to that court, had nothing to do with constitutional authority to condemn for preservation purposes because, as we had argued, the historic preservation ordinance had no relevance to the exercise of condemnation authority. Once we had left the forum of the administrative agency and transferred to the forum of our legislative body, the latter had absolute authority, as clearly expressed in the Constitution of the Commonwealth of Kentucky, to condemn anything for a public purpose, as long as they did not defraud people in exercising that power (there was no such allegation in this case) and as long as they paid just compensation for the property as determined by a trial court.² The Supreme Court of Kentucky wisely and unanimously agreed with that argument. Like the United States Supreme Court, they prefer to sidestep a constitutional issue whenever possible, so they decided this case exclusively on the basis of jurisdiction. As far as the constitutional issue is concerned, our saga has little implication for potential litigation outside Kentucky.

The third part was a tie. When we returned to our circuit court, we tried the case as to value. The plaintiff, the City of Louisville, had the burden of proving how much the houses were

worth. We called two expert witnesses, who testified that these houses were only worth \$100,000 because of the neglect of the owners, the Women's Club, during the three or four years of negotiation and litigation. The Women's Club, though, brought in three appraisers who said that the houses were grand examples of Richardsonian Roman National Architecture, which they are, and who contended that the property was worth \$250,000. The panel awarded \$175,000, the midpoint between the two appraisals. The City of Louisville paid the award and obtained title to the property. We are now trying to renovate these two homes, prime examples of Victorian architecture of which the City of Louisville is very proud.

Many localities are reluctant to condemn because of the high cost of acquisition. It may help if I tell you how we raised the money. Most of it came from the municipal treasury, the rest from private donations. Mayor Sloan was being criticized by people who were opposed to allocating public funds for preservation of these two houses when the City faced potential strikes by the police and firemen for pay raises. He told me that either we had to back out of the litigation or we had to plumb the depths of the commitment of the people who had encouraged the litigation. He asked me to raise \$30,000 as a demonstration of broad community support for preservation. Within seven days, we raised \$35,000. We called meetings of preservation supporters and talked with them about how a government had gone out on a limb for them, and it was time for them to climb the tree and get out there too. Government is a two-way street. If the citizens did not participate in it, and give it their commitment, and this time it meant some dollars, then they couldn't expect to have all their concerns continually addressed by local government. Once we raised the \$35,000, we deposited it with the court as evidence of good faith, and there was never another word from anyone in state or local government about spending the other \$140,000 when the jury verdict came in.

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1. NEW YORK, N.Y., ADMIN. CODE ANN., ch. 8-A (Williams 1976 & Supp. 1981).

2. KY. CONSTITUTION § 13,242.