NOT DESIGNATED FOR PUBLICATION

PROJECT RETURN	*	**NO. 2001-CA-1353**
VERSUS	*	**COURT OF APPEAL**
CITY OF NEW ORLEANS	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
	*	

*** * * * * * ***

CONSOLIDATED WITH:	**CONSOLIDATED WITH:**
DE GAULLE INVESTMENTS, L.L.C.	**NO. 2001-CA-1354**
VERSUS	
CITY OF NEW ORLEANS	

CONSOLIDATED WITH:	**CONSOLIDATED WITH:**
DEGAULLE INVESTMENTS, L.L.C.	**NO. 2002-CA-1385**
VERSUS	
CITY OF NEW ORLEANS	

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NOS. 99-15222 C/W 99-15465, DIVISION "I"
Honorable Kim M. Boyle, Judge Pro Tempore
* * * * * *

Judge David S. Gorbaty

* * * * * *

(Court composed of Judge Joan Bernard Armstrong, Judge Patricia Rivet Murray, Judge David S. Gorbaty)

ARMSTRONG, J., CONCURS
MURRAY, J., CONCURS WITH REASONS

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REVERSED

In this appeal, plaintiffs DeGaulle Investments, L.L.C. (“DeGaulle”)

and Project Return contend that the trial court erred in upholding the finding of the Administrative Adjudication Bureau for Public Housing and Environmental Violations ("Bureau") that DeGaulle and Project Return violated Section 5.4.3 of the Comprehensive Zoning Ordinance. For the reasons set forth below, we reverse.

FACTS AND PROCEDURAL HISTORY

DeGaulle owns an office building at 2703 General DeGaulle Drive in New Orleans. The property is located in a B-1 zoning district (Neighborhood Business District). On January 7, 1999, DeGaulle leased the building to the Administrators of the Tulane Education Fund. The Administrators of the Tulane Education Fund utilized the property for a program called Project Return.

Project Return offers counseling and job skill training to former inmates seeking to become assimilated to life outside of prison. The program operates in ninety-day cycles. During that time, participants meet Monday through Friday, from eight o'clock in the morning until four-thirty in the afternoon. They spend the entire day at Project Return, except for a one-hour lunch break, during which they may leave the premises.

The City of New Orleans received a complaint about the property. As a result, on May 3, 1999, the Zoning Administrator for the Department of Safety and Permits ("Zoning Administrator") conducted an inspection. The Zoning Administrator concluded that the activity being conducted there was not a permitted use in a B-1 zoning district.

On June 28, 1999, defendant issued a Notice of Hearing to DeGaulle and Project Return that alleged violation of Section 5.4.3 of the Comprehensive Zoning Ordinance ("CZO") of the City of New Orleans, Ordinance No. 4263 M.C.S., by the operation of a Rehabilitation Training Center at the property. The notice required that DeGaulle and Project Return appear at a hearing before the Bureau on August 13, 1999.

After the hearing, on August 27, 1999, the Bureau found that DeGaulle and Project Return had violated Section 5.4.3 of the CZO. The Bureau fined plaintiffs $500.00 and assessed them the hearing costs of $75.00. Plaintiffs appealed the decision of the Bureau to the Civil District Court for the Parish of Orleans. The trial court affirmed the decision of the Bureau on April 20, 2001. Plaintiffs subsequently filed this appeal.

DISCUSSION

Plaintiffs argue that the trial court erred in concluding that the Bureau had jurisdiction and authority to prosecute zoning violations. Further, plaintiffs contend that the trial court erred in allowing the City of New Orleans to classify ex-convicts as an "environmental danger" to falsely create jurisdiction for the Bureau.

The trial court found that "…the clear language of La. R.S. 13:2576 (A) would appear to be broad enough to include the City's authority, through the AAB, to regulate zoning matters that impact the environment."

La. R.S. 13:2576(A) provides:

> Any municipality having a population of four hundred fifty thousand or more may prescribe civil fines for violation of public health, housing, fire code, environmental, or historic district ordinances in the municipality by owners of immovable property, their agents, tenants, or representatives pursuant to the procedures for administrative adjudication provided in this Chapter. For the purposes of this Chapter, "housing violations" shall encompass only those conditions in privately owned structures which are determined to constitute a threat or danger to the public health, safety, or welfare and/or to the environment, or a historic district. Provided, however, nothing in this Section shall be construed to affect activities which occur on the premises of manufacturing facilities and which are regulated by Title 30 of the Louisiana Revised Statues of 1950.

The regulation of the environment falls within the City's legitimate governmental purpose of protecting the health and safety of its citizens. The regulation of the environment not only includes the regulation of pollution

sources that affect the air, water, and ground, but also includes the application of traditional zoning laws controlling the location, size, and use of buildings that impact other environmental problems.

In *Standard Materials, Inc. v. City of Slidell*, 960684 (La. App. 1 Cir. 9/23/97), 700 So.2d 975, the court stated that "[t]he power of local governments to zone and control land use is broad, and its proper exercise is an essential aspect of achieving quality of life." 960684 at p. 19, 700 So.2d at 988. The court upheld the City of Slidell's use of its zoning ordinances to "minimize the impact of the potential environmental problems." 960684 at p. 19, 700 So.2d at 989. The broad authority of R.S. 13:2576 to enforce environmental violations through the administrative process includes the enforcement of violations of zoning ordinances, because that is the manner in which cities commonly and broadly regulate the environment.

Furthermore, the Code of the City of New Orleans grants the Bureau the authority to enforce violations of the CZO as follows:

> Sec. 6-34. Authority of the hearing officer.
>
> Hearing officers who have been appointed and sworn in accordance with section 6-33 shall have the authority to hear and decide public health, housing, and environmental violations. Adjudication authority of the hearing officer shall include but not be limited to:
>
> * * *
>
> (23) Violations of M.C.S., Ord. No. 4,264, as amended, the Comprehensive Zoning Law of the City of New Orleans…

Code 1956, Section 2B-4; M.C.S., Ord. No. 17,299, Section 1, 12-1-95.

The City of New Orleans is a pre-existing home rule municipality and is free of state interference when exercising within its charter boundaries and not in conflict with the state constitution. *See City of New Orleans v. Board of Comm'rs of New Orleans Levee Dist.*, 93-0690 (La. 7/5/94), 640 So.2d 237, 244-45. The City's home rule powers include the power to initiate local zoning ordinances as long as they are consistent with the constitution. *Id.* There is no conflict between the state law, R.S. 13:2576(A), and the enforcement of environmental violations via zoning ordinances. Therefore, we find that the Bureau has authority to enforce zoning violations under either State law or the Code of the City of New Orleans. This assignment of error is without merit.

Plaintiffs next argue that the trial court erred in holding that the hearing officer's decision was not an abuse of discretion, notwithstanding the fact that the hearing officer's decision that Project Return operated a "Rehab Training Center" was manifestly erroneous. Plaintiffs further contend that the trial court erred in failing to review the zoning

administrator's arbitrary and capricious interpretation of the CZO.

Zoning Administrator of the Department of Safety and Permits, Paul May, testified at the hearing that the Project Return facility falls into the category of "Rehabilitative-Recovery/Care Center" ("RR/CC"), which is defined in Article 2, Section 2.2 of the CZO, and is not permitted in a B-1 zone:

> 149. Rehabilitative-Recovery/Care Center. A building other than an apartment hotel, hotel, small or large group home, rooming house, tourist home, motel or motor lodge, **providing temporary lodging and board and a special program of specialized care and counseling on a full-time basis**. Such a center includes but is not limited to centers which provide for alcohol and drug abuse clientele, former inmates of prisons or correctional institutions, or former patients of mental illness institutions where such centers are operated under the auspices of an entity which is designated as educational, religious, eleemosynary, public or nonprofit by the Federal Internal Revenue Service **and is licensed by the State of Louisiana.** (Emphasis added.)

Mr. May explained that pursuant to Article 3, Section 3.2 of the Zoning Ordinance, "uses not permitted are prohibited," and disallowed Project Return's use of the property as a not permitted, and thus prohibited, function in a B-1 zone.

Plaintiffs argue that the facility is used for administrative and general office functions, which are permitted in a B-1 zone pursuant to Article 5,

Section 5.4.3. They point out that they do not provide lodging and board as per the definition of a rehabilitation center. In addition, Project Return does not provide "a program of specialized care;" only counseling is given. Finally, Project Return is not licensed by the State of Louisiana, as also required by the definition.

The first principle of zoning law is that because zoning ordinances are in derogation of a citizen's constitutionally protected right to own and use his property, they must be construed, when subject to more than one reasonable interpretation, according to the interpretation that allows the least restricted use of the property. *City of New Orleans v. Elms,* 556 So.2d 626, 632 (La. 1990), superseded by Statute, *see, Parish of Jefferson v. Jacobs,* 623 So.2d 1371 (La. App. 5 Cir. 1992), *as quoted in Palm-Air Civic Ass'n., Inc. v. Syncor Intern. Corp.,* 1997-1485 (La.App. 4 Cir. 3/4/98), 709 So.2d 258, *see also Flex Enterprises, Inc. v. City of New Orleans,* 2000-0815 (La. App. 4 Cir. 2/14/01), 780 So.2d 1145. In other words, where a CZO provision is subject to more than one interpretation, the least restrictive interpretation must prevail. *Palm-Air,* 709 So.2d at 262; *Flex Enterprises, Inc.,* 780 So.2d at 1151.

The Zoning Administrator found that Project Return's use of the property was not defined in the CZO. Therefore, the Zoning Administrator, in interpreting the CZO, looked to similar uses that were defined. He admitted that the facility was used for office functions including administration, counseling, and classrooms. However, the Zoning Administrator concluded that Project Return's use was closest to an RR/CC and was thus prohibited. This finding was erroneous. Under *Palm-Air* and *Flex Enterprises,Inc.*, since there was more than one reasonable interpretation, the least restrictive interpretation should have been applied. The usage of the property should have been compared to that of a general office, which would have been permissible under the zoning ordinances. Therefore, the trial court erred in holding that the hearing officer's decision was not an abuse of discretion. Since we find that appellants' argument has merit, we pretermit discussion of the remaining assignments of error.

CONCLUSION

Accordingly, for the foregoing reasons, the judgment of the trial court is reversed.

REVERSED