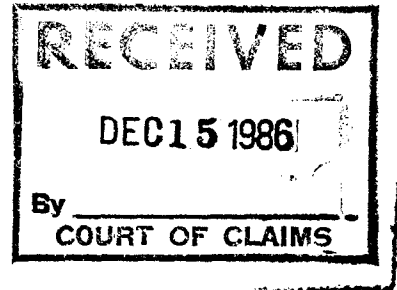


IN THE COURT OF CLAIMS OF OHIO

RICHARD TAYLOR, ET AL. :
 Plaintiffs, : CASE NO. 86-11146
 v. :
 DEPARTMENT OF REHABILITATION :
 AND CORRECTION, ET AL. :
 Defendant-Third Party :
 Plaintiffs, :
 v. :
 CITY OF CLEVELAND :
 Third-Party :
 Defendant. :



AMENDED THIRD PARTY COMPLAINT FOR DECLARATORY JUDGMENT, PRELIMINARY INJUNCTION AND PERMANENT INJUNCTION

GENERAL ALLEGATIONS

1. Ohio prisons are grossly overcrowded. As of January 1, 1986, 20,500 inmates were housed in institutions designed to hold only 13,000. The state's prison population has been rising steadily for several years, due in part to public outcry for tougher laws. This has resulted in longer sentences for felony convictions, increasing the average stay in prison by 60 percent.

2. Third Party Plaintiff, Department of Rehabilitation and Correction, is bound by a Consent Decree entered in the United

States District Court, Northern District of Ohio, Eastern Division, in Boyd, et al v. Denton, et al., Case No. C78-1679, wherein Chief Judge Battisti ordered the closing of the present housing facilities (except for "E Dorm") at the Ohio State Reformatory at Mansfield by December 31, 1986. The Department of Rehabilitation and Correction is entitled to six-month extensions of that deadline only upon a showing of continuous good faith progress toward the completion of the Northeastern Ohio Reformatory and the Dayton Reformatory.

3. Recognizing the need for more prison space, the Ohio General Assembly approved Am. Sub. H.B. 530 in 1982, which authorizes the Ohio Building Authority to issue \$638 million in bonds to finance the construction of 14 new state prisons and the expansion of two existing facilities.

IDENTIFICATION OF PARTIES

4. Plaintiffs have filed a complaint against Defendants, Department of Rehabilitation and Correction and the Department of Administrative Services. Copies of the complaint, Defendants' answer, and all other pertinent pleadings were attached to the Third-Party Complaint as Exhibits A through G and are incorporated herein by reference.

5. Third Party Defendant, City of Cleveland is a municipal

corporation located within Cuyahoga County, Ohio.

6. Vincent Lombardi is the director of the Department of Community Development, and Francis G. Cash, is the Commissioner of the Division of Building and Housing, Department of Community Development. Cash, under the direction of Lombardi, is responsible for the issuance of demolition permits, building permits and certificates of occupancy, and for the enforcement of the Cleveland zoning code. The following offices are under the control of the Division of Building and Housing: the Examiner of Plans, the Examiner of Construction, the Bureau of Plumbing, the Bureau of HVAC, the Bureau of Electrical, and the Bureau of Elevators.

7. Mitchell Brown is the director of the Department of Public Safety. The Division of Fire, the Division of Traffic, Engineering & Parking, and the Division of Police are each divisions of the Department of Public Safety.

8. Jeffrey D. Comfort is the director of the Department of Health and Human Resources. The Division of Air Pollution Control, Division of Environmental Health and the Division of Health are each divisions of the Department of Health and Human Resources.

9. W. Dale Wegrich is the director of the Department of Public Utilities, of which there is a Division of Water and Heat.

10. Joseph L. Stamps is the director of the Department of

Public Service. The Division of Streets, Division of Engineering and Construction, Division of Waste Collection and Disposal, and Bureau of Sidewalks are each divisions of the Department of Public Service.

11. W.G. Teare is the chairman of the City Planning Commission, which is required to review all proposed zoning changes and to make a recommendation to City Council regarding the changes.

12. The State of Ohio is the owner of property within the City of Cleveland commonly known as the Coit Road G.M. Fisher Body Plant (hereinafter referred to as "Coit Road property"), which is more fully described in Exhibit H, attached to the Third-Party Complaint and incorporated herein by reference; and property within the City of Cleveland located at East 30th St. and Orange Avenue commonly known as the Cuyahoga County Pre-Release Center site (hereinafter referred to as "Pre-Release Center").

STATEMENT OF CLAIM

COUNT ONE

13. Defendant Third Party Plaintiffs incorporate paragraphs one (1) through twelve (12).

14. The Coit Road property was purchased on November 26, 1985, for the purpose of building part of the Northeastern Ohio

Reformatory, a 500-bed medium security facility to be called the Cleveland Correctional Institution, pursuant to Section 5 of Am. Sub. H.B. 530, 114th General Assembly, as subsequently amended by Am. Sub. S.B. 550 and Am. Sub. H.B. 269, 114th General Assembly, Am. Sub. H.B. 291 and Am. S.B. 381, 115th General Assembly, and by action of the State of Ohio Controlling Board, pursuant to Am. S.B. 381.

15. Am. Sub. H.B. 530, as subsequently amended, requires that the Northeastern Ohio Reformatory be constructed "at a site that is wholly or partly within Cuyahoga County and that is within the regularly scheduled service area of one or more modes of public transportation."

16. The Coit Road property is the previous site of the G.M. Fisher Body Plant, which has been closed for about four or five years. The site, consisting of approximately 45 acres, contains abandoned, dilapidated, decaying structures, as well as hazardous wastes, such as asbestos, PCB's, wood-block flooring saturated with creosote, large pits filled with contaminated materials, and other unknowns in containers, piping and pits. The property is surrounded by obtrusive fencing.

17. The initial phases of the prison construction project involve the demolition of the dilapidated structures and removal of the hazardous materials, in accordance with standards promulgated by the United States Environmental

Protection Agency. The finished correctional facility will be surrounded by an aesthetically pleasing, landscaped mound of earth which will conceal a security fence enclosing the facility.

18. Ordinances adopted by Third Party Defendant, City of Cleveland, impose multiple legal impediments to the construction of a state correctional facility anywhere within its city limits:

a. The Cleveland Zoning Code does not designate a state correctional facility as a permitted use in any of its zoning districts. The Coit Road property is currently zoned by the City of Cleveland as a General Industrial District.

b. On June 23, 1986, the City of Cleveland passed Ordinance No. 1682-86, a complete copy of which was attached to the Third-Party Complaint as Exhibit I and is incorporated herein by reference. The ordinance forbids the use of any city services, resources, funds, credit or facilities for the planning, construction, maintenance or operation of any state correctional facility within the Cleveland City limits.

c. The ordinance makes it a misdemeanor for Cleveland city employees to perform their duties to issue permits, provide police and fire protection and provide water and

electrical services in connection with the planning, construction, maintenance or operation of any state correctional facility within the Cleveland City limits.

d. The ordinance prohibits any Cleveland city employee from processing a request for a zoning change or variance for the construction of any state correctional facility within the Cleveland City limits.

19. On August 5, 1986, the project managers for the construction of the correctional facility submitted an application for demolition of existing buildings on the Coit Road property.

20. Francis G. Cash, Commissioner, Division of Building and Housing, refused to process such application "on the advice of counsel, pursuant to Ordinance No. 1682-86." See Exhibit J, attached to the Third-Party Complaint and incorporated herein by reference.

21. Third Party Defendant has also imposed, or will impose, the following obstacles:

a. Lombardi and Cash, or individuals under their control, will continue to refuse to process and grant an application for a demolition permit for Third Party Plaintiffs or their contractors.

b. Jeffrey D. Comfort, or individuals under his control, will refuse to process and grant an application

for a hazardous waste removal permit for Third Party Plaintiffs or their contractors.

c. Lombardi and Cash, or individuals under their control, will refuse to process and grant an application for a building permit to Third Party Plaintiffs or their contractors.

d. W. Dale Wegrich, or individuals under his control, will refuse to approve the application for a building permit for Third Party Plaintiffs or their contractors, and will refuse to provide water service to the Coit Road site.

e. Mitchell Brown, or individuals under his control, will refuse to approve the application for a building permit for Third Party Plaintiffs or their contractors and will refuse to provide fire and police protection to the Coit Road site.

f. Jeffrey D. Comfort, or individuals under his control, will refuse to approve an application for a building permit for Third Party Plaintiffs or their contractors.

g. Joseph L. Stamps, or individuals under his control, will refuse to approve an application for a building permit for Third Party Plaintiffs or their contractors, and will refuse to provide waste collection and disposal for the Coit Road site.

h. W.G. Teare, or individuals under his control, will

refuse to approve an application for a building permit of Third Party Plaintiffs or their contractors, and will refuse to review and recommend any proposal by Third Party Plaintiffs or their contractors for a zoning change.

i. Marilyn G. Zack, or individuals under her control, will refuse to approve an application for a building permit for Third Party Plaintiffs or their contractors.

22. Ordinance No. 1682-86 and the Cleveland zoning code interfere with the sovereign power of the State of Ohio and are in conflict with the general laws of the State.

23. The "general laws" of the State, which take precedence over local ordinances are those that involve the concern of the State for the peace, health and safety of all of its people. Am. Sub. H.B. 530, is a "general law"; it specifically states at Section 27, "This act is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, safety, and welfare. The reason for such necessity lies in the immediate need for the rehabilitation and construction of facilities for the Department of Rehabilitation."

24. A city ordinance cannot forbid and prohibit what a statute permits and licenses. Municipalities cannot enact and enforce legislation which will obstruct or hamper the sovereign in the exercise of a sovereignty not granted away.

25. Cleveland Ordinance No. 1682-86 is invalid and

unconstitutional as it applies to Third Party Plaintiffs.

26. The zoning restrictions and any other impediments imposed by the City of Cleveland in the construction of the correctional facility on the Coit Road property, interfere with and must give way to the sovereign power of the State of Ohio in preserving the public peace, health, safety and welfare.

27. Third Party Plaintiffs have no adequate remedy at law and, unless the Coit Road project is allowed to proceed immediately and unimpeded by Third Party Defendant, Third Party Plaintiffs will suffer immediate and irreparable harm.

COUNT TWO

28. Third Party Plaintiffs incorporate paragraphs one (1) through twenty-seven (27).

29. Am.Sub.H.B. 530, requires the construction of buildings:

on one or more sites in Cuyahoga County to provide housing in one or more facilities for Department of Rehabilitation and Correction inmates who have a brief period of time to serve before release from prison; construction to commence immediately.

30. Third Party Plaintiffs, in order to perform the duties imposed by Am.Sub.H.B. 530, are presently constructing a 350 bed, male, administrative security facility to house inmates who are within six (6) weeks of their release. This facility is known as the Cuyahoga County Pre-Release Center.

31. The land upon which the Pre-Release Center is being

built is located at East 30th and Orange Avenues in the City of Cleveland. This land is owned by the State of Ohio.

32. To date, the site has been excavated; utility line trenches have been dug; three buildings have been built and enclosed in which interior construction is proceeding; and foundation walls have been erected or are in the process of being erected on the other nine (9) buildings.

33. Ordinances adopted by Third Party Defendant impose multiple legal impediments to completion of the construction of the Pre-Release Center. These include, but are not limited to:

a. The Cleveland Zoning Code does not designate a state correctional facility as a permitted use in any of its zoning districts. The Pre-Release Center property is currently zoned by the City of Cleveland as a General Industrial District; and

b. On June 23, 1986, the City of Cleveland passed Ordinance No. 1682-86, a complete copy of which was attached to the Third-Party Complaint as Exhibit I and is incorporated herein by reference. The ordinance forbids the use of any city services, resources, funds, credit or facilities for the planning, construction, maintenance or operation of any state correctional facility within the Cleveland City limits.

c. The ordinance makes it a misdemeanor for Cleveland city employees to perform their duties to issue permits, provide police and fire protection and provide water and electrical services in connection with the planning, construction, maintenance or operation of any state correctional facility within the Cleveland City limits.

d. The ordinance prohibits any Cleveland city employee from processing a request for a zoning change or variance for the construction of any state correctional facility within the Cleveland City limits.

34. Third Party Plaintiffs, acting by and through their employees and/or contractors employed by them, have made application to various agencies of the Third Party Defendant City of Cleveland for water permits, and the removal and relocation of municipal electric utility lines located on the site of the project. Officials, agents, and/or employees of the Third Party Defendant have refused to accept and/or process all applications submitted to them.

35. Third Party Defendant City of Cleveland has also imposed or will impose the following obstacles:

a. W. Dale Wegrich, Director, Cleveland Department of Public Utilities, or individuals under his control, will refuse to provide water service to the Pre-Release Center site; refuse to approve the application of Third Party

Plaintiffs and their contractors to tie the sanitary and storm sewer lines of the Pre-Release Center into those of the City of Cleveland and refuse to relocate municipal power lines and poles currently on the site to another location off site.

b. W.G. Teare, Chairman, Cleveland City Planning Commission, or individuals under his control, will refuse to review and recommend any proposal by Third Party Plaintiffs or their contractors for a zoning change.

36. The zoning restrictions and any other impediments imposed by the City of Cleveland in the construction of the Pre-Release Center, interfere with and must give way to the sovereign power of the State of Ohio in preserving the public peace, health, safety and welfare.

WHEREFORE, Third Party Plaintiffs pray that this Court:

AS TO COUNT ONE

a. Declare City of Cleveland Ordinance No. 1682-86 invalid and unconstitutional as it applies to Third Party Plaintiffs;

b. Declare the City of Cleveland zoning ordinances invalid and unconstitutional as applied to and as they affect the Third Party Plaintiffs' intended use of the Coit Road property;

c. Declare Third Party Plaintiffs immune from the Cleveland zoning restrictions in the proposed use of the Coit Road property as a correctional facility;

d. Enjoin Third Party Defendant to issue any and all permits and zoning variances or changes needed for the Coit Road project; and,

e. Enjoin Third Party Defendant to furnish to the Coit Road site the following services: water and sewerage, police and fire protection, waste collection and disposal, and any and all other services provided by the city which are necessary for the construction, maintenance and operation of the correctional facility.

Third Party Plaintiffs further pray that this Court:

f. Retain jurisdiction of this action in order to issue such further orders to the Third Party Defendant as may be necessary to prohibit it from interfering with the completion of the Coit Road project;

g. Enjoin Third Party Defendant from imposing criminal or civil sanctions against Third Party Plaintiffs, their employees, agents, contractors, and subcontractors, for the failure to obtain permits for the Coit Road project;

h. Enjoin Third Party Defendant from interfering with the progress of the Coit Road project while this matter is pending;

i. Grant such other relief as is necessary and just; and,

AS TO COUNT TWO:

j. Declare City of Cleveland Ordinance No. 1682-86 invalid and unconstitutional as it applies to Third Party Plaintiffs;

k. Declare the City of Cleveland zoning ordinances invalid and unconstitutional as applied to and as they affect the Third Party Plaintiffs' intended use of the Pre-Release Center property;

l. Declare Third Party Plaintiffs immune from the Cleveland zoning restrictions in the proposed use of the Pre-Release Center property as a correctional facility;

m. Enjoin Third Party Defendant to issue any and all permits and zoning variances or changes needed for the Pre-Release Center Project; and,

n. Enjoin Third Party Defendant to furnish to the Pre-Release Center site the following services: water and sewerage, police and fire protection, waste collection and disposal, and any and all other services provided by the city which are necessary for the construction, maintenance and operation of the correctional facility.

Third Party Plaintiffs further pray that this Court:

o. Retain jurisdiction of this action in order to issue such further orders to the Third Party Defendant as may be necessary to prohibit it from interfering with the completion of the Pre-Release Center project;

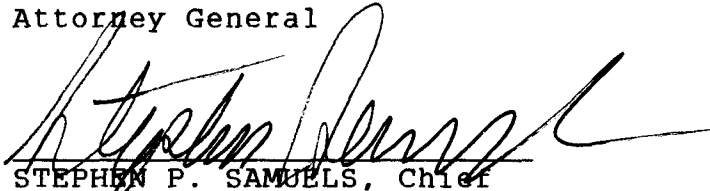
p. Enjoin Third Party Defendant from imposing criminal or civil sanctions against Third Party Plaintiffs, their employees, agents, contractors, and subcontractors, for the failure to obtain permits for the Pre-Release Center;

q. Enjoin Third Party Defendant from interfering with the progress of the Pre-Release Center project while this matter is pending; and,

r. Grant such other relief as is necessary and just.

Respectfully submitted,

ANTHONY J. CELEBREZZE, JR.
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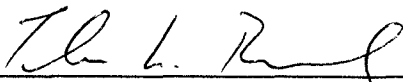


THOMAS L. ROSENBERG
Assistant Attorney General

COUNSEL FOR DEFENDANTS
DEPARTMENT OF ADMINISTRATIVE
SERVICES AND DEPARTMENT OF
REHABILITATION AND
CORRECTION

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Amended Third Party Complaint has been sent by regular U.S. Mail, postage prepaid, on this 15 day of December, 1986 addressed to Howard J. Sterling, 75 Public Square, Suite 512, Cleveland, Ohio 44113; Joseph R. Compoli, Jr., 768 East 185th Street, Cleveland, Ohio 44113, Attorneys for Plaintiffs and to Stuart A. Friedman, Assistant Director of Law, Room 106, City Hall, 601 Lakeside Avenue, Cleveland, Ohio 44114; and Anthony J. Garofoli, Climaco, Seminatore, Lefkowitz and Garofoli, Ninth Floor, Halle Building, Cleveland, Ohio 44115, Attorneys for Third Party Defendant City of Cleveland.



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Assistant Attorney General