

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY  
TWENTY-FIRST JUDICIAL CIRCUIT  
STATE OF MISSOURI

MONARCH FIRE PROTECTION DISTRICT,	)	
	)	
Plaintiff,	)	
	)	Cause No. 22SL-CC00405
v.	)	
	)	Div. 2
CITY OF WILDWOOD, MISSOURI,	)	
	)	
Defendant.	)	

CITY OF WILDWOOD’S MOTION TO DISMISS OR IN THE ALTERNATIVE MOTION  
FOR A MORE DEFINITE STATEMENT

Defendant, the City of Wildwood, Missouri (the “City”), for its Motion to Dismiss, or in the alternative, Motion for a More Definitive Statement, pursuant to Rule 55.27, states:

1. Plaintiff’s Petition alleges there is a dispute between the City and Plaintiff, the Monarch Fire Protection District, stemming from Plaintiff’s desire to build a firehouse at 18304 Horse Creek Road, Wildwood, Missouri.

2. Specifically, Plaintiff claims the City’s actions have allegedly caused an unreasonable delay with respect to Plaintiff’s ability to construct the new firehouse.

3. Plaintiff seeks a declaratory judgment, and a preliminary and permanent injunction in the form of “an Order of this Court that the Monarch Fire Protection District can construct new Fire House 2 on its property located at 18304 Wild Horse Creek Road, Wildwood, Missouri, without approval of the [City]. . .”

4. Plaintiff’s Petition fails to state a claim upon which relief can be granted for the reasons outlined below.

I. Plaintiff’s Time for Seeking Review of the Conditions of the Conditional Use Permit Has Expired

5. Portions of the Petition appear to be directed at conditions included within the Conditional Use Permit granted by the City. For example, in Paragraph 28, Plaintiff discusses a setback requirement that it believes is “in excess of the footage otherwise required by the City of Wildwood.” See Petition, ¶ 28.

6. As Plaintiff correctly alleges, on April 12, 2021, the City Council held a hearing pursuant to Section 415.500(I) of the City Code, which authorizes the Council to review the Planning Commission’s decision to grant or deny a conditional use permit application. A copy of City Code, Section 415.500 is attached as **Exhibit A**.

7. Pursuant to City Code § 415.500(I)(c), the City has adopted the procedures and rules of evidence applicable to a contested case as set forth in Chapter 535, RSMo., when conducting a public hearing to review a decision by the Planning Commission.

8. Pursuant to § 536.100, RSMo., a party aggrieved by a final decision in a contested case has thirty (30) days to seek judicial review of that decision.

9. The City provided its Findings and Facts and Conclusions of Law to Plaintiff regarding the Conditional Use Permit on or about May 5, 2021.

10. Plaintiff is therefore barred from seeking review of the conditions included within the Conditional Use Permit.

## II. The Petition Fails to Identify a Justiciable Controversy Ripe for Determination

11. The Petition fails to allege the existence of any actual, existing justiciable controversy between Plaintiff and the City.

12. A court may grant a declaratory judgment if there is: “(1) a justiciable controversy; (2) legally protective interests; (3) a controversy ripe for judicial determination; and (4) an inadequate remedy at law.” *Century Motor Corp. v. FCA US LLC*, 477 S.W.3d 89, 95 (Mo. App. E.D. 2015).

13. A justiciable controversy means a “real, substantial, presently existing controversy admitting of specific relief, as distinguished from an advisory decree upon a purely hypothetical situation.” *Id.* (citing *Mo. Soybean Ass’n v. Mo. Clean Water Comm’n*, 102 S.W.3d 10, 25 (Mo. banc 2003)). Thus, “[t]he facts on which the decision is demanded must have accrued so that the judgment declares the existing law on an existing state of facts.” *Id.* (internal citation omitted). If the issue before the Court is not ready for judicial determination, then any judgment is a nullity. *Id.* (internal citation omitted).

14. The only decision by the City that is arguably at issue is a comment by City staff that the access easement “to the Loggia Property will require a fifty (50) foot setback to be established from its eastern edge to its site.” *See* Petition, ¶ 36.

15. Plaintiff alleges no facts or law indicating why the comment is problematic from a legal standpoint or more importantly, why the comment is sufficient to establish a claim for declaratory judgment. For example, Plaintiff does not allege it cannot comply with the setback requirements, or that the City somehow lacks authority to require the setback. This is significant because declaratory judgment actions are designed to “settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations.” § 527.120, RSMo.; *Ferguson Police Officers Ass’n*, 670 S.W.2d at 925 (“One of the main purposes of the [declaratory judgment] remedy is to resolve conflicts in legal rights before a loss occurs.”).

16. The Petition is devoid of any allegations as to any uncertainties or insecurities with respect to Plaintiff’s individual rights, status, or other legal relations in connection with the City or under the City’s Zoning Ordinance at all. For example, other than a general reference to *City of Frontenac v. St. Louis County Library*, Cause No. 19SL-CC02728, the Petition does not identify any case law, statute, or ordinance on which Plaintiff bases its claim for declaratory judgment.

17. Plaintiff also does not contest the validity of the City's Zoning Ordinance, nor does it seek a declaration as to the powers and duties of the City thereunder.

18. Furthermore, other than the comment by City staff about the setback requirement discussed above, the only other allegation involves an alleged *delay* by the City with respect to issuing an excavation permit—but, the permit was in fact granted. In that regard, Plaintiff's claim appears to be centered on obtaining an advisory opinion from the Court that the City should simply work faster. This kind of relief is simply not available under a claim for declaratory judgment. See *Century Motor Corp.*, 477 S.W.3d at 95 (“A court cannot render a declaratory judgment unless the petition presents a controversy ripe for judicial determination.”).

### III. Insufficient Allegations to Establish No Adequate Remedy at Law

19. Plaintiff's Petition also fails to establish they have no adequate remedy at law.

20. The only allegations discussing adequate remedy at law appear in Paragraph 42 of the Petition, which merely states: “Plaintiff has no other remedy at law.” Such conclusory allegations are insufficient to meet the pleading standards under the Rules. See *Pulitzer Publ'g Co. v. Transit Cas. Co.*, 43 S.W.3d 293, 302 (Mo. banc 2001) (“Missouri rules of civil procedure demand more than mere conclusions that the pleader alleges without supporting facts.”).

21. Plaintiff has pleaded no facts establishing it has no adequate remedy at law, which is an essential element of its claim.

### IV. Plaintiff's Request for Injunctive Relief Fails

22. When considering a request for injunctive relief, a court should weigh, among other things, the movant's probability of success on the merits and “the balance between [the alleged harm] and the injury that the injunction's issuance would inflict on other interested parties, and the public interest.” *State ex rel. Dir. of Revenue v. Gabbert*, 925 S.W.2d 838, 839 (Mo. banc

1996).

23. For the reasons discussed above, the Petition fails to state a claim for declaratory judgment. Plaintiff's request for injunctive relief therefore also must fail. See *Goerlitz v. City of Maryville*, 333 S.W.3d 450, 455 (Mo. banc 2011) (holding "an injunction is a remedy and not a cause of action; therefore, it must be based on some recognized and pleaded legal theory.").

V. **In the Alternative, Request to Strike Request for Attorneys' Fees**

24. Alternatively, if the Court does not dismiss the Petition, then the City requests that the Court strike Plaintiff's request for attorneys' fees in that Plaintiff has not alleged the existence of any contract or statute that would permit it to recover attorneys' fees; there is no claim of collateral litigation; and Plaintiff fails to allege any facts that would permit it to recover attorneys' fees under the "balance the benefits" theory. See *Essex Contracting, Inc. v. Jefferson County*, 277 S.W.3d 647, 657 (Mo. banc 2009); *Stephenson v. First Missouri Corp.*, 861 S.W.2d 651, 658 (Mo. App. W.D. 1993).

WHEREFORE, Defendant, the City of Wildwood, Missouri, hereby respectfully requests this Court dismiss Plaintiff's Petition with prejudice, or in the alternative and at a minimum, require Plaintiff to make a more definite statement with respect to the facts and basis on which it asserts its claim, and grant such other and further relief as the Court shall deem proper and appropriate in the circumstances.

Respectfully Submitted,

HAMILTON WEBER LLC

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing was served this 17th day of March, 2022 by:

       United States mail, postage prepaid;  
  X   electronic transmission via Case.net;  
       facsimile transmission at        a.m./p.m.  
       hand delivery; to:

Mathew Hoffman, #44276  
1115 Locust Street, 4<sup>th</sup> Floor  
St. Louis, MO 63101  
(314) 436-7800  
(314) 231-0323 – Facsimile

/s/ John H. Kilper