

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI

DILLARD’S, INC.,)	
)	
Plaintiff,)	
)	Case No.
vs.)	
)	Division No.
CITY OF CHESTERFIELD,)	
)	
<u>SERVE AT:</u> 690 Chesterfield Pkwy W)	
Chesterfield, MO 63017)	
)	
Defendant.)	

**PETITION FOR DECLARATORY JUDGMENT, INJUNCTIVE RELIEF AND
JUDICIAL REVIEW**

COMES NOW Plaintiff, Dillard’s, Inc., and for its Petition for Declaratory Judgment, Injunctive Relief and Judicial Review, states to the Court as follows:

1. Plaintiff Dillard’s, Inc. (“Dillard’s” or “Plaintiff”) is a Delaware corporation registered to do business in the State of Missouri.
2. Defendant City of Chesterfield (“Chesterfield” or “Defendant”) is a municipal corporation duly organized and existing as a third-class city under the laws of the State of Missouri.
3. Dillard’s owns real property located in Chesterfield, Missouri and is a taxpayer, paying state and county taxes of all kinds, including real estate taxes and personal property taxes.
4. Venue is proper in St. Louis County, Missouri in that both Plaintiff and Defendant are residents of St. Louis County, per applicable law and this matter concerns real property located in St. Louis County, Missouri.
5. On July 25, 2022, the City Council of Chesterfield adopted Resolution No. 479 which purportedly authorized formation of and established the Tax Increment Financing

Commission of the City of Chesterfield, Missouri (“TIF Commission”). A true and correct copy of Resolution No. 479 is attached hereto as Exhibit 1 and incorporated herein by reference.

6. The TIF Commission and/or Chesterfield engaged a consulting company, PGAV Planners (“PGAV”), to prepare a plan for redevelopment for acreage previously known as the Chesterfield Mall and acreage currently being developed and known as Wildhorse Village.

7. On October 21, 2022, PGAV issued to the TIF Commission a report titled “Chesterfield Regional Tax Increment Financing Redevelopment Plan & Project” (the “Redevelopment Plan”), a true and correct copy of which is attached hereto as Exhibit 2 and incorporated herein by reference.

8. On information and belief, Chesterfield did not request bids or proposals for implementation of the redevelopment project as required by Section 99.280.1(3), R.S.Mo.

9. Section 99.810, R.S.Mo. requires that, in submitting a redevelopment plan involving tax increment financing, the proposed developers must submit an “affidavit, signed by the developer or developers ... attesting that the provisions of this subdivision have been met.”

10. The affidavits from the two proposed developers, Wildhorse Village, LP (“Wildhorse”) and TSG Downtown Chesterfield Redevelopment, LLC (“TSG”), submitted as Appendix C to the Redevelopment Plan, do not provide any personal attestations by the Developers that the statutory provisions have been met, as required by statute, but rather, merely attest that the Plan prepared by PGAV states as much. As such, the affidavits submitted by the proposed developers do not meet the statutory requirements.

11. The Redevelopment Plan specified and recommended a Redevelopment Area of approximately 241 acres (“Redevelopment Area”), which is more fully described in the Redevelopment Plan. The Redevelopment Area consists of parcels that had either been previously

developed (the Chesterfield Mall acreage) or that are currently under development (the Wildhorse Village acreage) without the use of tax increment financing.

12. Plaintiff is the fee owner of approximately seventeen (17) acres within the portion of the Redevelopment Area formerly known as Chesterfield Mall (the “Dillard’s Parcel”).

13. The Redevelopment Plan envisions new, mixed-use development, which includes commercial and retail development, associated parking, residential development and other public improvements in the Redevelopment Area. Approximately 75 acres represent the property previously known and operated as the Chesterfield Mall, and most of the remaining acreage has been and is currently under development (without the use of tax increment financing) and known as Wildhorse Village.

14. The Redevelopment Plan purports to conclude that the Redevelopment Area meets the requirements for designation as a “blighted area” as defined in Section 99.805(1), R.S.Mo. by virtue of factors “including, but not limited to: Insanitary (sic) or Unsafe Conditions; Deterioration of Site Improvements; Existence of Conditions Which Endanger Life or Property by Fire and Other Causes; Economic Liability; and Social Liability.” The Redevelopment Plan further purports to conclude that the Redevelopment Area: a) “has not been subject to growth and development through investment by private enterprise” and b) “would not reasonably be anticipated to be developed without the adoption of tax increment financing.”

15. These purported conclusions with respect to the Redevelopment Area are arbitrary, capricious, and without evidentiary basis or support.

16. On September 13, 2022, November 1, 2022, November 15, 2022, and November 21, 2022, the TIF Commission held meetings and/or public hearings and received comments from some interested persons and entities relative to the Redevelopment Plan and Redevelopment Area.

17. At the meeting held on November 21, 2022, the TIF Commission recommended by majority vote that the Chesterfield City Council, by means of a city ordinance, formally designate the 241 acres discussed in the Redevelopment Plan (Exhibit 2 attached hereto) as a Redevelopment Area and approve the Redevelopment Plan.

18. On December 5, 2022, the Chesterfield City Council held a meeting at which there were first readings of Proposed Bills No. 3416 and 3417. A second reading was scheduled to occur at a Special City Council meeting on December 14, 2022.

19. At the Special City Council meeting on December 14, 2022, Proposed Bills No. 3416 and 3417 received their second reading and were subsequently approved by unanimous votes of the City Council.

20. The proposed bills were designated and numbered as Ordinance No. 3217 and Ordinance No. 3218, respectively. True and correct copies of the two ordinances are attached hereto as Exhibits 3 and 4 and incorporated herein by reference. Ordinance No. 3217 adopts and approves the Redevelopment Plan. Ordinance No. 3218 adopts and approves the RPA-2 Redevelopment Project as described in the Redevelopment Plan, which involves the Wildhorse Village portion of the Redevelopment Area.

21. Proper notice of one or more of the public hearings of the TIF Commission was not provided to Dillard's (and, upon information and belief, other taxpayers whose land lies within the Redevelopment Area), as owner of land within the Redevelopment Area, as required by Section 99.830, R.S.Mo., and on information and belief, the TIF Commission proceeded with the hearing(s) despite the lack of proper notice for the same.

22. Section 99.810.1(1), R.S.Mo. provides that no redevelopment plan involving tax increment financing shall be adopted by a municipality without findings that: 1) the redevelopment

area on the whole is a blighted area; 2) the redevelopment area has not been subject to growth and development through investment by private enterprise; and 3) the redevelopment area would not “reasonably be anticipated” to be developed without the adoption of tax increment financing. This latter finding is commonly known as the “but for” test.

23. Ordinance No. 3217 (Exhibit 3 attached hereto), in Section 1.A., includes the following purported findings by the City Council:

- a. The Redevelopment Area on the whole is a “blighted area,” as defined in Section 99.805 of the Real Property Tax Increment Allocation Redevelopment Act;
- b. The Redevelopment Area has not been subject to growth and development through investment by private enterprise without the adoption of tax increment financing;
- c. The Redevelopment Area would not reasonably be anticipated to be developed without the adoption of tax increment financing; and
- d. The Redevelopment Area includes only those parcels of real property and improvements thereon directly and substantially benefited by the Redevelopment Plan.

24. These purported findings were arbitrary, capricious, and without evidentiary basis or support, and the City Council ignored material facts and evidence establishing that the Redevelopment Area was not blighted and that the Redevelopment Plan did not satisfy the statutory requirements.

25. For example, pursuant to Section 99.810.1(1), R.S.Mo., in order to enact an ordinance providing for tax increment financing (*e.g.*, Ordinance No. 3217), the City Council was

required to find that the Redevelopment Area on the whole is a blighted area. However, neither PGAV nor the TIF Commission or the City Council did a parcel-by-parcel determination of blight. If such a parcel-by-parcel determination had been done as required, the Redevelopment Plan would clearly show that based on square footage, the areas of alleged blight are substantially less than the areas that are not blighted. The maps attached as exhibits to the Redevelopment Plan (Exhibit 2 attached hereto) show that the majority of all of the alleged blighting factors are located on just two parcels – the Dillard’s Parcel and then one oddly configured parcel that includes all of the enclosed mall and a portion of the parking areas owned by one of the developers, TSG – which two parcels collectively total only approximately 40 acres of the approximately 241 acre Redevelopment Area. Even if those two parcels were to meet the definition of blight per the statute (which they do not), they only make up approximately 16.67% percent of the Redevelopment Area – nowhere close to more than half or “on the whole.”

26. As to “blighted area,” 99.805(1), R.S.Mo. requires findings that the area is a “social liability or menace to the public health, safety, or welfare in its present condition and use” and an ensuing “economic liability.” Yet, the Redevelopment Plan contains no facts or findings regarding the same. For example, there are no references to the number of police and/or emergency services required to respond to the Redevelopment Area (nor that they are any greater than any other area). There are no references to any fires. The Redevelopment Plan even states that PGAV found no evidence of any break-ins to the Dillard’s building. The Redevelopment Plan references a partially full paint can that was thrown in the enclosed mall and graffiti in the small parking garage that is part of the Dillard’s Parcel (which is basically hidden) as evidence of “unsafe conditions” and evidence of “persistent criminal behavior,” but there are no references to any muggings, shootings, drug dealings, burglaries or any other truly criminal, unsafe or unsanitary condition.

27. Even if the limited information regarding the conditions described in the Redevelopment Plan were enough for blight, those conditions were limited to just two of the many parcels that are part of the Redevelopment Area, which is insufficient to support the required legislative finding of blight with respect to the Redevelopment Area as a whole.

28. Furthermore, in its report, PGAV fails to mention any contact it had with Dillard's, while it comments that the vacant Dillard's Parcel is an economic liability. If PGAV had contacted Dillard's, it would have learned that Dillard's wants and intends to reopen its retail store on the Dillard's Parcel in connection with TSG's overall redevelopment. In fact, Dillard's and TSG have actively discussed the same for three and a half years, and TSG knew at all times that this was and is Dillard's intent and plan. Like PGAV, the City Council did not contact Dillard's to discuss Dillard's intent and plan for the Dillard's Parcel. The Dillard's Parcel does not represent an economic liability.

29. The City Council's finding of "blight" set forth in Ordinance No. 3217 was incorrect, arbitrary, capricious, and without evidentiary basis or support.

30. The statute further required that the City Council find that the proposed Redevelopment Area has not been subject to growth and development through investment by private enterprise. This requirement has also not been met, particularly given that the general area is currently booming with development and economic promise.

31. For example, a significant portion of the Redevelopment Area has already (for several years) been (in the case of the Chesterfield Mall) and/or is currently (in the case of Wildhorse Village) under development by private investors. TSG or an affiliate has been acquiring millions of dollars of property in the mall area without tax increment financing with the intent of

redeveloping it. Plaintiff itself has plans to redevelop and reopen its retail department store on the Dillard's Parcel without tax increment financing.

32. Based upon this and other evidence readily available and/or known to Defendant and the general public, the City Council, in enacting Ordinance No. 3217, did not establish satisfaction of the statutory requirement that the proposed redevelopment area has not been subject to growth and development through investment by private enterprise. Thus, the City Council's finding as to this issue was incorrect, arbitrary, capricious, and without evidentiary basis or support.

33. Similarly, there is no evidence to support any finding that the Redevelopment Area would not reasonably be anticipated to be developed without the adoption of tax increment financing. Wildhorse Village, the infrastructure of which is essentially completed and where high-rise residential units and garages are currently under construction, has been under development for over a year without tax increment financing. Additionally, TSG or an affiliate has acquired millions of dollars of property in the mall area with the intent of redevelopment without reliance upon tax increment financing.

34. Moreover, on information and belief, it has been Defendant, and not the developers, that introduced and continued pursuit of tax increment financing for the Redevelopment Area in collusion with the developers. On information and belief, the developers intended to develop the Redevelopment Area even without tax increment financing. TSG even placed large signs on the Chesterfield Mall property stating "WELCOME TO THE FUTURE HOME OF: DOWNTOWN CHESTERFIELD" and included a picture of the planned development prior to the passing of any TIF financing. TSG also submitted offers to purchase Dillard's Parcel – without tax increment financing and prior to the passing of any TIF financing - evidencing TSG's intent to develop the

property irrespective of tax increment financing. After Defendant introduced and continued to push for pursuit of tax increment financing, Defendant and the developers acted together in bad faith and intentionally disregarded and/or omitted material facts and/or willfully refused to conduct diligent inquiry with respect to the same in connection with the Redevelopment Plan, with the intent to strip property rights from landowners within the Redevelopment Area, including Dillard's, without proper process of law.

35. The City Council's finding that the proposed Redevelopment Area has not been subject to growth and development through investment by private enterprise was incorrect, arbitrary, capricious, and without evidentiary basis or support.

36. The Dillard's Parcel will not be directly and substantially benefited by inclusion in the Redevelopment Area or by the Redevelopment Plan itself, and the City Council's finding to the contrary was incorrect, arbitrary, capricious, and without evidentiary basis or support.

37. By way of example, the Redevelopment Plan provides that the tax increment financing will be in effect for 23 years. During this time period, by virtue of the fact that the Redevelopment Area is within and part of a TIF district, numerous taxing authorities will not receive the taxes they would otherwise receive for provision of services to the citizens of Chesterfield.

38. Section 99.810.1(5), R.S.Mo. requires that a cost-benefit analysis be performed prior to a municipality's adoption of a redevelopment plan including tax increment financing.

39. The Redevelopment Plan includes a purported Cost-Benefit Analysis, a true and correct copy of which is attached hereto as Exhibit 5 and incorporated herein by reference. However, this included analysis lacks factual/evidentiary support or justification for the assumed revenue or valuation projections of the project and is based upon pure speculation. Incredibly, the

analysis itself explicitly cautions the reader to look closely at the assumptions made without specifying or describing those assumptions. While Defendant may claim that the requirement of a cost-benefit analysis has technically been met, the actual analysis itself is meaningless and unresponsive of any positive effect of tax increment financing on the Redevelopment Area or the project.

COUNT I
DECLARATORY JUDGMENT

40. Plaintiff realleges and incorporates by reference the averments contained in Paragraphs 1 through 39 herein.

41. Pursuant to Section 527.020, R.S.Mo., “any person whose rights, status or other relations are affected by a ... municipal ordinance ... may have determined any question of ... validity arising under the ... ordinance ... and obtain a declaration of rights, status or other legal relations thereunder.”

42. By virtue of its ownership of the Dillard’s Parcel, Plaintiff’s rights, status and/or other relations are affected by Ordinance Nos. 3217 and 3218.

43. Ordinance No. 3217 and 3218 essentially constitute an unlawful taking of Dillard’s private property for a purpose other than a public purpose and without proper and due process. The Redevelopment Plan provides that in the event that Dillard’s, Defendant, and the developers are unable to reach an agreement as to the purchase of Dillard’s Parcel, Defendant may use the power of eminent domain to acquire the same under the Real Property Tax Increment Allocation Redevelopment Act.

44. Plaintiff will suffer irrevocable and irreparable injury and damage as a result of Chesterfield’s failure to comply with the requirements of Missouri statute and is arbitrary,

capricious, and unreasonable actions unless this Court declares Ordinance No. 3217, and consequently 3218, invalid.

45. If the Court determines that any part, section, or subsection of Ordinance Nos. 3217 and 3218 is unlawful, the entire ordinance is unlawful, such that no part, section, or subsection of the ordinance can be enforced. To the extent that Defendant wish to proceed with a redevelopment plan for the Redevelopment Area, Defendant must begin anew with the tax increment financing process as mandated by and in accordance with the requirements of Missouri statutes, including, but not limited to, giving proper notice to interested parties, holding required public hearings with opportunity for public comment, and making proper findings supported by competent evidence to support the proposed redevelopment plan.

46. Plaintiff has been, and will be, required to incur attorney's fees and costs in challenging Chesterfield's arbitrary and unreasonable actions as set forth above. In light of the special circumstances presented herein, this Court should award Plaintiff its attorney's fees and costs incurred herein.

WHEREFORE, Plaintiff prays that this Court:

a. Declare that Ordinances Nos. 3217 and 3218 are void, invalid and in violation of Sections 99.800 to 99.865, R.S.Mo.;

b. Declare that to the extent that Defendant wish to proceed with a redevelopment plan for the Redevelopment Area, Defendant must begin anew with the tax increment financing process as mandated by and in accordance with the requirements of Missouri statutes, including, but not limited to, giving proper notice to interested parties, holding required public hearings with opportunity for public comment, and making proper findings supported by competent evidence to support the proposed redevelopment plan;

- c. Alternatively, declare that the Dillard's Parcel may not be included within the Redevelopment Area or subject to the terms and provisions of the Redevelopment Plan;
- d. Alternatively, declare that the power of eminent domain may not be exercised against the Dillard's Parcel for purposes of the Redevelopment Plan, as the proposed taking is not for a public purpose, as permitting the taking would only be substituting one private purpose for another;
- e. Award costs and Plaintiffs' reasonable attorney's fees as permitted under Section 527.100, R.S.Mo. and Missouri Rule of Civil Procedure 87.09 or as otherwise allowed by law; and
- f. Enter such other relief as this Court deems appropriate.

COUNT II
JUDICIAL REVIEW OF MUNICIPAL ADMINISTRATIVE ACTION

47. Plaintiff realleges and incorporates by reference the averments in Paragraphs 1 through 46 herein.

48. Pursuant to Sections 99.820.4 and 99.825.1, R.S.Mo., the TIF Commission was required to hold public hearings and to make recommendations to "the government body" concerning the adoption of redevelopment plans and the designation of redevelopment areas.

49. As indicated above, the TIF Commission held public hearings culminating on November 21, 2022 and issued a Resolution approving the proposed Redevelopment Plan, designating the Redevelopment Area and expressing its "recommendations" to the City Council. A true and correct draft of the Resolution is attached hereto as Exhibit 6 and is incorporated herein by reference, as the final signed version has not been made available. The Resolution included findings: a) that "The Redevelopment Area on the whole is a 'blighted area,' as defined in Section 99.805.(1) (sic) ... , and has not been subject to growth and development through investment by private enterprise and would not reasonably be anticipated to be developed without the adoption

of tax increment financing;” b) the Redevelopment Plan conforms to the comprehensive plan for the development of the municipality as a whole; and c) the proposed Redevelopment Plan is “financially feasible” based upon the cost-benefit analysis provided to the TIF Commission.

50. The City Council purportedly approved the TIF Commission’s Resolution and recommendations.

51. The findings of the City Council in Ordinance No. 3217, as set forth above in this Petition, are unsupported by competent and substantial evidence upon the whole record and, therefore, are arbitrary and capricious and an abuse of discretion. Thus, Ordinance 3217 is an action in excess of the statutory authority and jurisdiction of the City of Chesterfield pursuant to 99.810, R.S.Mo. and other portions of the Real Property Tax Increment Allocation Redevelopment Act.

52. If Ordinance No. 3217 is found to be invalid, arbitrary, capricious and/or an abuse of discretion, Ordinance No. 3218 necessarily must fail as well.

53. Plaintiff is aggrieved by the enactment of Ordinance No. 3217 and has standing to challenge the same.

54. Plaintiff has exhausted all administrative remedies available.

WHEREFORE, Plaintiff prays that this Court:

- a. Declare that Ordinance No. 3217 is void and invalid because required statutory procedures were not complied with, and because the Ordinance includes findings that are unsupported by competent and substantial evidence upon the whole record, and therefore is inconsistent with the Real Property Tax Increment Allocation Redevelopment Act;

- b. Permanently enjoin Chesterfield from using tax increment financing in any manner whatsoever pursuant to said void and invalid ordinance; and
- c. Award costs and reasonable attorney's fees;
- d. Grant such other and further relief as this court may deem just and proper.

COUNT III
INJUNCTIVE RELIEF

55. Plaintiff realleges and incorporates by reference the averments in Paragraphs 1 through 54.

56. Plaintiff has no adequate remedy at law if Defendant is not enjoined as set forth herein.

57. There is a substantial threat of irreparable harm to Plaintiff if Defendant is not enjoined as set forth herein. The value of the Dillard's Parcel and other property interests of Plaintiff will be lost or substantially diminished if the Redevelopment Plan and/or the use of the power of eminent domain by Defendant as to the Dillard's Parcel for purposes of the Redevelopment Plan is not enjoined.

58. The harm that Plaintiff would incur if Defendant is not enjoined as set forth herein outweighs any potential harm to Defendant from the entry of the requested injunctive relief. Plaintiff is the lawful owner of the Dillard's Parcel and, as contemplated by the Redevelopment Plan, can be forced to terminate its ownership through condemnation or otherwise.

59. There is a substantial likelihood that Plaintiff will prevail on the merits of its claims against Defendant.

WHEREFORE, Plaintiff prays for relief as follows:

- a. That this Court issue its Order directing Defendant, upon a date and at an hour to be fixed by the Court in said Order, to show cause why a preliminary injunction

should not issue enjoining, prohibiting and restraining Defendant from doing the following pending the outcome of this litigation:

- i. attempting to or actively enforcing the provisions of Ordinances Nos. 3217 and 3218;
 - ii. using tax increment financing in any manner pursuant to Ordinances Nos. 3217 and 3218; and
 - iii. using eminent domain to force the divesting of Plaintiff's interests in the Dillard's Parcel.
- b. Following a preliminary injunction hearing, that this Court enter an Order enjoining, prohibiting and restraining Defendant from doing the following pending the outcome of this litigation:
 - i. attempting to or actively enforce the provisions of Ordinances Nos. 3217 and 3218;
 - ii. using tax increment financing in any manner pursuant to Ordinances Nos. 3217 and 3218; and
 - iii. using eminent domain to force the divesting of Plaintiff's interests in the Dillard's Parcel.
- c. After a full and final hearing on the merits of this cause, issue an Order permanently enjoining, prohibiting and restraining Defendant from:
 - i. attempting to or actively enforce the provisions of Ordinances Nos. 3217 and 3218;
 - ii. using tax increment financing in any manner pursuant to Ordinances Nos. 3217 and 3218; and

- iii. using eminent domain to force the divesting of Plaintiff's interests
in the Dillard's Parcel.
- d. Award Plaintiff its attorneys' fees and costs incurred in this matter; and
- e. Grant such other and further relief as this court may deem just and proper.

Respectfully submitted,

ROSENBLUM GOLDENHERSH, P.C.

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