

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI**

DOORACK BRICK CONTRACTING )  
COMPANY, )  
) )  
*Plaintiff,* )  
) )  
v. )  
) )  
THE CITY OF CHESTERFIELD, MISSOURI; )  
) )  
*and,* )  
) )  
MAYOR ROBERT NATION, in his individual )  
and official capacities; )  
) )  
*and,* )  
) )  
CITY ADMINISTRATOR MICHAEL HERRING, )  
in his individual and official capacities; )  
) )  
*and,* )  
) )  
JOHN AND JANE DOE MEMBERS OF THE )  
CHESTERFIELD CITY COUNCIL, in their )  
individual and official capacities, )  
) )  
*Defendants.* )

Case No. 19-CV-2236

**JURY TRIAL DEMANDED**

**COMPLAINT**

Plaintiff Doorack Brick Contracting Company (“Doorack Brick”) states as follows in support of its Complaint against Defendants the City of Chesterfield Missouri (the “City” or “Chesterfield”), Mayor Robert Nation, City Administrator Michael Herring, and John and Jane Doe Members of the Chesterfield City Council.

**Introduction**

Doorack Brick and its owners William G. Doorack and Marilyn B. Doorack (“the Dooracks”), have been caught in the crossfire of an ugly political dispute between current and

former factions of the Chesterfield City government, which has, out of animus, ambition and greed, sought to cripple them financially. When the Dooracks and Doorack Brick leased a valuable piece of commercial property—and their only substantial asset—to the City, on specific terms the City requested, they trusted the City to carry out its contractual obligations and to act in good faith. Instead, the City and City officials, including now-Mayor Robert Nation, used the Lease as a political cudgel against rivals at the expense of Doorack Brick and its property rights. Over time, as the City began to draw criticism for its failure to put the Property to any use, the past proponents of the Lease sought to deflect blame by attempting to coerce Doorack Brick into relinquishing its contractual rights. By threatening to rezone the Property from commercial to Parks and Scenic and destroy its value the City hoped to force Doorack Brick to sell the Property at a 75-percent discount to the agreed-upon contractual price. Doorack Brick refused the City's demand and the City followed through on its threat.

Of course, the City never had any intention of using the Property as a park, or in any manner consistent with a Parks and Scenic zoning. Nor did it put the Property to such use. In fact, the City made no plans for any park; and admitted that City politics would never have permitted such use. For the Lease term, the Property laid vacant. Just prior to the Lease's end, Doorack Brick requested that the Property be rezoned back to its original "General Extensive Commercial" designation. Though the City could not dispute the current Parks and Scenic zoning is incompatible with the Property's private ownership, it refused Doorack Brick's request.

The City's actions and the actions of its agents and officials breached the plain terms of the Lease, which required the parties to act in good faith and only allowed for rezoning to accommodate the City's actual use of the Property. More importantly, the City's intentional, malicious, and arbitrary conduct violated Doorack Brick's clearly established rights under the

Fifth and Fourteenth Amendments to the Constitution of the United States, as well as the corollary provisions of the Missouri Constitution. Doorack Brick now seeks monetary, injunctive, declaratory, and punitive relief.

**Parties, Jurisdiction and Venue**

1. Plaintiff Doorack Brick is a corporation organized and existing under the laws of the State of Missouri with a principal place of business located in Des Peres, Missouri.

2. Doorack Brick is a citizen of the State of Missouri.

3. At all times relevant to this suit, Doorack was owned and operated by the Dooracks, an elderly married couple residing in St. Louis County, Missouri.

4. Defendant City of Chesterfield is, and at all times material hereto has been, a municipal corporation and a political subdivision of the State of Missouri.

5. Defendant Robert Nation is currently the Mayor of the City; from 2007 to April 17, 2013, Nation was a member of the Chesterfield City Council.

6. Defendant Michael Herring, at all times material hereto, was acting as the City Administrator for the City.

7. John and Jane Doe Defendants were members of the Chesterfield City Council at the time of the events alleged herein.

8. This matter arises under the Civil Rights Act of 1871, 42 U.S.C. § 1983 *et. seq.*, and the Fifth and Fourteenth Amendments to the Constitution of the United States. As such, subject matter jurisdiction is appropriate in this Court pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3). As to all non-federal claims, Doorack Brick invokes the Court's supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

9. Venue in this Court exists pursuant to 28 U.S.C. § 1391(a) and (b) because all defendants reside in the State of Missouri, at least one defendant resides in this judicial district, and the events or omissions giving rise to the claims raised herein occurred in this judicial district.

### **The Property**

10. At all times relevant to this dispute, Doorack Brick has owned a contiguous parcel of land located at 16659 Old Chesterfield Road (the “Property”). A survey of the Property prepared for the City of Chesterfield is attached hereto as Exhibit A.

11. The Property is bordered on the south and west by Old Chesterfield Road and on the North by railroad tracks operated by the Chicago Rock Island and Pacific Railroad. The land to the east of the Property houses various commercial enterprises including Suntrup Towing and Transport and the Chesterfield Antique Mall.

12. The Property was originally zoned “C-7,” a General Extensive Commercial zoning designation, by St. Louis County in 1965 prior to the incorporation of the City of Chesterfield.

13. For the majority of the Property’s life, it was used by Doorack Brick as a Brickyard and for other industrial and commercial uses.

### **The Lease**

14. In 2008, anticipating their retirement from active operation of Doorack Brick, the Dooracks sought to lease the Property to generate a consistent income stream to fund their retirement.

15. Doorack Brick received several offers to lease the Property.

16. On December 10, 2008, Doorack Brick and Chesterfield Village, Inc. executed a “Ground Lease and Purchase Option” for the Property (the “Lease”). A true and correct copy of this Lease is attached hereto as Exhibit B.

17. Among other terms, the Lease provided:

- a. An annual rent of \$78,000 was to be paid to Doorack Brick.
- b. The Tenant was required to pay all taxes assessed against the Property.
- c. The terms of the Lease were effective for ten (10) years following a two-month due diligence period.
- d. The Tenant had the right to rezone the Property “to accommodate Tenant’s Use.”
- e. “Tenant’s Use” is a defined term meaning “the right to demolish any existing improvements and to remodel, reconstruct, and construct buildings and other improvements and to otherwise use and operate the Property, or cause the Property to be used and operated, in compliance with all Legal Requirements.”
- f. At any point after February 1, 2016, the Tenant could exercise an option to purchase the Property for \$1,000,000.

18. At the time the Lease was executed, the parties understood, and the Lease provided, that Chesterfield Village, Inc. intended to assign the Lease to the City to facilitate the Property’s development as a MetroLink station or transportation hub.

19. On April 1, 2009, Chesterfield Village, Inc. assigned the Lease to the City for the remaining lease term. A copy of the Agreement for Assignment and Assumption of Lease (the “Assignment”) is attached hereto as Exhibit C.

20. Under Paragraph 2 of the Assignment, the City assumed all the rights and obligations of a Tenant under the Lease.

21. The Assignment was approved by a vote of the Chesterfield City Council and the passage of Ordinance 2513.

### **The City's Internal Politics**

22. The monthly cost of the Lease immediately became a matter of consternation among the members of the Chesterfield City Council.

23. Robert Nation, then a Councilman, repeatedly voiced concerns that the City had made a bad deal and should look for ways to terminate the Lease or reduce its payments.

24. For the next four years, the City made no attempt to develop the Property, though it continued to make monthly rent payments to Doorack Brick.

25. In an October 23, 2009 email exchange between the Chesterfield City Attorney and the City Administrator, Michael Herring, the City Attorney recommended that, "if the Council wanted to end the lease," they should "try and sell the lease and purchase option." The City Attorney went on to note, "Given that the property is already zoned C-8 [sic] and on a prime corner. [sic] I could easily see a gas station or other commercial use wanting this location at a premium price." The City Administrator responded, "I agree!"

26. At the end of 2010, the Chesterfield City Council ordered the City Administrator to commission an appraiser to value the Property and present options for the future use of the Property.

27. On February 9, 2011, consistent with the purchase option price of \$1,000,000, the appraisal returned a valuation of \$950,000.

28. The appraisal also noted that “the highest and best use of the site is for future commercial development consistent with surrounding uses and in conformity with zoning requirements.”

29. In an email exchange with the City Administrator, Councilwoman Connie Fults expressed concerns that then-Councilman Robert Nation would seek to use the details of the appraisal to further attack the City’s involvement in the Lease during his campaign for Mayor of Chesterfield.

30. In a February 23, 2011 executive session of the Chesterfield City Council, then-Councilman Robert Nation expressed dismay with the results of the appraisal, demanded and was denied a copy of the appraisal, and stated that he thought the lease payments were too high. Councilmembers Logan, Segal, Geiger, Fults and Erickson all expressed their opinions that the City had negotiated a good deal for the lease of the Property and that it was in the City’s best interest to continue the lease and eventually purchase the Property.

31. Mr. Nation has since stated that Doorack Brick and the Dooracks were “the beneficiaries of . . . the Mayor, City Attorney, and City Administrator pulling the wool over the eyes of a foolish City Council.”

32. In August of 2011, the City Administrator, at the behest of then-Mayor Geiger, requested that the City determine “what would be involved in ENDING the Doorack lease,” as it was “becoming increasingly difficult to justify the \$84,000/year.” (Emphasis original.)

33. The City Attorney responded that “if we want to end the financial cost we should probably be thinking about a sale or lease of the property to a **commercial user.**” (Emphasis added.)

34. On April 17, 2013, Robert Nation was sworn in as the new Mayor of Chesterfield.

35. During the first months of Mayor Nation's tenure, the City began to publicly raise concerns with Doorack Brick and its attorney about the cost to rent the Property.

36. Mayor Nation has since stated that the City was not going to take responsibility for the actions taken during his predecessors' administrations.

37. Doorack Brick maintained that the internal politics of Chesterfield had no bearing on City's obligations under the Lease, that it had given the City everything it wanted in the Lease, and that it was entitled to the full amount of rent due under the terms of the Lease and Assignment.

### **The City's Threats**

38. Only July 17, 2013, the Chesterfield City Attorney sent a letter to an attorney representing Doorack Brick.

39. In this letter, the City Attorney stated that "the Chesterfield City Council wants to review its obligations under the sublease with Chesterfield Village, Inc. for the Doorack Property. Specifically, the City is concerned about the cost of the sublease, the cost of the purchase option and the future use of the property."

40. The City threatened that it had the power to rezone the property to a Parks and Scenic District, and would exercise that power if Doorack Brick did not agree to substantially reduce its compensation under the Lease, and falsely stated that a Parks and Scenic zoning "would certainly be a more correct zoning given the historical area that surrounds the property."

41. In this same July 17, 2013 letter, the City Attorney wrote, "The City understands that rezoning the property to Park and Scenic classification would hinder future use of the property." But that "[t]he City will leave the existing C-7 zoning intact, in exchange for the Dooracks agreeing to terminate the existing lease."



42. The City also offered not to rezone the Property if the Dooracks agreed to sell it to the City for \$250,000 (\$750,000 less than the agreed-upon purchase option).

43. Chesterfield City Administrator Michael Herring actively participated in the drafting of the July 17, 2013 letter, including the threat to rezone the Property should the Dooracks not agree to surrender their rights under the Lease.

44. Contemporaneous correspondence between the City Attorney and City Administrator shows that the City had no plans to develop the Property into a park, or anything else.

45. Instead, the City intended to force the Dooracks to sell the property cheaply and then prevent further development: “While the City had NO USE for this property, as far as I can tell, it might still be worth \$250K to have it never develop.” (Emphasis original.)

46. In an August 19, 2013 memorandum to the City Administrator, the City Attorney acknowledged that the elderly Dooracks understood the threat: “**Needless to say the Dooracks do not like any of these options, but also do not want the property rezoned to Parks and Scenic.** The Dooracks’s [sic], according to their attorney, depend on the monthly rent payments as a primary source of retirement income and do not want to lose that income stream. They do understand the constraints that a rezoning to the Parks and Scenic District would Place on their property.”

47. While the City has since attempted to characterize its July 17, 2013 letter as nothing more than an attempt to inform the Dooracks about actions that might affect the value of their property, correspondence between the City Attorney and City Administrator shows this characterization to be a pretense. The City’s intent was not to inform the Dooracks of a

contemplated change in the zoning of the Property, but to use the threat of such a change to force the Dooracks to sell the Property at far less than market value.

48. Characterizing the July 17, 2013 letter, the City Administrator wrote: “Regarding the attached letter, it’s obviously your sense that our **threat** to rezone the property to “Park/Scenic” is enough of a CONCERN, to Mr. Bakewll and his client, to cause him/them to agree to re-negotiate the current lease in terms more favorable to them ..... and to us!” (Emphasis original.) The City Administrator went on to state that he believed the City Council would not agree to purchase the property for \$500,000, but might agree to purchasing it for \$250,000 and that “the threat of rezoning the property to PARK/SCENIC could very well cause that to happen.”

49. Of course, an offer to purchase the Property at one-fourth of the agreed-upon purchase option (and then-appraised value) is not “terms more favorable” to the Dooracks or Doorack Brick.

50. In an October 9, 2013 email to the City Attorney, the City Administrator wrote that the Property was “on the wrong side of the levee, to serve as a ‘trailhead’” and suggested that members of the City Council, including Connie Fults, wanted the City to buy the Property “due to the political repercussions if the property were ever developed.”

#### **The Rezoning of the Property**

51. Doorack Brick and the Dooracks refused to accede to the threats made by the City in its July 17, 2013 letter and informed the City that rezoning the Property to a Parks and Scenic District would “drastically devalue the property and would be considered a regulatory taking and inverse condemnation by the City.”

52. On January 12, 2015, the City's Planning Commission held a hearing to determine whether to rezone the Property to Parks and Scenic. At that hearing, Marilyn Doorack stated that the rezoning of the property would have a tremendous adverse effect on the property. She explained that the Lease was structured so that the City would purchase the property at the end of the 10-year term. She stated she felt it wasn't right for the city to rezone the property to reduce its value rather than simply purchasing the property under the terms of the Lease.

53. At the January hearing, the City Attorney was asked whether the City planned to purchase the property, to which he responded that the City had not yet made a decision, but that if the City chose not to purchase the Property, the Property could be zoned back to commercial.

54. On May 11, 2015, the Planning Commission voted 8-0 to recommend rezoning the Property to Parks and Scenic.

55. On May 21, 2015, the City Planning and Public Works Committee voted 3-0 to recommend rezoning the property to Parks and Scenic and forwarded the motion to the City Council for final approval.

56. According to the City, the Parks and Scenic designation "goes hand-in-hand with the surrounding area which contains several properties that have been designated as Landmark and Preservation Areas (LPA). A change of zoning to the 'PS' Park and Scenic District for the large, vacant corner parcel would bring greater cohesiveness to this historically significant area in line with the Comprehensive Plan's vision."

57. That statement was and is false.

58. The below images show this "historically significant area":



59. On June 15, 2015, in coordination with the City Attorney and City Administrator, the City Council passed Ordinance No. 2856, following through on the City's threat to rezone the Property to Parks and Scenic. Defendant Nations signed the Ordinance on the same day.

60. On information and belief, the John and Jane Doe members of the City Council acted in coordination with the City Attorney and City Administrator, pursuant to an agreement to mislead other members of the City Council and the public, in order to avoid the political repercussions of continuing to do nothing with the Property.

61. One member of the City Council who voted in favor of the rezoning later voiced concern regarding the rezoning: “it was not uncommon (at least for me) to come to a meeting where something like this was presented and pitched where Nations, Herring, and [the City Attorney] would act as the pitchmen, answer questions, and proffer an opinion on what would be best for the City. I realize now looking back that it was perhaps naïve of me to presume they were all telling the truth and presenting what was best for Chesterfield. Most of the time what they pitched made sense and most of us would vote with the recommendation. Knowing then what I know now, I would have been much more skeptical on every issue. It was (and maybe still today) very difficult to get all of the details on every issue far enough in advance to be able to expertly vote on every matter. Some things came in fast and furious with limited details and limited time and we followed the advice of the people listed above. Again, knowing then what I know now, I should have sensed a red flag on these exact types of issues when they came up this way.”

62. At the time Property was rezoned, the City had no intention of purchasing the Property under the Lease’s purchase option or after the Lease’s termination. Mayor Nation was strongly against purchasing the property, though he approved rezoning the Property to Parks and Scenic.

63. At the time of the rezoning, the City had drawn up no plans to use the Property as a park or anything else.

64. When Mayor Nation was asked by the Dooracks why the City would rezone the Property without having any plan to use it, he stated, mistakenly, “well the contract provides for it.”



65. A year before the Lease's termination, Mayor Nation stated that the "political climate" made it impossible for the City to purchase the Property.

66. When asked how a piece of privately-owned property, zoned Parks and Scenic, could be put to any public use without the City purchasing or condemning it (both of which would requiring paying fair market value for the Property), Mayor Nation had no answer.

67. In characterizing the controversy that surrounded the City's payment of rent on a Property that had never been used or developed and the City's rezoning of that Property, the City acknowledged that political pressure had been exerted on members of the City Council who had voted for the Lease but could no longer justify it and who feared it being used as political ammunition against them.

68. During the remaining term of the lease (until February of 2019), the City made no attempt to develop the Property into a park or to put the property to any use that was consistent with its Parks and Scenic zoning. To this day, the Property remains vacant, as shown below.





**Inconsistent with Surrounding Uses**

69. The current Parks and Scenic zoning of the Property is inconsistent with the City of Chesterfield’s Comprehensive Land Use Plan, under which the Property is included in an “Urban Core” district.

70. The Unified Development Code for the City of Chesterfield provides that Urban Core districts are “intended to provide a method for commercial or mixed commercial and residential development.”

71. Though the City of Chesterfield’s Comprehensive Land Use Plan contemplates that certain areas within the city will be designated as “Parks/Recreation,” the Property is not included in any area so designated.

72. The current Parks and Scenic zoning of the Property is also inconsistent with the zoning of all adjoining properties.

- a. The property to the north contains a railroad and is zoned “C-7” General Extensive Commercial District.

- b. The property to the south is zoned “PC” Planned Commercial District.
- c. The properties to the east are zoned “C-7” General Extensive Commercial District and “PI” Planned Industrial District.
- d. The property to the west is zoned “NU” Non-Urban District, an inactive zoning designation.



**Destruction of Value**

73. In 2016, after the Property was rezoned to Parks and Scenic, the City commissioned another appraisal to determine the Property’s value. That appraisal returned a value of only \$400,000—nearly \$600,000 less than the 2011 appraisal when the Property was still zoned commercial.



74. In the 2016 appraisal, the appraiser noted: “while the present zoning places significant restrictions upon the potential use of the site, a representative of the City indicated that the property had previously been zoned commercial and the site could once again be rezoned commercial.”

75. The appraisal noted that the property was in an “AE flood hazard area” but that there were “no other significant impediments to general residential, commercial, or industrial construction on the site.”

76. The appraisal concluded that the highest and best use of the property was for future commercial development, and the City currently agrees with that fact.

77. Although the property was zoned as Parks and Scenic at the time of the appraisal, all of the highest and best uses of the property would require a rezoning back to commercial.

78. In 2018, Mayor Nation offered for the City to purchase the Property from Doorack Brick for \$200,000, inclusive of approximately \$90,000 in remaining payments under the Lease.

#### **End of the Lease Term**

79. The Lease and Assignment ended on February 8, 2019.

80. As of that date, the City had made no significant changes to the Property since 2010.

81. On information and belief, the City made no plans to develop the Property into a park at any time during the term of the Lease, nor did it plan to use the Property in any other manner consistent with its Parks and Scenic zoning.

82. Following the termination of the Lease and Assignment, Doorack Brick and the Dooracks repeatedly requested that the City zone the Property back to C-7.

83. Despite the City's statement that the Property could be zoned back to commercial, the City has been unwilling to do so.

84. Instead, the City claims that Doorack Brick and the Dooracks had been unreasonable in refusing to sell the Property to the City at a fraction of its value or to terminate the Lease prior to the agreed-upon term.

85. Missouri law, of course, contains no provision allowing municipalities to use zoning ordinances to penalize property owners who they deem have responded "unreasonably" to post-contractual demands.

#### **Future Use of the Property**

86. Doorack Brick is the only asset of any substantial value owned by the Dooracks, and the Property is the only current asset of Doorack Brick. Prior to the rezoning of the Property in 2015, the Dooracks intended to rent or sell the Property to fund their retirement.

87. The Dooracks are both in their eighties and William Doorack suffers from advanced dementia requiring expensive medical care.

88. Neither Doorack Brick nor the Dooracks intend to turn the Property into a park or to use the Property in any manner consistent with its current zoning. It would be economically infeasible for them to do so and would deprive Doorack Brick and the Dooracks of the Property's value and their only source of income.

89. Shockingly, though the City has asserted that a Parks and Scenic zoning is the most appropriate classification for the Property, the City has a plan for *commercial* construction on the Property. The current draft of the City's revised Comprehensive Land Use Plan plans call for the construction of "mixed use buildings" on the Property, to include "small retail and restaurant uses, as well as some artists studios/workshops." See Exhibit D at 10-14.

90. Not only is the City's future proposed use of the Property inconsistent with the Property's Parks and Scenic zoning, it is also inconsistent with the Property's private ownership and would require the City to either purchase or condemn the Property—and pay fair market value when doing so.

**COUNT I**  
**(Breach of Contract: Against Defendant City)**

91. Doorack Brick realleges and incorporates the allegations of Paragraphs Nos. 1-90 as though set forth in fully here.

92. Both the Lease and the Assignment are valid and enforceable contracts.

93. Under the terms of the Assignment, the City assumed all rights and obligations of a Tenant under the Lease between Doorack Brick and Chesterfield Village, Inc.

94. The Lease provided, in part, that in exchange for an annual payment of \$78,000 Doorack Brick would rent the Property to the Tenant (the City) for a period of ten years, ending on February 8, 2019.

95. The Lease also provided the City with the limited right to rezone the Property “to accommodate Tenant’s Use.”

96. Doorack Brick performed all of its obligations under the Lease.

97. In rezoning the Property to Parks and Scenic in 2015 and then making no attempt to develop the property in a manner consistent with this zoning classification, the City exceeded its limited right to rezone to *accommodate its use*. In the absence of this right, the rezoning of the Property breached Paragraph 2 the Lease and the implied duty of good faith and fair dealing.

98. As a direct and proximate result of the rezoning and of Defendant City's conduct, the Property lost a majority of its market value and Doorack Brick lost a substantial source of rental income.

99. To the extent Doorack Brick prevails in this breach of contract action, it is entitled to an award of attorneys' fees and costs pursuant to Paragraph 19 of the Lease.

WHEREFORE, Plaintiff Doorack Brick respectfully asks the Court to award it compensatory damages in excess of two (2) million dollars against Defendants for breach of contract and as a result of the diminution of the value of the Property and the loss of income from that Property. Doorack Brick additionally requests that the Court order specific performance of the City's obligations under the Lease and Assignment, including rezoning the property back to an extensive commercial designation.

**COUNT II**  
**(Substantive Due Process – 42 U.S.C. § 1983: Against All Defendants)**

100. Doorack Brick realleges and incorporates the allegations of Paragraphs Nos. 1-99 as though set forth in fully here.

101. Under Missouri and federal law, Doorack Brick had a valid and constitutionally-protected property interest in the previous commercial zoning of the Property, as well as a constitutionally-protected interest in not being subjected to arbitrary and capricious zoning decisions.

102. Defendants, under color of law, threatened to rezone the Property to Parks and Scenic as a negotiating tactic to force Doorack Brick to relinquish its unambiguous contractual rights under the Lease and Assignment.

103. When Doorack Brick refused to relinquish its rights, Defendants—motivated by animus against Doorack Brick and the Dooracks—intentionally, arbitrarily and capriciously engaged in reverse spot zoning by singling out the Property for different, less-favorable zoning treatment than neighboring property.

104. This use of Defendants' police power shocks the conscious, violates the trust between the City and its citizens, and is an egregious and extraordinary misuse of the City's zoning authority.

105. The conduct of individual Defendants Nation, Herring, and John and Jane Doe City Councilmembers violated clearly-established Constitutional standards set by both the Eighth Circuit and the Supreme Court. The actions of each individual defendant were taken under color of law, were motivated by animus against Doorack Brick and the Dooracks and were callously and willfully indifferent to federally-protected rights.

106. As a direct and proximate result of the rezoning and of Defendants conduct, the Property lost a majority of its market value and Doorack Brick lost a substantial source of rental income.

107. Under the foregoing facts, Defendants violated Doorack Brick's substantive due process rights under the Fourteenth Amendment to the Constitution of the United States.

108. To the extent Doorack Brick prevails in the instant case, it is entitled to an award of attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

WHEREFORE, Plaintiff Doorack Brick respectfully asks the Court to award it compensatory damages in excess of two (2) million dollars against Defendants as a result of the violation of Doorack Brick's constitutional rights, the diminution of the value of the Property and the loss of income from that Property. Doorack Brick is additionally entitled to recover punitive damages against Defendants Nation, Herring, and John and Jane Doe City Councilmembers in their individual capacities. Finally, Doorack Brick requests a mandatory injunction compelling the City to repeal Ordinance No. 2856 and rezone the Property from its current Parks and Scenic zoning back to an extensive commercial zoning.

**COUNT III**  
**(Equal Protection – 42 U.S.C. § 1983: Against All Defendants)**

109. Doorack Brick realleges and incorporates the allegations of Paragraphs Nos. 1-108 as though set forth in full here.

110. In rezoning the Property to Parks and Scenic, Defendants intentionally, arbitrarily and irrationally singled out the Property and Doorack Brick as a “class of one” for different, less-favorable zoning treatment than all surrounding properties.

111. Defendants’ discriminatory actions lacked any rational basis and instead were motivated by animus against Doorack Brick and the Dooracks for refusing to sell the Property to the City for well-below market value.

112. The current zoning of the Property is inconsistent with all surrounding properties and with the City of Chesterfield’s Comprehensive Land Use Plan—which places the Property in an “Urban Core” district. Further, the zoning of the property bears no relation to the Property’s current, former, or anticipated future uses.

113. The conduct of individual Defendants Nation, Herring, and John and Jane Doe City Councilmembers violated clearly-established Constitutional standards set by both the Eighth Circuit and the Supreme Court. The actions of each individual defendant were taken under color of law, were motivated by animus against Doorack Brick and the Dooracks and were callously and willfully indifferent to federally protected rights.

114. As a direct and proximate result of the rezoning and of Defendants’ conduct, the Property lost a majority of its market value and Doorack Brick lost a substantial source of rental income.

115. Under the foregoing facts, Defendants violated Doorack Brick’s equal protection rights under the Fourteenth Amendment to the Constitution of the United States.

116. To the extent Doorack Brick prevails in the instant case, it is entitled to an award of attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

WHEREFORE, Plaintiff Doorack Brick respectfully asks the Court to award it compensatory damages in excess of two (2) million dollars against Defendants as a result of the violation of Doorack Brick's constitutional rights, the diminution of the value of the Property and the loss of income from that Property. Doorack Brick is additionally entitled to recover punitive damages against Defendants Nation, Herring and John and Jane Doe City Councilmembers in their individual capacities. Finally, Doorack Brick requests a mandatory injunction compelling the City to repeal Ordinance No. 2856 and rezone the Property from its current Parks and Scenic zoning back to an extensive commercial zoning.

**COUNT IV**  
**(Regulatory Takings: Against Defendant City)**

117. Doorack Brick realleges and incorporates the allegations of Paragraphs Nos. 1-116 as though set forth in full here.

118. Defendant City's rezoning of the Property to Parks and Scenic constituted and continues to constitute a regulatory taking and inverse condemnation of the Property. Defendant City's conduct is unreasonable, arbitrary and capricious.

119. The rezoning of the Property, which at all times relevant to this suit has been privately owned, to Parks and Scenic serves no public purpose and bears no relationship to public health, safety, morals or general welfare.

120. Zoning the Property as a Park does not make it a park; the Property is still a vacant lot covered in concrete. Doorack Brick has no intent or incentive to invest the time and money into turning the Property into a park. The City has not taken steps to condemn the Property or to otherwise purchase it to use as a park.

121. With its current zoning, the Property has no value to Doorack Brick, which is a commercial enterprise that is not in the business of building parks, and no value to the public.

122. The market value of the property has been substantially depressed by its Parks and Scenic zoning. Based on the City's own appraisals, the value of the property decreased by approximately 60% after it was rezoned. In its most recent purchase offer, the City estimated a value of approximately 10% of its pre-rezoning assessment.

123. The rezoning of the Property interferes with Doorack Brick's distinct, investment-backed expectation to lease or sell the Property for valuable, commercial use.

124. The current zoning of the Property is inconsistent with the zoning of all surrounding properties, and with the City's Comprehensive Land Use Plan.

125. The City has not paid Doorack Brick just compensation for the diminution in value of the Property, nor has it offered to do so.

126. As a direct, foreseeable and proximate result of the City's decision to rezone the Property to Parks and Scenic, Doorack Brick's property rights have been damaged and Doorack Brick has suffered a diminution in the fair market value of the Property in an amount presently unknown but likely to exceed \$600,000, the exact amount of which will be proved at trial.

127. To the extent Doorack Brick prevails in the instant case, it is entitled to an award of attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

WHEREFORE, Plaintiff Doorack Brick respectfully asks the Court to award it all compensatory damages in excess of two (2) million dollars for the violation of Doorack Brick's constitutional rights, diminution of the value of the Property and the loss of income from that Property during the time in which it was improperly zoned.



**COUNT V**  
**(Municipal Liability)**

128. Doorack Brick realleges and incorporates the allegations of Paragraphs Nos. 1-127 as though set forth in full here.

129. The Chesterfield City Council, which passed Ordinance No. 2856, and Defendant Nation, who signed the ordinance, had final policy making authority within the City. Their concerted actions were not subject to review by other City officials.

130. Alternatively, on the zoning matters at issue here, Defendant Herring, the City Attorney, and Defendant Nation had final policy making authority pursuant to a delegation of authority from the City Council. Though the City Council held the final vote on rezoning the Property to Parks and Scenic, they severed as nothing more than a rubber stamp on the decision of Herring, Nation, and the City Attorney.

131. The City of Chesterfield failed to exercise adequate supervision over the relevant activities of Defendant Herring and the City Attorney alleged in this Complaint.

132. Finally the City of Chesterfield, through the City Council and Mayor Nation, had actual knowledge of the unconstitutional conduct of Defendant Herring, Defendant Nation and the City Attorney and adopted and affirmed that conduct through the passage of Ordinance No. 2856.

133. Under 42 U.S.C. § 1983, municipal liability extends to decisions made by municipal actors with final policy making authority, as well as to the City's failure to supervise its employees and affirmation of the unconstitutional conduct of those employees.

WHEREFORE, Plaintiff Doorack Brick requests judgment against Defendant City on these grounds and to the extent set forth in Counts I-IV, above.

**COUNT VI**

**(Civil Conspiracy – 42 U.S.C. § 1983: Against Defendant Herring and John and Jane Doe Councilmembers in their Individual Capacities)**

134. Doorack Brick realleges and incorporates the allegations of Paragraphs Nos. 1-133 as though set forth in full here.

135. Communications between Defendant Herring and the City Attorney demonstrate a civil conspiracy, actionable under 42 U.S.C. § 1983, to deprive Doorack Brick of its rights under the Fourteenth and Fifth Amendments to the Constitution of the United States.

136. Acting in concert and under the color of law, Defendant Herring and the City Attorney drafted and sent letters to Doorack Brick threatening to unconstitutionally rezone the Property to Parks and Scenic unless Doorack Brick agreed to relinquish its contractual rights under the Lease and Assignment and sell the property to the City at a substantial discount.

137. When Doorack Brick refused to bow to their threats, Defendant Herring and The City Attorney, with the knowledge, assistance and agreement of John and Jane Doe City Councilmembers, successfully petitioned the City to have the Property rezoned.

138. As a direct and proximate result of the conspiracy between Defendant Herring, the City Attorney, and John and Jane Doe City Councilmembers and the influence that these actors exercised over the City Council, Doorack Brick's property is now zoned Parks and Scenic, violating Doorack Brick's substantive due process and equal protection rights and affecting an unconstitutional taking of Doorack Brick's property.

139. Further, as a direct and proximate result of the conspiracy between Defendant Herring, the City Attorney, and John and Jane Doe City Councilmembers and the influence that these actors exercised over the City Council, Doorack Brick suffered a substantial reduction in the market value of the Property and in the corresponding rental income.

140. The Conduct of Defendant Herring, the City Attorney, and John and Jane Doe City Councilmembers violated clearly-established Constitutional standards set by both the Eighth Circuit and the Supreme Court. The actions of each were taken under color of law, were motivated by animus against Doorack Brick and the Dooracks and were callously and willfully indifferent to federally protected rights.

WHEREFORE Plaintiff Doorack Brick respectfully asks the Court to award it compensatory damages in excess of two (2) million dollars against Defendant Herring and John and Jane Doe City Councilmembers as a result of the violation of Doorack Brick's constitutional rights, the diminution of the value of the Property and the loss of income from that Property. Doorack Brick is additionally entitled to recover punitive damages against Defendant Herring and John and Jane Doe City Councilmembers in their individual capacities.

#### **COUNT VII**

##### **(Civil Conspiracy – Missouri Law: Against Defendant Herring and John and Jane Doe Councilmembers in their Individual Capacities)**

141. Doorack Brick realleges and incorporates the allegations of Paragraphs Nos. 1-140 as though set forth in full here.

142. Acting in concert and under the color of law, Defendant Herring and the City Attorney drafted and sent letters to Doorack Brick threatening to unconstitutionally rezone the Property to Parks and Scenic unless Doorack Brick agreed to relinquish its contractual rights under the Lease and Assignment and sell the property to the City at a substantial discount.

143. When Doorack Brick refused to bow to their threats, Defendant Herring and The City Attorney, with the knowledge, assistance and agreement of John and Jane Doe City Councilmembers, successfully petitioned the City to have the Property rezoned.

144. As a direct and proximate result of the conspiracy between Defendant Herring, the City Attorney, and John and Jane Doe City Councilmembers and the influence that these actors exercised over the City Council, Doorack Brick's property is now zoned Parks and Scenic, breaching the provision of the Lease the allowed only for rezoning to facilitate the City's use of the Property as well as violating Doorack Brick's substantive due process and equal protection rights and affecting an unconstitutional taking of Doorack Brick's property.

145. Further, as a direct and proximate result of the conspiracy between Defendant Herring, the City Attorney, and John and Jane Doe City Councilmembers, Doorack Brick suffered a substantial reduction in the market value of the Property and in the corresponding rental income.

146. The Conduct of Defendant Herring, the City Attorney, and John and Jane Doe City Councilmembers violated clearly-established Constitutional standards set by both the Eighth Circuit and the Supreme Court. The actions of each were taken under color of law, were motivated by animus against Doorack Brick and the Dooracks and were callously and willfully indifferent to federally protected rights.

WHEREFORE Plaintiff Doorack Brick respectfully asks the Court to award it compensatory damages in excess of two (2) million dollars against Defendant Herring and John and Jane Doe City Councilmembers as a result of the diminution of the value of the Property and the loss of income from that Property. Doorack Brick is additionally entitled to recover punitive damages against Defendant Herring and John and Jane Doe City Councilmembers in their individual capacities.

**COUNT VIII**  
**(Declaratory Judgment – Missouri Law)**

147. Doorack Brick realleges and incorporates the allegations of Paragraphs Nos. 1-146 as though set forth in full here.

148. The City’s decision to rezone the Property to Parks and Scenic was based solely on a desire to leverage this unfavorable zoning classification in post-contractual demands made to Doorack Brick and the Dooracks to force the Dooracks to sell their property to the City at well below market value.

149. The City’s interest in rezoning the Property to Parks and Scenic bears no relation to any cognizable public interest or to the public health, safety, morals, or general welfare.

150. The Property’s current zoning is inconsistent with all surrounding properties and with the City of Chesterfield’s Comprehensive Land Use Plan—which places the Property in an “Urban Core” district. Further, the zoning of the property bears no relation to the Property’s current, former, or anticipated future uses.

151. The rezoning of the Property to Parks and Scenic has done serious injury to Doorack Brick and the Dooracks, including a substantial reduction in the market value of the Property and in the corresponding rental income.

152. Based on the facts as described above, the present zoning classification is so unreasonable and arbitrary that it infringes the rights of Doorack Brick under the due process clause of the Missouri Constitution, Art. I, § 10, and exceeds the permissible authority of Missouri municipalities under Art. VI, § 19a.

153. Further, the present zoning classification falls well outside the City’s grant of zoning authority under Mo. Ann. Stat. § 89.010, *et seq.*

WHEREFORE, Plaintiff Doorack Brick requests that the Court enter an Order declaring and decreeing that Chesterfield City Ordinance No. 2856 violates Articles I and VI of the Missouri Constitution and exceeds the statutory grant of zoning authority to the City of Chesterfield under Mo. Ann. Stat. § 89.010, *et seq.* and is therefore null and void and of no force and effect.

Respectfully submitted,

THOMPSON COBURN LLP

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