

5. Venue is proper in St. Louis County under Mo. Rev. Stat. §§ 508.050 and 523.010, as this cause of action includes the City of Town & Country, Missouri, a municipal corporation in St. Louis County, Missouri. Additionally, the land at the subject of this cause of action is within St. Louis County, Missouri.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

6. Plaintiff owns and operates several senior living communities in the Greater St. Louis area, Central Missouri, and Central Illinois.

7. As part of its mission to serve older adults of Greater St. Louis, Lutheran Senior Services owns and operates Mason Pointe, a senior living community in the City located at the Subject Property.

8. Plaintiff has owned and operated Mason Pointe since 2015. A senior care facility has existed on the Subject Property for more than fifty years.

9. Mason Pointe provides a number of services for its residents, including Independent Living, Assisted Living, Memory Care Assisted Living, 24 Hour Long Term Care, and short stay rehabilitation.

10. Currently, Mason Pointe is home to 350 residents, each of whom are the beneficiaries of one or more of the many services and amenities offered by Mason Pointe.

11. In 2022, Plaintiff began efforts to improve Mason Pointe in an effort to keep pace with business model changes in the senior living industry.

12. Plaintiff determined that in order to continue to offer the highest quality services to its residents, Mason Pointe needed to decrease the number of nursing home units and increase the number of Assisted Living units and Independent Living units.

13. To facilitate this business model change, Plaintiff prepared a proposal to gain approval to amend the zoning governing the site to increase the “Maximum Floor Area” from

500,000 square feet to approximately 580,000 square feet and for approval of a related Amended Final Site Development Plan (the “Proposal”). *See* Exhibit 1.

14. Prior to formally presenting the Proposal to the City’s Planning and Zoning Commission, Plaintiff met with Mayor Charles Rehm (“Mayor Rehm”) and City Alderwoman Sue Allen (“Alderwoman Allen”) on October 27, 2022 to explain the necessity of approving the Proposal to allow Plaintiff to continue to meet the demands of the community given various business model changes resulting from a number of factors, including the COVID-19 pandemic.

15. Plaintiff subsequently hosted a “neighbor meeting” on November 3, 2022 to ensure that nearby residents and business owners understood the terms of the Proposal and the basis for the Proposal.

16. Plaintiff held additional neighbor meetings on November 30, 2022 and January 3, 2023.

17. During these neighbor meetings, City residents and business owners had the opportunity to ask questions and provide feedback about the Proposal to Plaintiff.

18. Following the January 3, 2023 neighbor meeting, Plaintiff met with Alderwoman Allen and Alderwoman Holly Even (“Alderwoman Even”) to discuss the best ways to feasibly accommodate the concerns about the Proposal raised by neighboring residents.

19. Plaintiff subsequently amended the Proposal to incorporate feedback provided during the neighbor meetings before formally presenting the Proposal to the City.

20. Amending the Proposal to accommodate the concerns raised by neighboring residents increased the total cost of the Proposal by more than \$3,500,000.00.

ZONING PROCEDURES

21. On February 15, 2023, Plaintiff presented the Proposal to the City’s Planning and Zoning Commission. The Planning and Zoning commission deemed the Proposal to be in

compliance with the City's Comprehensive Plan and, by a 6-1 vote (with one abstention), voted to forward the Proposal to the City's Board of Alderman ("BOA") with the Planning and Zoning Commission's recommendation of approval. *See* Exhibit 2.

22. The first reading of the Bill to approve the Proposal and associated public hearing before the BOA was set for March 27, 2023.

23. Prior to the first reading of the Proposal, an online petition was created to oppose the Proposal.

24. Upon information and belief, the online petition¹ was created by neighboring residents Jim and Tricia Newell.

25. The online petition ultimately garnered enough signatures to require a "super majority" of BOA votes to approval the proposal pursuant to Mo. Rev. Stat. § 89.060.

26. As a result, the Proposal required a "yes" vote from 75% of Aldermen, or six out of eight, to be approved.

27. On March 27, 2023, the BOA held a public hearing in which the Proposal was heard for first reading.

28. At the first reading, the Newells, via their attorney, spoke in opposition to the Proposal by presenting unsubstantiated claims that the Proposal would lead to (1) an increased burden on public services; (2) increased traffic and congestion in the City; (3) changes to the character of the area; (4) the elimination of greenspace and mature landscaping; (5) decreased neighboring property values; and (6) no additional real estate tax revenue. These concerns were previously made and refuted before the Planning and Zoning Commission on February 15, 2023.

29. These concerns were nearly identical to the concerns raised by the online petition.

¹ The online petition was previously available at www.stopmp.org. It has since been taken down.

30. Furthermore, these concerns were speculative in nature and were not supported by any data or formal analyses, and this lack of substantiation was presented to the BOA.

31. Specifically, there was no evidence offered by the Newells and other opponents that the Proposal would be an increased burden on public services, no traffic study was offered to support the contention that traffic would increase, no evidence that the character of the nearby residential neighborhood would change, no evidence that the Proposal would have a negative effect on neighboring residential property values. In fact, evidence was offered at the public hearing to establish that more trees would be on the site if the Proposal were approved than exist on the site now.

32. At the conclusion of the first reading and public hearing of the Proposal, Mayor Rehm, the presiding officer of the BOA, declared the public hearing closed, thereby concluding the presentation of evidence. No objection was made by any member of the BOA or the public to the closing of the public hearing by Mayor Rehm.

33. The BOA scheduled the Proposal for second reading on April 10, 2023.

34. On April 10, 2023, just hours before the Proposal was set to be heard on second reading, the Newells submitted a letter totaling 67 pages (with attachments) to the BOA further voicing their opposition to the Proposal by presenting information and materials *not submitted* to the BOA or to Plaintiff for first reading of the Bill to approve the Proposal or at the public hearing on March 27, 2023.

35. As a result of this voluminous letter, on April 18, 2023, Plaintiff requested that the second reading of the Proposal be continued to April 24, 2023 to ensure adequate time to review the letter and to ensure that the BOA was in possession of all the relevant facts and information to make a fully informed decision on the Proposal.

36. Plaintiff further explained that the continuance would not be detrimental to the interests of anyone; rather, denying the continuance would be detrimental to Plaintiff.

37. Despite Plaintiff's request, the BOA denied the continuance by a vote of 2-4 (with two abstentions) and proceeded with second reading on April 24, 2023.

THE CITY DENIES THE PROPOSAL WITHOUT EXPLANATION

38. Despite the fact that the Planning and Zoning Commission deemed the Proposal to be in compliance with the City's Comprehensive Plan and recommended the Proposal for approval before the BOA by a 6-1 vote, the BOA voted to deny the Proposal by a vote of 2-4 (with two abstentions) on April 24, 2023.

39. The BOA as an entity failed to provide any specific reason or reasons for denying the Proposal.

40. The only basis for denial that was provided by any alderman was that offered by Alderman Jeff Parrotte ("Alderman Parrotte").

41. Alderman Parrotte, despite having voted in favor of the Proposal in his capacity as a member of the Planning and Zoning Commission, reversed his position because he had "received many communications from neighbors of Mason Pointe and others voicing factual concerns" about the Proposal. *See* Exhibit 3.

42. Alderman Parrotte, however, admitted that the Proposal was likely reasonable, stating that "[w]ithout opposition *this may be a reasonable request* but there is opposition and the voices of the citizens of Town and Country, especially those impacted, must be seriously considered." *Id.* (emphasis added).

43. Other than Alderman Parrotte's statement, no BOA member articulated a basis for denial, and the only apparent basis ever offered into the public record for the denial of the Proposal was the unsubstantiated opposition voiced by the Newells and/or the online petition.

44. Given the current maximum floor area, Mason Pointe (and the Subject Property) cannot reasonably be developed to accommodate its business needs to serve its residents and fulfill its mission of providing dignified housing for older individuals in the Town and Country region.

45. The current maximum floor area of the Subject Property causes substantial private detriment to Plaintiff because the current maximum floor area is not reasonably suitable for or adapted to Mason Pointe, the commercial development on the Subject Property.

46. The inability to increase the maximum floor area of the Subject Property causes substantial private detriment to Plaintiff.

47. Specifically, the inability to increase the maximum floor area causes a significant reduction to the Subject Property's value and will cost Plaintiff approximately \$1,000,000 annually, amounting to confiscation.

48. Additionally, no public interest is served in maintaining the Subject Property's present maximum floor area, and the BOA failed to identify any public interest that is served by maintaining the present maximum floor area. "Missouri case law is clear that the interests of a few neighboring homeowners do not constitute the public interest as a whole." *Lenette Realty & Inv. Co. v. City of Chesterfield*, 35 S.W.3d 399, 407 (Mo. App. E.D. 2000), citing *Huttig v. Richmond Heights*, 372 S.W.2d 833, 840-43 (Mo. 1963).

COUNT I – MISSOURI ADMINISTRATIVE PROCEDURE ACT
DECLARATORY JUDGMENT

49. Plaintiff re-alleges and incorporates paragraphs 1-46 as if fully set forth herein.

50. The City's Planning and Zoning Commission concluded that the Proposal was consistent with the City's Comprehensive Plan and recommended that the City approve the Proposal.

51. The City disregarded the recommendation of the Planning and Zoning Commission by denying the Proposal.

52. The City failed to articulate any basis for its decision to deny the Proposal.

53. For the reasons stated herein, the City's refusal to approve the Proposal and expand the maximum floor area of the Subject Property is arbitrary, capricious, and unreasonable.

54. As a result of the City's arbitrary, capricious, and unreasonable decision to refuse to approve the Proposal, Plaintiff has suffered substantial private detriment.

55. As a ripe and justiciable controversy exists between the parties, a court order is required to declare the Subject Property's current maximum floor area as unreasonable, and to declare that the City's refusal to approve the Proposal as arbitrary, capricious, unreasonable, and to order that the City approve the Proposal and expand the maximum floor area for the Subject Property.

56. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff Lutheran Senior Services respectfully prays this Court for a judgment declaring and adjudging the City's refusal to approve the Proposal and expand the maximum floor area of the Subject Property to be an abuse of discretion and was arbitrary, capricious, and unreasonable, and ordering the City to approve the Proposal and expand the maximum floor area for the Subject Property within a reasonable time, and for such other relief as this Court deems fair and reasonable.

COUNT II – UNCONSTITUTIONAL TAKING

57. Plaintiff re-alleges and incorporates paragraphs 1-50 as if fully set forth herein.

58. For the reasons set forth herein, the present maximum floor area of the Subject Property is not reasonable and is causing substantial detriment to the Plaintiff.

59. The City’s refusal to approve the Proposal and expand the maximum floor area of the Subject Property significantly decreases the value and utility of the Subject Property.

60. The City’s refusal to approve the Proposal and expand the maximum floor area the Subject Property is arbitrary, capricious, unreasonable, unlawful, and amounts to an unconstitutional taking of Plaintiff’s property.

61. Plaintiff has suffered damages as a direct and proximate result of the City’s unconstitutional taking.

WHEREFORE, Plaintiff Lutheran Senior Services prays for an entry of judgment against the City pursuant to Mo. Const. Art. I §§ 10, 26, and 28 in an amount in excess of \$25,000, and for other relief that the Court deems just and proper.

Dated: July 14, 2023

Respectfully submitted,

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