

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CHANCERY DIVISION**

MICHAEL SCOTT, JAMES DES JARDINS,)
 MARK GRAHAM and)
 LORRAINE PETTIGREW)
)
 Plaintiffs,)
 v.)
)
 CITY OF CHICAGO.)
)
 Defendant.)

2013SCH19928
 CALENDAR/ROOM 18
 TIME 00:00
 Declaratory Judgment

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Michael Scott, James Des Jardins, Mark Graham and Lorraine Pettigrew,
 by and through their attorneys, O'Donnell Law Firm Ltd., for their Complaint against the
 City of Chicago state as follows:

NATURE OF ACTION

1. This action is brought pursuant to 65 ILCS 5/11-13-25 and the due process clause of the Illinois Constitution to challenge the City of Chicago's re-zoning of property located at 1330 E. 53rd Street (the "Subject Property").
2. On June 5, 2013, the Chicago City Council passed an ordinance which re-zoned the Subject Property from the B1-2 and B3-2 zoning districts to the B3-5 zoning district, and then from the B3-5 zoning district to Planned Development No. 1218. The Planned Development designation allows the owner of the Subject Property to construct a 13-story, 155-foot building with mixed residential and business uses (the "Development"), including 267 residential units and 30,000 square feet of commercial/retail space.
3. For a multitude of reasons, including the fact that the Development as approved by the City is wholly inconsistent with the existing uses and zoning on 53rd Street,

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as well as the existing uses and zoning to the north and south of 53rd Street, the ordinances re-zoning the Subject Property to B3-5, and then to Planned Development No. 1218, are arbitrary and capricious and should be struck down by this Court.

THE PARTIES

4. Michael Scott is an individual who owns and resides at 5213 S. Kenwood, which is within 250 feet of the Subject Property.

5. James Des Jardins is an individual who owns and resides at 5203 S. Kenwood, which is within 250 feet of the Subject Property.

6. Mark Graham is an individual who owns 5221 S. Kenwood, which is within 250 feet of the Subject Property.

7. Lorraine Pettigrew is an individual who owns and resides at 5213 S. Kimbark, which is within 250 feet of the Subject Property.

8. The City of Chicago is an Illinois municipal corporation with the power to zone and re-zone property within the limits of the city.

9. Venue is proper in that the City of Chicago is located within Cook County and the transaction that gave rise to these events occurred within Cook County.

10. Plaintiffs have complied with 65 ILCS 5/11-13-8 in that they have, within 30 days prior to filing this Complaint, provided written notice of this action to all owners within 250 feet of the Subject Property.

COUNT I – DECLARATORY JUDGMENT TO INVALIDATE RE-ZONING TO PLANNED DEVELOPMENT NO. 1218

11. The Subject Property takes its character from 53rd Street, which is comprised, primarily, of a series of 1-3 story buildings with retail uses on the ground floor and residential uses above.

12. Prior to the re-zoning to B3-5, and then to Planned Development No. 1218, the Subject Property consisted of a parking lot (previously a McDonald's restaurant) and an operating gas station / car wash. The Property had split zoning of B1-2 (neighborhood shopping district) and B3-2 (community shopping district).

13. Under the B1-2 and B3-2 designations, the floor area ratio (FAR) of the Subject Property (which, multiplied by lot area, established the maximum floor area of any new development) was 2.2. Under the B1-2 and B3-2 designations, the maximum height allowed on the Subject Property was 50 feet.

14. Prior to the re-zoning to B3-5, and then to Planned Development No. 1218, the B1-2 and B3-2 designations were consistent with the zoning of other properties along 53rd Street.

15. The property immediately west of the Subject Property is zoned B3-2. Further west, i.e., west of Woodlawn Ave., property along 53rd Street is zoned residential (RS-3 RT-4 and RM-5). The property immediately east of the Subject Property (on the corner of 53rd and Kenwood Avenue) is zoned B3-2. The property east of Kenwood Avenue along 53rd Street is zoned B3-3, B1-3 and B3-2. Under the least restrictive of these designations, B3-3, the FAR is 3 and the maximum height is 65 feet. The property north of the subject property, where plaintiffs reside, is zoned residential (RT-4 and RM-5). The maximum height in the RM-5 zoning district is 47 feet.

16. Prior to the re-zoning to B3-5, and then to Planned Development No. 1218, the uses of the Subject Property and those uses allowed by the B1-2 and B3-2 designations were consistent with the uses of other properties along 53rd Street.

17. The property to the west of the Subject Property is a one-story community shopping center. The properties to the east of the Subject Property along 53rd Street (both

on the north and south side of 53rd Street) are primarily 1-3 story mixed business and residential properties, with business on the ground floor and residential units above. The properties to the north of 53rd Streets are primarily single family and two flat homes, and low-rise apartment buildings.

18. Prior to the re-zoning to B3-5, and then to Planned Development No. 1218, the tallest building on 53rd Street in the vicinity of the Subject Property was an 80 foot, eight-story business/residential building (the “Versailles building”) located at the corner of Dorchester and 53rd Street. The Versailles building was constructed prior to the adoption of the 1957 zoning ordinance and is, therefore, a legal non-conforming use. The Versailles building has fewer than 100 residential units which, by a large margin, is the most dense building in the neighborhood.

19. In February 2013, the would-be developer of the Subject Property, Mesa Development, LLC submitted an application to re-zone the Subject Property to B3-5 and then immediately re-zone the Subject Property to a Planned Development that would allow a 13-story, 155-foot building, 267 unit mixed residential and commercial building.

20. From the developer’s perspective, the “interim” re-zoning to B3-5 was necessary because “Planned Developments are subject to strict compliance with the floor area ratio standards of the zoning district applicable to the subject property immediately before approval of the Planned Development [and] the Planned Development must be in substantial compliance with the density, use, setback [and] building height development standards of the zoning district applicable to the subject property immediately before approval of the Planned Development.” City of Chicago Zoning Code, Section 17-8-901.

21. By re-zoning the property to B3-5 immediately prior to the re-zoning to Planned Development No. 1218, B3-5 technically became “the zoning district applicable to the subject property immediately before approval of the Planned Development.” Under the standards of the B3-5 district, the maximum allowable height is 80 feet (approximately 8 stories) and the maximum FAR is 5.

22. By re-zoning the Subject Property to B3-5 immediately prior to re-zoning the Subject Property to Planned Development No. 1218, the developer hoped to demonstrate that a change from 80 feet (the height allowed in the B3-5 district) to 155 feet (almost *double* the height) was in “substantial compliance” with the building height standards “applicable to the subject property immediately before approval of the Planned Development.” In reality, the re-zoning to Planned Development No. 1218 was a change from the height allowed in the B3-2 and B1-2 zoning districts (50 feet) to 155 feet, more than *triple* the previously allowed height.

23. The re-zoning to B3-5, and then to Planned Development No. 1218, allows a building that is wholly inconsistent with the character of the neighborhood, i.e., both the building allowed under a B3-5 zoning classification, and the specific Development allowed by Planned Development No. 1218, are inconsistent with both the surrounding zoning classifications and the surrounding uses.

24. Both the B3-5 zoning classification and Planned Development No. 1218 are inconsistent with the *existing zoning* in that none of the surrounding zoning classifications on 53rd Street (e.g., B1-3, B3-2, and B3-3) allow anything higher than a 65 foot building. Further, the highest FAR allowed in the surrounding zoning classifications is 3, while the B3-5 zoning classification and Planned Development have an FAR of 5.

25. Both the B3-5 zoning classification and Planned Development No. 1218 are inconsistent with the *existing uses* in that one only of the neighboring uses on 53rd Street is as tall as buildings allowed in the B3-5 zoning classification and no existing building is anywhere near as tall as the approved Development (155 feet). Further, none of the uses have the number of residential dwelling units (267) anywhere close to the number allowed by the Development.

26. Both the B3-5 zoning classification and Planned Development No. 1218 allow over-sized, out-of-scale and out-of-character buildings to be constructed in the middle of a consistent, low-scale, neighborhood.

27. In addition to being oversized and out-of-character with the existing neighborhood, Planned Development No. 1218 as approved by the City lacks sufficient parking to adequately serve both the residential dwelling units and the expected commercial development. This lack of parking will cause users of the Development to park on neighborhood streets including Kimbark, Kenwood and Dorchester, thereby depriving plaintiffs and residents of the neighborhood of scarce on-street parking.

28. The size of the Development, which will tower over neighboring properties, will deprive neighboring properties, including the plaintiffs' properties of sunlight and cast significant shadows.

29. Construction consistent with the B3-5 zoning classification and construction of the Development will cause a diminution in the value of neighboring properties, including plaintiffs' property, by altering the character of the neighborhood, depriving the neighborhood of needed parking, and casting plaintiffs' properties in shadow.

30. The loss of value to plaintiffs is not justified by the so-called benefits of the Development. A building that complies with the pre-existing B1-2 and B3-2 zoning

classifications, rather than a grossly oversized building, would better promote the health, safety and general welfare of the public in that it would be more consistent with the existing character of the neighborhood.

31. Prior to the re-zoning, the property was properly used as a gas station, car wash and parking lot. Further, re-development consistent with the existing B1-2 and B3-2 zoning was economically feasible. Therefore, the pre-existing zoning was suitable and the property was not vacant or unused.

32. There is no driving need for the Planned Development as opposed to a development that complies with the regulations of the B1-2 and B3-2 zoning districts.

33. The City of Chicago does not have a comprehensive plan for development in the City.

34. The 2004 comprehensive amendments to Zoning Ordinance were supposed to lead to a thoughtful process by which neighborhoods could be re-zoned consistent with the new ordinance. Instead, zoning changes have continued to occur in piecemeal fashion with hundreds of individual re-zonings, including Planned Developments, occurring each year.

35. Prior to the re-zoning of the Subject Property to Planned Development No. 1218, no City-wide, community, or neighborhood plan or study identified the site as planned for, or appropriate for, a 155-foot 267-unit building.

36. The re-zoning to B3-5, and then to Planned Development No. 1218, was at best, haphazard, and was, in fact, manipulated by the Developer. The community was not allowed to fully participate in the review and evaluation process; a survey that the developer used to argue that the Development has community support did not support that

conclusion; and the City accepted the developer's parking and traffic study without comment and did not require or authorize an independent study.

37. Finally, approval of the re-zonings to B3-5, and then to Planned Development No. 1218, threatens to further alter the character of the neighborhood in that other would-be developers can now identify the Development as an "existing use" and seek to construct similarly-sized buildings. These re-zoning are the proverbial "camel's nose under the tent" that will permit wholesale changes to the character of 53rd Street and the surrounding neighborhood.

38. For all of the above reasons, the City approval of the re-zoning to B3-5, and then to Planned Development No. 1218, was arbitrary and capricious and should be invalidated.

WHEREFORE, plaintiffs ask that the Court: (i) find and declare that the re-zoning to B3-5, and the further re-zoning to Planned Development No. 1218, violate the due process rights of the plaintiffs and (ii) find and declare that the ordinances approving the re-zoning to B3-5, and then to Planned Development No. 1218, are invalid.

Michael Scott, James Des Jardins, Mark Graham
and Lorraine Pettigrew

By: 

One of their attorneys

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