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

FIX WILSON YARD, INC., et al.	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**08 CH 45023**
	)	
CITY OF CHICAGO, et al.	)	
	)	
Defendants.	)	

MEMORANDUM AND ORDER

Defendants City of Chicago, Wilson Yard Development I, LLC, Wilson Yard Partners, L.P., Wilson Yard Development Corporation, Wilson Yard Senior Housing, L.P., Wilson Yard Senior Development Corporation and Wilson Yard Retail I, LLC have filed a Motion to Dismiss pursuant to 735 ILCS 5/2-619.1.

I. Background

A. *Illinois Tax Increment Allocation Redevelopment Act ("TIF Act")*

The TIF Act, 65 ILCS 5/11-74.4-1, *et seq.*, was enacted to help municipalities to reduce or eliminate nearly blighted or blighted areas by allowing municipalities to allocate an increment of tax revenues to fund development projects in these areas. 65 ILCS 5/11-74.4-2(a) and (b). If a municipality finds that an area meets the statutory criteria for a "blighted" or "conservation" area, the TIF Act allows a municipality to enact ordinances that declare the area to be a redevelopment project area, adopt a redevelopment plan for the area, and approve the use of tax increment financing for redevelopment for the area. 65 ILCS 5/11-74.4-4.

B. *Complaint*

On December 3, 2008, Plaintiffs – Fix Wilson Yard, Inc. ("Fix Wilson"), Judith A. Pier, D. Richard Quigley, Judy Glazebrook, Katherine Boyda, Lukas Ceha and Pat Reuter – filed their Verified Complaint for Injunctive, Declaratory and Other Relief against Defendants City of Chicago ("City") and Wilson Yard Development I, LLC, Wilson Yard Partners, L.P., Wilson Yard Development Corporation, Wilson Yard Senior Housing, L.P., Wilson Yard Senior Development Corporation and Wilson Yard Retail I, LLC (collectively "the Holsten Defendants"). The basis of Plaintiffs' action is the adoption of three ordinances ("Ordinances") by the City on June 27, 2001 pursuant to the TIF Act which respectively: (1) approved the Wilson Yard Redevelopment Plan and Project ("Redevelopment Plan"); (2) designated 144 acres of land within the City located in the Uptown community area South of Wilson Avenue, East of Clark Street, North of Montrose Avenue and West of Lake Shore Drive ("the Subject

Property") as the Wilson Yard Redevelopment Project Area ("RPA") and; (3) adopted Tax Increment Financing ("TIF") for the RPA. (Ver. Compl. ¶¶14-15).

A Redevelopment Agreement was entered into between the City and Holsten Defendants on November 30, 2005. (Ver. Compl., Ex. F at ¶¶6-10). The City subsequently approved three separate amendments to the Redevelopment Agreement in June 2007 ("1st Amendment"), April 2007 ("2nd Amendment") and October 2008 ("Third Amendment"). (Ver. Compl., Exs. D, E and F). The Redevelopment Agreement with the Holsten Defendants related to property located at the corner of Broadway and Melrose that would be developed with funding in part by tax increment financing ("Wilson Yard Project"). The Wilson Yard Project was to include the demolition and relocation of an Aldi's grocery store with parking and the construction of a mixed commercial and residential facility which would include a Target store, a senior living facility, an affordable housing building and parking spaces. (Id.).

Plaintiff Fix Wilson is a not-for-profit association whose members are taxpayers residing in the City of Chicago and/or within the Redevelopment Project Area ("RPA") which is the subject of Plaintiffs' actions. (Ver. Compl. ¶2). The individual Plaintiffs are residents within the RPA or live within 250 feet of the RPA. (Ver. Compl. ¶3). Plaintiffs allege that there was no basis for adopting a Redevelopment Plan under the TIF Act because the property which comprises the RPA was not blighted or a conservation area necessitating a Redevelopment Plan and that this court should declare the Ordinances and Amendments void. (Ver. Compl. Count I). Plaintiffs allege that: (1) the First Amendment changed the nature of the original uses and substantially increased the budgets for the three contemplated phases; (2) the Second Amendment increased the square footage of restaurant and retail space, increased total projected costs and made other financial changes; and (3) the Third Amendment allegedly virtually gave up any default remedies against the developers. (Ver. Compl. ¶¶16-18). Plaintiffs also allege that the City and the Holsten Defendants entered into an agreement on June 1, 2007 amending the RPA, the First Amendment, in violation of 65 ILCS 5/11-74.4-5. (Ver. Compl. Count II). The Verified Complaint further alleges violations of due process and the Open Meetings Act. (Ver. Compl. Counts III-V).

II. Motion to Dismiss

Defendants seeks to dismiss Plaintiffs' Complaint pursuant to both §2-615 and §2-619. Defendants have attached the Declarations of Helen Schiller, Alderman of the 46th Ward where the RPA is located, (Motion, Ex. 1), and Peter Holstein, President of Holstein Real Estate Development. (Motion, Ex. 2).

A. *Standards for Motions to Dismiss*

A §2-615 motion to dismiss "challenges the legal sufficiency of the complaint." Chicago City Day School v. Wade, 297 Ill. App. 3d 465, 469 (1st Dist. 1998) The relevant inquiry is whether sufficient facts are contained in the pleadings which, if proved, would entitle a plaintiff to relief. Id. Such a motion does not raise affirmative factual defenses but alleges only defects on the face of the complaint." Id. "A section 2-615 motion admits as true all well-pleaded facts and reasonable inferences that can be drawn from those facts, but not conclusions of law or

conclusions of fact unsupported by allegations of specific facts." Talbert v. Home Savings of America, 265 Ill. App. 3d 376, 379-80 (1st Dist. 1994).

A Section 2-619 motion to dismiss "admits the legal sufficiency of the complaint and affirms all well-pled facts and their reasonable inferences, but raises defects or other matters either internal or external from the complaint that would defeat the cause of action." Cohen v. Compact Powers Sys., LLC, 382 Ill. App. 3d 104, 107 (1st Dist. 2008). A dismissal under Section 2-619 permits "the disposal of issues of law or easily proved facts early in the litigation process." Id. Section 2-619(a)(9) authorizes dismissal where "the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(9) (2008).

B. *Count I - §2-615 (Sufficiency of Allegations)*

Defendants argue that Plaintiffs have not alleged sufficient facts to support Count I. Specifically, Defendants contend that Count I is devoid of any facts which show that the City Council erroneously determined that the RPA qualifies as a conservation area under the TIF Act. Paragraph 30 of Count I, however, alleges ultimate facts which support the allegation that the RPA does not qualify as a conservation area. As noted by Plaintiffs, they are not required to plead evidence. Zeitz v. Village of Glenview, 227 Ill. App. 3d 891, 894 (1st Dist. 1992).

C. *Count I - §2-615 and §2-619 (Laches)*

Count I alleges that there was no basis for adopting a Redevelopment Plan under the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, ("TIF Act") because the RPA was not blighted or a conservation area necessitating a Redevelopment Plan. (Ver. Compl. ¶¶26-30). The Ordinances which approved the Redevelopment Plan, designated 144 acres of land as the RPA, and provided for TIF financing for the RPA were adopted on June 27, 2001. (Ver. Compl. ¶¶14-15). The three subsequent amendments ("Amendments") to the Redevelopment Plan were approved in June 2007, April 2008 and October 2008. Count I seeks a declaration that the Ordinances and Amendments are void. Defendants contend that Count I of the Complaint should be dismissed pursuant to §2-615 and §2-619 as barred by *laches*.

1. Law as to *Laches*

"*Laches* is an equitable doctrine which bars an action where, because of unreasonable delay in bringing suit, a party has been misled, prejudiced, or has taken a course of action different from what he would otherwise have taken." Summers v. Village of Durand, 267 Ill. App. 3d 767, 770 (2d Dist. 1994). Where the basis for the application of *laches* is apparent from the face of the pleading, *laches* is properly raised pursuant to §2-615. Id. at 771. Where the defense of *laches* is not apparent on the face of the pleading, *laches* is properly raised pursuant to §2-619. Id.

A party asserting *laches* must show: (1) lack of due diligence by the party asserting a claim; and (2) prejudice to the party asserting *laches*." Ashley v. Pierson, 339 Ill. App. 3d 733, 738 (4th Dist. 2003). Generally, "it is essential that the party have knowledge of the facts upon

which his claim is based yet fail to proceed in a timely manner." Senese v. Climatemp, Inc., 222 Ill. App. 3d 302, 318 (1st Dist. 1991).

2. *Laches* - Public Interest Exception

Initially, Plaintiffs argue that *laches* has no application in this case because there is a public interest exception to the *laches* doctrine.. Plaintiffs cite to People ex rel. Mahoney v. Decatur, Springfield & St. Louis Railway Co., 120 Ill. App. 229 (3d Dist. 1905), in support of this argument. Mahoney, however, involved a lawsuit brought by the State's Attorney on behalf of People of the State of Illinois and the court held that *laches* did not apply.

Plaintiffs maintain that Mahoney applies here because they bring this suit in the public interest and *laches* cannot act to bar their suit. Plaintiffs' argument is contrary to the holding in Solomon v. North Shore Sanitary District, 48 Ill. 2d 309 (1971). The private plaintiffs in Solomon filed suit against the sanitary district challenging a special election approving the issuance of $8 million in bonds to finance improvements at a sewage disposal facility. The Illinois Supreme Court found that the private plaintiffs were barred by *laches* from bringing suit having waited over two years to bring suit and where the sanitary district had already issued and sold the bonds and expenses had been incurred on the project. Id. at 322. The court stated that the "public interest" actually required that "plaintiffs be barred by laches." Id.

Plaintiffs' reliance on Lake Michigan Federation v. U.S. Army Corps of Engineers, 742 F. Supp. 441 (N.D. Ill. 1990), to argue that a public interest exception exists to preclude the application of laches is misplaced. In Lake Michigan, the plaintiffs challenged a conveyance under the public trust doctrine. The federal court found an "inadequate showing of dilatory conduct" and because of "the substantial public interest at stake" and the nature of the claims, found that *laches* did not preclude suit. Id. at 447. The Lake Michigan court analyzed whether *laches* should apply in the exercise of its discretion under the facts and circumstances there but did not hold that *laches* could not be considered. Defendants are not prevented from asserting *laches* against Plaintiffs.

3. *Laches* - Section 2-615

For *laches* to apply, there must first be a lack of due diligence on the part of the Plaintiffs. In deciding whether the length of a delay is unreasonable, courts look to the statute of limitations which would be applicable in a legal action as a convenient measure. Sundance Homes v. County of Du Page, 195 Ill. 2d 257, 270 (2001). Section 13-205 of the Illinois Code of Civil Procedure provides for a five-year statute of limitations for those "civil actions not otherwise provided for." 735 ILCS 5/13-205 (2009). The Ordinances which adopted the Redevelopment Plan and approved TIF financing which are the basis of Count I were passed on June 27, 2001. Therefore, the operative date in considering whether Count I is barred by *laches* is June 27, 2001. Plaintiffs filed their Complaint in December 2008. Using the five-year statute of limitations as a convenient measure, the seven and a half year delay in the filing of Count I is an unreasonable delay given the fact that the Complaint is devoid of any facts which would excuse the delay.

Plaintiffs have made several arguments relating to their delay in bringing Count I that are based on the evolving nature of the redevelopment of a TIF district and their insistence that they had to wait and see what would happen with the RPA. Plaintiffs argue that it was not until "2007 and 2008" that "the facts were on the table." (Response at 9). They say that until then "they did not know the facts necessary to determine that filing a lawsuit [was] necessary to stop the impermissible and improper squandering of taxpayer dollars." (Id.). Plaintiffs' argument seems to rely on the general law that *laches* applies when "a party [has] knowledge of the facts upon which a claim is based yet fail[s] to proceed in a timely manner." Senese, 222 Ill. App. 3d at 318.

It is true that the specifics of the development of the RPA and of the Wilson Yard Project were not entirely known at the passage of the Ordinances in 2001. Count I, however, challenges the passage of the Ordinances and the basis for challenging these Ordinances as alleged in the Complaint were known in 2001. Later facts caused Plaintiffs to finally file suit, but there was an unreasonable delay in asserting their Count I attack against the City Council's determination that the RPA qualifies as a conservation area.

"It is well settled that all citizens are charged with knowledge of the law." People v. Lander, 215 Ill. 2d 577, 588 (2005). "Ignorance of the law or legal rights will not excuse a delay in filing a lawsuit." Id. The adoption of the Ordinances on June 27, 2001 was a matter of public record. The Complaint does not allege that Plaintiffs were prevented from learning of the passage of the Ordinances. Nor does the Complaint allege any other facts which excuse the delay of seven and a half years in filing Count I. In their Response, Plaintiffs argue that they could have reasonably thought that the Ordinances would be repealed because the redevelopment activities did not commence until Fall of 2008. (Response at 8-9). However, the TIF Act allows for the repeal of an ordinance designating a redevelopment project area "[i]f no redevelopment project has been initiated in a redevelopment project area within seven years" after the passage of the ordinance. 65 ILCS 5/11-74.4-4(r) (2009). Plaintiffs allege that that the Redevelopment Project Area Agreement was executed in December 2005 and this agreement was clearly the initiation of a redevelopment project. (Ver. Compl. Ex. A). Plaintiffs could not reasonably believe that the Ordinances would be repealed after December 2005 and allege no such facts in their Complaint.

Plaintiffs also argue that they did not unreasonably delay in filing their Complaint because the Redevelopment Agreement was not approved until 2005 and the Amendments were not passed until 2007 and 2008. (Response at 8). While Count I seeks a declaration that both the Ordinances and the Amendments are void, it is clear that Count I is based on the adoption of the Redevelopment Plan on June 27, 2001. Plaintiffs' request for a declaration that the associated Ordinances and Amendments are void stems from their allegation that there was no basis for a Redevelopment Plan under the TIF Act. The fact that the Redevelopment Agreement was not approved until 2005 and the Amendments were not passed until 2007 and 2008 cannot excuse Plaintiff's delay in filing the lawsuit with regard to Count I. Furthermore, Plaintiff Fix Wilson Yard, Inc.'s Answers to the Wilson Yard Defendants' First Set of Interrogatories show that Plaintiffs began actively opposing the Redevelopment Plan in 2004. (Response, Group Ex. B, Answer to Interrogatory No. 9). Plaintiffs offer no reason for their failure to file suit at that time.

While the unreasonable delay is apparent from the face of the Complaint, *laches* requires both an unreasonable delay and prejudice to the Defendants. The existence of prejudice to Defendants is not apparent from the face of the Complaint as there are no allegations regarding the actions taken by Defendants in reliance on the Ordinances. Therefore, dismissal of Count I on *laches* grounds pursuant to §2-615 is not proper.

4. *Laches* - Section 2-619

Defendants also contend that dismissal based on *laches* is appropriate under §2-619. As discussed above, the Ordinances were passed in June 2001 and the Complaint contains no facts excusing the seven and a half year delay in filing Count I which establishes an unreasonable delay and lack of due diligence.

With regard to the existence of prejudice because of the delay, Defendants have submitted the Declarations of Alderman Helen Schiller and Peter Holsten in support of their Motion. (Motion, Exs. 1 and 2). Alderman Schiller states that the City has already expended $3.5 million in TIF funds to independent projects in the RPA. (Motion, Ex. 1 at ¶¶6-8). Alderman Schiller described the various redevelopment projects that have been completed or are in the process of being developed including the Wilson Yard Project, rehabilitation of buildings for affordable housing and schools, providing small business loans and funding streetscape improvements. (Id. at ¶6). The City has also distributed $9.5 million in TIF funds to the Wilson Yard Project and incurred another $9.5 million in unpaid TIF liability. (Id. at ¶9).

Peter Holsten, the President of Holsten Real Estate Development with overall responsibility for the Wilson Yard Project, states that the Holsten Defendants have incurred costs in excess of $67 million since November 2005 in connection with the Wilson Yard Project. (Motion, Ex. 2, ¶¶5, 9, 10). Holsten states that the development consists of an Aldi, a Target, smaller retail space, numerous parking spaces and an underground parking garage, a residential apartment building, a senior housing development, and a parking deck along with public road and infrastructure improvements. (Id. at ¶7). All demolition has taken place and all environmental hazards have been removed and the work on the Aldi store and the accompanying parking are complete. (Id. at ¶9). All the other components of the development are currently under construction and at present the excavation of the underground parking garage is essentially complete and 100 of the 250 caissons that support the buildings have been constructed. (Id.). The Declarations of Alderman Schiller and Holsten clearly establish the existence of prejudice to Defendants in reliance on the validity of the Ordinances. See, Solomon, 48 Ill. 2d at 322 (Plaintiffs' suit was barred by *laches* because they waited two years to bring suit and the sanitary

considered notice that legal action would be taken, Plaintiffs took no legal action for seven and a half years.

Plaintiffs also contend that Defendants have failed to provide any evidence that they were unaware that Plaintiffs would challenge the Ordinances. Plaintiffs point to Fix Wilson's Answers to the Wilson Yard Defendants' First Set of Interrogatories as evidence that Defendants had such knowledge. The Answers to Interrogatories, however, show nothing more than Plaintiffs' opposition to the redevelopment. (Response, Group Ex. B, Answer to Interrogatory No. 9). Opposition to redevelopment plans is not notice of an intention to file a lawsuit.

Plaintiffs' own exhibits show that the first notice Defendants received of Plaintiffs' intent to take legal action was a September 4, 2008 letter to Mara S. Georges, Corporation Counsel for the City, from Davis McGrath LLC, stating that it had been hired by Plaintiffs "to review the legality of the Wilson Yard TIF." (Response, Ex. C). Plaintiffs point out that in the face of this letter, the Third Amendment was approved in October 2008. Again, this argument ignores that the gist of Count I is a challenge to the Ordinances of 2001. This letter sent seven years later does not undermine Defendants' reliance or prejudice

Count I is dismissed on the grounds of *laches* pursuant to §2-619.

D. *Count II - §2-615*

Count II alleges that the agreement entered into by the City and the Holsten Defendants on June 1, 2007 which amended the RPA was a violation of 65 ILCS 5/11-74.4-5(c)(2) and (4) because it was made without a further Joint Review Board Hearing or a Public Hearing. (Ver. Compl. ¶¶39-40). Section 11-74.4-5 of the TIF Act provides in relevant part as follows:

> (c) After a municipality has by ordinance approved a redevelopment plan and designated a redevelopment project area, the plan may be amended and additional properties may be added to the redevelopment project area only as herein provided. Amendments which *** (2) substantially affect the general land uses proposed in the redevelopment plan *** (4) increase the total estimated redevelopment project costs set out in the redevelopment plan by more than 5% after adjustment for inflation from the date the plan was adopted * * * shall be made only after the municipality gives notice, convenes a joint review board, and conducts a public hearing pursuant to the procedures set forth in this Section and in Section 11-74.4-6 of this Act.

65 ILCS 5/11-74.4-5 (2009).

Defendants argue that Count II must be dismissed because §11-74.4-5 of the TIF Act clearly applies to amendments of redevelopment plans, not redevelopment agreements. Defendants are correct that Count II does not allege an amendment to the Redevelopment Plan adopted by ordinance on June 27, 2001. Plaintiffs admit that there were no changes to the Redevelopment Plan, but argue that the changes to the RPA are tantamount to a change in the Redevelopment Plan. The plain language of §11-74.4-5(c) of the TIF Act, however, applies only to amendments of redevelopment plans. Plaintiffs cite to no authority which requires that

changes to redevelopment agreements are subject to the requirements of §11-74.4-5(c) and no authority which would allow for the expanded reading of the plain language of §11-74.4-5(c). Count II is dismissed.

E. *Count III - §2-615 (Striking of Relief)*

In Count III, Plaintiffs allege that the City Council Committee on Finance approved the Third Amendment at a meeting on Monday, October 6, 2008. The supplemental agenda listing this item was filed on Friday, October 3, 2008. Although it is not evident from these pleadings, Plaintiff contends that the Open Meetings Act's requirement that the agenda for any regularly scheduled meeting be posted at least 48 hours in advance of the meeting was violated. 5 ILCS 120/2.02.

Count III seeks a finding that the October 6, 2008 Finance Committee approval of the Third Amendment to the Redevelopment Plan is null and void as violative of the Open Meetings Act. Count III also seeks to enjoin the implementation of the Third Amendment to the Redevelopment Agreement and any selling of bonds or undertaking of obligations or expenditures pursuant to the Ordinances or Amendments. While Count III refers to the Redevelopment Plan, Exhibit F to the Verified Complaint clearly shows that the Third Amendment was an amendment to the Redevelopment Agreement. Defendants move to strike the claim for relief in Count III seeking to nullify the Third Amendment ordinance.

Plaintiffs argue in response to the motion to strike that the City Council could not have voted on the Third Amendment without the Finance Committee's approval and, therefore, their request for relief as to the Third Amendment is proper. They contend that because the Finance Committee failed to comply with the Open Meetings Act in approving the Third Amendment, the City Council could not properly pass the ordinance adopting the Third Amendment. Plaintiff rely on Rules 41 and 44 of the City Council's Rules of Order and Procedure in making their argument. (Motion, Ex. 5). Rule 41 states that "[a]ll ordinances . . . shall be referred, without debate, to the appropriate committees and only acted upon by the City Council at a subsequent meeting, on the report of the committee having the same in charge . . ." with certain exceptions which are not applicable to the Third Amendment. (Motion, Ex. 5). The City Council's Rules of Order and Procedure appear to require action by the Finance Committee prior to the consideration of the Third Amendment Ordinance by the City Council.

This reading of the rules, however, does not lead to the conclusion that the Third Amendment is subject to nullification because of any violation of the Open Meetings Act by the Finance Committee. Illinois Gasoline Dealers Association v. City of Chicago, 119 Ill. 2d 391, 403 (1988). In Illinois Gas Dealers, the plaintiff argued, in part, that a fuel tax ordinance was invalid based on the City Council's failure to comply with Rule 41. Id. at 403. The Illinois Supreme Court held that the ordinance could not be invalidated based on the City Council's failure to comply with its own internal rules. Id. at 404. An ordinance can only be invalidated based on a constitutional violation or a violation of state or federal statute. Id. Count III does not allege that the City Council itself violated the Open Meetings Act in passing the Third Amendment Ordinance. Count III alleges only that the Finance Committee failed to follow the Open Meetings Act. Any failure of the Finance Committee to comply with the requirements of

the Open Meetings Act cannot form a basis for nullifying the City Council's passage of the Third Amendment. The City Council's vote on the Third Amendment ordinance without proper Finance Committee approval may constitute a failure to follow the internal rules of the City Council, but is not a basis for invalidating an ordinance. Plaintiffs' requests for a finding that the Third Amendment ordinance is null and void and a finding that the City should be enjoined from implementing the Third Amendment are stricken.

F. *Count IV – Procedural Due Process (§2-615)*

Count IV alleges that Plaintiffs' due process rights under the Illinois Constitution have been violated by the passage of the Ordinances and the Amendments. This procedural due process claim is based on Plaintiffs' contentions that they will sustain "a reduction in the value" of their property and a "loss of their tax dollars to private entities" if the implementation of the Ordinances and Amendments are not enjoined. (Ver. Compl. ¶51).

"Procedural due process claims concern the constitutionality of the specific procedures employed to deny a person's life, liberty or property interest." East St. Louis Fed'n of Teachers, Local 1220 v. East St. Louis Sch. Dist. No. 189 Fin. Oversight Panel, 178 Ill. 2d 399, 415 (1997). "Courts considering procedural due process questions conduct a three-part analysis: the first asks the threshold question whether there exists a liberty or property interest being interfered with by the State; . . ." Id. "A person claiming the property interest must show more than a unilateral expectation of that interest amounting to a 'legitimate claim of entitlement.'" Moller v. Civil Svc. Comm'n, 326 Ill. App. 3d 660, 664 (1st Dist. 2001) quoting Nowak v. City of Calumet City, 648 F. Supp. 1557, 1559 (N.D. Ill. 1986). Defendants contend that Plaintiffs have not alleged any facts showing the existence of a property interest which would support Plaintiffs' right to procedural due process.

First, Plaintiffs assert a protectable interest in not suffering a decrease in the value of their real estate. Plaintiffs do not allege specifically how or to what extent the Amendments have caused a reduction in the value of their property. Plaintiffs have cited to no case that has found a protectable constitutional interest in a decrease in the value of property where, as here, there has been no restriction in the use or ownership or possessory interest of Plaintiffs' property. See generally, Andrus v. Allard, 444 U.S. 51, 66 (1979)(reduction in value of property not necessarily equated to a taking because where "owner possessed a full 'bundle of property rights, the destruction of one 'strand' of the bundle is not a taking.").

Both sides discuss the holding in Groenings v. City of St. Charles, 215 Ill. App. 3d 295, 307 (2d Dist. 1991). In Groenings, the plaintiffs argued that they had a protectable property interest because a boundary agreement entered into by St. Charles blocked an annexation of their land thereby causing a decrease in the value of their property. The court found that Plaintiffs' interest in increasing the value of their property did not constitute a property interest protected by due process. Id. Groenings cannot be read to support Plaintiffs' position that they have a protected interest here where they contend that development of the Wilson Yard Project will somehow have a negative impact on the value of their property.

Plaintiffs allege a protectable property interest in the "loss of their tax dollars to private entities." There is no cited authority finding a constitutionally protectable interest in tax funds or in the "loss" of tax funds to private entities who are involved in the rehabilitation of conservation areas under the TIF Act. The tax schemes of the TIF Act itself have been upheld against due process challenges. See e.g., People ex rel. Canton v. Crouch, 79 Ill. 2d 356, 378 (1980). The TIF Act serves a public interest in the "elimination of urban blight." Id. There is nothing in the TIF Act or in the Ordinances relating to the RPA which would give rise to any property interest in tax funds subject to constitutional protections. A taxpayer does have standing to bring suit relating to the misuse of tax funds, e.g., Feen v. Ray, 109 Ill. 2d 339 (1988), but this fact does not give rise to a due process right.

In Peterson v. Tazewell County, 38 Ill. App. 3d 762, 763 (3d Dist. 1976), taxpayers challenged a transfer from the County General Fund to the County Nursing Home Fund. The transfer was to cover a deficit caused by the failure to charge the full cost of treatment to those patients who had private means to pay for their needs. The plaintiffs claimed that the transfer allowed the use of public money for private purposes which constituted a taking of property without due process. Id. The court rejected the claim based on the principle that "[t]here is no such thing as a property right vested in the citizens of the state against the imposition of taxes for the public good." Id. quoting People v. Cain, 410 Ill. 39 (1951); see also, In re Petition for Detachment of Land, 318 Ill. App. 3d 922, 932 (3rd Dist. 2000).

Plaintiffs further argue that they were entitled to procedural due process in the form of notice because the TIF Act recognizes that residents have an interest in the creation of TIF districts and a right to notice. However, Plaintiffs have not alleged the existence of any current property interest here which entitles them to procedural due process based on any statutory right to notice in the TIF Act. E.g., E&E Hauling, Inc. v. Pollution Control Bd., 116 Ill. App. 3d 586, 617 (2d Dist. 1983). Nor do Plaintiffs identify any part of the TIF Act which requires that residents be given notice of the entry of redevelopment agreements or amendments to those agreements. As noted above, while the TIF Act requires notice and a public hearing regarding amendments to a redevelopment plan, there is no corresponding requirement for amendments to redevelopment agreements. Count IV is dismissed.

G. *Count V – Substantive Due Process (§2-615)*

Count V, a substantive due process claim, alleges that the TIF Ordinances and the Amendments are "arbitrary, irrational and capricious, and are not rationally related to any legitimate government or public interest" in violation of Art. 1, §2 of the Illinois Constitution. Defendants contend that Plaintiffs have failed to state a claim for violation of substantive due process rights.

Legislative enactments are presumed to be constitutional and a court should uphold their validity if reasonably possible. Wade v. City of North Chicago Police Pension Bd., 226 Ill. 2d 485, 510 (2007). The standard used to determine whether a statute or ordinance violates substantive due process is the same standard used to determine whether a statute or ordinance violates equal protection. People ex rel. Lumpkin v. Cassidy, 184 Ill. 2d 117, 123-24 (1998). "Economic and social welfare legislation not affecting a suspect class or fundamental right is

subject to [the] rational basis test." Jacobson v. Dept. of Public Aid, 171 Ill. 2d 314, 323 (1996). Under the rational basis standard, "[t]he court simply inquires whether the means the statute employs to achieve its purpose are rationally related to that purpose." Waconda Fire Prot. Dist. v. Stonewall Orchards, LLP, 214 Ill. 2d 417, 434 (2005). "As long as the statute is rationally related to a legitimate state interest, it will be upheld." Lumpkin, 184 Ill. 2d at 124. Whether a rational basis exists is a question of law. Jacobson, 171 Ill. 2d at 323.

A substantive due process claim may be subject to a §2-615 motion to dismiss. Napleton v. Village of Hinsdale, 229 Ill. 2d 296 (2008). "[T]o withstand a section 2-615 dismissal motion, a plaintiff must plead sufficient facts to establish that the challenged enactment did not satisfy" the rational relationship standard. Id. at 319. In making this determination, the court may consider all well pled allegations of fact and exhibits attached to the Complaint. Id. at 320.

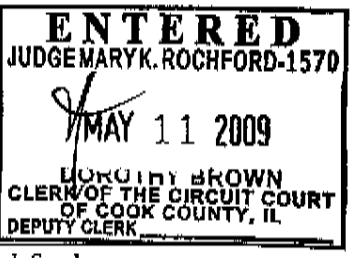
Municipalities have a legitimate interest in revitalizing blighted or conservation areas. People ex rel. city of Urbana v. Paley, 68 Ill. 2d 62, 73-75 (1977). The purpose of the TIF Act is to encourage private investment through TIF financing in order to eradicate blighted and conversation areas. 65 ILCS 5/11-74-4.4-2 (2009). The exhibits attached to the Complaint show that the Ordinances were enacted after the City conducted public hearings, established an interested parties registry and conducted an Eligibility Study. The Ordinances and the Amendments state that they are enacted pursuant to not only the TIF Act but also a home rule unit's power to regulate for the protection of the public welfare. The Ordinances and the Agreements contain the findings as to the need for development and the benefits from revitalization of the RPA. TIF financing is a rational means of achieving the City's legitimate interest in revitalization and development of the RPA.

Plaintiffs argue that there was no basis for the City's conclusion that the RPA was a conservation area because the Eligibility Study relied on by the City was without support. However, courts are not to decide whether a legislative enactment is wise or the best means to achieve the desired results. Lumpkin, 184 Ill. 2d at 124. Judgments made by a legislative body in passing an ordinance are not subject to courtroom fact finding. Id. If any set of facts, real or hypothesized, can be reasonably conceived to uphold the legislation, it must be upheld. Wauconda, 214 Ill. 2d at 434; Lumpkin, 184 Ill. 2d at 124; Jacobson, 171 Ill. 2d at 324. In Count V, Plaintiffs rehash their Count I problems with the Ordinances under the TIF Act but do not sufficiently set forth how the Ordinances and Amendments fail to meet the rational basis test. The City has a legitimate interest in revitalizing blighted or conservation areas and the accuracy of the Eligibility Study is irrelevant to the question of whether any conceivable basis exists to uphold the Ordinances and Amendments. Count V does not state a cause of action for violation of substantive due process and is dismissed.

III. Conclusion

1) Count I is dismissed pursuant to §2-619 on the basis that Count I is barred by the application of *laches*.
2) Count II is dismissed pursuant to §2-615.

3) Plaintiffs' requests in Count III for a finding that the Third Amendment ordinance is null and void and a finding the City should be enjoined from implementing the Third Amendment are stricken pursuant to §2-615.
4) Count IV is dismissed pursuant to §2-615.
5) Count V is dismissed pursuant to §2-615.
6) The status date of May 19, 2009 at 10:30 a.m. is to stand.



Judge Mary K. Rochford