

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

FIX WILSON YARD, INC. and JUDITH A. PIER, )  
D. RICHARD QUIGLEY, JUDY GLAZEBROOK, )  
KATHERINE BOYDA, LUKAS CEHA, and PAT )  
REUTER, )

Plaintiffs, )

v. )

Case No. )

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. )

Defendants. )

**VERIFIED COMPLAINT FOR INJUNCTIVE, DECLARATORY AND OTHER RELIEF**

Plaintiffs, Fix Wilson Yard, Inc., Judith A Pier, D. Richard Quigley, Judy Glazebrook, Katherine Boyda, Lukas Ceha, and Pat Reuter, by their attorneys, Thomas J. Ramsdell & Associates and Davis McGrath, LLC, and for their complaint against the Defendants, City of Chicago (“City” or “Chicago”) 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, Inc., allege as follows:

**NATURE OF THE ACTION**

1. This is an action for declaratory and injunctive relief brought by an association whose members are taxpayers residing in the City of Chicago and whom are adversely affected by the City's approval of a tax increment financing redevelopment plan and project involving approximately 144 acres of property (hereafter referred to as the "Subject Property" or the “TIF District”) within the City’s boundaries. Plaintiffs are seeking declaratory relief that the City's actions in establishing and purporting to implement the TIF District were void under the Tax

Increment Allocation Redevelopment Act (65 ILCS 5/11-74.4-1 et seq.); (hereinafter "TIF Act"), and injunctive relief against further implementation and operation of the Redevelopment Plan and Project. Plaintiffs also bring claims to invalidate a certain Third Amendment to the Wilson Yard Redevelopment Plan, on the grounds that the City violated the Open Meetings Act in enacting that Amendment, and also seek to invalidate all three amendments to the Wilson Yard Redevelopment Plan on the grounds that the City violated both their procedural and substantive due process rights under Art. I, § 2 of the Illinois Constitution in enacting those amendments.

### PARTIES

2. Plaintiff Fix Wilson Yard, Inc. is a not for profit association organized and existing under the Illinois not-for-profit corporation act and whose members are taxpayers who reside in the City of Chicago and/or within the Redevelopment Project Area which is the subject of this action (the "Subject Property" or "RPA").

3. The following individual Plaintiffs (collectively the "individual Plaintiffs") either own property within the TIF District or within approximately 250 feet of the TIF District, and have been harmed by the actions of the defendants complained of herein:

- a. Judith A. Pier ("Pier") owns the real property located at 819-21 West Sunnyside, Chicago, Illinois (within the TIF District);
- b. D. Richard Quigley ("Quigley") resides and owns the real property located at 4611 N. Magnolia, #3N, Chicago, Illinois (within 250 feet of the TIF District);
- c. Judy Glazebrook ("Glazebrook") resides and owns the real property located at 4325 N. Kenmore, Chicago, Illinois (within approximately 250 feet of the TIF District);
- d. Katherine Boyda ("Boyda") resides and owns the real property located at 4432 N. Clifton, #3N, Chicago, Illinois (within the TIF District);
- e. Lukas Ceha ("Ceha") resides and owns the real property located at 4350 N. Broadway, #1, Chicago, Illinois (within the TIF District);

- f. Pat Reuter (“Reuter”) resides and owns the real property located at 4434 N. Clifton, Unit GS, Chicago, Illinois (within the TIF District).
4. Defendant City of Chicago is an Illinois municipality, the territory of which overlays all of the Subject Property.
5. The Subject Property is located in Cook County, Illinois.
6. Defendant Wilson Yard Development I, LLC is an Illinois limited liability company and a party to the Wilson Yard Redevelopment Project Area Redevelopment Agreement between the City of Chicago and certain other entities dated November 30, 2005, a copy of which is attached as Exhibit A hereto.
7. Defendant Wilson Yard Partners, L.P. is an Illinois limited partnership and a party to the Wilson Yard Redevelopment Project Area Redevelopment Agreement between the City of Chicago and certain other entities dated November 30, 2005.
8. Defendant Wilson Yard Development Corporation is an Illinois corporation and a party to the Wilson Yard Redevelopment Project Area Redevelopment Agreement between the City of Chicago and certain other entities dated November 30, 2005.
9. Defendant Wilson Yard Senior Housing, L.P. is an Illinois limited partnership and a party to the Wilson Yard Redevelopment Project Area Redevelopment Agreement between the City of Chicago and certain other entities dated November 30, 2005.
10. Defendant Wilson Yard Senior Development Corporation is an Illinois corporation and a party to the Wilson Yard Redevelopment Project Area Redevelopment Agreement between the City of Chicago and certain other entities dated November 30, 2005.
11. Defendant Wilson Yard Retail I, LLC is the owner of property within the RPA situated at the Northwest corner of Montrose and Broadway streets and, upon information and belief, is intended to be one of the sites of development under the Redevelopment Plan.

#### **THE TIF ACT**

12. The TIF Act allows a municipality, under certain circumstances, to divert, for a period of up to 23 years, incremental property tax revenues which would otherwise be received by

taxing districts and to use said revenues, among other things, to induce private parties to develop "blighted" and "conversation" areas (65 ILCS 5/11-74.4-1 et seq.).

13. In order to create a TIF district, the property in question must satisfy the statutory criteria stated in the TIF Act, and the municipality must follow the procedures therefor, including, (a) convening a joint review board, consisting of representatives of various taxing bodies which would be affected by the reallocation of taxes and a public member, to consider whether the redevelopment proposal satisfies the eligibility requirements set forth in the TIF Act; (b) holding a public hearing in which it must hear and determine objections to the redevelopment project; and (c) adopting ordinances approving a redevelopment project and plan (65 ILCS 5/11-74.4-4 and 74.4-5).

#### **THE SUBJECT PROPERTY**

14. The Subject Property consists of approximately 144 acres of land within the City of Chicago in Cook County, Illinois, and is located in the Uptown community area South of Wilson Avenue; East of Clark Street; North of Montrose Avenue; and West of Lake Shore Drive. (Maps of the TIF District are attached hereto as Exhibit B).

#### **APPROVAL OF THE TIF DISTRICT AND AMENDMENTS TO THE REDEVELOPMENT PLAN**

15. On or about June 27, 2001, the City adopted three Ordinances (the "TIF Ordinances"), which ordinances respectively: (1) approved the Wilson Yard Redevelopment Plan and Project, (2) designated the Subject Property as the Wilson Yard Redevelopment Project Area ("RPA"); and (3) adopted tax increment financing for the RPA. True copies of these ordinances are attached hereto and incorporated herein by reference as Exhibit C hereto.

16. On or about June 1, 2007, the City approved a First Amendment to the Redevelopment Plan ("First Amendment"). The First Amendment substantially altered the original development plan in that it, *inter alia*, changed the nature of the original uses contemplated in the original Plan, and substantially increased the budgets for the three contemplated phases by \$20 million. A true and correct copy of the First Amendment is attached hereto as Exhibit D.

17. In or around April 2008, the City approved a Second Amendment to the Redevelopment Plan ("Second Amendment"). The Second Amendment substantially altered the original development plan and First Amendment in that it, *inter alia*, increased the square footage of the restaurant and retail space, increased the City Notes for the Project by almost \$10 million, increased the total projected costs, increased the maximum reimbursement amount of the aggregate principal of City Notes, and deleted provisions allowing for a reduction in the amount of City funds when the actual costs are either less than budgeted or not actually incurred. A true and correct copy of the Second Amendment is attached hereto as Exhibit E.

18. In October 2008, the City approved a Third Amendment to the Redevelopment Plan ("Third Amendment"). The Third Amendment substantially altered the original development plan and subsequent amendments in that, *inter alia*, the City virtually gave up any default remedies against the developer defendants and lost the right and ability, for failure of the developer to complete the phases of the Redevelopment Agreements (as amended), to terminate or suspend payments, or terminate the Redevelopment Agreement. A true and correct copy of the Third Amendment is attached hereto as Exhibit F.

19. The TIF Ordinance and subsequent amendments are collectively referred to herein as the "TIF Ordinance and Amendments."

#### **GENERAL ALLEGATIONS**

20. The adoption of tax increment financing for the Redevelopment Plan and Project at issue herein will result in the loss of significant and substantial real estate tax revenues by the City and other overlying tax districts in the RPA in that all or a substantial portion of the tax incremental revenues which will result from new developments on the Subject Property will be diverted from the overlying tax districts to the developers and owners of the Subject Property.

21. There is an actual controversy between Plaintiffs and the City regarding the legality of the City's actions in adopting the TIF Ordinances and Amendments, its compliance with the TIF Act, and the validity of the Ordinances under the TIF Act.

22. Plaintiffs will suffer irreparable injury as general taxpayers in the form of substantial lost property tax revenues on the Subject Property wrongfully diverted from the overlaying tax bodies if the TIF Ordinances are implemented and the Redevelopment Plan and Project, as amended, is allowed to proceed.

23. There is no adequate remedy at law for Plaintiff.

### COUNT I

#### **ABSENCE OF EVIDENCE THAT THE SUBJECT PROPERTY IS A CONSERVATION AREA AND/OR THAT DEVELOPMENT WOULD NOT OCCUR WITHOUT TIF FINANCING**

24. Plaintiffs repeat and reallege paragraphs 1-23 as and for paragraph 24 hereof.

25. The TIF Act allows a municipality to establish a "Redevelopment Plan" in order to "reduce or eliminate those conditions the existence of which qualified the redevelopment project area as a 'conservation area' . . ." (65 ILCS 5/11-74.4-2(b) and to adopt a Redevelopment Plan for said RPA.

26. The findings by the City that the Subject Property is a "conservation area" are clearly erroneous, arbitrary, unreasonable, and capricious in that there was no showing and there is no credible proof that 50% or more of the structures in the TIF District have an age of 35 years or more as required by 65 ILCS 5/11-74.4-2(b). Nor was there a proper showing and credible proof of the presence of three or more of the statutory conditions necessary to establish the property as a "conservation area." There was and is no evidence that:

- (1) The Subject Property would not be developed by reason of and/or exhibited deterioration within the meaning of 65 ILCS 5/11-74.4-2(b)(3).
- (2) The Subject Property would not be developed by and/or exhibited municipal code violations within the meaning of 65 ILCS 5/11-74.4-2(b)(4).
- (3) The Subject Property would not be developed by reason of and/or exhibited inadequate utilities within the meaning of 65 ILCS 5/11-74.4-2(b)(8).

27. The TIF Act further provides that a municipality may not adopt a redevelopment plan unless it finds that the redevelopment project "would not reasonably be anticipated to be developed without the adoption of the redevelopment plan." (65 ILCS 5/11-74.4-3(m)(J)).

28. The City of Chicago purportedly made the aforesaid requisite findings with regard to the Subject Property.

29. The findings by the City that the Subject Property is a "conservation area" and that it "would not reasonably be anticipated to be developed without the adoption of the redevelopment plan" are clearly erroneous, arbitrary, unreasonable, and capricious in that there was no showing and there is no evidence that development of the Subject Property would not reasonably be anticipated to occur absent the Redevelopment Plan and Project set forth in the TIF Ordinances or that the eligibility criteria alleged in paragraph 26 hereof were present to a meaningful degree throughout the Subject Property.

30. In making the aforesaid findings, the City arbitrarily and capriciously disregarded the following evidence which clearly demonstrates that the Subject Property is not a conservation area within the meaning of the TIF Act and that it could have been reasonably anticipated prior to June 2001 that the property would have been developed without the Redevelopment Plan and Project:

- a. The Subject Property includes and was surrounded by substantial residential and commercial developments, all of which have been developed without TIF financing;
- b. The Subject Property is located in a prime location and is prime property for redevelopment without public incentives. In fact, census data evidence establishes that significant development was occurring within the Subject Property leading to increased housing units and property values in the years proceeding the TIF Ordinances;
- c. The asserted conditions required for a conservation area are without basis in law or fact;
- d. There was and is insufficient evidence to show such a lack of growth and development in the Subject Property that it could reasonably be concluded that development would not occur without the Redevelopment Plan and Project;
- e. The closing of and required remediation of the Wilson Yards have caused and or contributed to any perceived or actual lack of private development and could have been corrected by the City without TIF funds; and

- f. The alleged inadequate utilities used to qualify the Subject Property as a Conservation Area are owned or controlled by the City and if such utilities are in fact inadequate, they could have been corrected by the City without TIF funds.

31. The Redevelopment Plan and Project for the Subject Property includes housing proposals not specific to or compatible with the proposed uses within and the Redevelopment Plan Goal, Objectives and Strategies for the designated Redevelopment Project Area, and not necessary for the elimination of the detrimental statutory criteria which is the alleged basis for the Redevelopment Project Area as required by the TIF Act. (65 ILCS 5/11-74.4-4.3(m)).

32. The Redevelopment Plan contemplates the use of TIF financing to pay for private improvements that should be funded by private funds or by the City of Chicago without TIF intervention.

33. There is no basis for concluding that the Subject Property could not be developed with ordinary industrial development bonds or other financing incentives, including but not limited to property tax rebates or sales tax revenue sharing or incentives available from Cook County.

34. The Plaintiff and its members will be irreparably harmed by the illegal diversion of substantial tax revenues from public bodies to private development projects such as set forth in the Redevelopment Plan unless the City of Chicago is preliminarily and permanently enjoined from further implementation of the TIF Ordinances.

35. The TIF Act provides the Plaintiff with no legal remedy. Therefore, the Plaintiff has no adequate remedy at law and, in any event, the amount of damages which will be incurred by the existence of the TIF district by the Plaintiff is incapable of precise calculation.

36. Based on the foregoing, there is a substantial likelihood that the Plaintiff will prevail on the merits of its claim.

37. The public interest will be served by granting the injunctive relief requested since an injunction will prevent the improper and illegal expenditure of property tax revenues.

WHEREFORE, the Plaintiffs respectfully pray:

- A. For the entry of an order declaring City's TIF Ordinances and Amendments void as a matter of law;



- B. For the entry of a temporary restraining order and preliminary injunction enjoining the City and the remaining Defendants from further implementation of said Ordinances and Amendments including construction on the Subject Property;
- C. For the entry of an order permanently enjoining the City and the remaining Defendants from further implementation of said Ordinances and Amendments including construction on the Subject Property;
- D. For the entry of an order permanently enjoining the City from selling any bonds or undertaking any obligation or making expenditures pursuant to said Ordinances and Amendments;
- E. For the entry of an order requiring the City of Chicago to deposit real estate taxes collected from the Subject Property during the pendency of this action into an escrow account subject to further order of the Court;
- F. For such other relief as the Court deems just and proper.

## COUNT II

### STATUTORY VIOLATION – AMENDMENT TO PLAN

38. Plaintiff repeats and realleges paragraphs 1-23 as and for paragraph 38 hereof.

39. On or about June 1, 2007 the City and the remaining Defendants entered into an agreement amending the RPA including an increase in the estimated project costs from approximately \$130 million to \$150 million, an increase of more than 5%, taking inflation into account, as well as the elimination of a movie theatre from the redevelopment project, thereby substantially altering and affecting the general land uses set forth in the original plan..

40. The aforesaid amendment to the RPA was and is tantamount to an amendment to the Redevelopment Plan and was made without a further Joint Review Board Hearing or Public Hearing, both of which are required by 65 ILCS 5/11-74.4-5(c)(2) and (4).

41. Therefore, the aforesaid Amendment and any subsequent amendments are without force or effect.

WHEREFORE, the Plaintiffs respectfully pray:

- A. For the entry of a temporary restraining order and preliminary injunction enjoining all Defendants from further implementation of the aforesaid Amendment as well as the TIF Ordinances, including construction on the subject property;

- B. For the entry of an order permanently enjoining all Defendants from further implementation of said Ordinances and Amendments including construction on the subject property;
- C. For the entry of an order permanently enjoining the City from selling any bonds or undertaking any obligation or making expenditures pursuant to said Ordinances and Amendments;
- D. For the entry of an For the entry of an order requiring the City of Chicago to deposit real estate taxes collected from the Subject Property during the pendency of this action into an escrow account subject to further order of the Court;
- E. For such other relief as the Court deems just and proper.

### COUNT III

#### VIOLATION OF THE OPEN MEETINGS ACT

42. Plaintiff repeats and reallege paragraphs 1- 23 as and for paragraph 42 hereof.

43. This Court is brought pursuant to 5 ILCS 120/1 *et seq.*, the “Open Meetings Act.”

44. On or about Friday, October 3, 2008, at 4:39 p.m., the Office of the City Clerk received a purported “Supplemental Agenda” for the regularly scheduled public meeting of the City of Chicago Committee on Finance, scheduled for Monday, October 6, 2008, at 10:30 a.m. (Exhibit G hereto)

45. The purported “Supplemental Agenda” sought to add an agenda item from the Department of Planning and Development relating to a proposed ordinance concerning the authority to amend a Redevelopment Agreement with the Wilson Yard defendants named herein.

46. The October 6, 2008 Finance Committee meeting was a public meeting within the meaning of the Open Meetings Act.

47. The Open Meetings Act requires the agenda for any regularly scheduled meeting be posted at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting. 20 ILCS 120/2.02. The agenda is also to be posted on the City’s website.

48. The Supplemental Agenda was filed less than 48 hours (excluding weekends) in advance of the October 6, 2008 meeting of the Committee on Finance, and notice of the Supplemental Agenda was not posted as required by the Open Meetings Act 48 hours (excluding weekends) in advance of the Finance Committee meeting.

49. At the October 6, 2008 Finance Committee meeting, the City's Committee on Finance approved the proposed amendment to the Wilson Yard Redevelopment Agreement (the Third Amendment).

50. The Open Meetings Act provides that where the provisions of the Open Meetings Act are not complied with, as here, the court may declare null and void any final action taken at such meeting, and may award the prevailing party reasonable attorney's fees and litigation costs.

WHEREFORE, the Plaintiffs respectfully pray:

- A. For a finding that the City's October 6, 2008 consideration and approval of the Amendments to the Wilson Yard Redevelopment Plan is null and void as violative of the Open Meetings Act;
- B. For a finding that the Third Amended Wilson Yard Redevelopment Plan is null and void;
- C. For the entry of a temporary restraining order and preliminary injunction enjoining all Defendants from further implementation of said Ordinances and Amendment, including construction on the subject property;
- D. For the entry of an order permanently enjoining all Defendants from further implementation of said Ordinances and Amendments including construction on the subject property;
- E. For the entry of an order permanently enjoining the City from selling any bonds or undertaking any obligation or making expenditures pursuant to said Ordinances and Amendments;
- F. For the entry of an order requiring the City of Chicago to deposit real estate taxes collected from the Subject Property during the pendency of this action into an escrow account subject to further order of the Court;
- G. For an award of all reasonable attorney's fees and litigation costs incurred by Plaintiffs in bringing this action; and

H. For such other relief as the Court deems just and proper.

#### COUNT IV

##### VIOLATIONS OF PROCEDURAL DUE PROCESS

51. Plaintiff repeats and realleges paragraphs 1-23 as and for paragraph 51 hereof.

52. The TIF Ordinances and Amendments have caused, and if the implementation of them is not enjoined will continue to cause, a reduction in the value of the individual plaintiffs' property and a loss of their tax dollars to private entities, and therefore constitute a deprivation of property under Article I, § 2 of the Illinois Constitution.

53. Article I, § 2 of the Illinois Constitution provides as follows:

*No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws.*

54. Illinois' due process guarantees include proper notice to all persons or entities having an interest in the properties affected by the TIF Ordinances, and an opportunity for such persons or entities to participate in, and object at, a full and fair public hearing.

55. Upon information and belief, with respect to notice and hearings, the procedure by which the City considered and enacted the First Amendment to the Redevelopment Plan ("First Amendment"), in or around May/June 2007, violated the due process clause of the Illinois Constitution in the following respects:

- a. It failed to provide for constitutionally guaranteed notice to all persons or entities having a legal interest in the properties affected by the First Amendment, including the Plaintiffs;
- b. It failed to reasonably inform property owners and other affected persons and entities, including the Plaintiffs, of the nature of the TIF Amendments, including the fact that parking spaces would be decreased, the maximum amount of the City's notes would increase, affordable housing units would increase, senior housing units would decrease, Phase 1, 2 and 3 total budget amounts would increase, the total project costs would increase by approximately \$20 million, and the project completion date would be extended by two years;

- c. It failed to provide for adequate notice to property owners and other affected persons and entities, including the Plaintiffs, of their right to a hearing and the deprivation of property value and tax dollars attendant to the First Amendment;
- d. It failed to provide property owners and other affected persons and entities, including Plaintiffs, with a reasonable opportunity to be heard by not providing for an adequate number of public hearings; and
- e. It failed to provide property owners and other affected persons and entities, including Plaintiffs, with a reasonable opportunity to prepare and present objections to the First Amendment.

56. Upon information and belief, with respect to notice and hearings, the procedure by which the City considered the Second Amendment to the Redevelopment Plan ("Second Amendment"), in or around April 2008, violated the due process clause of the Illinois Constitution in the following respects:

- a. It failed to provide for constitutionally guaranteed notice to all persons or entities having a legal interest in the properties affected by the Second Amendment, including the Plaintiffs;
- b. It failed to reasonably inform property owners and other affected persons and entities, including the Plaintiffs, of the nature of the TIF Amendments, including the fact that the maximum amount of the City's notes would increase by almost \$10 million, the restaurant and retail space would increase by 8,000 sq. feet, an affiliated company of Target may now become an anchor tenant, TIF funded property acquisition costs were increased, the total project cost increased by approximately \$800,000.00, Phase 2 and 3 total budget amounts would increase, the City's maximum reimbursement amount increased from 28.7% of the total cost to 34.22% of the total cost, and various provisions providing for a reduction in the maximum amounts of the City's funds were eliminated;
- c. It failed to provide for adequate notice to property owners and other affected persons and entities, including the Plaintiffs, of their right to a hearing and the deprivation of property value and tax dollars attendant to the Second Amendment;
- d. It failed to provide property owners and other affected persons and entities, including Plaintiffs, with a reasonable opportunity to be heard by not providing for an adequate number of public hearings;
- e. It failed to provide property owners and other affected persons and entities, including Plaintiffs, with a reasonable opportunity to prepare and present objections to the Second Amendment; and
- f. Upon information and belief, the purported notice of the public hearing before the Finance Committee relating to the Second Amendment

violated the Open Meetings Act as the agenda including consideration of the Second Amendment was not posted 48 hours before the public meeting of the Finance Committee.

57. Upon information and belief, with respect to notice and hearings, the procedure by which the City considered the Third Amendment to the Redevelopment Plan ("Third Amendment"), in or around October 2008, violated the due process clause of the Illinois Constitution in the following respects:

- a. It failed to provide for constitutionally guaranteed notice to all persons or entities having a legal interest in the properties affected by the Third Amendment, including the Plaintiffs;
- b. It failed to reasonably inform property owners and other affected persons and entities, including the Plaintiffs, of the nature of the TIF Amendments, including the fact that the City gave up virtually all of its potential recourse against the developers, including the City's ability to stop payments by elimination of the construction completion condition, the maximum interest rate provisions were amended to the disadvantage of the City (and its taxpayers), the default remedies provisions would change to reflect that "in no event" can the City suspend or terminate payments under the City notes;
- c. It failed to provide for adequate notice to property owners and other affected persons and entities, including the Plaintiffs, of their right to a hearing and the deprivation of property value and tax dollars attendant to the Third Amendment;
- d. It failed to provide property owners and other affected persons and entities, including Plaintiffs, with a reasonable opportunity to be heard by not providing for an adequate number of public hearings;
- e. It failed to provide property owners and other affected persons and entities, including Plaintiffs, with a reasonable opportunity to prepare and present objections to the Third Amendment.
- f. The purported notice of the public hearing before the Finance Committee relating to the Third Amendment violated the Open Meetings Act as the agenda including consideration of the Third Amendment was not posted 48 hours (excluding weekends) before the public meeting of the Finance Committee.

58. In passing the First, Second and Third Amendments to the Redevelopment Plan, the City rushed into enactments solely at the behest of a few interested citizens and the developer defendants named herein, rather than observe due process guarantees, engage in any reasonable planning considerations, or exercise due care.

59. The procedure followed by the City in passing the First, Second and Third Amendments has resulted in a deprivation of the individual Plaintiffs' property without due process of law.

60. This Count is brought pursuant to 735 ILCS 5/2-701 and 735 ILCS 5/11-101 *et seq.*

61. As a result of the violation of Plaintiffs' due process rights by the City of Chicago, Plaintiffs have been, and will continue to be, injured and damaged as follows:

- b. Plaintiffs have suffered and will continue to suffer a loss in land value of their property; and
- c. The First, Second and Third Amendments present an immediate and irreparable harm to Plaintiffs.

WHEREFORE, the Plaintiffs respectfully pray:

- A. For a declaration that the City violated Plaintiffs' procedural due process rights as guaranteed by Art. I, § 2 of the Illinois Constitution in enacting the First, Second and Third Amendments to the Wilson Yard Redevelopment Plan;
- B. For a declaration that the First, Second and Third Amendments to the Wilson Yard Redevelopment Plan are null and void;
- C. For the entry of a temporary restraining order and preliminary injunction enjoining all Defendants from further implementation of said Ordinances and Amendments, including construction on the subject property;
- D. For the entry of an order permanently enjoining all Defendants from further implementation of said Ordinances and Amendments including construction on the subject property;
- E. For the entry of an order permanently enjoining the City from selling any bonds or undertaking any obligation or making expenditures pursuant to said Ordinances and Amendments;
- F. For the entry of an order requiring the City of Chicago to deposit real estate taxes collected from the Subject Property during the pendency of this action into an escrow account subject to further order of the Court;
- G. For an award of all reasonable attorney's fees and litigation costs incurred by Plaintiffs in bringing this action; and

H. For such other relief as the Court deems just and proper.

## COUNT V

### VIOLATIONS OF SUBSTANTIVE DUE PROCESS

62. Plaintiff repeats and realleges paragraphs 1-41 as and for paragraph 62 hereof.

63. The TIF Ordinances and Amendments have caused, and if the implementation of them is not enjoined will continue to cause, a reduction in the value of the individual plaintiffs' property and a loss of their tax dollars to private entities, and therefore constitute a deprivation of property under Article I, § 2 of the Illinois Constitution.

64. Article I, § 2 of the Illinois Constitution provides as follows:

*No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws.*

65. The TIF Ordinances and subsequent amendments are arbitrary, irrational and capricious, and are not rationally related to any legitimate government or public interest, in violation of Art. I, § 2 of the Illinois Constitution in, *inter alia*, the following respect:

- a. They were not passed pursuant to any comprehensive land-use or development plan of the City, as the City has no such plans;
- b. The City's findings that the Subject Property is a "conservation area" is not supported by any reasonable or credible evidence;
- c. In the years preceding the adoption of the TIF Ordinances the areas in and around the Subject Property experienced residential and commercial growth and increases in property values and number of dwelling units;
- d. The Subject Property is located in a area that is prime for redevelopment as it is located close to Lake Michigan and is nearby to many amenities such as restaurants, shopping, businesses, jobs, parks and public transportation;
- e. The alleged inadequate utilities are owned and controlled by the City and could have been corrected by the City without TIF funds;
- f. The closing and remediation of the Wilson Yards, owned and operated as a train yard by the Chicago Transit Authority, caused and/or contributed to any perceived or actual lack of private development, which could have been corrected by the City without the use of TIF funds;



- g. The Department of Planning and Development, local Alderman and public officials, Committee on Finance, and the Chicago City Council failed to engage in any reasonable planning efforts for the Subject Property and failed to engage in any studies to determine whether the TIF Ordinances and Amendments would actually provide any public benefit;
- h. The TIF Ordinances and Amendments were passed not for the public welfare but in deference to the wishes of the developer defendants hereto and a few other interested individuals, the identities of whom are unknown to the Plaintiffs at this time;
- i. The TIF Ordinances and the Amendments will cost the City, its taxpayers, and other taxing districts, such as the Chicago Public Schools, untold millions of dollars in lost tax revenues, all for the benefit of a few developers, without any financial or other benefit to the public;
- j. The original TIF Ordinances have been amended three times, and the order in which the contemplated Phases (1, 2 and 3) would be completed, changed, such that retail, senior housing and market-rate (as promised by the local alderman) housing projects have been jettisoned, and currently the original Phase 2 (80 affordable rental dwellings) are being built first, in a discredited, high density public housing model;
- k. The housing model chosen for the affordable housing component (Phase 2) is the same or similar to the very same public housing model the City has paid millions of dollars to remove from locations elsewhere in the City over the past decade;
- l. The aggregate principal of City notes maximum reimbursement amount has increased by almost \$20 million, and is 34.22% of the total project cost – well in excess of the 10-20% guidelines observed in most TIF districts;
- m. The City has virtually given up any default remedies against the developer defendants and lost the right and ability, for failure of the developer to complete the phases of the Redevelopment Agreements (as amended), to terminate or suspend payments, or terminate the Redevelopment Agreement;
- n. The City has arbitrarily increased the TIF funds available over the \$58 million cap, and by more than 5%, without reconvening the joint review board, and without any benefit to the public;
- o. The City has agreed to reduce available parking by approximately 50% in an area that is already perceived to be parking deficient;
- p. The City has agreed to budget increases without study or analysis as to the harms to the City such increases will cause, and without study or analysis of any public benefit attendant to such increases;

- q. Various public officials of the City, including the local alderman, have failed to adequately inform residents of the nature of the TIF project, its changes and amendments, and the harms to the community that will flow from the Ordinances and Amendments;
- r. The majority of residents of the area in and around the TIF District oppose the Ordinances and Amendments. Surveys showing support were improperly manipulated and charrettes were improperly held and influenced by the local alderman and developers;
- s. Notwithstanding the findings of the Eligibility Study, there are, in fact, no significant issues with the condition of the sewers servicing the TIF District, and such as finding does not support consideration of the TIF District as a conservation area;
- t. The Amendments have eliminated the promised multi-use development, which was to include entertainment, big box retail, street level retail, senior housing and mixed-income housing, uses that increased the desirability of the original TIF District to surrounding residents;
- u. The City has substantially altered the plans contained in the original Ordinances without reconvening the joint review board as required by law; and
- v. The Redevelopment Plan, as amended, will cause a significant strain on the police, fire and transportation infrastructure of the area in and around the Subject Property.

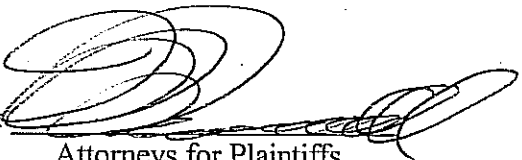
66. Plaintiffs, as citizens of Chicago affected by the Ordinances and Amendments, have the right to be free of arbitrary and unconstitutional land-use acts of the City of Chicago.

67. This Count is brought pursuant to 735 ILCS 5/2-701 and 735 ILCS 5/11-101 *et seq.*

68. There exists between the parties an actual and justiciable controversy relating to the validity and constitutionality of the Ordinances and Amendments thereto, and, Plaintiffs have suffered and are suffering immediate and irreparable harms as a result of the Ordinances and Amendments.

WHEREFORE, the Plaintiffs respectfully pray:

- A. For a declaration that the City violated Plaintiffs' substantive due process rights as guaranteed by Art. I, § 2 of the Illinois Constitution in enacting the TIF Ordinance and Amendments;
- B. For a declaration that the TIF Ordinance and Amendments are null and void;
- C. For the entry of a temporary restraining order and preliminary injunction enjoining all Defendants from further implementation of said TIF Ordinance and Amendments, including construction on the subject property;
- D. For the entry of an order permanently enjoining all Defendants from further implementation of said TIF Ordinance and Amendments including construction on the subject property;
- E. For the entry of an order permanently enjoining the City from selling any bonds or undertaking any obligation or making expenditures pursuant to said Ordinances and Amendments;
- F. For the entry of an order requiring the City of Chicago to deposit real estate taxes collected from the Subject Property during the pendency of this action into an escrow account subject to further order of the Court;
- G. For an award of all reasonable attorney's fees and litigation costs incurred by Plaintiffs in bringing this action; and
- H. For such other relief as the Court deems just and proper.

By:   
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VERIFICATION

I, Mary Anne Phelan, President of ~~Save~~<sup>Ex</sup> Wilson Yard, Inc. under penalties provided by law pursuant to § 1-109 of the Illinois Code of Civil Procedure, certify that the statements set forth in the foregoing Verified Complaint for Injunctive, Declaratory and Other Relief are true and correct, except as to matters stated therein to be on information and belief, and as to such matters certify as aforesaid that I verily believe the same to be true.

Dated: December 2, 2008

Mary Anne Phelan

## **LIST OF EXHIBITS TO THE COMPLAINT**

- A. Wilson Yard Redevelopment Project Area Redevelopment Agreement.
- B. Wilson Yard Community Context Map.
- C. Wilson Yard T.I.F Ordinances (group of 3).
- D. First Amendment to Wilson Yard Redevelopment Project Area Redevelopment Agreement.
- E. Second Amendment to Wilson Yard Redevelopment Project Area Redevelopment Agreement.
- F. Third Amendment to Wilson Yard Redevelopment Project Area Redevelopment Agreement.
- G. Supplemental Agenda, Committee on Finance, Oct 6, 2008.