

**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, LUCAS CEHA, AND PAT )  
REUTER )**

**Plaintiffs,**

v.

**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.**

**Case No. 08 CH 45023**

**Judge Mary K. Rochford**

**FIRST AMENDED 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, Ramsdell & Hind and Davis McGrath, LLC, for their amended 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, LLC, 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 Project Area 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 implementing the TIF District pursuant to the Redevelopment Project Agreement of November 30, 2005 ("RPA") and three subsequent amendments thereto 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 of the RPA. Plaintiffs also bring claims to invalidate a certain Third Amendment to the Redevelopment Agreement, on the grounds that the City violated the Open Meetings Act in enacting that Amendment, and also seek to invalidate the original TIF Ordinances, and thus the RPA and all three amendments thereto, on the ground that the original TIF Ordinances are unconstitutionally vague and ambiguous, and thus the City violated Art. I, §2 of the Illinois Constitution.

## **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"). 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 A)

3. The following individual Plaintiffs (collectively the "individual Plaintiffs") are taxpayers and 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, # I, 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 B hereto, and hereafter referred to as the "Redevelopment Project Agreement" or the "RPA".

7. Defendant Wilson Yard Partners, L.P. is an Illinois limited partnership and a party to the RPA.

8. Defendant Wilson Yard Development Corporation is an Illinois corporation and a party to the RPA.

9. Defendant Wilson Yard Senior Housing, L.P. is an Illinois limited partnership and a party to the RPA.

10. Defendant Wilson Yard Senior Development Corporation is an Illinois corporation and a party to the RPA.

11. Defendant Wilson Yard Retail I, LLC is the owner of property within the Subject Property 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).

14. The TIF Act defines “Redevelopment plan” as “the comprehensive program of the municipality for development or redevelopment intended by the payment of redevelopment project costs to reduce or eliminate those conditions the existence of which qualified the redevelopment project as a ‘blighted area’ or ‘conservation area’ or combination thereof...and thereby to enhance the tax bases of the taxing districts which extend into the redevelopment project areas...” 65 ILCS 5/11-74.4-3(n).

15. Pursuant to section §11-74.4-4(j) of the TIF Act, a municipality may:

“(j) Incur project redevelopment costs and reimburse developers who incur redevelopment project costs authorized by a redevelopment agreement; provided however...no municipality shall incur redevelopment project costs...that are not consistent with the program for accomplishing the objectives of the redevelopment plan as included in that plan and approved by the municipality until the municipality has amended the redevelopment plan as provided elsewhere in this Act.”

16. Moreover, Section §11-74.4-4(r) of the TIF Act states:

“Initiation of a redevelopment project shall be evidenced by either a signed redevelopment agreement or expenditures on eligible redevelopment project costs associated with a redevelopment project.”

**APPROVAL OF THE TIF DISTRICT IN 2001; ENTRY INTO THE RPA IN 2005;  
AND AMENDMENTS TO THE RPA**

17. 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; and (3) adopted tax increment financing for the Subject Property. True copies of these ordinances are attached hereto and incorporated herein by reference as Exhibit C hereto.

18. The stated goal of the Redevelopment Plan is “to reduce or eliminate conditions that qualify the Wilson Yard R.P.A. as a conservation area and to provide the direction and mechanisms necessary to create a cohesive and vibrant mixed-use, mixed income community and to preserve diversity in the area.” (Ex. C at 62347). The conditions that allegedly qualified the Subject Property as a conservation area were: (1) deterioration; (2) structures below minimum code; (3) inadequate utilities; and (4) lack of growth of equalized assessed value.

19. Another stated goal of the Redevelopment Plan is to “support the preservation and rehabilitation of existing multi-family and affordable housing throughout the [Subject Property] and support the development of new for-sale and rental housing that could include a mixture of market rate units and units affordable to moderate-, low- and very low-income households.” (Ex. C at 62,348).

20. A further stated goal of the Redevelopment Plan is to facilitate the preparation of underutilized sites for residential development.

21. On or about November 25, 2005 the City entered into the RPA with the Wilson Yard defendants identified in paragraphs 6-10 above.

22. The Developers and the City agreed in the RPA that the anchor site end users would include “Target Corporation, Aldi, Inc., [and] Kerasotes Theatres” (Ex. A, Section 8.06 (b)).

23. On or about June 1, 2007, the City approved a First Amendment to the RPA (“First Amendment”). The First Amendment substantially altered the Redevelopment Plan in that it, *inter alia*, changed the nature of the uses contemplated in the Redevelopment Plan.

Specifically, the First Amendment removed plans for a Kerasotes movie theater from the project, and extended the project's completion date by two years. Further, the First Amendment reduced surface and garage parking spaces from 700 spaces to 555 spaces. Finally, the First Amendment also 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.

24. In or around April 2008, the City approved a Second Amendment to the RPA ("Second Amendment"). The Second Amendment specifically states that "[a]ll prior agreements regarding the amendment of the Agreement are superseded by this Second Amendment." As such, the Second Amendment substantially altered the Redevelopment 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 Wilson Yard redevelopment 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.

25. In October 2008, the City approved a Third Amendment to the Redevelopment Plan ("Third Amendment"). The Third Amendment specifically states that "[a]ll prior agreements...regarding the amendment of the Agreement are superseded by this Third Amendment." As such, the Third Amendment substantially altered the Redevelopment Plan and subsequent amendments in that, *inter alia*, the City virtually gave up any default remedies against the developer. Specifically, the City lost the right and ability, for failure of the developer to complete the phases of the Redevelopment Agreement (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.

26. There is an actual controversy between Plaintiffs and the City regarding the legality of the City's actions in entering into the RPA and Amendments thereto and their compliance with the TIF Act in that the RPA as amended is inconsistent with the comprehensive program for accomplishing the objectives of the Redevelopment Plan, yet the City has incurred and has committed to continue incurring redevelopment project costs, without amending the Redevelopment Plan.

27. 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 RPA, as amended, is allowed to proceed.

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

### COUNT I

#### VIOLATION OF SECTION 11-74.4-4(j)

29. Plaintiffs repeat and reallege paragraphs 1-28 as and for paragraph 29 hereof.

30. The TIF Act gives the City the authority to "make and enter into all contracts with ...developers...necessary or incidental to the implementation and furtherance of its RPA." See 65 ILCS 5/11-74.4(b). However, the City is required to amend its Redevelopment Plan prior to incurring project redevelopment costs that are inconsistent with the program set forth in that plan. See 65 ILCS 5/11-74.4-4(j).

31. In this case, the City's RPA as well as the First, Second and Third Amendments are not consistent with the Redevelopment Plan's comprehensive program. Specifically, neither the RPA nor the First, Second and Third Amendments address the alleviation of the alleged



conservation factors or provide the residential or market-rate units stated in the Redevelopment Plan. Moreover, the Amendments have: increased the budget by \$20 million and increased City Notes for the Wilson Yard redevelopment project by \$10 million, reduced available parking spaces by 200, extended the projects completion date by two years, expunged plans for a Kerasotes movie theater, and most importantly, the City forfeited its right to stop payment by eliminating the construction completion condition.

32. With the City's forfeiture of the construction completion condition, "in no event" can the City suspend or terminate its payments under the City notes. That is totally inconsistent with the program for accomplishing the Redevelopment Plan. Moreover, the City's Amendment is in violation of Section 11-74.4-4(j) because there is no condition precedent for the developer before he can demand payment under the RPA, the City incurs and is immediately liable for TIF project costs as soon as demand is made by the developer.

33. As demonstrated, the RPA as well as the First, Second and Third Amendments are inconsistent with the program for accomplishing the Redevelopment Plan. As such, the City was prohibited from incurring redevelopment project costs until the City amended the Redevelopment Plan which the City has failed to do. The plaintiffs and its members have been harmed and will continue to be harmed by the City's actions.

34. Moreover, 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 RPA and Amendments.

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 the RPA 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 RPA 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 RPA 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 RPA 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

### VIOLATION OF OPEN MEETINGS ACT

38. Plaintiff repeats and realleges paragraphs 1- 37 as and for paragraph 38 hereof.

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

40. 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)

41. 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.

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

43. 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. 5 ILCS 120/2.02. The agenda is also to be posted on the City's website.

44. 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.

45. 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).

46. The Open Meetings Act provides that where the provisions of the Open Meetings Act are not complied with, as here, the court has broad discretion to order appropriate remedial relief, 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 violated the Open Meetings Act;
- B. For such relief as provided for under the Open Meetings Act, 5 ILCS 120/3(c);
- C. For an award of all reasonable attorney's fees and litigation costs incurred by Plaintiffs in bringing this action; and
- D. For such other relief as the Court deems just and proper.

### COUNT III

#### **DECLARATORY JUDGMENT – THE TIF ORDINANCES/ORIGINAL PLAN – VIOLATION OF ART. I, § 2**

47. Plaintiffs repeat and reallege paragraphs 1-37 as and for paragraph 47 hereof.

48. The TIF Ordinances (Ex. C hereto, pp. 62347-48) contain the “Redevelopment Plan Goal, Objectives And Strategies” for the Wilson Yard TIF District.

49. *Inter alia*, and as mere examples, the TIF Ordinances identify the following goals, objectives and strategies for the Redevelopment Plan:

The overall goal of the T.I.F. Redevelopment Plan is to reduce or eliminate conditions that qualify the Wilson Yard R.P.A. as a conservation area and to provide the direction and mechanisms necessary to create a cohesive and vibrant mixed-use, mixed-income community and to preserve diversity in the area.

\* \* \*

1. retain the economic and cultural diversity of the population in the R.P.A. and support the preservation of existing community residences and businesses by ameliorating the potential negative impacts, including displacement, that new development may have on existing community residents and businesses;

2. facilitate the assembly, preparation and marketing of vacant and underutilized sites for new retail, commercial, light industrial and residential development, and off-street parking areas and provide for corrective actions to address environmental problems to permit development and redevelopment, as needed or appropriate;

6. support the preservation and rehabilitation of existing multi-family and affordable housing throughout the R.P.A. and support the development of new for-sale and rental housing that could include a mixture of market-rate units and units affordable to moderate-, low- and very low-income households;

11. coordinate the goals of this redevelopment plan with the goals and objective of other underlying redevelopment plans and planning studies where appropriate and coordinate available federal, state and local resources, as appropriate;

50. The goals, objectives and strategies set-forth in the TIF Ordinances, which are supposed to reasonably inform citizens, including the plaintiffs, as well as City Officials charged with carrying them out, of the purposes behind the TIF Ordinances and what projects the taxpayers are expected to support with their tax dollars, are so rife with vague, ambiguous, subjective, overly inclusive language that they read more like a description of lofty social ideals than any publically-financed real estate development plan.

51. Taken as a whole, the goals, objectives and strategies make use of terms and phrases such as “direction and mechanisms necessary,” “potential negative impacts,” “may have,” “rental housing that *could* include a mixture...,” and “coordinate the goals...with the goals and objectives *of other* [unidentified] underlying redevelopment plans and planning studies *where appropriate....*”

52. The goals and objectives necessarily leave persons of common intelligence guessing as to who makes the decisions as to what is “appropriate” or “necessary,” and what, for example, is an appropriate “corrective action.”

53. The goal/objective most particular to the Holsten Wilson Yard Project, No. 2, describes virtually every type of real estate development, “new retail, commercial, light industrial and residential development, and off-street parking areas,” without providing any guidance as to what specific development the TIF monies are supposed to support.

54. The defendants to this action have already conceded that, “the Plan itself proposes only in *very general terms the desired uses to be made with the TIF Funds,*” citing goal/objective No. 2. *See* Defendants previously filed motion to dismiss, p. 11. (Emphasis added)

55. Similarly, goal/objective No. 6 provides for the potential development of a “mixture of market rate units and units affordable to moderate-, low- and very low-income households.”

56. Goal/objective No. 6 thus provides for the construction of virtually every type of new residential housing that can be developed, leaving taxpayers, including Plaintiffs, as well as City officials charged with carrying out the goals and objectives of the TIF Ordinances, guessing as to what type of housing the TIF Ordinances are actually supposed to support and provide.

57. These terms and phrases carry such subjective connotations as to render them meaningless in any objective, clearly defined sense. There are infinite ways in which persons of common intelligence may disagree as to what specifically is meant by the goals and objectives identified and described above, as evidenced, *inter alia*, by the significant changes to the Redevelopment Agreement, via the three Amendments, as alleged at pp. 23-25, *supra*.

58. Taken as a whole they are revealed as nothing more than a collection of contrived linguistic aberrations and lofty social ideals designed to appear as informative goals and objectives, without actually describing in any way commonly understood by persons of common intelligence what it is the TIF Ordinances are supposed to accomplish and how the public will benefit from the expenditure of its tax dollars.

59. Individually and as a whole these goals and objectives are not reasonably definite, nor are critical terms defined, such that a person of common intelligence could understand their meaning and application.

60. Thus, the TIF Ordinances' goals and objectives as contained therein are so vague and ambiguous that persons of common intelligence must necessarily guess at their meaning, and they are thus unconstitutional in violation of Art. I, § 2 of the Illinois Constitution.

61. More important, this language is so general and inclusive, it is almost impossible for a person of common intelligence to understand what the purposes of the TIF Ordinances are and how they are to be carried out.

62. Moreover, Plaintiffs, citizens and taxpayers of Chicago whose tax dollars are financing the various projects being carried out under the TIF Ordinances, Redevelopment Agreement, and three Amendments thereto, and whose property values are being diminished, have the right to be free of arbitrary, irrational and unconstitutionally vague and ambiguous acts of the Chicago City Council.

63. This Count is brought pursuant to 735 ILCS 5/2-701.

64. There exists between the parties an actual and justiciable controversy relating to (a) the validity of the TIF Ordinances, and (b) Plaintiffs' right to be free of unconstitutionally ambiguous and vague acts of the Chicago City Council.

65. The provisions cited above are so unconstitutionally vague and ambiguous that they should be declared invalid, and the TIF Ordinances should be declared invalid both in their parts, and in their entirety.

WHEREFORE, Plaintiffs pray for the relief requested below:

- A. For a declaration that the TIF Ordinances are unconstitutionally vague and ambiguous in their entirety, or in their parts, in violation of Art. 1, § 2 of the Illinois Constitution, and are thus invalid;
- B. For the entry of a temporary restraining order and preliminary injunction enjoining the City and the remaining Defendants from further implementation of said the TIF Ordinances, and the RPA and Amendments passed pursuant thereto, 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 TIF Ordinances, and the RPA and Amendments passed pursuant thereto, 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 TIF Ordinances, and the RPA and Amendments passed pursuant thereto;
- 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.

By   
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**VERIFICATION**

I, Mary Anne Phelan, President of Fix 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 First Amended 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: July 17, 2009

Mary Anne Phelan