

IN THE SUPREME COURT OF MISSOURI

No. SC86302

ST. CHARLES COUNTY, et al.,
Plaintiffs/Appellants,

v.

CITY OF ST. PETERS, et al.,
Defendants/Respondents.

Brief of Amicus Curiae City of St. Louis

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STATEMENT OF FACTS

The City of St. Louis adopts the statement of facts in the substitute brief of Respondent City of St. Peters.

POINT RELIED ON

**THE JUDGMENT OF THE TRIAL COURT SHOULD BE AFFIRMED
BECAUSE IT IS CONSISTENT WITH THE CONSTITUTION AND
LAWS OF THIS STATE IN THAT APPELLANTS' UNTIMELY AND
INCORRECT OBJECTIONS DO NOT WARRANT SETTING ASIDE
A DEVELOPMENT THAT WAS UNDERTAKEN IN 1992.**

State ex inf. Dalton v. Land Clearance for Redev. Auth.,

364 Mo. 974, 270 S.W.2d 44 (banc 1954).

Desloge v. St. Louis County, 431 S.W.2d 126 132 (Mo. 1968).

JG St. Louis West Ltd. Liability Co. v. City of Des Peres,

41 S.W.3d 513 (Mo. App. 2001).

Mo. Const. Article VI, § 21.

ARGUMENT

THE JUDGMENT OF THE TRIAL COURT SHOULD BE AFFIRMED BECAUSE IT IS CONSISTENT WITH THE CONSTITUTION AND LAWS OF THIS STATE IN THAT APPELLANTS' UNTIMELY AND INCORRECT OBJECTIONS DO NOT WARRANT SETTING ASIDE A DEVELOPMENT THAT WAS UNDERTAKEN IN 1992.

The Court should affirm the judgment of the trial court because Appellants' claims are contrary to Missouri law and the Missouri Constitution as shown by the briefs of Respondents City of St. Peters and Costco Wholesale Corporation. The City of St. Louis wishes to set forth additional reasons for the Court to reject Appellants' arguments.

Appellants' Arguments Would

Endanger The State And Its Municipalities

The City of St. Louis has been active in using TIF projects to redevelop areas that need an extra spark to be made productive. The 2003 Annual Report on Tax Increment Financing issued by the Missouri Department of Economic Development lists some of the redevelopment projects that St. Louis has used. These show some of the many ways that the Real Property Tax Increment Allocation

Redevelopment Act (“RPTIARA”) can be used. Portions of the report relevant to St. Louis are included in the appendix to this brief.

The various redevelopments are designed to serve such varied public purposes as preserving historic buildings, encouraging residence in the City, expanding jobs, preserving historic neighborhoods, meeting the needs of high-technology employers, increasing the number of people living in the downtown area, and increasing the availability of retail businesses. This listing is by no means exhaustive.

St. Louis and many other municipalities have been engaging in redevelopment for many years. Only harm would result, and no beneficial purpose would be served, by allowing parties to come in years after a redevelopment has been in operation to question the validity of the genesis of the project. As shown by the Department of Economic Development report, many millions of dollars have been committed to redevelopment projects by St. Louis and the developers who have agreed to help eradicate adverse conditions in the City.

As discussed below, the settled law of Missouri has been that redevelopments and the payments associated with them are proper.

Municipalities, developers, and the holders of notes and bonds and other obligations issued in connection with redevelopments are entitled to rely on the stability of the law. How many developers will come to Missouri in the future if the Court allows the St. Peters development from 1992 to be undone? How many participants in the credit markets will purchase Missouri bonds if the Court holds the obligations at issue in this case to be invalid? How would the state and its municipalities retain their credit ratings in the face of such uncertainty? These concerns are not peculiar to St. Peters or St. Louis. Every municipality in the state that has engaged in redevelopments in the past or might consider undertaking them in the future stands to be impacted by the Court's ruling in this case.

Ruling For Appellants Would Invite More Litigation

Of particular concern is the fact that it is inappropriate for anyone to attack a conclusive legislative determination on the issue of blight or the public purpose of a redevelopment on grounds that could and should be advanced in the legislative process. Appellants raise arguments that, if they had any merit, were available to be raised in 1992. Legislative determinations are not to be reviewed in light of events that occur twelve years later, but rather in light of

the facts at the time the legislative body was deliberating. *Elam v. City of St. Ann*, 784 S.W.2d 330, 335 (Mo. App. 1990); *R. A. Vorhof Constr. Co. v. Black Jack Fire Protection Dist.*, 454 S.W.2d 588, 591 (Mo. App. 1970); *Desloge v. St. Louis County*, 431 S.W.2d 126, 132 (Mo. 1968). The Court should not change Missouri law to allow the kind of Monday morning quarterbacking requested by Appellants.

One hesitates to raise the specter of tidal waves or floodgates, but it must be clear that a ruling in favor of Appellants would only invite more litigation relating to other developments. It is well known that developers have attempted to use the courts to derail projects undertaken by their competitors. In *JG St. Louis West Ltd. Liability Co. v. City of Des Peres*, 41 S.W.3d 513 (Mo. App. 2001), for example, a competitor (the owner of Chesterfield Mall) challenged the ordinances passed by the City of Des Peres calling for the use of tax increment financing to redevelop West County Center in cooperation with another developer. In the *Des Peres* case, the competitor challenged the legislative action in a timely manner. The Court should not foment even more such litigation by allowing competitors to attack developments years after they were approved.

This is not to suggest that it is improper for any party to bring a valid claim, or that developers lack any of the rights common to other corporate citizens. In this context, however, it cannot be doubted that competing developers would love to have the opportunity to attack the validity of their rivals' existing developments. The Court should not provide them with a forum to do so.

Redevelopment Is A Public Purpose

Appellants claim that it is improper for St. Peters, pursuant to the RPTIARA, to use economic activity taxes generated by Costco's redevelopment efforts to defray some of the costs of the redevelopment. Appellants point to Article VI, § 23, of the Missouri Constitution, which states in part that no city shall "grant public money in aid of any corporation." They also cite Article VI, § 25, which bars "grants of public money" to any private corporation under some circumstances.

Appellants' argument ignores the fact that St. Peters' actions pursuant to the RPTIARA are not for any private benefit, but rather serve a significant public purpose: alleviation of blight. Appellants' theory appears to proceed from the erroneous legal conclusion that

the redevelopment was undertaken for the purpose of conferring a benefit on private parties. This argument ignores pertinent provisions of the Missouri Constitution and judicial opinions going back many years that authorize redevelopment plans for the public purposes of alleviating blight and fostering economic development. The Missouri Constitution recognizes the public benefits of “clearance, replanning, reconstruction, redevelopment and rehabilitation of blighted, substandard or insanitary areas.” Mo. Const. Article VI, § 21.

It is well settled “that the primary purpose of a redevelopment project is a public purpose, and that any benefits to private individuals are merely incidental to the public purpose.” *State ex inf. Dalton v. Land Clearance for Redev. Auth.*, 364 Mo. 974, 270 S.W.2d 44, 53 (banc 1954). If the purpose of a government act is public, the fact that benefits may accrue to some private persons does not deprive the government action of its public character. *State ex rel. Atkinson v. Planned Indus. Expansion Auth.*, 517 S.W.2d 36, 45 (Mo. banc 1975). Improved employment and stimulation of the economy serve essential public purposes. *State ex rel. Jardon v. Industrial Dev. Auth.*, 570 S.W.2d 666, 675 (Mo. banc 1978).

St. Peters' actions were undertaken to further the public purpose of redevelopment. If the Court were to embrace the view suggested by Appellants, it would cast doubt on the many other redevelopment projects throughout the state that are driving economic renewal in other depressed areas.

This Case Is Not A Referendum On Tax Increment Financing

Amicus Great Rivers Habitat Alliance declares that “this Court must act to rein in the patent abuses occurring all across Missouri.” Amicus Brief at 30. Great Rivers says this case “offers the Court the opportunity to set reasonable and rational guideposts for the creation of redevelopment areas.” *Id.* These baseless suggestions invite comment.

First, obviously, this case is not a vehicle for the Court to review other developments. The record does not contain even a shred of support for Great Rivers' suggestion that a host of abusive redevelopment projects are operating illegally throughout the state. To the contrary, it is clear that the courts commonly rule on the propriety of various aspects of development projects and hold them invalid as often as the facts of any particular case require. *See, e.g., Ste. Genevieve School District v. Board of Aldermen of City of Ste.*

Genevieve, 66 S.W.3d 6 (Mo. banc 2002) (reviewing amendment of redevelopment project); *JG St. Louis West Ltd. Liability Co. v. City of Des Peres*, 41 S.W.3d 513 (Mo. App. 2001) (discussed above); *Spradlin v. City of Fulton*, 924 S.W.2d 259 (Mo. banc 1996) (reviewing creation of neighborhood improvement district); *City of St. Charles v. DeVault Mgmt.*, 959 S.W.2d 815 (Mo. App. 1997) (reviewing condemnation in connection with redevelopment). The suggestion that there is no meaningful judicial review of redevelopment projects is contrary to the facts.

Second, it appears that Great Rivers' entreaties should be made to the General Assembly rather than this Court. The great majority of the cases cited in Great Rivers' brief deal with the propriety of the statutory use of eminent domain. (Notably, this case does not involve any use of eminent domain.) In this state, it is well settled that statutes permit eminent domain to be used to further the public purpose of redevelopment. *Tax Increment Fin. Comm'n v. J.E. Dunn Constr. Co.*, 781 S.W.2d 70 (Mo. banc 1989); *State ex rel. United States Steel v. Koehr*, 811 S.W.2d 385 (Mo. banc 1991). If Great Rivers would like the law in this area to change, it should direct its efforts to the legislature.

Third, Great Rivers purports to discern a national trend “against the continued expansion of the use of government funds and government powers for the pure benefit of private developers.” The response to this claim must be that Missouri law, as discussed above, has never permitted any public expenditures for the pure benefit of private entities. Such a practice, if any municipality wanted to engage in it, is already barred. Redevelopment, however, is for a public purpose and thus a proper use of public funds. The existence of any “national trend” is not relevant to the Court’s considerations.

Further, the cases cited by Great Rivers do not show any national trend against redevelopment projects. Rather, it is clear that courts routinely permit redevelopments to go forward in conformity with statutes designed to alleviate adverse conditions. *San Franciscans Upholding the Downtown Plan v. City and County Of San Francisco*, 125 Cal. Rptr. 2d 745 (Cal. Ct. App. 2002). As in Missouri, the courts of other states do not allow “egregious misuse” of redevelopment statutes. *Id.* at 706 (distinguishing Great Rivers’ cited case, *Beach-Courchesne v. City of Diamond Bar*, 95 Cal.Rptr.2d 265 (Cal Ct. App. 2000)).

Great Rivers certainly has not cited any case to support the existence of any national trend to allow courts to derail redevelopments twelve years after they were approved. If the Court perceives the need to declare the law for the guidance of those involved in future redevelopments, this case involving a development commenced in the last century is not the appropriate vehicle.

The Kelo Case

Finally, Great Rivers cites the Connecticut case of *Kelo v. City of New London*, 843 A.2d 500 (Conn. 2004), in which the United States Supreme Court recently granted a writ of certiorari. *Kelo* is irrelevant to this case, but at the same time supports the judgment of the trial court.

The principal issue in *Kelo* is “whether the public use clauses of the federal and [Connecticut] constitutions authorize the exercise of the eminent domain power in furtherance of a significant economic development plan that is projected to create in excess of 1000 jobs, to increase tax and other revenues, and to revitalize an economically distressed city, including its downtown and waterfront areas.” *Id.* at 507. The case arose from the efforts of landowners to

obtain injunctive relief to prevent the city from exercising eminent domain authority to condemn the landowners' properties for the development. *Id.* at 508. The Supreme Court of Connecticut affirmed. *Id.*

Kelo is consistent with the many decisions of Missouri courts, including the trial court in this case, holding that redevelopment for public purposes is constitutional. And *Kelo* does not support the position of Appellants. The issues raised by the landowners in *Kelo* are not afoot in this case. This case does not involve the consideration of clauses in the constitutions of Connecticut and the United States that limit the power of eminent domain. Nothing that transpires in the future in the *Kelo* case, whether in state court or the United States Supreme Court, will have any effect on the outcome of this case.

CONCLUSION

The judgment of the trial court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that this brief includes the information required by Rule 55.03 and complies with the requirements contained in Rule 84.06. Relying on the word count of the Microsoft Word program, the undersigned certifies that the total number of words contained in this brief is 2500, excluding the cover page, signature block, and certificates of service and compliance.
