

Summary of SC92646, Bonzella Smith and Isaiah Hair and Cheryl Nelson and Elke McIntosh v. City of St. Louis, Board of Aldermen for the City of St. Louis, TIF Commission for the City of St. Louis and Northside Regeneration

Appeal from the St. Louis city circuit court; Judge Robert H. Dierker Jr.
Argued and submitted November 28, 2012; opinion issued April 9, 2013

Attorneys: Northside Regeneration was represented by Paul J. Puricelli and Robb E. Hellwig of Stone, Leyton & Gershman in St. Louis, (314) 721-7011; St. Louis city was represented by Gerard T. Carmody, James P. Carmody and Edwin C. Ernst IV of Carmody MacDonald PC in St. Louis, (314) 854-8600; Nelson and McIntosh were represented by W. Bevis Schock of Schock Law in St. Louis, (314) 726-2322; and Smith and Hair were represented by D.B. Amon, an independent practitioner from St. Louis, (314) 531-9016; Eric E. Vickers, an independent practitioner from St. Louis, (314) 420-8700; and James W. Schottel Jr. of Schottel & Associates PC in St. Louis, (314) 421-0350.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: Northside Regeneration and St. Louis city challenge a declaratory judgment that voided two ordinances, which authorized a tax increment financing plan for redevelopment of 1,500 acres in the city. Northside and the city also challenge the circuit court's judgment that the redevelopment plan at issue does not comply with the requirements of the tax increment financing act. Four residents of the city, who had prevailed in the underlying case support the circuit court's judgment, but challenge the circuit court's decision overruling their motion for attorney fees. In a 6-0 decision written by Chief Justice Richard B. Teitelman, the Supreme Court of Missouri reverses in part and affirms in part the circuit court's decision. The decision is reversed as to the voidance of the ordinances due to lack of a defined redevelopment project and cost benefit analysis, but affirmed as to all other issues.

Facts: St. Louis city passed two ordinances authorizing a redevelopment plan proposed by Northside Regeneration for 1,500 acres of the city. One ordinance provided for adoption and approval of the redevelopment plan pursuant to the Tax Increment Financing Act. It also designated the redevelopment area, approved the redevelopment area and created a special fund for allocation and administration of payment of redevelopment costs. It further provided findings that the redevelopment area as blighted, that a cost-benefit analysis had been filed, that redevelopment was not financially feasible without tax increment financing assistance and it approved the plan as conforming to the city's comprehensive plan for redevelopment. The second ordinance designated the redevelopment; proposed development of new commercial, institutional and industrial uses; and authorized the city to enter an agreement with Northside. Smith and Hair filed an action for a preliminary injunction to prevent the city and Northside from moving forward with the plan, and later asked for declaratory judgment. Nelson and McIntosh later intervened in the action. The residents then filed a motion alleging the ordinances did not include a redevelopment project as required in the tax increment financing act. The circuit court found the ordinances were void because the redevelopment plan lacked a defined redevelopment project and a cost-benefit analysis of the projects. The circuit court also overruled the residents' motion for attorney fees.

REVERSED IN PART AND AFFIRMED IN PART.

Court en banc holds:

- (1) The issue of whether there was a sufficiently specific redevelopment project was not properly raised at trial, nor was it tried by implied consent.
- (2) The trial court did not abuse its discretion in denying the request for attorney fees. Circuit courts are authorized to award costs, but costs do not automatically include attorney fees.
- (3) The trial court did not err in holding that the ordinances complied with the requirement to include adequate evidence of financing for the redevelopment plan.
- (4) The residents presented no valid basis for this Court to second guess the legislative finding that the redevelopment plan conforms with the city's comprehensive land use plan.
- (5) The third and fourth points of the residents' argument are dismissed for failure to comply with the rules. The points relied on do not identify any particular ruling, legal reason or reason to reverse the trial court's judgment.