IN THE SUPREME OF MISSOURI

BONZELLA SMITH, *et al*	)	
	)	
Respondent Cross Appellants	)	
vs.	)	Supreme Court No.SC92646
	)	
TIF COMMISSIONERS, *et al*.,	)	Appeal No. ED95733
	)	
Appellants.	)	Appeal from the Circuit Court of St. Louis City, Missouri Case No. 0922-CC9379 Hon. Robert H. Dierker, Jr Division 18
	)	
	)	On Transfer from the Missouri Court of Appeals, Eastern District

SUBSTITUTE BRIEF OF RESPONDENTS CROSS APPELLANTS BONZELLA SMITH AND ISAIAH HAIR

D B AMON #31287
3201 Washington
St. Louis, Missouri 63103
(314) 531-9016
Fax *(314) 367-1661*
dbamonattorneyyahoo.com
Attorney for Respondent Cross Appellants Isaiah Hair and Bonzella Smith

TABLE OF CONTENTS **1**

TABLE OF AUTHORITIES **2**

Cases

Statutes and Court Rules

Other:

JURISDICTIONAL STATEMENT

This is an appeal from a judgment entered on July 2, 2010, by the Honorable Robert H. Dierker Jr., of the Circuit Court of the City of St. Louis, Missouri. On June 19, 2012, the Missouri Court of Appeals, Eastern District, issued an opinion stating that it would affirm, but ordered the appeal transferred to this Court pursuant to Rule 83.02 because of the general interest and importance of the issues. This Court has jurisdiction pursuant to the Missouri Constitution, Article V, Section 10.

.

STATEMENT OF FACTS

I. NORTHSIDE'S REDEVELOPMENT PLAN

Appellants' redevelopment project is primarily written within Appellants' Redevelopment Agreement **Substitute Appendix to Appellant Northside's Substitute Brief (**hereinafter **SubAppxAppNorSubBr)A40** as an attachment to Ordinance 68485, adopted by Appellant City. By such action Appellants bypassed the TIF Commission's approval and bypassed the public disclosure requirements and thus violated the TIF Act's requirement that the redevelopment project first meet with approval of said Commission and presented at public hearing for comment, support or disapproval.**§99.820.1** and **§99.825.1**

Additionally, **§99.810** of the TIF Act identifies some prerequisites for municipal approval of a redevelopment plan, including a blighting analysis, compliance with the The Real Property Tax Increment Allocation Redevelopment Law, §§99.800 et seq., RSMo a municipality's comprehensive plan, a "cost-benefit" analysis, among others. In 2009, Northside submitted its proposed Redevelopment Plan to the City of St. Louis.

On October 30, 2009, Appellants Board of Aldermen, City of St. Louis adopted two ordinances (the "Redevelopment Ordinances"): Ordinance No. 68484, **SubAppxAppNorSubBr A27** which, among other things: (i) adopted and approved a redevelopment plan titled the "Northside Regeneration Tax Increment Financing (TIF) Redevelopment Plan" dated September 8, 2009 (the "Redevelopment Plan"), and (ii) designated the Northside Regeneration Redevelopment Area (as described in the Redevelopment Plan) as a "redevelopment area" as that term is defined in the TIF Act

(the "Redevelopment Area") (A27) Ordinance No. 68485, which, among other things: (i) affirmed the designation of the Redevelopment Area and approval of the Redevelopment Plan and **alleged** Redevelopment Projects in RPA A and **alleged** Redevelopment Projects in RPA B, (ii) designated Appellant Northside as the Developer of the Redevelopment Area, and (iii) directed the City to enter into the Redevelopment Agreement (the "Redevelopment Agreement")(**A36**). The City and Northside executed the Redevelopment Agreement dated as of December 14, 2009 see **SubAppxAppNorSubBr A40**

The Redevelopment Ordinances contemplate the reformation of 1500 acres in North St. Louis. The Redevelopment Agreement acknowledges that the City approved the redevelopment projects in RPA A and B as described in The Plan, but referred RPA C and RPA D back to the TIF Commission. Appellant Northside seeks $390,600,000 in TIF financing.

II. THE PARTIES

Appellant Northside Regeneration, LLC ("Northside") is the Developer under two voided ordinances adopted by the City of St. Louis in support of the redevelopment project as part of the Northside Regeneration Tax Increment Financing (TIF)Redevelopment Plan. Upon passage of said ordinances Appellant applied for and received what has often been refereed to by the north side residents as the Paul McKee Law, **§99.1205** RSMo, aka Distressed Areas Land Assemblage Tax Credit Act designed specifically for wealthy developers requiring a minimum holding of seventy five (75) acres and specifically **requires** a redevelopment agreement with a local municipality

which upon application said developer collects $20,000,000.00 per year up to and including a total of $95,000,000.00. To date upon application for the tax credit, Appellant Northside has collected $20,000,000.00 for 2009, **TRTr**.209-211; see also Substitute Brief of City of St Louis, et al @ p. 19) and $9,000,000.00 in 2010 well after the ordinances were voided by the trial court. The City of St. Louis, its Board of Aldermen and TIF Commission, have also appealed the trial court's ruling.

Respondents/Cross-Appellants Bonzella Smith and Isaiah Hair reside within the redevelopment area and were two of the original Plaintiffs in this lawsuit (Northside LF12). Cheryl Nelson was also an original Plaintiff and a resident of the redevelopment area Northside LF 12). Ms. Nelson later joined Elke McIntosh, who owns property within the redevelopment area, as an "Intervenor," and thereafter was represented by both counsel for Plaintiffs and Intervenors. Ms. Nelson and Ms. McIntosh filed a separate Petition for Declaratory Judgment, and have filed a cross-appeal from the trial court's ruling, **Legal File (LF) 23**.

III. PROCEDURAL FACTS

Three residents of the 5th Ward filed suit on October 22, 2009, and filed a Second Amended Petition on November 30, 2009 **(LF) 12**. The original Plaintiffs alleged the Redevelopment Ordinances "do not conform to State legislative requirements" and "insufficiently satisfy the minimum statutory requirements" **LF 15**, and claimed the TIF Commission failed to follow appropriate procedures in the conduct of its hearing in several respects **LF 19-21**.

On the first morning the bench trial, counsel for the original Plaintiffs submitted a motion and memorandum *in limine* moving the Court exclude any evidence that The Redevelopment Plan "mentions or identifies" a redevelopment project **Trial Transcript (TRTr) p3 LL 3-21**

The trial court did not rule on the motion, indicating that it would take the motion with the case after said Respondent Cross appellants Smith and Hair made a continuing objection, noted by the trial court. **TRTr) p3 LL 3-21**. Following a bench trial, the trial court entered a Memorandum, Order and Judgment on July 2, 2010 **LF 311 et seq**. ruling and declaring the redevelopment ordinances void "in the absence of" defined "redevelopment projects in The Redevelopment Plan and in the absence of a cost-benefit analysis of any redevelopment projects" **LF 357, 360**).

POINTS RELIED ON

I. THE TRIAL COURT COMMITTED NO ERROR IN RULING THAT THE REDEVELOPMENT ORDINANCES LACKED A REDEVELOPMENT PROJECT AND THUS DID NOT SATISFY THE TIF ACT BECAUSE RESPONDENTS DID NOT FAIL TO RAISE LEGAL OR FACTUAL CHALLENGE BASED UPON THE LACK OR SUFFICIENCY OF A REDEVELOPMENT PROJECT IN THEIR PLEADINGS AND AT TRIAL AND THEREFORE DID NOT WAIVE ANY SUCH CHALLENGE

Kerth v. Polestar Entm't, 325 S.W.3d 373 (Mo. App. E.D. 2010), reh'g and/or transfer denied (July 28, 2010), transfer denied (Dec. 21, 2010).

City of St. Joseph, Mo. v. St. Joseph Riverboat Partners, 141 S.W.3d 513 (Mo.App. W.D. 2004).

In re: the Marriage of Hendrix, 183 S.W.3d 582 (Mo. 2006).

Allen Quarries, Inc. v. Auge, 244 S.W.3d 781 (Mo. App. S.D. 2008)

II. THE TRIAL COURT DID NOT ERR IN RULING THAT THE REDEVELOPMENT ORDINANCES LACKED A REDEVELOPMENT PROJECT AND THEREFORE DID NOT SATISFY THE TIF ACT AND THE TRIAL COURT'S EXPLANATION OF A REDEVELOPMENT PROJECT IS NOT CONTRARY TO THE INTENT OF THE TIF ACT; AND THE REDEVELOPMENT ORDINANCES DID NOT INCLUDED A REDEVELOPMENT PROJECT WITHIN THE MEANING OF THE TIF ACT

Great Rivers Habitat Alliance v. City of St. Peters, 246 S.W.3d 556 (Mo. App. W.D. 2008)

City of Shelbina v. Shelby County, 245 S.W.3d 249 (Mo.App. E.D. 2008)

RSMo

III. THE TRIAL COURT DID NOT ERR IN RULING THAT THE REDEVELOPMENT ORDINANCES DID NOT SATISFY THE TIF ACT AS THE ORDINANCES LACKED A COST-BENEFIT ANALYSIS REFERABLE TO A REDEVELOPMENT PROJECT BECAUSE THE TIF ACT DOES REQUIRES A COST BENEFIT ANALYSIS IN CONNECTION WITH INDIVIDUAL REDEVELOPMENT PROJECTS

Land Clearance for Redevelopment Auth. of City of St. Louis v. Inserra, 284 S.W.3d 641 (Mo.App. E.D. 2009).

Great Rivers Habitat Alliance v. City of St. Peters, 246 S.W.3d 556 (Mo. App. W.D. 2008

IV. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION NOR ERRED IN DENYING NORTHSIDE'S MOTION FOR A NEW TRIAL BECAUSE, EVEN ASSUMING THE TRIAL COURT'S NEW DEFINITION OF "REDEVELOPMENT PROJECT" AND ASSUMING THE REDEVELOPMENT ORDINANCES DID NOT OTHERWISE CONTAIN A REDEVELOPMENT PROJECT, THE COURT SHOULD NOT HAVE ALLOWED NORTHSIDE TO PRESENT EVIDENCE OF REDEVELOPMENT PROJECTS APPROVED BY THE CITY BOARD OF ALDERMEN THOUGH THE COURT IS ALLOWED TO

CONSIDER MATTERS OUTSIDE THE ORDINANCES AND SUCH EVIDENCE WOULD NOT HAVE DEMONSTRATED THAT THE CITY APPROVED A VIABLE REDEVELOPMENT PROJECT EVEN UNDER THE TRIAL COURT'S DEFINITION

Andersen v. Osmon, 217 S.W.3d 375 (Mo.App. W.D. 2007)

In Re: Marriage of Hendrix 183 SW3d 582,

Hancock v Shook 100 SW3d 786 (M0 banc 2003)

V. THE TRIAL COURT DID NOT ERROR BY VOIDING THE CITY'S TIF ORDINANCE, BECAUSE IT DID NOT MISAPPLY THE DEFINITIN OF A "REDEVELOPMENT PROJECT" UNDER THE TIF ACT, IN THAT IT WAS NOT FAIRLY DEBATEABLE OR REASONABLY DOUBTFUL WHETHER THE INFRASTRUCTURE IMPOVEMENTS AND OTHER PUBLIC WORKS THE CITY APPROVED CONSTITUTE A REDEVELOPMENT PROJECT IN FURTHERANCE OF THE CITY'S REDEVELOPMENT PLAN

Great Rivers Habitat alliance v City of St Peters 246 SW3d 556

Spradlin v City of Fulton 924 SW2d 259

City of St. Charles v. DeVault Mgmt., *959 S.W.2d 815, 821 (Mo. App. W.D. 1997)*

VI. THE COURT ERRED IN UPHOLDING THE REDEVELOPMENT PLAN'S EVIDENCE OF COMMITMENTS TO FINANCE PROJECT COSTS BECAUSE REPRESENTS PRESENTED NO REASONABLY DEBATABLE FACTS OF SUFFICIENT FINANCING PURSUANT TO §99.810.1 RSMO

Kerth v. Polestar Entm't, 325 S.W.3d 373, 378 (Mo. App. E.D. 2010).

Binger v. City of Independence, 588 S.W.2d 481, 486 (Mo. banc 1979)

VII. THE TRIAL COURT DID NOT ERR IN FINDING THE REDEVELOPMENT PLAN DOES NOTCONTAIN A REDEVELOPMENT PROJECT AS DEFINED IN §99.805 WHERE APPELLANTS ADMIT THE SUBSTANCE OF THEIR REDEVELOPMENT PROJECT IS CONTAINED IN THEIR REDEVELOPMENT AGREEMENT

State ex rel Teasdale v Spainhoweer 580 SW2d 303

State ex rel Wright v Carter 319 SW2d 596

VIII. THE COURT ERRED IN UPHOLDING THE REDEVELOPMENT PLAN CONFORMS TO THE CITY'S COMPREHENSIVE PLAN FOR THE DEVELOPMENT OF THE MUNICIPALITY AS A WHOLE PURSUANT TO §99.810.1(2) RSMO WHERE THE ONE SENTENCE STATEMENT OF COMPLIANC IS NOT DEBATABLY SUFFIICIENT UNDER CASE LAW

State ex rel Teasdale v Spainhoweer 580 SW2d 303

State ex rel Wright v Carter 319 SW2d 596

City of St Charles v De Vault Management 959 SW2d 815

IX. THE TRIAL COURT ERRED IN NOT FINDING THE TIF COMMISSION WAS UNDER ANY OTHER OBLIGATION TO DENY THE REDEVELOPMENT PLAN FOR LACKING CONFORMITY WITH §99.800, ET. SEQ. RSMO

Binger v. City of Independence, 588 S.W.2d 481, 486 (Mo. banc 1979)

X. THE TRIAL COURT ERRED IN NOT FINDING THE BOARD OF ALDERMEN CREATED AN ORDINANCE SUBJECT TO TIF COMMISSION

APPROVAL THUS GIVING THE TIF COMMISSION LEGISLATIVE AUTHORITY INCONSISTENT WITH THE TIF ACT

Centene, 225 S.W.3d at 437 n. 3

Binger v. City of Independence, 588 S.W.2d 481, 486 (Mo. banc 1979)).

XI. THE TRIAL COURT ERRED IN DENYING ATTORNEY FEES ARE APPLICABLE UPON A RULING FAVORABLE TO PLAINTIFFS THOUGH DISCRETIONARY THE RIGHTS OF CITIZENS ACCESS TO LEGAL COUNSEL SHOLUD NOT DIFFER FROM THOSE SAME RIGHTS AFFORDED IN CLASS ACTION SUITS ESPECIALLY WHEN SUITS AS HERE SEEK TO PROTECT THE RIGHT OF DUE PROCESS

Roberts Fertilizer, Inc. v. Steinmeier, 748 SW2d 883 (Mo.App.1988),

Morgan v. Morgan, 755 SW2d 737 (Mo.App.1988)

ARGUMENTS

I. THE TRIAL COURT COMMITTED NO ERROR IN RULING THAT THE REDEVELOPMENT ORDINANCES LACKED A REDEVELOPMENT PROJECT AND THUS DID NOT SATISFY THE TIF ACT BECAUSE RESPONDENTS DID NOT FAIL TO RAISE LEGAL OR FACTUAL CHALLENGE BASED UPON THE LACK OR SUFFICIENCY OF A REDEVELOPMENT PROJECT IN THEIR PLEADINGS AND AT TRIAL AND THEREFORE DID NOT WAIVE ANY SUCH CHALLENGE

Standard of Review

The Court reviews de novo whether a judgment should be vacated because it is void. **Kerth v. Polestar Entm't**, 325 S.W.3d 373, 378 (Mo. App. E.D. 2010).

Discussion

"The *purpose* of a pleading is to limit and define the issues to be tried in a case and [to] put the adversary on notice thereof." **City of St. Joseph, Mo. v. St. Joseph Riverboat Partners**, 141 S.W.3d 513, 516 (Mo.App. W.D. 2004).

Even in an ordinary appeal, the appellate court is to affirm the trial court regardless of the reason given by the trial court, if the result can be sustained on any ground. **Roberts Fertilizer, Inc. v. Steinmeier**, 748 SW2d 883 (Mo.App.1988), ***Morgan v. Morgan***, 755 SW2d 737 (Mo.App.1988).

On the question of the existence or nonexistence of a redevelopment project Appellants admit they never refuted nor raised the question of err at any time during the trial nor in their motion for post trial relief.

> *"When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be sub served thereby and the objecting party fails to satisfy the court that the admission of such evidence would cause prejudice in maintaining the action or defense upon the merits."* **Rule 55.33(b) MRCP**

The issue or question of the existence or non-existence of a "redevelopment project" was tried and determined by the doctrine of implied consent and by failure of Appellants to object and/or make an offer of proof. Appellants admit the lack of a redevelopment project was raised by Respondent Cross Appellants Smith and Hair's motion in limine.

> *In determining the sufficiency of a petition, the Missouri Supreme Court has directed that all facts properly pleaded be assumed to be true. The allegations are given a liberal construction and the petition is accorded those reasonable inferences deducible from the facts stated.*
>
> **Missouri Practice Series** Vol 15 §55.05-3. p. 360

Appellants cannot claim they were not warned the issue of non-existence of a "redevelopment project" was introduced. Unlike **City of St. Joseph, Mo. v. St. Joseph Riverboat Partners**, 141 S.W.3d 513 (Mo.App. W.D. 2004) and **Allen Quarries, Inc. v. Auge**, 244 S.W.3d 781 (Mo. App. S.D. 2008) it is clear from the three page motion and eight page memorandum in support of the motion in limine that the issue of a redevelopment project was specifically introduced into question and at issue. **TRTr p.3 LL3-21**)

That said memorandum examined every mention of the word redevelopment project contained in Appellants' redevelopment plan and ordinances. **Supplemental Legal File to Brief Respondent Cross Appellant Smith and Hair p. 27** Said memorandum and motion clearly pointed out the lack of a defined redevelopment project. Said motion and memorandum also make clear lack of a redevelopment project from Plaintiffs' perspective would be fatal to Appellants' support for their Plan, claim and defense. Further, said memorandum points out Appellants within their own Plan recognized the need for a defined redevelopment project but nevertheless failed to provide a single one. After filing said motion and memorandum and after orally making a continuing objection based upon said motion, as admitted by Appellant Northside, Appellants failed to object or to offer any prejudice they believed they may suffer as a result but chose to ignore the entire matter as if it were of no consequence. Said motion and memorandum were unchallenged at any time at the trial level prior to the trial court's decision.

Additionally, the fact that Plaintiffs pointed out to the trial court the lack of a redevelopment plan, could render the ordinances fatally flawed, left the trial court in a position in the least to inquire as to whether such was so or not so.

In Respondent's second amended claim, **LF 15,** part of the relevant language is as follows:

> ¶*21 That Respondent City of St Louis lacked authority and jurisdiction to approve and pass any ordinance or legislation granting any rights pursuant to said Plan in that:*
>
> *i. Said Plan and ordinance do not conform to State legislative requirements*
>
> *ii. That said Plan and ordinance insufficiently satisfy the minimum statutory requirements*
>
> *iii. Said Plan and was approved by the Commission which lacked jurisdiction to do so and that said approval by law is required before the City can introduce, vote and pass law pursuant to said Plan*
>
> *iv. That Respondent City lacks authority to waive the statutory the minimum requirements*
>
> *v. That Respondent City failed to review the process by which the Commission approved said Plan*
>
> *vi. That said ordinance and legislation by the City was voted and passed unlawfully*

> *vii. That said ordinance was passed by Respondent City in direct violation of and contrary to conditions set forth in §99.820, et seq*
>
> *Averments in a pleading should be given a liberal construction and accorded those favorable inferences fairly deducible from the facts stated.* **Pippins v. City of St. Louis**, 823 S.W.2d 131, 133 (Mo.App. E.D. 1992).

That the lack of a redevelopment project was consistent with the above pleading required the trial court to review the question of a redevelopment project as a result directly or indirectly of said pleadings, motion and memorandum. Whether on its own or as a function of Plaintiffs' pleadings the trial court was directed to raise the question whether the ordinances met the minimum statutory requirements necessary to qualify for the TIF. Said ordinances do not meet the minimum requirements mandating a redevelopment project and thus said ordinances should remain void.

Appellant Northside argues the motion in limine along with the pleadings are mere conclusions unsupported by facts, consisting of general allegations. However as above described, the motion in limine is supported by a point by point review and challenge to every mention of the term "redevelopment project" identified in The Plan and ordinance, et al. that review specifically points out the failure of each such mention to identify a redevelopment project, rather than merely mentioning the term. Said motion/memorandum in limine and pleadings both reference the fact that The Plan is inconsistent with statutory requirements

Appellants City of St Louis, et al and Northside argue the entire plan as packaged is the project.

Appellants also insufficiently cite 100 SW3d 786, 802 which states:

> *A motion in limine, by itself, preserves nothing for appeal... "The proponent of the evidence must attempt to present the excluded evidence at trial . . . ." If the evidence remains excluded,* **Hancock v Shook** *the proponent must then make an offer of proof.* Id.*Mr. Hancock did not attempt to present the excluded evidence at trial or make an offer of proof; thus, he did not preserve the issue for appeal. Point five is denied. (citations omitted)* **Hancock**, **802**

Here Respondent Cross Appellants Smith and Hair believe Appellants have confused which party identified in the above cite is the "proponent"

II. THE TRIAL COURT DID NOT ERR IN RULING THAT THE REDEVELOPMENT ORDINANCES LACKED A REDEVELOPMENT PROJECT AND THEREFORE DID NOT SATISFY THE TIF ACT AND THE TRIAL COURT'S EXPLANATION OF A REDEVELOPMENT PROJECT IS NOT CONTRARY TO THE INTENT OF THE TIF ACT; AND THE REDEVELOPMENT ORDINANCES DID NOT INCLUDE A REDEVELOPMENT PROJECT WITHIN THE MEANING OF THE TIF ACT.

Standard of Review

This Court must determine whether substantial evidence supports the City's compliance with the TIF Act in the enactment of the Redevelopment Ordinances:

Our usual standard of review for a court-tried case under ***Murphy v. Carron***, 536 S.W.2d 30, 32 (Mo. banc 1976), does not apply where, as here, the trial court reviewed the propriety of a determination by a legislative body. ***Centene***, 225 S.W.3d at 437 n. 3 (Stith, J., concurring). Rather, we examine the record to determine whether substantial evidence supports the legislative decision. *Id.* (quoting ***Binger v. City of Independence***,588 S.W.2d 481, 486 (Mo. banc 1979)). ***Land Clearance for Redevelopment Auth. of City of St. Louis v. Inserra***, 284 S.W.3d 641, 648 (Mo.App. E.D. 2009).

One of the purposes of the TIF Act is to give the citizens within the Redevelopment Area (footprint) an opportunity to view and discuss what the developer wants to build and how it affects those within the footprint. Another purpose is to give those within the

municipality or county an opportunity to understand the benefits to be derived from the redevelopment project. §99.820 and §99.825 specifically mandates just such an opportunity

The issue of fairly debatable is raised here for the first time by Appellants and not prior. If a question of "fairly debatable" were at issue then it must go to the question of whether Appellants submitted a redevelopment project within their Redevelopment Plan before adoption of the TIF ordinances. The answer is **no**. Appellants in their brief have not identified any item or subject from which they could argue "this is a redevelopment project found on Page # ??? of the submitted Redevelopment Plan ". Rather, Appellants have left this Court to guess there is a redevelopment project contained in the Redevelopment Plan because Appellants disagree one does not exist.

Appellants quarrel over the definition of the term redevelopment project while asking this Court to view their entire Redevelopment Plan as one big redevelopment project, a redevelopment project without the cost benefit's requirement of a beginning and end date along with costs and debt retirement date. This is disingenuous.

The 's*cope, duration and nature of the development*…' do not a redevelopment project make.

Appellant Northside argues no discussion of the "policies underlying the TIF Act has been brought forth by either lower court. To respond to that argument we can take a look at Appellant Northside's expression of that policy which in their own words dispels their argument that sewers and street development can constitute a project:

Why TIF Increment Financing Is Needed in the Redevelopment Area

> *The extraordinary costs associated with land acquisition and public works and infrastructure needed to redevelop the area have made such redevelopment economically infeasible without the use of TIF. Also, the extraordinary cost of site preparation and environmental remediation are significantly higher than private developers can typically pay to develop residential and commercial property in this market. While these extraordinary development costs increase the overall project costs and resulting annual expenses, residents and businesses in the development will still only pay market-rate rents and sales prices. Consequently, an imbalance between expenses and revenue is created that makes comprehensive redevelopment economically infeasible unless eligible redevelopment costs are reimbursed or financed as allowed under the TIF Act.*
>
> **SubAppxAppNorSubBr A263**

This means the TIF Act merely supplements the redevelopment project with financial support for infrastructure development (public works, site preparation and environmental remediation) land acquisition without which the cost of a redevelopment project under The Redevelopment Plan may cost prohibitive. This policy statement is also an admission that infrastructure development is NOT the redevelopment project but facilitates the redevelopment project. Under the TIF Act the TIF assistance is offered to offset infrastructure costs associated with “revitalization and redevelopment”. Thus it is clear

any definition of redevelopment project does not broadly include infrastructure redevelopment. See **§99.825.3**[1]

Appellant Northside supports this position in stating the following:

> *The Redevelopment Agreement ensured that the City would have no obligation to issue TIF notes prior to the actual implementation of the infrastructure redevelopment projects:….* **Northside Substitute Brief 39**
>
> *The City and Northside agreed to project milestones and objectives, and included contractual safeguards to ensure that the City would never commit to TIF proceeds until Northside built the streets, sewer and other public infrastructure….* **Northside Substitute Brief 40**

The objective of the TIF statute is to provide cost support for those redevelopment plans containing a redevelopment project for which the infrastructure development supports. For example, a new hotel may need new street lights, driveways and expanded lanes to facilitate entry and exit. It may also require expanded sewer lines, driveways and no parking signs. The TIF benefits both the county and the developer's interests by lending the temporary tax resources from the increased value the redevelopment area receives at

[1] Within the Agreement between Appellants "work" is defined as including construction of the buildings within the Redevelopment Area…. This is directly contrary to §**99.825.3** Article IV of the Agreement, under Reimbursement of Developer's Cost the chart includes "Building Rehabilitation **Northside Appendix Vol I Ordinance 68585 A62**

presumably no direct costs to the residents or government. Appellants would have the Court believe a non committed infrastructure development constitutes a redevelopment project. This is backwards. The developer is awarded a TIF on the value added to the redevelopment area as a result of the approved redevelopment project to support of the redevelopment project.

In the case at bar The Redevelopment Plan's general description of objectives includes nondescript suggestions not limited to:

> *The new construction of up to approximately 2,200 single family residences and townhomes, up to approximately 7,800 condominium/apartment units, up to approximately 1,000,000 square feet of retail/restaurant space, up to 4,500,000 square feet of office/business space and possible hotel accommodations;…." Plan*
>
> **SubAppxAppNorSubBr A270**

These make up the redevelopment projects had they been listed and identified as such but as both lower courts suggested they were shrouded in the language of "might" "could" "envisioned". Further the support mechanisms designed within the TIF Act lend support for infrastructure development in support of such objectives where legally and lawfully presented under the TIF statutes.

However, Appellants argue their redevelopment project is contained within their Redevelopment Agreement. The Redevelopment Agreement was not presented to the TIF commission nor presented for public review as required pursuant to .**§99.820.1** and **§99.825.1**

The facts in **City of Shelbina v. Shelby County,** 245 S.W.3d 249 (Mo.App. E.D. 2008) are similar to those herein. Appellants Northsides' distinguishing **Shelbina** facts are irrelevant to the overall issues in **Shelbina** where the facts therein are similar to the facts herein. Said similar facts include the City's passage of TIF ordinances and the lack of a specific redevelopment project included therein. In regard to these **Shelbina** and this case are the same. The lack of a chosen developer and lack of a redevelopment agreement in **Shelbina** are immaterial. Had there been a development agreement and developer in **Shelbina**, neither scenario would have made up for or changed the ordinance in which a redevelopment project was missing from the Redevelopment Plan.

Appellant Northside's argument reinforces the trial court's position by pointing out what was lacking in **Shelbina**; in so doing Appellants point out what was lacking in their own Redevelopment Plan submitted to the TIF Commissioners.

> *It is clear from the plain language of the statute*{99.845.1}*that the legislature contemplated a municipality must take the step of either"(1) approving a redevelopment project; or, (2) undertake acts that establish a redevelopment plan* ***and*** *a redevelopment project prior to enacting TIF ordinances.* **Shelbina** @ p. 253

The **Shelbina** court's explanation of what was lacking as described on the entirety of **Shelbina's** p. 253 is four square and parallels what is lacking in Appellant Northsides' Plan as described by the trial court in the case at bar:

> *Defendants argue, in effect, that the redevelopment plan's description of what the redeveloper may do in the future is a*

sufficient definition of a "project" to support the Board of Aldermen's finding of compliance with the statute. If that were so, the difference between a redevelopment plan and a redevelopment project would be nil. The Court cannot read language out of the statute, but must give effect to all of the General Assembly"s language. **(7/2 Ruling LF 348)**

On the contrary, the TIF act as a whole contemplates the confluence of redevelopment plan, redevelopment area, and redevelopment project. To conform to the statute, the legislative body must adopt a plan defining a redevelopment area, together with or subsequent to approval of a redevelopment project or projects, and no plan can be adopted unless it contains a defined project or projects. **(7/2 Ruling; LF 348)**

... the statutory scheme envisions three essential elements: a redevelopment area, a redevelopment plan, and a redevelopment project or projects. The statutory requirements are littered throughout the various sections of the TIF act, but they are perceptible. Unless an area, a plan and a project or projects coincide, a city may not approve a tax increment allocation financing.

The evidence shows that the defendants in this case deliberately chose to omit defined projects from the redevelopment plan and from

> *the redevelopment contract approved by ordinance in this case. Int.Ex. 24 demonstrates that the parties intentionally substituted "less specific language" and "may" for "will" throughout the redevelopment plan.* (**7/2 Ruling LF 343**
>
> *It is clear from the excerpts cited that the City did not have any specific redevelopment projects approved nor had undertaken acts to establish a redevelopment project as required under Section 99.845.1 Since Section 99.845.1 contemplated the adoption of a redevelopment project prior to enactment of TIF ordinances and in light of the absence of a redevelopment project at that time, we deem Ordinances 1094 and 1095 void ab initio.* **Shelbina** @ p. 253-254.

Appellants herein complain the trial court used the term "specific plan or design" but ignores the same term, above cited, as used in **Shelbina**. Further, appellants expand on the trial court's explanation to suggest the trial court requires more specificity and detail in identifying the redevelopment project than the statute calls for. This was not done. The trial court merely pointed out what the statutes call for, that is a defined redevelopment project.

Therefore, even without the alleged expanded or narrow definition complained of by Appellants, the lack of a specific redevelopment project in the Redevelopment Plan renders the ordinances in this cause of action void ab initio.

Further, the TIF Act calls for the redevelopment project at the time the ordinance is passed, not at some future date.

As for Appellant Northside's emphasis on safeguards we reiterate there are no safeguards within the Agreement between the City and Northside The Agreement specifically allows the developer in this case to opt out of the Agreement at any time without cause at ¶ 7.1

> *So long as no TIF Bonds or TIF Notes are outstanding with respect to and Redevelopment Project Area, the Developer may, by giving written notice to the City, abandon the Redevelopment Projects and terminate this Agreement. Notwithstanding the foregoing, in the event a TIF Note or TIF Notes held by the Developer is or are outstanding with respect to any Redevelopment Project Area, the Developer may, by giving written notice to the City abandon the Redevelopment Projects….* **SubAppxAppNorSubBr *A67***

Acquisition of the TIF further allows the Appellant Northside to do nothing while at the same time collecting $20,000,00.00 per year pursuant to what has often been refereed to within the northside development as the Paul McKee Law. **§99.1205** RSMo which aka Distressed Areas Land Assemblage Tax Credit Act designed specifically for wealthy developers requiring a minimum holding of seventy five (75) acres and requires a redevelopment agreement with the local municipality which upon application said developer collects $20,000,000.00 per year up to and including a total of $95,000,000.00. To date the Appellant Northside has collected $20,000,000.00 for 2009, **TRTr.Tab.4,p 210 LL 14-17;** see also **Substitute Brief of Appellant City of St Louis, et al @ p. 19** and $9,000,000.00 in 2010 well after the ordinances were voided.

III. THE TRIAL COURT DID NOT ERR IN RULING THAT THE REDEVELOPMENT ORDINANCES DID NOT SATISFY THE TIF ACT AS THE ORDINANCES LACKED A COST-BENEFIT ANALYSIS REFERABLE TO A REDEVELOPMENT PROJECT BECAUSE THE TIF ACT DOES REQUIRE A COST BENEFIT ANALYSIS IN CONNECTION WITH INDIVIDUAL REDEVELOPMENT PROJECTS

Standard of Review

This Court must determine whether substantial evidence supports the City's compliance with the TIF Act in the enactment of the Redevelopment Ordinances:

Our usual standard of review for a court-tried case under **Murphy v. Carron**, 536 S.W.2d 30, 32 (Mo. banc 1976), does not apply where, as here, the trial court reviewed the propriety of a determination by a legislative body. **Centene, *225 S.W.3d at 437*** n. 3 (Stith, J., concurring). Rather, we examine the record to determine whether substantial evidence supports the legislative decision. *Id.* (quoting **Binger v. City of Independence**, 588 S.W.2d 481, 486 (Mo. banc 1979)).

Inserra, 284 S.W.3d at 648.The Court examines whether the City's action was fairly debatable. **Great Rivers Habitat Alliance**, 246 S.W.3d at 562.

Discussion

Appellant Northside incorrectly states the two types of TIF are small and large projects. No support for such is available. There are, however allowances for TIF and non TIF redevelopment projects under the statute. This is what the trial court referenced in the last page of its order and judgment, **SubAppxAppNorSubBr A399,** that is, that the

redevelopment project could continue and go forward with private financing but no TIF so long as the efforts were lawfully applied.

Appellant Northsides' mis-reading of the statutes in question suggests no redevelopment project is required at the time the redevelopment and TIF ordinances are passed through the city's legislature. This represents a total lack of understanding the statutory language. What Appellants failed in citing **§99.810.1(5)** is the language preceding the cited matter:

> *No redevelopment plan shall be adopted by a municipality without findings that: (3) … retirement of obligations incurred to finance redevelopment project costs have been stated….* **§99.810.1(3)**

Appellant Northside failed to do so.

> **…***but the intention is clear: the Board of Aldermen must find that a proposed redevelopment plan contains a cost-benefit analysis of the impact of the plan on each relevant taxing district. The analysis must also show the impact if "the project" is built compared to the impact if it is not built. (Here again the statute uses the word "project" as distinct from the plan, and here again the defendants have presented a plan without projects, unless one accepts concepts as the same thing as projects.) Finally, the cost-benefit analysis must provide sufficient information for the TIF Commission to evaluate whether the project is financially feasible*. (**7/2 Ruling LF 340)**
>
> *No redevelopment plan shall be adopted by a municipality without findings that: (5) A cost-benefit analysis showing the economic*

> *impact of the plan on each taxing district which is at least partially within the boundaries of the redevelopment area. The analysis shall show the impact on the economy if the project is not built, and is built pursuant to the redevelopment plan under consideration. The cost-benefit analysis shall include a fiscal impact study on every affected political subdivision, and sufficient information from the developer for the commission established in section 99.820 to evaluate whether the project as proposed is financially feasible*
>
> **§99.810.1(5)**

One of the purposes of the cost benefit analysis is to give local government as well as those citizens within and without the foot print an opportunity to view the costs associated with the redevelopment project and an opportunity to review the redevelopment project's debt structure for feasibility, marketability and schedule of anticipated work completion. Such information allows local government and citizens the right to measure the redevelopment progress.

Despite Appellant Northside's protestations, **§**99.820 does not allow for adoption of a redevelopment plan without a corresponding redevelopment project. Here, said Appellant Northside misreads the statute, again. Appellant Northside is also not correct as to

§99,825.1

Within **§99,825.1** the statute specifically states only **after** a municipality has complied with and is *in conformance with the procedures of sections 99.800 et al* can a municipality apply for TIF.

Further, the TIF Act does allow for subsequent redevelopment projects but only after a redevelopment project was initially approved and submitted to the municipality for a vote, and only under the specific guidelines consistent with the previous redevelopment project submission:

> *After the adoption of an ordinance approving a redevelopment plan or redevelopment project, or designating a redevelopment area, no ordinance shall be adopted altering the exterior boundaries, affecting the general land uses established pursuant to the redevelopment plan or changing the nature of the redevelopment project without complying with the procedures provided in this section pertaining to the initial approval of a redevelopment plan or redevelopment project and designation of a redevelopment area. Hearings with regard to a redevelopment project, redevelopment area, or redevelopment plan may be held simultaneously.*
>
> **§99.825.1**

IV. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION NOR ERRED IN DENYING NORTHSIDE'S MOTION FOR A NEW TRIAL BECAUSE, EVEN ASSUMING THE TRIAL COURT'S NEW DEFINITION OF "REDEVELOPMENT PROJECT" AND ASSUMING THE REDEVELOPMENT ORDINANCES DID NOT OTHERWISE CONTAIN A REDEVELOPMENT PROJECT, THE COURT SHOULD NOT HAVE ALLOWED NORTHSIDE TO PRESENT EVIDENCE OF REDEVELOPMENT PROJECTS APPROVED BY THE CITY BOARD OF ALDERMEN THOUGH THE COURT IS ALLOWED TO CONSIDER MATTERS OUTSIDE THE ORDINANCES AND SUCH EVIDENCE WOULD NOT HAVE DEMONSTRATED THAT THE CITY APPROVED A VIABLE REDEVELOPMENT PROJECT EVEN UNDER THE TRIAL COURT'S DEFINITION

Standard of Review

The Court reviews the trial court's denial of a motion for new trial for abuse of discretion. **Andersen v. Osmon,** 217 S.W.3d 375, 377 (Mo.App. W.D. 2007).

Discussion

Additionally, Appellants allege they could have addressed the issue of redevelopment projects had they known it was "a matter of concern to the Court". Appellants here suggest when the motion in limine and the detailed memorandum in support were filed, along with Respondents Smith and Hair's continuing objection to any mention of the existence of a redevelopment project, the motion was a matter of concern to Respondents and but not important enough for Appellants to address.

The motion in limine issue was before the Court and in Appellants' hands during the trial clearly stating:

The Plan, does not describe on any page(s) a "redevelopment project".

SubAppxAppNorSubBr *A347*

The "inconsistent with statutory requirements" language comes directly from Respondents' amended pleadings.

Appellants' move for a new trial to disclose redevelopment projects they claim they were in possession of, were aware of, and had specific evidence of, but chose not to disclose at trial because that issue at that time was only important to Respondents.

Further, Appellants claim the Court created a "restrictive" definition of redevelopment project. Appellants, however, insist their closed door presentation to the Board of Aldermen should now be heard as consistent with the opposed definition of redevelopment project. Appellants' footnote #1, is further developed in their argument, addressed below, that no redevelopment project is necessary until the developer applies for the TIF money.

Thus, Appellants' argument is, regardless of how one defines redevelopment project, the redevelopment project need not be presented within the Redevelopment Plan or its supplements voted on by the TIF Commission and the Board of Aldermen, until the developer asks to be shown the money. The only implication possible is Appellant Northside's failure to include a redevelopment project, as the courts suggest, was deliberate, intentional and cause for declaring the approved ordinances void.

Appellants have cited case law that when reviewing the grant of a new trial the Court

> *"…is to indulge every reasonable inference in favor of the trial court and may not reverse unless there has been a clear abuse of discretion*". **Anderson v Osmon** 217 SW3d 375 (Mo App 2007)

Subsequently Appellants have not shown one instance of an abuse of discretion nor have Appellants alleged any abuse of discretion. Citing the case law submitted in support of Appellants' motion Respondents state as follows:

> *An abuse of discretion occurs when a trial court"s ruling is clearly against the logic of the circumstances then before the court and is so unreasonable and arbitrary that it shocks the sense of justice and indicates a lack of careful, deliberate consideration. **** If reasonable persons can differ as to the propriety of the trial court"s action, then it cannot be said that the trial court abused is discretion.* **In Re: Marriage of Hendrix** 183 SW3d 582, [3-4]; citing **Hancock v Shook** 100 SW3d 786 (M0 banc 2003)

Neither have Appellants proffered any matters suggesting Appellants have good cause to have this action reheard or resubmitted or set aside in whole or in part.

Appellants incorrectly suggest the specificity of the redevelopment projects was at issue without their knowledge. This may be so **only** if as they argue Appellants believe no redevelopment project was required until the developer applies for TIF money after completion of a redevelopment project eligible for TIF financing. That is, after the TIF Commission vote and after the ordinances are signed by the mayor.

However, Appellants' argument is three fold: (1) Appellants did provide and described redevelopment projects within The Plan (2) the redevelopment projects were presented to the Board of Aldermen but not the Court, and (3) it is unnecessary to submit any redevelopment projects until they are already constructed and proven to the Board of Aldermen just prior to issuing TIF funds to the developer. All and each of these arguments are inconsistent with the evidence and Appellants' argument that the bulk of their redevelopment project is infrastructure development found in the un-reviewed Redevelopment Agreement.

As to Appellants' surprise, the statute clearly requires submission of a redevelopment project. Respondent Cross Appellants Hair and Nelson alleged in their amended Petition The Plan and Ordinances did not conform to statute. Respondents' memorandum and motion in limine clearly state said nonconformance involves the lack of a redevelopment project.

The language of the motion refers back to the very same language of the petition. That is, *The Redevelopment Plan, which is inconsistent with statutory requirement, does not describe or propose a "redevelopment project".* Respondent Cross Appellants Hair and Nelson's motion in limine and memorandum in support clearly identified the matter of a redevelopment project was at once absent from the ordinances and at the same time mandatory under the statute.

If, however from Appellants' perspective the redevelopment project question is a new issue, Appellants can hardly deny they had no warning. Likewise, Appellants' argument of injection of a new issue suggests Respondent Cross Appellants Hair and Nelsons'

presentation was a new theory of the case. This is not so. Respondent Cross Appellants Hair and Nelson s' theory in their petition and motion are consistent – the Plan and ordinances fail statutory requirements.

Under the guise of not knowing the redevelopment project question was at issue Appellants now desire to present evidence they were fully aware of prior to trial, evidence undisclosed, evidence they could have presented and chose not, and evidence even as presented in their motion for new trial would not cure the issues raised by the trial court, that is, a lack of a cost benefit analysis identifying the redevelopment project with all costs and expenses addressed and the presentation of said known redevelopment project to the TIF Commission for approval and public hearing.

In addition Appellants have already stated redevelopment projects need not have been presented to the Commission nor the Board of Aldermen prior to their vote. This can only mean Appellants at no time intended to present any redevelopment projects until after the votes of the Commission and the votes of the Aldermen were taken. That no redevelopment projects were presented prior to ordinance adoption is what this Court ruled upon.

Neither the Commissioners nor Aldermen could emphatically testify having any knowledge of the statutory requirements. Ignorance of the law is their only excuse. Appellants by their motion for new trial have so admitted.

> "*Northside did not believe that…the TIF Act…required the introduction of this further detail supporting the projects identified in Northside"s plan. See Northside Mtn New* **Trial LF 368**

Appellants in their same motion for new trial argue statutory language and words must receive "a general construction", see *Northside LF Vol III p368.* But where the Court @ p.38, **07/02 Jdgmt LF 348**, applies a general construction Appellants protest. Appellants castigate the general language of the Court but submitted no alternative general description of what is a redevelopment project.

Additionally, Appellants complain the "specific plan" definition is new but ignore the Court's further generic definition that a project is an "*undertaking devised to effect the reclamation or improvement of a particular area*". **LF 348**

Appellants' challenge is to show the Court where within the Redevelopment Plan appears an undertaking devised to effect the reclamation or improvement of a particular area. Merely mocking the Court's review of the statutory language does not further Appellants' cause. Selective discourse on the Court's opinion as wrong without support or alternative view makes an ad homonym argument without a showing of error or abuse of discretion.

Appellants, rather than show the Court one redevelopment project in evidence, debates semantics within the loosely written statute. The language in the documents submitted by Appellants the trial court has already pointed out does not identify a redevelopment project. Appellants, however, chose to repeat that said language in fact does identify redevelopment projects. Appellants do so without explanation, without analysis and without comparison - it must be so because Appellants said so.

Appellants argue ad nauseum the Developer cannot get paid TIF money without actually building something; that something Appellant Northside argues **would** be the

redevelopment project. Thus, Appellants argue, Developer need not identify a redevelopment project because until it is built the Developer can't get paid anyway. Finally, Appellants argue their detail is "consistent with historical applications" without showing consistent historical findings in favor of the herein challenged redevelopment project; nor do Appellants inadequately challenge or distinguish their Plan from that in ***City of Shelbina v.Shelby County***, 245 S.W.3d at 249, cited by the trial court.

The Shelbina court stated:

> *It is clear from the plain language of the statute that the legislature contemplated a municipality must take the step of either, (1) approving a redevelopment project; or (2) undertake acts that establish a redevelopment plan* and *a redevelopment project prior to enacting TIF ordinances.**** It is clear… that the City did not have any specific redevelopment projects approved nor had undertaken to establish a redevelopment project as required under Section 99.845.1.* **Shelbna at 249**

Interestingly the court in **Shelbina** also made use of the same adjective "specific" in describing the absence of a redevelopment project as did the trial court.

The specific statutory language cited in **Shelbina** citing 99.845.1 reads as follows:

> *A municipality, either at the time a redevelopment project is approved or, in the event a municipality has undertaken acts establishing a redevelopment plan and redevelopment project and has designated a redevelopment area after the passage and approval*

> *of sections 99.800 to 99.865 … which acts are in conformance with the procedures of sections 99.800 to 99.865, may adopt tax increment allocation financing by passing an ordinance….*

Appellant Northside would have this court substitute it's opinion that no project need be identified prior to passage of the ordinance granting a TIF because larger development schemes are not anticipated by the TIF Act. Appellant Northside would further have this Court re-interpret the TIF Act by completely ignoring §99.805(14) and any and all references to a redevelopment project because a redevelopment plan and a redevelopment project in its view are one-in-the-same.

V. THE TRIAL COURT DID NOT ERROR BY VOIDING THE CITY'S TIF ORDINANCE, BECAUSE IT DID NOT MISAPPLY THE DEFINITIN OF A "REDEVELOPMENT PROJECT" UNDER THE TIF ACT, IN THAT IT WAS NOT FAIRLY DEBATEABLE OR REASONABLY DOUBTFUL WHETHER THE INFRASTRUCTURE IMPOVEMENTS AND OTHER PUBLIC WORKS THE CITY APPROVED CONSTITUTE A REDEVELOPMENT PROJECT IN FURTHERANCE OF THE CITY'S REDEVELOPMENT PLAN

Great Rivers Habitat alliance v City of St Peters 246 SW3d 556

Spradlin v City of Fulton 924 SW2d 259

City of St. Charles v. DeVault Mgmt., *959 S.W.2d 815, 821 (Mo. App. W.D. 1997)*

Spradlin v City of Fulton 924 SW2d 259

City of St. Charles v. DeVault Mgmt., *959 S.W.2d 815, 821 (Mo. App. W.D. 1997)*

DISCUSION

Respondent Cross Appellants Smith and Hair cannot find one sentence within the pages of Appellant Northside's Plan identifying infrastructure development as a project **within** said Plan. Respondent Cross Appellants Smith and Hair cannot find one sentence **within** the pages of Appellant Northside's Plan identifying infrastructure development as a part or component of said Plan.[2] Accordingly no uncertainty exists and the ordinances prove arbitrary the presumption of validity fails.

[2] Likewise, not even the Agreement describes what infrastructure work will be done in in each of Redevelopment Area A or within Redevelopment Area B.

> *the "fairly debatable" test operates "[i]n conjunction with and, perhaps, in amplification of" the presumption of legislative validity). In order to overcome this presumption, it must be shown that no such uncertainty exists--that the challenged action is not "reasonably doubtful or even fairly debatable."* City of St. Charles v. DeVault Mgmt., *959 S.W.2d 815, 821 (Mo. App. W.D. 1997)*.**Great Rivers Habitat @ 562**
>
> *Unless it should appear that the conclusion of the City's legislative body in the respect in issue ... is clearly arbitrary ..., we cannot substitute our opinion for that of the City's .... If the City's action ... is reasonably doubtful or even fairly debatable we cannot substitute our opinion for that of the City Council.* **Spradlin** @ 263

Because the only portion of The Plan passed by the City involved Redevelopment Area A and Redevelopment Area B, our focus is limited to those two "footprints". The parties, to date, agree, the redevelopment project to be considered must be within the confines of The Plan. The TIF Act does not identify oral conversations nor the Agreement between the developer and the municipality as the vehicle within which the redevelopment project should be described.

The purpose of the Agreement is to accept The Plan. The Agreement is not The Plan. Thus, at issue is not whether the City in passing an Agreement contained in the ordinances, an Agreement purported to contain a redevelopment project, but whether the

City adopted a qualified redevelopment project contained in The Plan. This is recognized in the language of §99.825.1 which requires a public hearing on the redevelopment project prior to its adoption by ordinance. This is also supported by the language in §**99.810.1** which states:

> *No redevelopment plan shall be adopted by a municipality without findings that… (3)The estimated dates… of completion of any redevelopment project and retirement of obligations incurred to finance redevelopment project costs have been stated* **§99.810.1(3)**

There are no descriptions of costs specifically associated with Redevelopment Areas A and B contained in the Cost Benefit Analysis but merely an outline of costs for all four redevelopment areas jointly. There exists no stated dates (*The estimated dates… of completion of any redevelopment project and retirement of obligations incurred to finance redevelopment project costs have been stated*) when funds borrowed will be retired for Redevelopment Areas A or B as required pursuant to **§99.810.1(3**)

Further, because the definition of the redevelopment project includes the legal description of the area selected, Appellants would have this Court assume their redevelopment project will be attached to every square inch of every block contained in the selected legal descriptions without exception.

Contrary to Appellant City's assessment the TIF Act does not fund redevelopment projects but refunds expenses related to infrastructure development associated with the redevelopment project.

Appellants' primary argument rests on the notion the trial court and appeals court misapplied the law in accepting a more stringent definition of the term "redevelopment project". Without getting into an argument over semantics, the gist of Appellants' problem rests in the fact The Plan is absent a redevelopment project under any reasonable definition of the term "project.[3] Appellant City challenges the trial court's use of Webster against a series of internet (Wikipedia style) dictionaries as if Webster was once a TV sitcom star carried on Michael Jackson's lap.

Appellant City argues "a redevelopment project is not a required component of the redevelopment plan", citing §99.810. Respondent Cross appellants disagree:

> *No redevelopment plan shall be adopted by a municipality without findings that: (3) The estimated dates, of completion of any*

---

[3] project, n.

a. ….a tabulated statement; a design or pattern according to which something is made.

c. In business, science, etc.: a collaborative enterprise, freq. involving research or design, that is carefully planned to achieve a particular aim.

1916 *Washington Post* 2 Apr. 4 New York mechanical engineers associated with Prof. Parker in his engineering and research projects.

2005 *Metro (Toronto)* 19 July 19/4 By day she is spear-heading an ambitious project at the University of Guelph to build Canada's most powerful proton microprobe. **The Oxford English Dictionary**

> *redevelopment project and retirement of obligations incurred to finance redevelopment project costs have been stated….*
>
> **§99.810.1(3)**

Said Appellant also misreads **§99.810**. by suggesting a developer has ten years from the date of the ordinance to devise and submit a redevelopment project. This again represents Appellants' position at post trial hearing that no redevelopment plan was in fact required. The language in **§99.810** actually means a developer cannot amend nor add another redevelopment project under the same ordinance, after ten years from the date of the original ordinance. We find support for this position contained in **§99.825.1**:

> *After the adoption of an ordinance approving a redevelopment plan or redevelopment project, or designating a redevelopment area, no ordinance shall be adopted …changing the nature of the redevelopment project without complying with the procedures provided in this section pertaining to the initial approval of a… redevelopment project….* **§99.825.1**

This is further buttressed by the TIF Act stating TIF allocation is not available without, unless and until a redevelopment project is adopted:

> A municipality, either at the time a redevelopment project is approved or, in the event a municipality has undertaken acts establishing a redevelopment plan and redevelopment project and has designated a redevelopment area …may adopt tax increment allocation financing by passing an ordinance…. **§99.845.1**

Thus, under **§99.845.1** the TIF is completely unavailable without the redevelopment project. So, even if a redevelopment plan was adopted by ordinance, no TIF is allowed until after a redevelopment project has been identified.

Additionally, under See **§99.825.1** no redevelopment project can be adopted by a municipality without first holding a public hearing on its efficacy. Appellants cannot show where their infrastructure project was brought before the public.

Appellants have committed to the position their redevelopment project is contained in their Agreement between them. Appellants never brought their Agreement for public hearing pursuant to **§99.825**. and for this reason alone said ordinances should be stricken.

VI.THE TRIAL COURT ERRED IN NOT FINDING THE REDEVELOPMENT PLAN'S "EVIDENCE OF FINANCING" AN INSUFFICIENT SHOWING OF EVIDENCE OF COMMITMENTS TO FINANCE PROJECT COSTS PURSUANT TO §99.810.1 RSMO

The Court reviews de novo whether a judgment should be vacated because it is void. *Kerth v. Polestar Entm't*, 325 S.W.3d 373, 378 (Mo. App. E.D. 2010).

Discussion

The statute **§99.810.10** requires the following:

> *Each redevelopment plan shall set forth in writing… and shall include, …evidence of the commitments to finance the project costs….*

The trial court erred in finding the single page letter of commitment sufficient under the statute.

The Plan's language purporting to provide this evidence of financing is as follows:

> *Appendix B contains a commitment letter from the Bank of Washington to provide financing for the RPA A and RPA B. Said commitment letter will be supplemented when subsequent redevelopment projects are approved. The Developer also commits to finance Redevelopment Costs through a combination of equity, conventional financing, and TIF Obligations that would be purchased or privately placed by the Developer*. **The Redevelopment Plan SubAppxAppNorSubBr A 289**

The Plan's Appendix B consists of a one page letter from the Executive Vice President Louis B. Eckelkamp of the Bank of Washington. **SubAppxAppNorSubBr A 323**

Said bank's total assets are $781 million, $680 million of which are pledged or loaned out. **TR Tr p.87 LL2 -15**

Redevelopment Area A and Redevelopment Area B are estimated to cost $3,634,000,000.00 see **SubAppxAppNorSubBr A287**

That the Bank of Washington's Vice President, and one of the bank's directors, Louis B. Eckelkamp, testified the letter merely reiterates the bank's commitment as of the date of the letter and that total commitment was for $27.6 million dollars. [4] He also testified that said letter represents the total commitment requested by Appellant Northside:

> *Q When you stated in your letter that the purpose of this letter is to reiterate the commitment of the Bank of Washington*
>
> *A Yes*
>
> *Q That reiteration is represented by the loans thqt you've given in 2006, is that correct?*

[4] Appellants Hair and Smith disagree with Respondent McIntosh's position there was testimony that the Bank of Washington "has loaned Mr. McKee tens of millions of dollars". This quite contrary to the testimony which was that $27.6 million was loaned and some had been repaid and refinanced. No other dollar figures were proffered. **TRTr p85 LL12; p. 86 LL -21**

A Correct. The letter would have been a reiteration of those loans, that is correct.

Q Presently that"s the extent of your participation?

A And, honestly, that's the extent to which we've been asked to participate

Q And so that's the extent upon which you've agreed to 27.6 million?

A At this point, yes sir **TRTr 85 LL12 -1**

Q Now the Bank of Washington with respect to the Redevelopment Plan submitted by Northside Regeneration is prepared to loan an additional what amount to Northside Regeneration?

A I"m not necessarily prepared to comment on that because we've not been asked. **TRTr p 96 LL 17-22**

He further testified he assumed there would be other loans and investors participating; this of course is his personal assumption. **TRTr p. 5 LL17-23** Eckelkamp also testified the Bank of Washington's total assets are $781 million of which $680 million is loaned out. **TRTr p.87 LL2 -15**

Looking back at Eckelkamp's letter together with Eckelkamp's testimony, it is apparent said commitment (in less than "*the strict sense of the term*") therein represents the total proposed commitment for RPA a and RPA B. Said commitment is not a commitment but a reiteration of the bank's prior loan made in 2006. No other involvement had been

requested or committed by the bank. As such the September 2009 letter fails to represent evidence of financing RPA A and RPA B.

Appellant Northside's Redevelopment Plan specifically states supplemental commitments will be forthcoming **only** when "*subsequent redevelopment projects are approved*".

The TIF Commission only approved what it purports to be redevelopment projects for RPA A and RPA B. This approval and recommendation makes up part of the Agreement between Appellants Northside and Appellant City which was likely entered into prior to the ordinances passage.

Thus, Respondent Cross Appellants conclude no other representation of financing as to RPA A and RPA B are anticipated (a) under the language of the Plan and (b) according to the testimony of Eckelkamp. Cross Appellants can ascribe no other meaning to that language and testimony other than financing commitments will come forth when "*subsequent redevelopment projects (*RPA C and RPA D) *are approved*".

Additionally, Cross Appellants can only assume from said language that said future commitments will likely and some how come from the same source, The Bank of Washington:

Said commitment letter will be supplemented when subsequent redevelopment projects are approved. **SubAppxAppNorSubBr A 289**

The Bank of Washington does not have the assets to finance RPA A and RPA B, by it's own admission. Its letter attached as exhibit B to The Plan is not a commitment in the

true sense but only a reiteration of a prior commitment for $27.6. The Plan fails the minimum requirements of **§99.810.1**

And, according to Professor Boldrin The Plan has "no evidence of financing". See **TRTr p. 6 LL 5 to p. 77 LL5**

In **Maryland Plaza**, op cit. a former Revised Code of St Louis required a detailed statement of the proposed method of financing the redevelopment.

In this case the subsequent §99.800,et. seq. RSMo. states each redevelopment plan **shall** include "*...evidence of the commitments to finance the project costs...."* Apparently the legislature had some reason for using the word "evidence" in its statutory language. The term evidence has strong legal connotation and has been defined ad nauseum.

Cross Appellants here suggest the term means and the Missouri legislature meant:

> *Something that tends to prove or disprove the existence of an alleged fact....* **Black's Law Dictionary 9th Edition 2004**

That the evidence of financing the project costs $3.634 Billion does not exist. That the Redevelopment Plan does not prove a fact of existing financing. It is neither proof of financing the entirety of the redevelopment project costs approved by the Commission and Board of Aldermen, nor the redevelopment project costs of RPA A And RPA B alone. The statements found in the Plan's language of evidence of financing establishes nothing. It is too scant in information to be considered even rudimental.

In **Maryland Plaza Redevelopment vs Greenberg** 594 SW2d 284, where a developer sought condemnation proceedings against a property owner under a City approved redevelopment plan, the appellate court reviewed similar language, as in this case, but

more lengthy and of a broad and general nature. Plaintiffs find the ruling in Maryland Plaza consistent with how the language in the Plan should be viewed. Though the language in the statute in this case differs, "detailed financing" in Maryland Plaza and "evidence of financing" herein, the Missouri legislators were looking for some language a bit more substantive than what is presented today for this Court's review. Cross Appellants suggest the statutory language is different and authorities can disagree on how much detail is sufficient detail. But as to evidence of a fact, in this case, that evidence is woefully insufficient. In **Maryland Plaza** the court found the following language unacceptable pursuant to §29.080(15) Revised Code of St Louis:

> *…debt financing will be on a structure-to-structure basis…*
>
> *…the cost of public areas will be assigned proportionately to each structure…*
>
> *…seed capital will be provided for all structures by the Developer….*
>
> **Maryland Plaza p. 290**

Of this the Court in **Maryland Plaza** stated such language:

> *…established nothing. They are vague general comments as to the proposed method of financing. They are too scant in information to be considered even rudimental….***Maryland Plaza p. 290**

The **Maryland Plaza** trial court and appellate court struck down the City's ordinance as void for:

> *…failure to contain a detailed statement of financing as required by Chapter 29, Revised Code of St Louis* **Maryland Plaza p. 290**

The language in the Plan is even less detailed and more scant than that in the above cited cause. It fails to contain any aspects or elements of financing redevelopment costs. Of further concern is the complete absence of any attempt at providing evidence of financing RPA C and RPA D. Despite the total lack of evidence of financing RPA C and RPA D the TIF Commission approved the Plan. Despite the lack of evidence of financing $3.634 billion of RPA A and RPA B the TIF Commission approved The Plan granting Appellant Northside access to the entire requested $390 million in tax increment financing.

The Commission, having failed to acknowledge a lack of evidence of a commitment of financing project costs; having ignored anything to do with RPA C and RPA D, including the lack of a commitment of financing those project costs; and since said failures are direct inconsistencies with **§99.810.1** said Commission's approval and recommendation to the Board of aldermen is without authority, outside the scope and language of said statute. That the public hearing on The Plan and subsequent Resolution are at best premature.

The ordinances passed by the City reflect the very same foundations upon which the Commission approved. Without the requisite "evidence of a financial commitment" the Board of Aldermen had no authority to approve The Plan. The problem with the Resolution and ordinances are consistent with the very same financing problems in **Maryland Plaza, op. cit**.

What the Commission and Board of Aldermen had before them prior to testimony and evidence presentations were the Plan, including a September 8, 2009 letter from the Bank of Washington (a bank with a sub-par rating, with inadequate loan loss reserves) that in

fact is not a commitment but merely indicates an interest in continuing its previous actions presumably involving Redevelopment Project Areas A & B, "*subject to approval*". The Plan in its entirety contains no evidence of a commitment of financing project costs.

Even in an ordinary appeal, the appellate court is to affirm the trial court regardless of the reason given by the trial court, if the result can be sustained on any ground. **Roberts Fertilizer, Inc. v. Steinmeier**, 748 SW2d 883 (Mo.App.1988), **Morgan v. Morgan**, 755 SW2d 737 (Mo.App.1988)

VII. THE TRIAL COURT DID NOT ERR IN FINDING THE REDEVELOPMENT PLAN DOES NOTCONTAIN A REDEVELOPMENT PROJECT AS DEFINED IN §99.805 WHERE APPELLANTS ADMIT THE SUBSTANCE OF THEIR REDEVELOPMENT PROJECT IS CONTAINED IN THEIR REDEVELOPMENT AGREEMENT

Standard of Review

This Court must determine whether substantial evidence supports the City's compliance with the TIF Act in the enactment of the Redevelopment Ordinances:

Our usual standard of review for a court-tried case under **Murphy v. Carron**, 536 S.W.2d 30, 32 (Mo. banc 1976), does not apply where, as here, the trial court reviewed the propriety of a determination by a legislative body. **Centene**, 225 S.W.3d at 437 n. 3 (Stith, J., concurring). Rather, we examine the record to determine whether substantial evidence supports the legislative decision. *Id.* (quoting **Binger v. City of Independence**, 588 S.W.2d 481, 486 (Mo. banc 1979)).

Discussion:

Respondent Northside's Redevelopment Plan, et. al. does not include a "redevelopment project" as called for in **§99.800**, et seq RSMo. Said statute at **§99.805.1** identifies among other things, four specific items requiring approval of and findings by the TIF Commission and the Board of Alderman which include (a) a Redevelopment Area, **§99.805.1 (12),** (b) a Redevelopment Plan @ **§99.805.1 (13),** (c) a Redevelopment Project @ **§99.805.1 (14) and,** (d) Redevelopment Project Costs @ **§99.805.1 (15).** That

the "redevelopment project" is a phantom mentioned, referenced, and priced but not proposed and does not exist within the pages of The Plan. As defined by statute a

> "redevelopment project" is "*any development project within a redevelopment area in furtherance of the objectives of the redevelopment plan….*" **§99.805(14)**

a. The Board of Aldermen

Despite the fact the Commission never recommended a "redevelopment project" the Board of Aldermen in adopting all other recommendations of the Commission in **Intervener's Exhibit 1**,**Board Bill 219** voted and approved the following language:

> *WHEREAS, on September 23, 2009, the TIF Commission voted to recommend that the Board of Aldermen adopt an ordinance … (iv) approving the Redevelopment Project as described in the Redevelopment Plan…* **SubAppxAppNorSubBr *A 29***
>
> *WHEREAS, the Board of Aldermen has received the recommendations of the TIF Commission regarding the Redevelopment Area, the Redevelopment Project and the Redevelopment Plan… and adopt and approve the Redevelopment Plan and Redevelopment Project….* **SubAppxAppNorSubBr A 29**

The Redevelopment Plan does not describe on any page(s) a "redevelopment project *(…Redevelopment Project Area A and Redevelopment Project Area B are collectively referred to as the "Redevelopment Project")* **SubAppxAppNorSubBr A28**

So, when the Board adopts and approves the recommendations of the Commission it is in part adopting and approving non-existent recommendations, nullities.

SubAppxAppNorSubBr A31

The Board adopts a "redevelopment project" it identifies as "*described in the Redevelopment Plan"*. However, The Plan contains no proposed, defined, or described "redevelopment project". Such language and/or definition(s) are absent.

b. The Redevelopment Plan

The Plan, which is inconsistent with statutory requirement, does not describe or propose a "redevelopment project". The first mention of a "redevelopment project" appears on page 7 of The Plan, **SubAppxAppNorSubBr A264**. And, like the entirety of The Plan merely **refers** to a "redevelopment project".

The Plan's Organization of this Redevelopment Plan, a subheading, which sets forth a summary of key findings and objectives, and a general description of the programs and activities to accomplish the objectives, yet never refers to a" redevelopment project" as defined by statute or otherwise. **SubAppxAppNorSubBr A264 -A265;.**

SubAppxAppNorSubBr A31- 32

Curiously, The Plan's language admits the statute requires a *"detailed description of the factors that qualify the redevelopment… project*, **SubAppxAppNorSubBr A 266**

and that there be "*adoption of an ordinance approving a Redevelopment Project…."*,

SubAppxAppNorSubBr A266

Additional proof Appellant Northside was aware a "redevelopment project" is necessary, separate and apart from the redevelopment project area, can be found in The Plan's following language:

All Redevelopment Projects are estimated to be completed….

… any ordinance approving a Redevelopment Project….

Any Redevelopment Project must be approved.. **SubAppxAppNorSubBr A267**

… if the Redevelopment Projects are not built….

… for the TIF Commission to evaluate whether the Redevelopment Projects… are feasible

...and may be revised at such time as Redevelopment Projects within those respective Redevelopment Project Areas are approved.. **SubAppxAppNorSubBr A268**

The immediate above language contradicts the Commission's assertion the "redevelopment project area" and the "redevelopment project" are one in the same. This also defies the logic that two redevelopment project areas equals one "redevelopment project".

Section 6 of The Plan discusses *"…a general description of the four (4) proposed Redevelopment Project Areas";* these redevelopment project areas are presumed (though Appellants do not admit) consistent as defined and required by statute. The Redevelopment Plan, inclusive of the Cost Benefit Analysis, the Data and Analysis of Conditions Representing A Blighted Area and the TIF Application do not contain or propose or describe a "redevelopment project".

Any and every reference to a "redevelopment project" by appellants or any witness as a thing in existence is reference to a nullity and without support in law and fact.

c. **Statutory References**

As defined by statute a "redevelopment project" is any development project within a redevelopment area in furtherance of the objectives of the redevelopment plan….

§99.805(14) RSMo

Statutory requirements state the following:

By ordinance introduced in the governing body of the municipality within fourteen to ninety days from the completion of the hearing required in section 99.825, approve redevelopment plans and ***redevelopment projects****, and designate redevelopment project areas pursuant to the notice and hearing requirements of sections 99.800 to 99.865.* ***No redevelopment project*** *shall be approved unless a redevelopment plan has been approved and a redevelopment area has been designated prior to or concurrently with the approval of such* ***redevelopment project*** *and the area selected for the* ***redevelopment project*** *shall include only those parcels of real property and improvements thereon directly and substantially benefited by the proposed* ***redevelopment project*** *improvements*

§99.820.1(1) RSMo

As the TIF Act is an appropriation act it must be strictly construed. **State ex rel Teasdale v Spainhoweer 580 SW2d 303** When a statute is strictly construed it can be given no broader application than is warranted by its plain and unambiguous terms. **State ex rel Wright v Carter** 319 SW2d 596

Prior to the adoption of an ordinance proposing the designation of a redevelopment area, or approving a redevelopment plan or ***redevelopment project****, the commission shall fix a time and place for a public hearing as required in subsection 4 of section 99.820 and notify each taxing district located wholly or partially within the boundaries of the proposed redevelopment area, plan or project****….*** *Prior to the conclusion of the hearing, changes may be made in the redevelopment plan,* ***redevelopment project****, or redevelopment area,****….*** *After the public hearing but prior to the adoption of an ordinance approving a redevelopment plan or* ***redevelopment project****, or designating a redevelopment area, changes may be made to the redevelopment plan,* ***redevelopment projects*** *or redevelopment areas without a further hearing, if such changes do not enlarge the exterior boundaries of the redevelopment area or areas, and do not substantially affect the general land uses established in the redevelopment plan or substantially change the nature of the* ***redevelopment projects****,* ***….*** *After the adoption of an ordinance approving a redevelopment plan or* ***redevelopment project****, or designating a redevelopment area, no ordinance shall be adopted altering the exterior boundaries, affecting the general land uses established pursuant to the redevelopment plan or changing the nature of the* ***redevelopment project*** *without complying with the*

procedures provided in this section pertaining to the initial approval of a redevelopment plan or ***redevelopment project*** *and designation of a redevelopment area. Hearings with regard to a* ***redevelopment project****, redevelopment area, or redevelopment plan may be held simultaneously.* **§99.825.1 RSMo**

Effective January 1, 2008, if, after concluding the hearing required under this section, the commission makes a recommendation under section 99.820 in opposition to a proposed redevelopment plan, ***redevelopment project****, or designation of a redevelopment area, or any amendments thereto, a municipality desiring to approve such project, plan, designation, or amendments shall do so only upon a two-thirds majority vote of the governing body of such municipality.*

§99.825.2 RSMo

The estimated dates, which shall not be more than twenty-three years from the adoption of the ordinance approving a ***redevelopment project*** *within a redevelopment area, of completion of any* ***redevelopment project*** *and retirement of obligations incurred to finance redevelopment project costs have been stated, provided that no ordinance approving a* ***redevelopment project*** *shall be adopted later than ten years from the adoption of the ordinance approving the redevelopment plan under which such project is authorized and provided that no property for a* ***redevelopment***

> ***project*** *shall be acquired by eminent domain later than five years from the adoption of the ordinance approving such* ***redevelopment project*** **§99.810.1(3) RSMo**

Appellants have not proposed a "redevelopment project". A "redevelopment project" as defined by **§99.805.1(14)** "*includes any development project within a redevelopment area in furtherance of the objectives of the redevelopment plan*". There exists no language proposing any development project. RPA A combined with RPA B do not together make a redevelopment project.

Appellants in their Redevelopment application, by ordinance and Resolution, have **specifically** and **unequivocally** defined their redevelopment project as RPA A and RPA B; Appellants have otherwise identified no other matter in their Redevelopment Plan as a redevelopment project. As such Appellants cannot now back out claiming error on the trial court's part that is should have looked elsewhere for their redevelopment project when it is clear Appellants identified and **defined** their redevelopment project as RPA A and RPA B. A redevelopment project area is statutorily distinct from a "redevelopment project"; likewise a redevelopment plan is distinguishable, statutorily, from a "redevelopment project". Appellants have identified a redevelopment plan and a redevelopment project area, including an **amorphous** redevelopment project cost but failed to produce, propose and have approved and adopted a statutorily acceptable "redevelopment project". That there exists no writing or recording identifiable as a statutorily acceptable redevelopment project.

The Resolution of the Commission and the ordinances passed by the Board of Aldermen are at the most premature for lack of a specified redevelopment project for the redevelopment areas. As to "redevelopment projects" the Commission and the Board of Aldermen voted and approved language that does not exist and that said votes were without authority and outside the language of the statute. In light of the fact Appellants have gone through great length to explain how much of their Redevelopment Agreement contains necessary elements of the redevelopment project they should be taken at their word that the substance of what they have proffered as a redevelopment project are contained in said Redevelopment Agreement and not in their Redevelopment Plan. As a result this stands as an admission their redevelopment project was not brought before the TIF commission or the public as statutorily required.

Therefore, all ordinance references to a redevelopment project should be stricken. The TIF should not have been granted for lack of meeting a minimal statutory requirement. Neither the Commission nor the Board had authority or jurisdiction to vote and approve a nullity. Appellants argue the gist of their redevelopemt plan is found in their Redevelopment Agreement which was not presented to the TIF commission nor for rview during the statutorily mandated hearing on the redevelopment project.

VIII. THE TRIAL COURT ERRED IN FINDING THE REDEVELOPMENT PLAN CONTAINS A FINDING THAT IT CONFORMS TO THE CITY'S COMPREHENSIVE PLAN FOR THE DEVELOPMENT OF THE MUNICIPALITY AS A WHOLE PURSUANT TO §99.810.1(2) RSMO BECAUSE CASE LAW SUGGESTS A MORE DEFINITIVE COMPARISON IS NEEDED BEYOND THAT SUBMITTED BY APPELLANTS

Standard of Review

This Court must determine whether substantial evidence supports the City's compliance with the TIF Act in the enactment of the Redevelopment Ordinances:

Our usual standard of review for a court-tried case under **Murphy v. Carron**, 536 S.W.2d 30, 32 (Mo. banc 1976), does not apply where, as here, the trial court reviewed the propriety of a determination by a legislative body. **Centene**, 225 S.W.3d at 437 n. 3 (Stith, J., concurring). Rather, we examine the record to determine whether substantial evidence supports the legislative decision. *Id.* (quoting **Binger v. City of Independence**, 588 S.W.2d 481, 486 (Mo. banc 1979)).

Discussion:

Respondent Northsides' Northside Redevelopment Plan (The Plan), et. al. does not include findings that the redevelopment plan conforms to the City's comprehensive development plan as called for in §99.810.1(2) RSMo. That the claimed finding in The Plan is neither a finding nor comparison nor reference to the elements, particulars, demands, restrictions, requirements or mandates of the comprehensive plan.

a. The TIF Commission

The TIF Commission's September 23, 2010 Resolution made the following finding:

> *The Redevelopment Plan conforms to the comprehensive plan for the development of the municipality as a whole.*

This pronouncement was written without one scintilla of support alleged, identified or cited. The comprehensive plan thereafter is not mentioned further. There is no language in any documents submitted to the Commission that measures, weighs or considers the harmony between the city's comprehensive plan and The Plan.

In **City of St Charles v De Vault Management** 959 SW2d 815 the City of St Charles filed an action in eminent domain, after granting the developer a TIF, against apartment owners to make way for construction of the developer's gaming district which was contrary to the city's comprehensive plan for moderate density residential and park space.

> *Under §99.810.1(2) the plain meaning of "conforms" would be that the redevelopment plan present findings that are in agreement or harmony with the comprehensive plan "as a whole". Since §99.810 is not ambiguous, we are not afforded room for construction and consent to disregard the plain meaning, of "conforms".* **City of St Charles v De Vault Management** 959 SW2d 815, p. 821 [15]

b. The Redevelopment Plan

The Plan, which is inconsistent with statutory requirement, does not describe or propose how The Plan conforms to the comprehensive plan. The entire language purportedly representing the "findings" required pursuant to said statutory requirements consists of the following:

On January 5, 2005, the City of St Louis Planning Commission adopted a new Strategic Land Use Plan. The Redevelopment Plan conforms to said Strategic Land Use Plan.**.**

SubAppxAppNorSubBr A267

That said language is woefully insufficient for the following reasons:

a. The Plan contains no language the Strategic Land Use Plan is in fact or is the equivalent of the City's "*comprehensive plan for the development of the municipality*"

b. It contains no findings

i. The language of the statute is plural

ii. There are no findings nor a finding

c. The statement contains no comparison between the two plans

i. The Plan contains no analysis of the two plans ii. The Plan contains no comparison of development of – 1. Land 2. Buildings 3. Residences 4. Infrastructure 5. Commercial development 6. Land use 7. Occupancy 8. Revenue 9. Taxes 10. Transportation 11. Density . The statement contains no investigation of the conclusions of either plan, which could thus summarize the two as the same or equivalent

e. There is no language showing conformance or harmony between the two plans

c. Statutory Reference §99.810.1(2) specifically requires: *No redevelopment plan shall be adopted by a municipality without findings that: (2) The redevelopment plan conforms to the comprehensive plan for the development of the municipality as a whole*

§99.810.1(2)

As the TIF Act is an appropriation act it must be strictly construed**. State ex rel Teasdale v Spainhoweer** 580 SW2d 303 When a statute is strictly construed it can be given no broader application than is warranted by its plain and unambiguous terms. **State ex rel Wright v Carter** 319 SW2d 596

> *Under §99.810.1(2) the plain meaning of "conforms" would be that the redevelopment plan present findings that are in agreement or harmony with the comprehensive plan "as a whole". Since §99.810 is not ambiguous, we are not afforded room for construction and consent to disregard the plain meaning, of "conforms".* **City of St Charles v De Vault Management** 959 SW2d 815, p. 821 [15]

Even in an ordinary appeal, the appellate court is to affirm the trial court regardless of the reason given by the trial court, if the result can be sustained on any ground. **Roberts Fertilizer, Inc. v. Steinmeier**, 748 SW2d 883 (Mo.App.1988), **Morgan v. Morgan**, 755 SW2d 737 (Mo.App.1988)

The Plan voted on and approved by the TIF Commissioners, voted on and approved by the Board of Aldermen contains no findings of any kind, type or measure between The Plan and the municipality's comprehensive development plan. The Commission and the Board of Aldermen were without authority to consider or vote to approve The Plan. The Plan does not conform to the minimum statutory requirement of conformance to any comprehensive or land use plan. Without such conformity identified in The Plan the Commission and Board of Aldermen should not have approved and voted an ordinance under the authority of §**99.800, et seq** RSMo That Appellant City of St Louis lacked

authority and statutory jurisdiction to approve and pass any ordinance or legislation granting any rights pursuant to said Plan in that: *a.* Said Plan and ordinance do not conform to State legislative requirements *b.* That said Plan and ordinance insufficiently satisfy the minimum statutory requirements *c.* The Plan contains no language the Strategic Land Use Plan is in fact or is the equivalent of the City's comprehensive plan for the development of the municipality *d.* That Appellant City lacks authority to waive the statutory minimum requirements *e.* That Appellant City failed to review the process by which the Commission approved said Plan *f.* That said ordinance and legislation by the City was voted and passed unlawfully *g.* That said ordinance was passed by Appellant City in direct violation of and contrary to conditions set forth in **§99.820**, et seq Because an effort expressing conformity with the city's comprehensive plan for the development of the municipality is undeniably absent from The Plan, the Commission should have rejected The Plan and the Board of Aldermen should not have approved it and passed ordinances granting rights to the developer contained in the ordinances. As a result the ordinance are insufficient and lacking statutory requirements and therefore void.

IX. THE TRIAL COURT ERRED IN NOT FINDING THE TIF COMMISSION WAS UNDER ANY OTHER OBLIGATION TO DENY THE REDEVELOPMENT PLAN FOR LACKING CONFORMITY WITH §99.800, ET. SEQ. RSMO

Standard of Review

This Court must determine whether substantial evidence supports the City's compliance with the TIF Act in the enactment of the Redevelopment Ordinances:

Our usual standard of review for a court-tried case under **Murphy v. Carron**, 536 S.W.2d 30, 32 (Mo. banc 1976), does not apply where, as here, the trial court reviewed the propriety of a determination by a legislative body. **Centene**, 225 S.W.3d at 437 n. 3 (Stith, J., concurring). Rather, we examine the record to determine whether substantial evidence supports the legislative decision. *Id.* (quoting **Binger v. City of Independence**, 588 S.W.2d 481, 486 (Mo. banc 1979)).

Discussion:

a. **To TIF or not to TIF**

Appellants must show a need for the TIF, that without TIF a plan or The Plan is not feasible. Appellant Norhtside's Russell Capelin testified he prepared the last five pages of the Cost Benefit Analysis. Said testimony included the representation that Appellant Norhtside's investment is the difference between the expenses paid with government sourced funds and those not paid with government sourced funds. Given that Capelin could not from that figure determine the amount leveraged, or to be leveraged, Capelin agreed, hypothetically, if Appellant Northside's capital investment is $2 billion their return on investment is approximately 50%, or $910,772,000.00 with the TIF or 32%

without the TIF amounting to approximately $531 million in profits. With half the $2 billion dollar investment said return on investment would be twice the rate quoted here; and greater still with any lesser investment subject to leverages. Thus from their own figures the financial return makes The Plan feasible even without the TIF. As such the Board of Aldermen and the Commission and their advisers should have concluded these figures (if accepted) reflect no need for the TIF.

On the exhibit's "Return on Cost" term witness Capelin could not state what in fact it measures. He refused and barely challenged the term as a legitimate accounting term or a legitimate real estate financing term. Respondent Cross Appellants Smith and Hair move this court for judicial notice that "return on cost" is not a term of art in any financial or real estate accounting procedures.

Washington University's chairman of the economics department, Michele Boldrin testified the term "return on costs" is not a recognized term in the financial community. "*In other words nobody would do that*." **TRTr pp 86 LL21 to pp 88 LL13**

Return on Costs ratios, then, are of no consequence, are insignificant and do not lead to a measurement of feasibility. The feasibility of TIF financing thus proves unnecessary given the figures presented.

b. Projected Growth Rates

The projected growth rates in the last five pages of the Cost Benefit Analysis are based in part on Capelin's experiences. Capelin, never identified as an expert, in any field of accounting, financial planning, marketing or real estate development, having presented no curriculum vitae, having written no treatises in his own hand, books, papers, articles

nor published work, fails any test as a reliable source from whom said projections should be relied upon. Additionally, Capelin stated his projections of annual growth rate were also based upon models out of Chicago and Denver without any comparison and analysis of how said comparisons were projected onto the St Louis market either by applying *Form 14*, or any theory of relativity or reference or equation or formula.

These projections, used as a basis for balancing the revenues and expenses figures in an effort to show "benefit" are more than obviously circumspect and should not have been allowed by the Commission or the Board of Aldermen and their advisers.

a) The Anticipated Type and Term of the Sources of Funds to Pay Costs

Under **§99.810.1** RSMo The Plan "*shall provide the anticipated type and term of the sources of funds to pay costs"*. Asked of the witness, Chairman of Washington University's Economics Department, Michele Boldrin, whether The Plan contains any language identifying the type and terms of the sources of funds to pay costs, he responded "*No*". **See Trial Transcript pp 75 LL22 to pp 77 LL8** This was never disputed, challenged or contradicted by testimony or otherwise.

The language in The Plan**,. SubAppxAppNorSubBr A290** reads very much in broad strokes as the commitment to finance language except that said language does not addresses the issue of "term of the sources of funds to pay costs".

Obviously, the TIF Commission and the Board of Aldermen completely failed in their obligations to ensure statutory conformity prior to approving The Plan.

c. Redevelopment Project Area A –D

a.) A $390.6 million dollar splice

The Plan requests a total of $390.6 million in TIF for the entire application. The Plan further is an application for a blight designation over the entire acreage identified in The Plan. It also calls for the right to exercise a "*procedure*" of eminent domain over the entire number of listed parcels therein identified.

The Board of Aldermen approved the entire TIF amount applicable to all four redevelopment project areas. Two of the four require segue back to the Commission for approval. Can the undivided TIF funds awarded Appellant Northside be applied to only two redevelopmentproject areas when no official division of said amount is sanctioned or set aside? If so can the entire amount be applied to A and B or should there be a remainder to another entity, or a remainder just "on paper"? Under either scenario, under whose authority can the $390.6 million be spliced?

b.) extended boundaries or extended authority

The Plan is not divided into four parts but is an application in whole. The requested TIF is not divided into four parts and neither is the submitted blight designation. The Plan is a complete and whole undivided redevelopment plan as prescribed by law. The Plan designates four redevelopment project areas, A-D, allotted throughout the totality of land within The Plan.

The TIF Commission approved The Plan as to two of the designated redevelopment project areas, RPA A and RPA B. The TIF Commission did not approve the designations RPA C and RPA D.

> *After the public hearing but prior to the adoption of an ordinance approving a redevelopment plan or redevelopment project, or designating a redevelopment area, changes may be made to the redevelopment plan, redevelopment projects or redevelopment areas without a further hearing, if such changes do not enlarge the exterior boundaries of the redevelopment area or areas* **§99.825.1 *RSMo***

After the public hearing the Commission limited its approval to RPA A and RPA B. However, the Board of Aldermen extended the approved exterior boundaries outside these areas. The extended areas were in The Plan, RPA C and RPA D, but not approved by the Commission. The Commission's opposition to RPA C and RPA D could have been overridden by the governing body by a 2/3 majority vote.

> *…if, after concluding the hearing required under this section, the commission makes a recommendation under section 99.820 in opposition to a proposed redevelopment plan, redevelopment project, or designation of a redevelopment area, or any amendments thereto, a municipality desiring to approve such project, plan, designation, or amendments shall do so only upon a two-thirds majority vote of the governing body of such municipality* ***§99.825.2 RSMo***

However, nothing in the record indicates nor in the ordinances indicate a vote to override the Commission's "*recommendation in opposition"* to RPA C and RPA D; that is, the

failure to address RPA C and RPA D. The only vote taken was approval of the Commission's recommendations. Nothing else is stated.

The language in both ordinances suggest the Board of Aldermen vote was consistent with the approvals of the Commission. No vote was taken to take up of what the Commission did not approve. Here, however the Commission did not specifically recommend *opposition* to RPA C and RPA D, but we argue here no other interpretation of the Commission's action toward RPA C and RPA D is applicable.

In light of this the Board of Aldermen, pursuant to **§99.825.2** were obligated to specifically vote to include the Commission's rejection of RPA C and RPA D. The recommendation without RPA C and RPA D **is** in opposition. No such corrective vote took place; and in not doing so, the boundary extension granting Appellant Northside authority to redevelop RPA C and RPA D is unlawful.

"The Board of Alderman was without power to enact an ordinance prescribing a redevelopment area that included parcels outside of the approved redevelopment projects." The ordinances included RPA C and RPA D which were not approved but resulted in an enlargement of the exterior boundaries**.**

c.) predominance of blight or blight of predominance

That the Data and Analysis of Conditions Representing A Blighted Area cannot be divided. Thus there exists no blight study for the RPA A and RPA B alone or jointly. The Commission approved RPA A and RPA B which cannot be shown as a blighted area alone. The blight study submitted was done for the entire land mass under The Plan.

Accordingly, no breakdown of the submitted plan is possible into RPA A and RPA B jointly or severally.

The statute requires a blight determination for the entire redevelopment area. **§99.810.1** The redevelopment area approved by the Commission and the Board of Aldermen does not include RPA C or RPA D which the Board of Aldermen want sent back to the Commission's drawing board. The predominance of blight does not exist, if at all, unless or until the Commission supports and approves RPA C or RPA D. Such return gives the Commission a predominance over the ordinance. This "rendered the City unable to meet the TIF statutory requirement that there be a predominance of blight".

X. THE TRIAL COURT ERRED IN NOT FINDING THE BOARD OF ALDERMEN CREATED AN ORDINANCE SUBJECT TO TIF COMMISSION APPROVAL THUS GIVING THE TIF COMMISSION LEGISLATIVE AUTHORITY INCONSISTENT WITH THE TIF ACT

Standard of Review

This Court must determine whether substantial evidence supports the City's compliance with the TIF Act in the enactment of the Redevelopment Ordinances:

Our usual standard of review for a court-tried case under **Murphy v. Carron**, 536 S.W.2d 30, 32 (Mo. banc 1976), does not apply where, as here, the trial court reviewed the propriety of a determination by a legislative body. **Centene**, 225 S.W.3d at 437 n. 3 (Stith, J., concurring). Rather, we examine the record to determine whether substantial evidence supports the legislative decision. *Id.* (quoting **Binger v. City of Independence**, 588 S.W.2d 481, 486 (Mo. banc 1979)).

Discussion:

The Board of Aldermen voted and approved City Ordinance 68485 and City Ordinance 68484 granting Appellant Nortlhside a TIF in the amount of Three Hundred Ninety Million Six Hundred Thousand Dollars ($390,600,000) representing the entire amount called for in The Plan though said amount applied exclusively to the entire land mass under The Plan**.. SubAppxAppNorSubBr A 287**

> *The City agrees to reimburse Developer for the verified Reimbursable Redevelopment Project Costs in the principal amount*

> *not to exceed Three Hundred Ninety Million Six Hundred Thousand Dollars ($390,600,000)….* **SubAppxAppNorSubBr A61**

In approving The Plan but deleting from the ordinance RPA C and RPA D and by requiring Appellant Northside to return to the TIF Commission for further consideration of RPA C and RPA D the Board of Aldermen have created an ordinance subject to TIF Commission approval before the expenditure of the entire TIF amount can be fully utilized:

> *The City hereby selects the Developer as the developer of the Redevelopment Area to perform or cause the performance of the Work in accordance with the Redevelopment Plan, this Agreement, the Individual RPA Redevelopment Agreements, and all Governmental Approvals**,** subject to receiving approval of the TIF Commission and the Board of Aldermen for Redevelopment Projects in RPA C and Redevelopment Projects in RPA D* , the adoption of tax increment financing within Redevelopment Project Area C and Redevelopment project A **SubAppxAppNorSubBr A 53**
>
> *The City agrees to issue TIF Notes to the Developer….*
>
> *With respect to Redevelopment Project Area C and Redevelopment Project Area D, the issuance of the TIF* Notes to the Developer shall be further subject to the adoption of tax increment financing within Redevelopment Project Area C and Redevelopment Project Area D. **SubAppxAppNorSubBr A61**

Obviously, no TIF was adopted by the Commission for Redevelopment Project Area C and Redevelopment Project Area D. Likewise, the ordinances approved The Plan as a whole document; absent from said approval are RPA C and RPA D which are both integral parts of The Plan. Therefore before TIF "*reimbursements*" and TIF "*Notes*" can go to the developer, that is to Appellant Northside, the TIF Commission must take the matter up for adoption – again. This means the ordinances at issue are subject to the vote of the TIF Commission's approval of tax increment financing for Redevelopment Project Area C and Redevelopment Project Area D. The ordinances in question are therefore unlawful and unenforceable where they are subject to approval by the TIF Commission. This is a reversal of the statutory authority in §99.825 specifically and §99.800, et. seq. both requiring TIF approval prior to a vote of the St Louis Board of Aldermen. Here the aldermen have passed an ordinance subject to an additional vote of the TIF Commission. Appellant's reasoning for returning the matter to the Commission may be failure to show statutory requirements of "evidence of the commitments to finance the project costs, the anticipated type and term of the sources of funds to pay costs" and a separate and distinct Data and Analysis of Conditions Representing A Blighted Area. However, the reasoning for this reversal cannot justify its effect in law.

Curiously, the Commission rendered no explanation for eliminating from its recommendation RPA C and RPA D. In fact the Commission's Resolution, completely ignored both without mentioning either. Whether this is merely an omission or subterfuge is not in evidence.

However, upon cross examination Defendant sponsors of the ordinances were unable to admit or define why RPA C and RPA D had to be reviewed by the TIF Commission, again. See, Tesitmony of Lewis Reed , President Board of Aldermen **TRTr pp 36 LL 9 to 19; pp 38 LL19 to pp 40 LL 2; pp40 LL15 to pp41 LL 5; pp 42 LL2 to LL 19**

These flaws, however, were obvious to Appellants who were not charged with reconciling The Plan with statutory requirements. These flaws, obvious, distinctive, and glaring were ignored by the Commission and Board of Aldermen in favor of Appellant Northside and contrary to the interests of Cross Appellants and all those similarly situated as St Louis residents and tax payers.

By passage of City Ordinance 68485 and City Ordinance 68484 and therein requiring Appellant Northside to return to the TIF Commission for further consideration of RPA C and RPA D the Board of Aldermen have created unlawful ordinances subject to TIF Commission approval thus granting the TIF Commission either legislative authority or executive veto authority over those portions of the ordinances applicable. If not a violation this represents a contradiction of statutory authority. This was done to obfuscate The Plan's obvious lack of statutory conformity. The requirement to return to the Commission has no deadline, nor restriction on capping the TIF available to RPA C and RPA D. The responsible solution would have been to send the entire matter back to the Commission. Having failed to do so the remaining responsible solution rests in declaring the ordinances void.

Even in an ordinary appeal, the appellate court is to affirm the trial court regardless of the reason given by the trial court, if the result can be sustained on any ground. **Roberts**

Fertilizer, Inc. v. Steinmeier, 748 SW2d 883 (Mo.App.1988), ***Morgan v. Morgan***, 755 SW2d 737 (Mo.App.1988) This Court for the above cited reasons must find in favor of the tiral court's decision voiding the ordinances in question by sustain the trial court's order and judgment faoo all other reasons and as cited herein in Point IX.

XI. THE TRIAL COURT ERRED IN DENYING ATTORNEY FEES ARE APPLICABLE UPON A RULING FAVORABLE TO PLAINTIFFS THOUGH DISCRETIONARY THE RIGHTS OF CITIZENS ACCESS TO LEGAL COUNSEL SHOLUD NOT DIFFER FROM THOSE SAME RIGHTS AFFORDED IN CLASS ACTION SUITS ESPECIALLY WHEN SUITS AS HERE SEEK TO PROTECT THE RIGHT OF DUE PROCESS

Standard of Review

This Court must determine whether substantial evidence supports the City's compliance with the TIF Act in the enactment of the Redevelopment Ordinances:

Our usual standard of review for a court-tried case under **Murphy v. Carron**, 536 S.W.2d 30, 32 (Mo. banc 1976), does not apply where, as here, the trial court reviewed the propriety of a determination by a legislative body. **Centene**, 225 S.W.3d at 437 n. 3 (Stith, J., concurring). Rather, we examine the record to determine whether substantial evidence supports the legislative decision. *Id.* (quoting **Binger v. City of Independence**, 588 S.W.2d 481, 486 (Mo. banc 1979)).

Discussion:

Plaintiffs assert herein that Plaintiffs were forced to prepare evidence submitted and un-submitted) contradicting Defendants' agents of misinformation, political as well as those of the fourth estate.

*That I will practice law to the best of my knowledge and ability and with consideration for the defenseless and oppressed. So help me God***. Rule 8.15(b)** RMo SCt

The Missouri Supreme Court requires the above sated oath among and for all those seeking license to practice law in the state of Missouri. Cross Appellants do not believe consideration for the defenseless and oppressed should be limited to those areas of the law in which legal fees are guaranteed upon a successful outcome as in class action law suits.

Those lawyers who seek to protect the rights of the public resulting from consumer malfeasance or mistake, as in class action suits, are well within their rights to seek and find approval for attorney fees. Such compensation encourages legal counsel to seek justice on behalf of the victims of corporate greed, malfeasance and mistakes or omissions from poor design, inadequate research, faulty manufacturing, faulty assembly, toxic chemicals and the like.

The limitation of such fees restricted to those citizens who often lost or poorly invested small sums into consumer goods and services is well established. However, in many such cases, the attorneys, where compensation is sought for the class of consumers, are those who reap the biggest awards.

However, where the rights of citizens to be protected in their property rights, as here, comes into question, the laws of compensation to the successful attorneys are restricted. The Declaration of Independence upon which this nation is finally founded and the American Constitution speak not of consumer protection but citizen's rights. The aforesaid oath of office pre-dates the rights of consumer protection; yet, those rights inherently fundamental to the merits of the Declaration or the Constitution are jeopardized substantially by discouraging practice on behalf of the "defenseless and

oppressed" where their socio/political rights are subject to jeopardize. The same citizen community suffering from faulty home construction in their subdivision may seek compensation by class action. Those same citizens whose subdivision may be subject to an unlawful application of eminent domain are hard pressed to find representation because such requires counsel to do so pro bono or for the most minimal upfront fees imaginable.

*More importantly, ghetto residents have need of effective advocacy of their interests and concerns in a variety of other contexts, from representation before welfare agencies and other institutions of government to advocacy before planning boards and commissions concerned with formulation of development plans.**** Although lawyers function in precisely this fashion for the middle-class clients, they are too often not available to the impoverished ghetto residents.****In all of these efforts, the local bar bears major responsibility for leadership and support*. Report of the National Advisory Commission on Civil Disorders (Kerner Commission Report) March 1, 1967 Chapter 10, p. 152

Substitute Appendix of Respondent Cross Appellants substitute Brief Smith and Hair A18

The above quote represents former president Lyndon B. Johnson's request the commission determine what happened, why it happened and what could be done to prevent future riots. That **one** of the Kerner Commssion's suggestion that the 1967 riots in the United States may have been curtailed had rioting residents had better access to address long standing grievances and needs and that the bar was best situated to aid in

that assistance. Our cause of action herein represents just what that Commission proposed.

However, the failure of the courts, in general, to encourage socio/political protection to the defenseless and oppressed (while rewarding consumer loss) is what is called for reversing by way of compensation to the successful litigant representing the defenseless. Just as consumers have rights to legal counsel, so too do those seeking protection from wealthy developers with armies of wherewithal, including massive political contributions to unconcerned politicians.

Even in an ordinary appeal, the appellate court is to affirm the trial court regardless of the reason given by the trial court, if the result can be sustained on any ground. ***Roberts Fertilizer, Inc. v. Steinmeier***, 748 SW2d 883 (Mo.App.1988), ***Morgan v. Morgan***, 755 SW2d 737 (Mo.App.1988)

CONCLUSIONS

Appellant City, like Appellant Northside admit their redevelopment project rests primarily within the pages of their Redevelopment Agreement as an attachment to Ordinance 68485.That admission alone suggests it was never brought into public scrutiny nor previewed by the TIF Commissioners. This is at the same time an admission the alleged redevelopment project is not contained within the pages of the Redevelopment Plan. These facts are not debatable and by such admissions render the ordinances in question void.

Pursuant to such admission this Court is left without options other than to uphold the trial court's decision sustaining the judgment and voiding the ordinances.

Additionally, the Agreement also lacks even a hint of a redevelopment project as prescribed by the TIF Act and the language of said redevelopment project cannot be discerned from the Agreement.

What's new is not the definition of "project" but Appellants' switch from their post trial argument that The Plan does contain a redevelopment project to the redevelopment project is contained within the Redevelopment Agreement with references to The Redevelopment Plan. Appellants' arguments lack substance and logic. There is no fairly debatable question on the existence of a redevelopment project. It does not exist within The Redevelopment Plan; it does not exist in whole within the Redevelopment Agreement. It cannot be found in The Plan where it belongs; the ordinances are justifiably voided.

Under Appellant Northside's own submission and evidence the development can proceed without TIF. A 35% to 50% return on investment over the period suggested represents more than a substantial return. The suggested growth rates have no foundation and were viewed with the highest available skepticism by Professor Boldrin. The complete absence of type and sources of funds to repay costs was completely ignored by both the Commission and Board of Aldermen. There is no blight study applicable to the approved redevelopment areas A and B but inclusive of A-D. Redevelopment Project Areas C and D were never approved for TIF. The aldermen extended the exterior boundaries of the redevelopment area contrary to **§99.825** RSMo

Nothing in the record indicates nor do the ordinances indicate a vote to override the Commission's failure to approve RPA C and RPA D was taken. Thus, The Board of Alderman were without power to enact an ordinance prescribing a redevelopment area that included parcels outside of the approved redevelopment project areas.

Each of these failures alone and certainly lumped together sufficiently suggest a lack of statutory conformity and thus a lack of Commission and Aldermanic authority to approve The Redevelopment Plan.

After Respondent Cross Appellants Smith and Hair filed their motion and memorandum in limine and after orally making a continuing objection based upon said motion, as admitted by Appellant Northside, Appellants failed to offer any prejudice they believed they may suffer as a result but instead ignored the entire matter as if it were of no consequence. Said motion and memorandum were unchallenged.

Additionally, the fact that Appellants pointed out to the trial court a relevant and significant element of Appellants' Plan was an oral presentation to the Board of Aldermen this flawed logic left the trial court in a position to accept that fact as an admission of noncompliance..

That the lack of a redevelopment project was consistent with the above pleading required the trial court to review the question of a redevelopment project as a result directly or indirectly of said pleadings, motion and memorandum. Whether on its own or as a function of Respondent Cross appellant Smith and Hair's motions the trial court was compelled to raise the question whether the ordinances met the minimum statutory requirements necessary to qualify for the TIF.

Therefore, even without the alleged expanded or narrow definition complained of by Appellants, the lack of a specific redevelopment project renders the ordinances in this cause of action void ab initio.

The ordinances passed by the City reflect the very same foundations upon which the Commission approved. Without the requisite "evidence of a financial commitment" the Board of Aldermen had no authority to approve The Redevelopment Plan. The problem with the Resolution and ordinances are consistent with the very same financing problems in **Maryland Plaza**

The Resolution of the Commission and the ordinances passed by the Board of Aldermen are at the most premature for lack of a specified redevelopment project for the redevelopment areas. As to "redevelopment projects" the Commission and the Board of

Aldermen voted and approved language that does not exist and that said votes were without authority and outside the language of the statute.

Because an effort expressing conformity with the city's comprehensive plan for the development of the municipality is undeniably absent from The Plan, the Commission should have rejected The Plan and the Board of Aldermen should not have approved it and passed ordinances granting rights to the developer contained in the ordinances.

The Commission and the Board of Aldermen were without authority to consider or vote to approve The Plan. The Plan does not conform to the minimum statutory requirement of conformance to any comprehensive or land use plan. Without such conformity identified in The Plan the Commission and Board of Aldermen should not have approved and voted an ordinance under the authority of §**99.800, et seq** RSMo

The complete absence of type and sources of funds to repay costs was completely ignored by both the Commission and Board of Aldermen. There is no blight study applicable to the approved redevelopment area. The aldermen extended the exterior boundaries of the redevelopment area contrary to **§99.825** RSMo

The failure of the courts, in general, to encourage socio/political protection to the powerless (while rewarding consumer loss) calls for reversing by way of compensation the successful litigant representing the due process rights of the general public who by no act of their own fall prey to unprotected noncompliant redevelopment.

Even in an ordinary appeal, the appellate courts do affirm trial court decisions regardless of the reason given by the trial court, if the result can be sustained on any ground.

Finally, Appellants primarily suggest their development is such a virtuous and magnanimous venture, and because its wealthy patron has spent his and money of others, this court should empathize with their cause on behalf of the poor indigent North St Louis residents who may be left without their only benefactor.

For all the foregoing reasons, and for the reasons set forth above Respondent Cross Appellants Smith and Hair pray this Court for an order and judgment denying Appellants' appeal and sustaining the lower court decisions.

Respectfully submitted,

D B AMON #31287
3201 Washington
St. Louis, Missouri 63103
(314) 531-9016
(314) 367-1661
dbamonattorneyyahoo.com

CERTIFICATE OF COMPLIANCE AND SERVICE

This brief complies with the requirement of Rule 84.04 and Local Rule 365. This brief contains 19,050 words as determined by the software application for Microsoft Word.

The undersigned counsel certifies that the foregoing was filed electronically with the Clerk of the Court for the Missouri Supreme Court by using the e-Filing system. Participants in the case were served by the e-Filing system.

August 29, 2012 to|

Paul Puricelli Stone, Leyton &Gershman Attorneys @ Law 7733 Forsyth Blvd #500 St Louis, MO 63105

W. Bevis Schock #32551 7777 Bonhomme, Suite 1300

St. Louis, MO 63103 St. Louis, MO 63105

Daniel B. Emerson #56808 Assistant City Counselor City Hall, Room 314

1200 Market Street St. Louis, MO 63103

James W. Schottel, Jr. #51285 906 Olive, Suite PH St. Louis, MO 63101

Eric E. Vickers #31784 7800 Forsyth, Suite 700 St. Louis, MO 63105

Gerard T. Carmody 120 S, Central Clayton, Mo 63105

Respectfully submitted,

D B AMON #31287
3201 Washington
St. Louis, Missouri 63103
(314) 531-9016
(314) 367-1661
dbamonattorneyyahoo.com