

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
CHANCERY DEPARTMENT**

NORTHWEST SIDE UNITE, DEBRA A. )  
 WEBSTER, DAWN M. OSINSKI, PAUL )  
 HUGHES, LAVERNE SZCZEPANSKI, )  
 EDWARD MUSOLFF, JOMIT JOSEPH, and )  
 WILLIAM MORRICE, )

Plaintiffs, )

v. )

CITY OF CHICAGO; JUDY FRYDLAND, )  
 COMMISSIONER OF THE CHICAGO )  
 DEPARTMENT OF BUILDINGS; and )  
 ALDERMAN JOHN ARENA )

Defendants. )

No.:

2017CH04988  
 CALENDAR/ROOM 16  
 TIME 00:00  
 Injunction

**VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Pursuant to 735 ILCS 5/2-701, Plaintiffs, Northwest Side Unite, Debra A. Webster, Dawn M. Osinski, Paul Hughes, Laverne Szczepanski, Edward Musolff, Jomit Joseph, and William Morrice, by their Attorney, Arcturus Law Firm, file this Verified Complaint for Declaratory and Injunctive Relief and complain of Defendants as follows:

1. This is a proceeding for injunctive relief and for a declaratory judgment in a case of actual controversy under §2-701 of the Code of Civil Procedure, 735 ILCS 5/2-701.
2. This matter regards a purported Settlement Agreement (Exhibit A) entered into, without authorization, by Defendants and non-parties LSCD of Jefferson Park, LLC and LSC Development, LLC (collectively, "LSC"). LSC was developing a storage facility at the property it had recently purchased at 5150 N. Northwest Highway, Chicago Illinois ("Property"). Triggered by the wrongful suspension of LSC's building permit, the purported

Settlement Agreement has set in motion an improper end-run around lawful requirements, and threatens Plaintiffs' reliance on a lawful zoning process.

3. Accordingly, Plaintiffs seek a declaratory judgment that the purported Settlement Agreement was and is void *ab initio*, that it violated procedural due process guarantees a preliminary and permanent injunction preventing any further zoning amendments, planned development approvals, or building permit issuance pursuant to this unlawful process.

#### **PARTIES, JURISDICTION, AND VENUE**

4. Plaintiff Northwest Side Unite is a non-profit entity of residents in the Jefferson Park community, with its principal offices in Chicago, Cook County, Illinois.

5. Plaintiffs Debra A. Webster and Dawn M. Osinski are owners as tenants in common, of the residential property at 5156 N. Lovejoy Chicago. Ms. Webster has had an ownership interest in this property since 1984. Ms. Osinski has had an ownership interest since 2007. Their residence is within 250 feet of the Property.

6. Plaintiff Paul Hughes owns and resides at 5120 N. Lovejoy Avenue, Chicago. His residence is within approximately 200 feet of the Property.

7. Plaintiffs Laverne Szczepanski and Edward Musolff own and reside at 5112 N. Lovejoy Avenue, Chicago. Their residence is within approximately 250 feet of the Property.

8. Plaintiff Jomit Joseph owns and resides at 5126 N. Lovejoy Avenue, Chicago. His residence is within approximately 250 feet of the Property.

9. Plaintiff William Morrice is the beneficiary of the land trust which owns property at 5120 N. Milwaukee Avenue, directly adjoining the Property. Mr. Morrice operates Ellengee Market Co. at the 5120 N. Milwaukee location.

10. Defendant City of Chicago (“City”) is an Illinois municipal corporation and home-rule municipality.

11. Defendant Judy Frydland is employed by the City as Commissioner of the Department of Buildings and is named as defendant solely in her official capacity, not her individual capacity.

12. Defendant John Arena is the Alderman for Chicago’s 45th Ward and is named as a defendant solely in his official capacity, not his individual capacity.

13. Non-party LSCD of Jefferson Park, LLC, is an Illinois limited liability corporation in good standing with its principal offices located in Barrington, Lake County, Illinois.

14. Non-party LSC Development, LLC is an Illinois limited liability corporation in good standing with its principal offices located in Barrington, Lake County, Illinois.

15.

16. This Court has jurisdiction over the parties as all are residents of Cook County.

17. Venue is proper in this Court as the Defendants all reside in Cook County and the acts that form the basis of the Complaint took place in Cook County.

## **FACTUAL BACKGROUND**

### ***A. The Property Prior to LSC’s Purchase***

18. Prior to September 2015, the Property was zoned M1-1 or “Limited Manufacturing/Business Park District.” The Property consisted of (and for the moment, remains) a one-story building.

19. The Property is located in Chicago’s 45th Ward. The current alderman for the 45th Ward is Defendant John Arena.

20. On his official website, Alderman Arena maintains a document of Zoning and Development Guidelines for the 45th Ward. Among other things, the document states:

- a. that his administration will “[e]ncourage development that conforms to the existing zoning map. . . . In support of which, my office will consider zoning changes only rarely and under extreme circumstances.”
- b. “This office will encourage new development that seeks to reflect the character and context of the adjacent and other buildings in the surrounding area, comparable in quality, scale, density and building materials.”
- c. “This office will encourage the preservation, renovation and adaptive re-use of the existing building stock.”

***B. LSC Purchases the Property and Obtains A Building Permit***

21. According to the LSC Complaint, LSC entered into a contract to purchase the Property on September 1, 2015, and closed the purchase on December 4, 2015. (Ex. B ¶ 17) At the time, the M1-1 zoning permitted them to renovate the existing structure into their intended storage warehouse as of right. (Ex. B ¶ 16).

22. According to the LSC Complaint, LSC needed to conduct a certain amount of demolition prior to the beginning of the renovation project. A Demolition Permit was issued by the DOB on or around Dec. 10, 2015. (Ex. B ¶ 24). Demolition work began soon thereafter. (Ex. B ¶ 27).

23. According to the LSC Complaint, LSC applied to the DOB for a building permit (“LSC Building Permit”) to begin renovation on March 15, 2016, by which time the required demolition work was substantially complete. (Ex. B ¶ 29).

***C. Alderman Arena Downzones The Property And Revokes The Permit***

24. On March 16, 2016 Alderman John Arena introduced a downzoning measure, rezoning the Property to B1-1, "Neighborhood Shopping District," to the city council. According to the LSC Complaint, no prior notice of this measure was given to LSC. (Ex. B ¶ 31).

25. According to the LSC Complaint, LSC obtained the LSC Building Permit on April 26, 2016. (Ex. B ¶ 34).

26. According to the LSC Complaint, the next day, April 27, 2016, Alderman Arena contacted Chicago Building Commissioner Judy Frydland and directed her to void the LSC Building Permit. (Ex. B ¶ 35).

27. According to the LSC Complaint, beginning on April 27, 2016, LSC and its agents repeatedly attempted to contact Alderman Arena to discuss his decision to "improperly and with no notice" void the Building Permit (Ex. B ¶ 36). Although LSC and their agents left multiple voicemails, emails, and letters to Alderman Arena's office, and even tried to meet in person, they were unable to speak to the Alderman. (Ex. B ¶ 36).

28. According to the LSC Complaint, Alderman Arena first tried to introduce the B1-1 downzoning to the City's Committee on Zoning, Landmarks, and Building Standards (the "Zoning Committee") on April 26, but the Zoning Committee did not vote on the downzoning that day because Alderman Arena had not held the required public hearing before the City's Plan Commission. (Ex. B ¶ 34).

29. The required public hearing for the downzoning was held on May 19, 2016. According to the LSC Complaint, prior to the meeting, Alderman Arena reported to the Plan Commission that the property was vacant, and that no construction was proposed at the time,

despite knowledge of LSC's (now-revoked) building permit. (Ex. B ¶ 37). The Plan Commission recommended approval of the B1-1 downzoning following the May 19 hearing.

30. On June 2, 2016, the downzoning proposal was back before the Zoning Committee as part of its deferred agenda. The Zoning Committee recommended that the downzoning proposal be passed.

***D. LSC Sues The City And Enters Into The Purported Settlement Agreement***

31. LSC filed the LSC Lawsuit for mandamus and declaratory judgment against the City and Commissioner Judy Frydland on June 16, claiming it had vested property rights in the original M1-1 zoning. (Ex. B)

32. While the lawsuit was pending, the B1-1 downzoning was passed by the City Council on June 22, 2016.

33. On January 27, 2017, LSC purported to enter into a Release and Settlement Agreement ("Settlement Agreement") with the City, as well as with Judy Frydland, Commissioner of the Chicago Department of Buildings. Alderman Arena was also a signatory to the Settlement Agreement (Ex. A) The Settlement Agreement referenced a new Zoning Map Amendment and Planned Development Application filed on January 18, 2017, Application number 19084 (the "PD Application").

34. The Zoning Map Amendment of the PD Application proposed an upzoning of the Property from B1-1 to B3-5, "Community Shopping District." Most notably, a change from B1-1 to B3-5 allows a five-fold increase in the floor area ratio (FAR), meaning that where one-story structures now stand, buildings of five or more stories could now be built. Chicago Mun. Code. § 17-3-0104.

35. Paragraph 5 of the Settlement Agreement requires Alderman Arena to support and not challenge the PD Application. It further requires the City's Zoning Administrator to support the PD Application before both the Plan Commission and the Committee on Zoning. (Ex. A ¶ 5).

36. Paragraph 7 of the Settlement Agreement states that the City "agrees to use its reasonable best efforts to complete its review of the permit application expeditiously so that a building permit *can issue as soon as practicable*, provided [LSC] have submitted all required plans, specifications, and other materials necessary for the City's review." (Ex. A ¶ 7) (emphasis added).

37. Paragraph 7 also contemplates the "granting of necessary and appropriate administrative adjustments and/or variances as may be required for the Construction" (Ex. A ¶ 7).

38. Paragraph 8 of the Settlement Agreement states that if the City Council does not enact an ordinance rezoning the Property within 180 days, LSC is not granted the variances and/or administrative adjustments stated in Paragraph 7, or a building permit does not issue, LSC can develop the Property consistent with the current zoning classification, and reassert their claims in the LSC Lawsuit. (Ex. A ¶ 8).

39. The Settlement Agreement was signed by Commissioner Frydland and an unknown individual on behalf of the City of Chicago. Commissioner Frydland is head of the Department of Buildings, and not the Department of Planning Development under which the Zoning Administrator serves. *See* Chicago Mun. Code. §§ 2-22-030, 2-40-045.

40. The Settlement Agreement is also signed by Alderman Arena, who was not a party to the LSC Lawsuit. The Settlement Agreement states that the Alderman “is a signatory to this Agreement only with respect to his specific obligations set forth below.” (Ex. B at 1).

41. Upon information and belief, the City Council took no action to authorize the settlement of the LSC lawsuit, nor did it direct the Corporation Counsel to settle the LSC lawsuit.

***E. The City Has Significant Legal Obligations Regarding Zoning And Permits***

42. With regard to the Zoning Map Amendment, the Zoning Administrator “must *review* each proposed zoning map amendment application and forward a *recommendation* on the proposal to the City Council Committee on Zoning, Landmarks and Building Standards before the Committee's public hearing. . . .” Mun. Code § 17-13-0305 (emphasis added). The Zoning Code provides a number of criteria that review bodies *should* consider, although it also says that the amendment *must* be made in the best interest of the public health, safety and general welfare, while also recognizing the rights of individual property owners. Mun. Code § 17-13-0308.

43. The factors that *should* be considered are laid out include whether the proposed rezoning is consistent with any plans for the area that have been adopted by the Plan Commission or approved by the City Council, Mun. Code § 17-13-0308-A; whether the proposed rezoning is appropriate because of significant changes in the character of the area due to public facility capacity, other rezonings, or growth and development trends, Mun. Code § 17-13-0308-B; whether the proposed development is compatible with the character of the surrounding area in terms of uses, *density* and building scale, Mun. Code § 17-13-0308-C; whether the proposed zoning classification is compatible with surrounding zoning, Mun. Code



§ 17-13-0308-D; and whether public infrastructure facilities and city services will be adequate to serve the proposed development at the time of occupancy, Mun. Code § 17-13-0308-E.

44. The Zoning Administrator also has specific duties with regard to Planned Development described by the Zoning Code. As with the Zoning Map Amendment, the Zoning Administrator must review each planned development and forward a recommendation to the Plan Commission. Mun. Code § 17-13-0603. The criteria for reviewing a Planned Development differ from the criteria for the Zoning Map Amendment, and include whether the proposed development complies with the standards and guidelines of Sec. 17-8-0900, Mun. Code § 17-13-0609-A; whether the proposed development is compatible with the character of the surrounding area in terms of uses, *density* and building scale, Mun. Code § 17-13-0609-B; and whether public infrastructure facilities and city services will be adequate to serve the proposed development at the time of occupancy, Mun. Code § 17-13-0609-C. The standards in guidelines in § 17-8-900, in turn, reflect comprehensive review of all aspects of the planned development.

45. The Zoning Administrator has further responsibilities under Mun. Code § 17-13-0610, which provides that following the adoption of a planned development ordinance, every application for a permit or license within the planned development boundaries must be reviewed by the Zoning Administrator for a determination that the proposed use, building or structure complies with all provisions of the planned development ordinance. Zoning and occupancy certificates may be issued by the Zoning Administrator for uses, buildings or structures within the planned development only upon her written approval.

46. The Building Commissioner, who unlike the Zoning Administrator, was a party to the LSC Lawsuit, is responsible for the issuance of building permits. § 13-32-030. Under the Municipal Code, the Commissioner shall give ten days' written notice of the proposed issuance of the permit to the alderman of the ward in which the work is to be done. In cases of emergencies, a permit may be issued, to take immediate effect, under the Building Commissioner's authority, and the Commissioner must notify the alderman of such issuance within 24 hours.

***F. Subsequent Developments Confirm That The Settlement Agreement Binds The City***

47. On March 16, 2017, the Plan Commission held a hearing in which the PD Application was discussed. Dozens of neighboring citizens spoke against the PD, and a petition opposing the PD containing 3,000 signatures was presented.

48. Prior to the Plan Commission's vote on the PD, Alderman Arena gave a statement regarding his downzoning of the Property. "[W]e moved forward with downzoning the entire block to B1-1 -- that was strategic, and would ensure that if a new use were to be considered there, there would be ample time to consult with the community and work with the developers on a plan that would conform with the changing nature of surrounding uses."

49. After Alderman Arena's comments, the Commissioners were asked if they wished to ask any questions of the Alderman, or of the applicant (LSC). No questions were posed to either party.

50. During the roll call vote, Plan Commission member Michael P. Kelly stated "based on the settlement agreement, and the local elected official's support, I am going to vote yes."

51. Upon information and belief, the City will continue to push the Planned Development through Zoning and City Council review quickly, as failure to get City Council approval within 180 days of the Settlement's effective date would reopen the City to legal action from LSC. (Ex. A )

***G. Plaintiffs***

52. Plaintiffs Webster, Osinski, Hughes, Musolff, Szczepanski, Joseph, (together "Individual Residential Plaintiffs") and Morrice (together with the Individual Residential Plaintiffs, "Individual Plaintiffs") all believe that if the PD Application at issue is built as planned, it would be contrary to the public health, safety, and welfare, have an adverse impact on property values, and reduce their use and enjoyment of their properties.

53. Additionally, the Individual Residential Plaintiffs believe that the construction of the building proposed in the PD Application would negatively impact the single-home character of their community as most of the surrounding buildings are lower height.

54. Individual Residential Plaintiffs believe that buildings built under the proposed rezoning would not be compatible with the surrounding area in terms of use, density and building scale.

55. Individual Residential Plaintiffs believe that the current water management infrastructure is aging and is inadequate for proposed developments.

56. Individual Plaintiffs believe that the because of the terms of the Settlement Agreement, a rezoning and planned development will be improperly approved and building permits improperly issued to begin demolition and/or construction at the Property. They further fear that the wrongfully approved and permitted construction and demolition will

interfere with the quiet enjoyment of their property due to traffic congestion, noise and parking issues.

57. Individual Plaintiffs believe that the agreement is void. They also believe that the Settlement Agreement negatively affects their ability to have my concerns and comments heard in a meaningful way as they would be in a legal process. They further believe that money damages would be insufficient, and that there would be no way to calculate them..

58. Northwest Side Unite represents community members from Jefferson Park and is committed to preserving the quiet, low-density character of Northwest Side neighborhoods.

### **COUNT I**

#### **Declaratory Judgment – Settlement Agreement is *Ultra Vires* and Void**

59. Plaintiffs incorporate by reference, as if fully set forth herein, paragraphs 1 through 55.

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

61. Defendants each lacked the authority to enter into the Settlement Agreement under Illinois law and Chicago ordinances.

62. The purported Settlement Agreement wrongfully attempts to set up an illegal process for approval of the PD Application, issuance of building permits, and related zoning issues. The City is prohibited from legislating by agreement, much less when the agreement in question is entered into by unknown City officials.

63. Defendants' agreement to and execution of the purported Settlement Agreement was an *ultra vires* act that renders the purported Settlement void at its inception.

64. The City Council did not direct the Corporation Counsel to settle the LSC Lawsuit.

65. There exists between the parties an actual and justiciable controversy relating to the authority and validity of the purported Settlement Agreement between LSC and Defendants and whether the execution of the purported Settlement Agreement was an *ultra vires* act that is void *ab initio*.

WHEREFORE, Plaintiffs pray for judgment in their favor, and an order declaring:

- a. The Settlement Agreement is an *ultra vires* act, void and of no effect.
- b. The Corporation Counsel of the City of Chicago, Building Commissioner Judy Frydland, and Alderman John Arena lacked the authority to enter into the Settlement and its execution was an *ultra vires* act;
- c. The Settlement Agreement's attempts to amend City laws by agreement are null and void.
- d. All acts of Defendants pursuant to or in furtherance of the Settlement Agreement are prohibited, null, and void.
- e. Any other relief that the Court deems just and equitable.

**COUNT II**  
**Injunction – Ultra Vires**

66. Plaintiffs incorporate by reference, as if fully set forth herein, paragraphs 1 through 62.

67. Plaintiffs have suffered and will continue to suffer irreparable harm for which there is no adequate remedy at law as a result of Defendants' conduct in connection with the *ultra vires* Settlement Agreement.

68. The actual amount and nature of the damage to the Plaintiffs are incapable of being computed solely in terms of money damages.

WHEREFORE, Plaintiffs respectfully ask this Court to:

- a. Grant temporary, preliminary, and permanent injunctive relief as to all acts of the City of Chicago (including their officers, employees and agents), Building Commissioner Judy Frydland, and Alderman Arena, that relate to the approval of the PD Application pursuant to the process laid out in the Settlement Agreement.
- b. Enjoin Defendants from asserting the validity of the Settlement Agreement.
- c. Enjoin issuance of any permits for the Property pursuant to the PD Application
- d. any other relief that the Court deems just and equitable. .

### **COUNT III**

#### **Declaratory Judgment – Denial of Procedural Due Process**

69. Plaintiffs incorporate by reference, as if fully set forth herein, paragraphs 1 through 65.

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

71. The purported Settlement Agreement arises out of a wrongful withdrawal by Alderman Arena and Commissioner Frydland of LSC's building permit.

72. By making concessions and attempting to amend City ordinances in the face of a potential money judgment, without authorization, Defendants sought to bind the City to a fundamentally unfair legislative process.

73. There exists between the parties an actual and justiciable controversy relating to the authority and validity of the purported Settlement Agreement between LSC and Defendants and whether the execution of the purported Settlement Agreement was an *ultra vires* act that is void *ab initio*.

WHEREFORE, Plaintiffs pray for judgment in their favor, and an order declaring:

- a. The Settlement Agreement violates Plaintiff's procedural due process rights on its face, and is thus void.
- b. The Settlement Agreement's attempts to amend City laws by agreement are null and void.
- c. All acts of Defendants pursuant to or in furtherance of the Settlement Agreement are prohibited, null, and void.
- d. any other relief that the Court deems just and equitable.

#### **COUNT IV**

#### **Injunction – Denial of Procedural Due Process**

74. Plaintiffs incorporate by reference, as if fully set forth herein, paragraphs 1 through 70.

75. Plaintiffs have suffered and will continue to suffer irreparable harm for which there is no adequate remedy at law as a result of Defendants' conduct in connection with the *ultra vires* Settlement Agreement.

76. The actual amount and nature of the damage to the Plaintiffs are incapable of being computed solely in terms of money damages.

WHEREFORE, Plaintiffs respectfully ask this Court to:

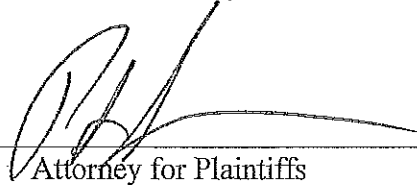
- a. Grant temporary, preliminary, and permanent injunctive relief as to all acts of the City of Chicago (including their officers, employees and agents), Building Commissioner Judy Frydland, and Alderman Arena, that relate to the approval of the PD Application referenced in the Settlement Agreement.
- b. Enjoin Defendants from asserting the validity of the Settlement Agreement.
- c. Enjoin issuance of any permits for the Property pursuant to the PD Application currently under consideration.
- d. any other relief that the Court deems just and equitable. .

Dated: April 6, 2017

Respectfully submitted,

NORTHWEST SIDE UNITE, DEBRA A.  
WEBSTER, DAWN M. OSINSKI, PAUL  
HUGHES, LAVERNE SZCZEPANSKI,  
EDWARD MUSOLFF, JOMIT JOSEPH, and  
WILLIAM MORRICE,

By



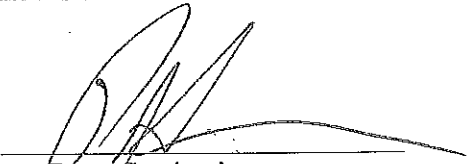
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## VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.



Peter Stasiewicz