Electronically Filed - ST LOUIS COUNTY - November 03, 2023 - 04:22 PM

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI

MIDWEST PETROLEUM COMPANY, WALLIS COMPANIES, INC., SPIRIT ENERGY, LLC, AYDT OIL COMPANY,

Plaintiffs,

vs.

ST. LOUIS COUNTY, MISSOURI,

Serve: St. Louis County c/o County Clerk
41 South Central, 1st Floor
St. Louis, Missouri 63105

Defendant.

PETITION

COME NOW Plaintiffs Midwest Petroleum Company ("Midwest"), Wallis Companies Inc. ("Wallis"), Spirit Energy, LLC ("Spirit Energy"), and Aydt Oil Company ("Aydt Oil") (collectively "Plaintiffs") by and through their attorneys, and for their petition for declaratory judgment, injunctive relief, and other relief state as follows:

INTRODUCTION

1. Defendant has unlawfully taken property from Plaintiffs Midwest, Wallis, Spirit Energy, and Aydt Oil, as well as many other convenience store owners and operators holding tobacco licenses in St. Louis County.

Electronically Filed - ST LOUIS COUNTY - November 03, 2023 - 04:22 PM

2. Defendant effected the unlawful taking by passing an ordinance that reduces the value of any St. Louis County convenience store that is within one thousand (1000) feet of school property.

3. Despite St. Louis County's representation that the ordinance serves public health, the ordinance has not reduced the number of tobacco licenses that operate within 1000 feet of school property. Instead, the ordinance creates an unnecessary impediment to current license holders selling their business operations.

4. The ordinance is unlawful because it prohibits the transfer of a convenience store's license to sell tobacco if that store happens to be within 1000 feet of school property.

5. The value of an existing convenience store or property on which such a store operates is what a reasonable buyer would pay who was willing but did not have to purchase, and what a seller would accept who was willing but did not have to sell.

6. Defendant's unlawful ordinance means that no potential buyer could use any currently operating convenience store to sell tobacco if that store happens to be within 1000 feet of school property or will be within 1000 feet of school property prior to the consummation of a sale.

7. A convenience store that cannot sell tobacco is worth a fraction of what the same store is worth if it can sell tobacco.

Electronically Filed - ST LOUIS COUNTY - November 03, 2023 - 04:22 PM

8. Defendant, through its ordinance, effected a taking of property without just compensation.

9. Plaintiffs bring this action to set aside Defendant's unlawful ordinance, or, in the alternative, to obtain just compensation for the unlawful taking.

PARTIES

10. Midwest is a Missouri Corporation in the business of owning and/or operating convenience stores and gasoline stations, including operations within St. Louis County that are located at the following addresses:

- 12188 Bellefontaine Rd., St. Louis, MO, 63138;
- 8729 Jennings Rd., St. Louis, MO 63136;
- 11546 Larimore Rd., St. Louis, MO, 63138;
- 3602 Woodson Rd., St. John, MO 63114,
- 8970 St. Charles Rock Rd., St. John, MO, 63114.[1]

11. Wallis is a Missouri Corporation in the business of owning and operating convenience stores and gasoline stations, including operations located in St. Louis County at the following addresses:

- 11152 Manchester Rd., Kirkwood, MO, 63122;
- 14807 Manchester Rd., Ballwin, MO, 63011;
- 8445 Gravois Rd., Affton, MO, 63123;
- 1789 Clarkson Rd., Chesterfield, MO, 63017;
- 5840 South Lindbergh Blvd., St. Louis, MO, 63123;
- 9201 Clayton Rd., St. Louis, MO, 63124;
- 1 South Lindbergh, St. Louis, MO, 63141.

[1] Midwest leases the property at this address for its operation.

Electronically Filed - ST LOUIS COUNTY - November 03, 2023 - 04:22 PM

12. Spirit Energy is a Delaware limited liability company in the business of owning convenience stores and gasoline stations, including operations located in St. Louis County, at the following addresses:

- 12200 Clayton Road, St. Louis, MO, 63131;
- 1940 Union Blvd., St. Louis, MO, 63125;
- 1435 S. Kirkwood Road, Sunset Hills, MO, 63127;
- 10691 St. Charles Rock Road, St. Ann, MO, 63074;
- 5215 Lucas & Hunt, St. Louis, MO, 63121;
- 1545 S. New Florissant, Florissant, MO, 63031;
- 8600 Watson Road, St. Louis, MO, 63119;
- 1108 S. Florissant, St. Louis, 63121.

13. Aydt Oil is a Missouri Corporation in the business of owning and operating convenience stores and gasoline stations, including an operation located in St. Louis County at the following address:

- 11142 Big Bend Road, Kirkwood, MO, 63122.

14. St. Louis County is a county and political subdivision within the State of Missouri.

JURISDICTION AND VENUE

15. Plaintiffs bring this action pursuant to Sections 527.010 and 526.030, R.S.Mo.

16. Venue is proper in this Court pursuant to Section 508.010 R.S.Mo.

ALLEGATIONS COMMON TO ALL CLAIMS

17. On May 7, 2019, the St. Louis County Council passed Substitute Bill No. 1 for Bill No. 270, 2018, amending Title VI, Chapter 602 of SLCRO 1974 (the "Ordinance").

Electronically Filed - ST LOUIS COUNTY - November 03, 2023 - 04:22 PM

18. The Ordinance repealed and reenacted various St. Louis County Ordinances, including §602.361.1 to provide as follows:

> No person shall sell tobacco products or electronic smoking devices unless the person is authorized to do so by a license issued by the Department or is an employee or agent of a person who has been issued a license by the Department. **Following the date on which this section becomes effective, no licenses will be issued to persons selling tobacco products within one thousand (1,000) feet of school property** as measured by a straight line from the nearest point of the property line of the parcel on which the school property is located to the nearest point of the property line of the parcel on which the person's business is located. This restriction does not apply to an existing license holder who has been licensed to sell licensed products in that same location prior to the date on which this section becomes effective. **Licenses issued to persons within one thousand (1,000) feet of school property prior to the date on which this section becomes effective, cannot be transferred to a new owner upon sale of business.** Licenses issued to persons within one thousand (1,000) feet of school property prior to the date on which this section becomes effective, will be subject to license suspension and revocation as outlined in Section 602.362. For the purposes of this section, the person deemed to sell tobacco products or electronic smoking devices through a vending machine shall be the owner of the business establishment in which the vending machine is located. The prohibition of this subsection shall not apply to a manufacturer of tobacco products or electronic smoking devices or a wholesaler of same unless such manufacturer or wholesaler is selling to the ultimate consumer of same.

(emphasis added).

19. St. Louis County Ordinances define *school property*:

> "School property" shall include any public or private elementary school, middle school, secondary school, preschool or early childhood education center building, including school buildings operated by the Special School District of St. Louis County; and all property owned or

Electronically Filed - ST LOUIS COUNTY - November 03, 2023 - 04:22 PM

> leased by such schools where student activities occur, including but not limited to athletic fields and appurtenant facilities.

§602.360.

20. Plaintiffs or their tenants are licensed to sell tobacco at their convenience stores that are located within 1000 feet of school property.

21. St. Louis County failed to provide notice of Bill No. 270, 2018, or Substitute Bill No. 1 to existing tobacco license holders, including Plaintiffs.

22. St. Louis County made no attempt to provide notice of Bill No. 270, 2018, or Substitute Bill No. 1 to existing tobacco license holders, including Plaintiffs.

23. Plaintiffs received no notice of Bill No. 270, 2018, or Substitute Bill No. 1.

24. St. Louis County was under the mistaken belief that Bill No. 270, 2018, and Substitute Bill No. 1 would impact only 8 existing tobacco license holders at the time of passing the Bill.

25. However, at the time of the bill's passage, 164 license holders operated within 1000 feet of school property.

COUNT I: UNCONSTITUTIONAL TAKING

26. Plaintiffs incorporate by reference as though fully set forth herein each of the allegations contained in paragraphs 1 through 28.

27. Pursuant to Article I, Section 26 of the Missouri Constitution, "private property shall not be taken or damaged for public use without just compensation."

Electronically Filed - ST LOUIS COUNTY - November 03, 2023 - 04:22 PM

28. Plaintiffs acquired their respective business interests in properties engaged in the sale of tobacco products, and their licenses to sell tobacco at those properties before the effective date of the Ordinance.

29. Plaintiffs made substantial financial investments in their properties in reliance on the fact that the operations were licensed to sell tobacco products thereon.

30. The license to sell tobacco products at the properties in question constitutes a substantial component of the value of said properties.

31. The highest and best use of the properties is as a convenience store in which many products, including tobacco products, are sold.

32. The Ordinance has damaged Plaintiffs by significantly reducing the value of Plaintiffs' properties by preventing transfer to an operator who could continue selling tobacco products.

33. The Ordinance constitutes an unlawful taking of Plaintiffs' private property.

34. In enacting the Ordinance, Defendant exceeded its police powers because the Ordinance does not reasonably relate to the health, safety, or welfare of the public.

35. The Ordinance effected a taking of Plaintiffs' property without just compensation.

36. As a result of Defendant's taking of Plaintiffs' property rights without just compensation, the Plaintiffs have been damaged by the diminution in value of

Electronically Filed - ST LOUIS COUNTY - November 03, 2023 - 04:22 PM

their respective properties that are located within 1000 feet of school property in St. Louis County, identified above.

COUNT II: DUE PROCESS VIOLATION

37. Plaintiffs hereby incorporate by reference as though fully set forth herein each of the allegations contained in paragraphs 1 through 39.

38. Pursuant to Article I, Section 10 of the Missouri Constitution, "no person shall be deprived of life, liberty, or property without due process of law."

39. The Ordinance reduced the value of the Plaintiffs' property.

40. The Ordinance is codified in the St. Louis County Revised Ordinances under Chapter 602, which is designated for Public Health ordinances.

41. The Ordinance is arbitrary, capricious, and irrational as its practical implications do not serve the furtherance of the stated purpose.

42. The Ordinance allows businesses with existing tobacco licenses to retain those licenses and to continue selling tobacco within 1000 feet of school property.

43. Further, the County imposes no restrictions on public or private elementary schools, middle schools, secondary schools, preschools or early childhood education centers from opening or relocating within 1000 feet of tobacco license holders. Therefore, under the Ordinance tobacco products will continue to be sold within 1000 feet of school property.

Electronically Filed - ST LOUIS COUNTY - November 03, 2023 - 04:22 PM

44. Additionally, tobacco license holders who are not impacted by the Ordinance today will be impacted if a school opens, relocates, or expands within 1000 feet of the license holder's convenience store.

45. The Ordinance is further not rationally related to public health because those who sell tobacco products are required to validate a purchaser's age before selling tobacco products, and violations are subject to enforcement under the Missouri Clean Indoor Act (section 407.931 RSMo) and 21 U.S.C. §333(D)(8) and § 387f(d)(5), and 21 CFR §1140.14(a).

46. The Ordinance is also arbitrary as it will prevent adults from purchasing tobacco products within 1000 feet of school property.

47. Additionally, Plaintiffs were not provided notice of Bill No. 270, 2018, Substitute Bill No. 1 or any associated hearings regarding the amendment to the St. Louis County Ordinance identified above.

48. As tobacco license holders and property owners, Plaintiffs were entitled notice and an opportunity to be heard.

49. St. Louis County's failure to provide notice or even to attempt to provide notice results in a violation of Plaintiffs' due process rights.

COUNT III: DECLARATORY JUDGMENT

50. Plaintiffs hereby incorporate by reference as though fully set forth herein each of the allegations contained in paragraphs 1 through 52.

Electronically Filed - ST LOUIS COUNTY - November 03, 2023 - 04:22 PM

51. The Declaratory Judgment Act and Rule 87 authorize the Court to declare rights, status, and other legal relations whether or not further relief is or could be claimed.

52. Any person whose rights, status or other legal relations are affected by a statute or ordinance "may have determined any question of construction or validity arising under" the enactment "and obtain a declaration of rights, status or other legal relations thereunder." § 527.020, RSMo.

53. There is a justiciable controversy between Plaintiffs and St. Louis County regarding whether the 2019 amendment to Title VI, Chapter 602 of SLCRO 1974 is lawful under the 14th Amendment of Constitution of the United.

WHEREFORE, Plaintiffs respectfully requests the following relief:

A. A declaration that Section 602.361, SLCRO 1974, as amended, constitutes a taking in violation of the Fifth Amendment to the U.S. Constitution and Article I, Section 26 of the Missouri Constitution, and award Plaintiffs damages to be proven at trial.

B. A declaration that Section 602.361, SLCRO 1974, as amended, is unconstitutional on its face and as it is applied because it violates the Due Process Clauses of the Fourteenth Amendment to the U.S. Constitution and Article I, Section 10 of the Missouri Constitution.

C. An injunction preventing St. Louis County from denying any tobacco license application on the basis of 602.361, SLCRO 1974 (the 1000-foot rule) if a tobacco license holder operated a business on the same property.

Electronically Filed - ST LOUIS COUNTY - November 03, 2023 - 04:22 PM

ARMSTRONG TEASDALE LLP

By: */s/ Evan J. Sullivan*

Jeffery T. McPherson #42825
Matthew S. Shorey #47861
Matthew J. Reh #49418
Evan J. Sullivan #73032
7700 Forsyth Blvd., Suite 1800
St. Louis, Missouri 63105
314.621.5070
314.621.5065 (facsimile)
jmcpherson@atllp.com
mshorey@atllp.com
mreh@atllp.com
esullivan@atllp.com

ATTORNEYS FOR PLAINTIFFS MIDWEST PETROLEUM COMPANY, WALLIS COMPANIES, INC., SPIRIT ENERGY, LLC, AND FASTRAK STORES, INC.,

Not an Official Court Document