

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

BEITLER REAL ESTATE SERVICES	)	
LLC,	)	
	)	
Plaintiff,	)	Case No.
	)	
v.	)	<b>JURY DEMANDED</b>
	)	
CITY OF MADISON, WISCONSIN,	)	
	)	
Defendant.	)	

**COMPLAINT**

Beitler Real Estate Services LLC (“Beitler”) for its Complaint for Declaratory Judgment against the City of Madison, Wisconsin (the “City”), states as follows:

**NATURE OF THE CASE**

1. This case arises from a public-private partnership between Beitler and the City of Madison to redevelop two pieces of property in downtown Madison, Wisconsin known as the Judge Doyle Square.

2. In direct violation of Beitler’s rights under a development agreement between the parties, the City has unilaterally seized, for its own financial gain, the development of an above-grade parking structure and retail space assigned to Beitler for development in the parties’ agreement.

3. The City’s brazen attempt to develop the above-grade parking structure without Beitler’s consent in violation of Beitler’s clear rights under the development agreement, falls into the City’s continued pattern of excluding Beitler from the development process, refusing to provide Beitler with necessary information about the project without justification, and waging a

public smear campaign against Beitler, falsely blaming Beitler for the City's request to fund the development of the above-grade parking structure.

4. Beitler's attempts to work with the City in good faith to complete this development project, and the City's attempts to vilify Beitler and unlawfully push Beitler out of the development project in response, are chronicled in the communications Beitler and its counsel sent to the City in an attempt to move this project forward in accordance with the terms of the development agreement. See 4/18/18 Letter from J. Oakley, 5/3/18 Letter from J. Beitler, and 5/9/18 Letter from J. Oakley, attached hereto as Group Exhibit A.

5. Since Beitler's attempts to work cooperatively with the City to complete this development project while protecting its rights under the development agreement have failed, Beitler seeks a declaration from this Court that the City's attempt to build the above-grade parking is a violation of the parties' development agreement and the City must cease building this above-grade parking structure in violation of Beitler's exclusive development rights under the agreement.

#### **THE PARTIES**

6. Plaintiff Beitler Real Estate Services LLC is an Illinois limited liability company with its principal place of business in Chicago, Illinois. Beitler is owned by two members: J. Paul Beitler and John Paul Beitler III. Both J. Paul Beitler and John Paul Beitler III are individuals residing in Cook County, Illinois.

7. Defendant City of Madison, Wisconsin is a Wisconsin municipal corporation, with its principal place of business located at 210 Martin Luther King, Jr. Blvd., Madison, Wisconsin.

### **JURISDICTION AND VENUE**

8. This Court has subject-matter jurisdiction over this case pursuant to 28 U.S.C. § 1332(a). There is diversity of citizenship between Beitler and the City as Beitler is a citizen of Illinois and the City is a citizen of Wisconsin. The amount in controversy exceeds \$75,000 exclusive of interests and costs as the value to Beitler of the disputed development is more than \$10,000,000.

9. This Court has personal jurisdiction over the City pursuant to Illinois's long-arm statute, 735 ILCS 5/2-209(a). This case arises out of a contract, the Development Agreement, that the City entered into with Beitler, an Illinois limited liability company based in Chicago.

10. Significant aspects of the Parties' formation and performance of the Development Agreement and work on the Project described therein occurred in Chicago, Illinois, including without limitation, the following:

- The City chose to engage Beitler, an Illinois company for the Project. The City negotiated the terms of the Development Agreement in part by placing calls to Beitler's offices in Chicago. Beitler manager J. Paul Beitler signed the Development Agreement in Chicago.
- Beitler has performed the majority of its contractual duties under the Development Agreement and work in furtherance of the Project from its offices in Chicago by, among other things, communicating with the City regarding the Project, coordinating and pursuing zoning, seeking debt, equity and other third party partners for the Project and working with architects, engineers and contractors in furtherance of the Project.
- The City made payments to Beitler related to this Project directly to Beitler's bank accounts in Illinois.
- Beitler and the City engaged Lothan Van Hook DeStefano Architecture LLC ("LVDA"), an Illinois limited liability company located in Chicago, Illinois, to assist in designing the Project pursuant to the Development Agreement.

- Beitler and/or City representatives met with LVDA in Chicago on numerous occasions between 2016 and 2018 to complete the design of the Project according to the Development Agreement.
  - Representatives from the City, including Natalie Erdman, George Austin, Mayor Soglin and Alderman Verveer, participated in numerous telephone calls to Beitler's and/or LVDA's offices in Chicago.
  - The City also recently engaged LVDA to assist in designing the above-grade parking structure it plans to build in violation of the Development Agreement. LVDA is designing the above-grade parking structure for the City from its offices in Chicago.
11. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2).

### **FACTUAL BACKGROUND**

#### **Beitler and the City Enter into a Public-Private Partnership to Develop Block 88 and Block 105**

12. In 2015, the City issued a Request for Proposal seeking a private development partner to redevelop property the City owned in Judge Doyle Square, near the Wisconsin State Capital. The contemplated development project consisted of the redevelopment of two parcels of land: Block 88 and Block 105 (the "Project").

13. After considering numerous responses and proposals, in 2016, the City selected Beitler, an Illinois company, as its partner for this project.

14. The City and Beitler entered into a development agreement for the Project dated July 12, 2016 (the "Development Agreement"). A true and correct copy of the Development Agreement is attached hereto as Exhibit B.

15. The negotiation of the Development Agreement involved meetings at Beitler's offices in Chicago and numerous phone calls by the City to Beitler in Chicago. Beitler Manager, J. Paul Beitler, signed the Development Agreement in Chicago, Illinois.

16. In the Development Agreement, the City and Beitler agreed to “develop the Property in accordance with this Agreement and will cooperate with one another in connection herewith.” *Id.* at § 1.1.

17. Pursuant to the Development Agreement, the development would consist of a “Private Development” and a “Public Development.” *Id.* at § 1.2.

18. The Public Development, a below-grade public parking garage, would be constructed and paid for by the City and include:

(1) a parking component with approximately 600 structured parking stalls (the “Public Ramp”), to be constructed by the City on Block 88 for operation as public parking; and

(2) a proposed Bike Center (as further defined in Section 5.1 (a) below). For all purposes of this Agreement, the defined term “Public Ramp” shall be inclusive of the Bike Center, if constructed.

*Id.* at § 1.2(b).

19. The “Private Development” portion of the project would be constructed and paid for by Beitler and include the following three elements (the “Private Development Elements”):

(1) an apartment complex with retail space and parking on Block 88; (2) an apartment complex with retail space and parking on Block 105; and (3) a mixed-use hotel component with parking on Block 105.

20. The three Private Development Elements are described in Section 1.2(a) of the Development Agreement:

(1) an apartment component ... and a retail component ... *plus ancillary parking in a building to be constructed by the Developer [Beitler] on Block 88 (the “Block 88 Apartment”) ...*

(2) an apartment component ... and a retail component ... *plus ancillary parking in a building to be constructed by the Developer on Block 105 (the “Block 105 Apartment”) [and]*

(3) an urban mixed use hotel component ... plus ancillary parking in a building to be constructed by the Developer on Block 105 (the “Block 105 Hotel”)[.]

*Id.* at § 1.2(a) (emphasis added).

21. The Development Agreement provides that “[d]uring the term of this Agreement, [Beitler] shall have the exclusive right to negotiate with the City concerning development, leasing and acquisition of the Property and the City agrees that it shall not directly or indirectly solicit or entertain any other proposals for such development, leasing or acquisition of the Property during the term of this Agreement.” Ex. B, § 11.12.

22. After entering into the Development Agreement, the parties engaged LVDA located in Chicago, Illinois, to assist in designing the Project. Beitler and/or City representatives met with LVDA in Chicago on numerous occasions between 2016 and 2018 to complete the design of the Project according to the Development Agreement.

23. After entering into the Development Agreement, Beitler began performing its duties under the Development Agreement, including planning the development of ancillary parking of the Private Development Element for Block 88 (sometimes referred to as the “Podium”), from its offices in Chicago.

24. In February, 2017, Beitler and the City submitted a joint zoning application to the City (“Joint Application”), a true and correct copy of which is attached hereto as Exhibit C. The Joint Application sought one overall general development plan (“GDP”) for the Project and four individual Specific Implementation Plans (“SIPs”) according to the elements set out in the Development Agreement (one for the Public Ramp, one for the Private Development above the Public Ramp on Block 88, and one each for the two Private Development Elements on Block 105). *Id.*

### Project Timeline

25. Under the terms of the Development Agreement, the Public Ramp on Block 88 was the first aspect of the Project to be completed.

26. Block 105 currently houses a public parking garage, which the Public Ramp on Block 88 will replace. In order to prevent a decrease in parking availability in the area during the redevelopment, the public parking garage on Block 105 was to remain open until the Public Ramp was completed on Block 88. After the City completed the Public Ramp, the public parking garage on Block 105 could be demolished to allow Beitler to begin the Private Development component on Block 105.

27. Beitler's timeframe for commencing the Private Development portion of the Project after completion of the Public Development is set out in Section 5.2(d) of the Development Agreement, which states:

Construction. The Developer shall be solely responsible for the total cost and expense for the construction of the Private Development. The closing of financing of **no fewer than one** Private Development Project Element (the "Private Development Closing") shall occur no later than **twenty-four (24) months after Public Ramp Completion Date** (the "Private Development Closing Deadline"). The closing of financing for **the second and third** Private Development Project Elements shall occur no later than **thirty-six (36) months after Public Ramp Completion Date**.

*Id.* at §5.2(b) (emphasis added).

28. Pursuant to the terms of Section 5.2(b), Beitler has complete discretion as to which of the three Private Development Elements to develop first following the City's completion of the Public Ramp. Beitler has two years *after* the City completes the Public Ramp to secure financing for any one of the Private Development Elements on *either* Block 88 or

Block 105. Beitler then has three years after the City completes the Public Ramp to secure financing for the remaining Private Development Elements.

29. Thus, because the City has not yet completed the Public Ramp, Beitler's three-year window to exercise its development rights has not been triggered.

30. As of May 1, 2018, Mayor Paul R. Soglin and the Judge Doyle Project Coordination Team presented an estimated completion date of April, 2019 for the Public Ramp in a document submitted to the members of the City's Common Council. A true and correct copy of the City's May 1, 2018 submission to the Common Council is attached hereto as Exhibit D.

31. Based on the City's current estimated completion date for the Public Ramp, Beitler's earliest deadline to secure financing for the Private Development Element it elects to develop first would be April, 2021.

**The City Refuses to Cooperate and Work in Good Faith with Beitler**

32. Despite the requirement in the Development Agreement for the parties to cooperate with one another in the development of the Project, the City has continuously excluded Beitler from the development process, refused to provide Beitler with information necessary for Beitler to plan its portion of the development and secure financing, and took unilateral actions without Beitler's knowledge or consent in direct violation of the Development Agreement.

33. First, despite the parties submitting a joint zoning application requesting one GDP for the Project with four individual SIPs for each development element contemplated in the Development Agreement, the City actually conditionally approved two GDPs—one for Block 88 and one for Block 105—and two SIPs—one for Block 88 and one for Block 105. As a result, the Public Ramp and the Private Development Element above the Public Ramp on Block 88 were

aggregated for zoning purposes, despite the clear delineation between these two elements in the Development Agreement.

34. The City did not consult with, or obtain approval from, Beitler for this change from the agreed joint zoning application. Instead, the City, acting as both a developer and party to the agreement and the arbitrator of zoning approvals, unilaterally approved conditional zoning in this alternative structure that Beitler did not agree to.

35. Despite Beitler's repeated requests for an explanation of the current zoning for Blocks 88 and 105 and all changes since the parties submitted their joint zoning application, the City has failed to explain what it has done with the zoning.

36. Since beginning development on the Public Ramp, the City has also refused to provide information to Beitler about how it planned to deliver the completed Public Ramp to Beitler.

37. In order for Beitler to plan its development of and secure appropriate financing for its development component on top of the Public Ramp, it is critical for the City to inform Beitler of what the structure of the roof of the Public Ramp will be when the City completes the Public Ramp. It is impossible for Beitler to plan its development on Block 88 without information as to the structure it will be building upon.

38. In an attempt to work with the City in good faith to continue the progress of the Project, Beitler sent numerous communications to the City asking for information on how the Public Ramp would be delivered upon completion. Despite Beitler's continued requests for information in order to keep the Project on schedule, the City unreasonably refused to provide Beitler with *any* information on the specifications of the Public Ramp roof that Beitler would build on.

39. The City's refusal to provide this information to Beitler prevented Beitler from finalizing its plans for the Block 88 development and developing financing opportunities for the Project.

**The City Attempts to Unilaterally Develop Above-Grade Parking on Block 88 in Direct Violation of the Development Agreement**

40. After attempting to obtain information from, and work in good faith with, the City to plan its development element on Block 88 above the Public Ramp as required by the Development Agreement, Beitler read in the newspaper that on May 7, 2018, the Madison Finance Committee ("Finance Committee") recommended – at the City's request – that the City invest an additional \$11,000,000 to construct a "podium" consisting of two floors of parking above grade and a load transfer slab above the parking on Block 88.

41. Pursuant to the Development Agreement and the joint zoning application the parties submitted, *Beitler*, not the City, clearly has the right and responsibility to develop the parking element above-grade (i.e. above the Public Ramp) on Block 88. The City's pursuit and receipt of the Finance Committee's recommendation for the City to construct the Podium violates these terms of the Development Agreement.

42. Beitler was not consulted or even informed of the City's unilateral proposal to the Finance Committee to build the Podium in violation of the Development Agreement. Beitler only learned of the proposal through the newspaper.

43. After learning about the City's plan to build the Podium in violation of the Development Agreement, Beitler and its counsel sent communications to the City and conferred with the City's legal department, demanding that the City cease its attempts to build the Podium in violation of the Development Agreement. See correspondence dated May 9, 2018 included in Group Exhibit A.

44. Indeed, Beitler specifically demanded that the City not present the Podium plan approved by the Madison Finance Committee to Madison's City Council. Ignoring Beitler's demand, the City has continued forward with its unilateral development of the Podium by presenting the Podium proposal to the full City Council.

45. At the City's request, on May 15, 2018, the City Council passed a resolution authorizing allocation of funds for the City to construct the Podium (the "Resolution"). A copy of Enactment # RES-18-00403 is attached hereto as Exhibit E. Mayor Soglin and Alderman Mike Verveer were co-sponsors of the resolution. *Id.*

46. Upon information and belief, as authorized in the Resolution, the City also unilaterally moved ahead with LVDA to begin design and development of the Podium without Beitler's input or consent.

47. Now that it has secured financing to construct the Podium, the City has begun the process to seek zoning approval for its plan. Indeed, the City has filed an application for a "major alteration" and is set to present information on its proposal for the Podium to the City's Urban Design Commission on June 6, 2018. See <https://madison.legistar.com/View.ashx?M=A&ID=575141&GUID=0837CE8D-B40B-455B-B36A-31948576965A>.

48. The Resolution authorizing the Podium directs the City to amend certain portions of the Development Agreement to allow development of the Podium, which amounts to an acknowledgement that actions the City is taking to build the Podium violate the current terms of the Development Agreement. See Exhibit E.

49. However, the Development Agreement does not allow for unilateral amendment. Pursuant to Section 11.1, “[t]he parties may amend this Agreement ... only by a written document agreed to by the parties[.]” Ex. B, § 11.1.

50. Despite the City’s refusal to provide Beitler with necessary information about the Project, despite attempting to unilaterally develop the Podium in violation of the Development Agreement, and despite Beitler having no current obligations and no ability to begin development of the Private Elements while the City’s construction of the Public Ramp is ongoing, the City has initiated a public relations smear campaign against Beitler in relation to this Project.

51. As set forth in detail in Mr. Paul Beitler’s letter to District 4 Alder Michael E. Verveer (Ex. A) and as seen in the Mayor’s letter to the Common Council (Ex. C), the City and its officials are disseminating false and misleading information about Beitler’s intentions to complete the Project as contemplated by the Development Agreement as a pretext to justify the City’s selfish attempt to take a portion of Beitler’s development under the Development Agreement for its own financial gain.

52. By unilaterally seizing Beitler’s rights, the City will benefit at least as follows:

- Avoid future closures of the Public Ramp when Beitler develops the Block 88 Private Development Elements on the timeframe set forth in the Development Agreement. According to the City’s presentation to City Council, this will save the City at least \$1 million (see Exhibit E);
- Provide significant income to the City above and beyond ground lease payments it would otherwise receive from Beitler. This is because the City would own and operate both the public parking in the Podium and ground floor retail space, both of which will generate significant income and can be sold at any time in the future for millions.

### **COUNT I – DECLARATORY JUDGMENT**

For Count I of its Complaint, pursuant to 28 U.S.C. § 2201, Beitler states as follows:

53. Beitler realleges and incorporates by reference paragraphs 1 through 52 of this Complaint as if fully stated herein as paragraph 53.

54. An actual and substantial controversy exists between Beitler and the City over whether the City can unilaterally develop the Podium, which is an aspect of the Private Development Element for Block 88, which Beitler has the exclusive right to develop under the Development Agreement.

55. Beitler has a tangible legal interest and protectable right in its exclusive right to develop the Private Development Element on Block 88, including an above-grade parking structure. The City has taken a position adverse to Beitler's interest by unilaterally initiating development of an above-grade parking structure on Block 88 in violation of Beitler's rights under the Development Agreement.

56. The City's ongoing actions to develop the Podium—including obtaining Enactment # RES-18-00403 on May 15, 2018, presenting information on the City's proposal for the Podium project to the City's Urban Design Commission on June 6, 2018, and the City's ongoing work with LVDA to develop plans for the Podium—show that this controversy is of sufficient immediacy to warrant a declaratory judgment.

57. Beitler will suffer irreparable harm if the City unilaterally builds the Podium in violation of Beitler's rights under the Development Agreement as the City will have taken a development right on Block 88 that belongs to Beitler under the terms of the Development Agreement.

58. Beitler has no adequate remedy at law to the City's unilateral taking of its right to develop the above-grade parking portion of its Private Development Element on Block 88 as this

above-grade parking is an essential element of Beitler's overall design for its development of the Project, which it is exclusively entitled to develop under the Development Agreement.

59. Further, the vertical portion of Block 88 upon which the Podium would be built is unique real estate, which the City is attempting to seize from Beitler and develop for its own profit.

60. Beitler is likely to succeed on its declaratory judgment claim as the Development Agreement clearly provides Beitler the exclusive right to develop the apartments, retail space, and above-grade parking on Block 88.

61. The irreparable harm Beitler faces if the City develops the above-grade parking on Block 88 in violation of Beitler's rights under the Development Agreement outweighs any potential harm an injunction would impose on the City. Indeed, the City will not be harmed at all by virtue of being forced to live by the terms of the Development Agreement.

WHEREFORE, Plaintiff Beitler Real Estate Services LLC respectfully requests that this Court grant the following relief:

- A. Enter a declaratory judgment stating that the City's construction above-grade on Block 88, including construction of the proposed Podium, violates the terms of the Development Agreement;
- B. Enjoin the City from taking any further action to construct above-grade on Block 88, including develop and construction of the Podium; and
- C. Grant such other and further relief as this Court deems just and proper.

**JURY DEMAND**

Plaintiff Beitler Real Estate Services LLC hereby demands a trial by jury on all issues so triable.

Respectfully submitted,

BEITLER REAL ESTATE SERVICES LLC

By: /s/ James L. Oakley

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