

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

EG,)			
an individual,))	
))	
JJ,)			
an individual,))	
))	
and))	
))	
PS,)			
an individual,))	
))	
Plaintiffs,))	Cause No.
))	
v.))	
))	Division No. 1
THE LOOP TROLLEY)			
TRANSPORTATION))	
DEVELOPMENT DISTRICT,)			
a political subdivision of the))	
State of Missouri,))	
))	
and))	
))	
THE LOOP TROLLEY COMPANY,)			
a Missouri non-profit corporation,))	
))	
Defendants.))	

ORDER AND JUDGMENT

This matter comes before the Court on Defendants The Loop Trolley Transportation Development District’s (the “District”) and The Loop Trolley Company’s Motion for Summary Judgment. The Motion was called, heard and submitted on January 30, 2017. The Court, having heard the arguments of counsel, having read the memoranda of law submitted and being now fully advised, enters the following Order and Judgment:

Background

The Missouri Transportation Development District Act (“TDD Act”) authorizes the creation of a transportation development district for the purpose of funding, planning and constructing a transportation or related infrastructure project. See Sections 238.200-.275 RSMo. In 2008, in accordance with the TDD Act, this Court entered a declaratory judgment (“Formation Judgment”) establishing the District and authorizing a sales tax to fund the construction and operation of a trolley car system along Delmar Boulevard and DeBaliviere Avenue.¹

On July 20, 2015, Plaintiffs EG, JJ, and PS filed a one count Petition challenging the District's construction of a trolley system outside District boundaries. The trolley route currently extends 300 feet beyond the boundary of the District on the eastern end of the line, and 235 feet beyond the western boundary of the District at Kingsland Avenue. Plaintiffs seek (1) a judgment declaring the District lacks authority to construct and operate the trolley car system outside the boundaries of the District, and (2) a permanent injunction enjoining further construction and operation of the trolley car system beyond District boundaries. Defendants move for summary judgment.

Discussion

Summary judgment is proper when the moving party has demonstrated a right to judgment as a matter of law based upon facts from which there is no genuine dispute. *ITT Commercial Fin. Corp. v. Mid-America Marine Supply Corp.*, 854 S.W.2d 371, 376 (Mo. banc

¹ *In re the Creation of The Loop Trolley Transportation Development District, et al. v. Missouri Highways and Transportation Commission, et al.*, Cause No. 07CC-003451 (Aug. 1, 2008).

1992). Defendants contend they are entitled to summary judgment on the grounds that (1) Plaintiffs lack standing to challenge the location of the trolley project, (2) Plaintiffs' claim is barred by the equitable doctrine of laches, and (3) if it is necessary to reach the merits, Defendants are entitled to judgment as a matter of law because the trolley project is not strictly confined to the boundaries of the District.²

(1) Standing

Defendants argue Plaintiffs do not have standing to bring the present action. To have standing in a declaratory judgment action, the plaintiff must have a legally protectable interest at stake in the litigation. *Ste. Genevieve Sch. Dist. R II v. Bd. of Aldermen of City of Ste. Genevieve*, 66 S.W.3d 6, 10 (Mo. banc 2002); *Blue Cross & Blue Shield of Missouri v. Nixon*, 81 S.W.3d 546, 551 (Mo. App. W.D. 2002).

Plaintiffs allege their status as taxpayers gives them a legally protectable interest in this action sufficient to confer standing. Missouri recognizes taxpayer standing because the public interest is at stake where the expenditure of public money is involved. *Manzara v. State*, 343 S.W.3d 656, 659 (Mo. banc 2011). However, the mere allegation of improper spending does not provide taxpayer standing. *Id.* Rather, the taxpayer must show "(1) a direct expenditure of funds generated through taxation; (2) an increased levy in taxes; or (3) a pecuniary loss attributable to the challenged transaction of a municipality." *Airport Tech Partners, LLP v. State*, 462 S.W.3d 740, 745 (Mo. banc 2015) (citing *E. Missouri Laborers Dist. Council v. St. Louis Cty.*, 781 S.W.2d 43, 47 (Mo. banc 1989)).

² Defendants also seek summary judgment on the basis that PS should be barred from bringing this action because he failed to challenge the route during the formation lawsuit in 2007. Defendants did not raise this argument at the summary judgment hearing, however, and the Court does not address it in this Order and Judgment.

In this case, the District is funded through the imposition of a sales tax. The sales tax is imposed upon retail sellers of goods and services located within the District. Section 238.235(2) RSMo. The seller, not the customer, is the taxpayer. *Centerre Bank of Crane v. Dir. of Revenue*, 744 S.W.2d 754, 759 (Mo. banc 1988).

PS has presented evidence that he is a retail seller of goods within the District. PS submitted an affidavit stating that on June 21, 2016, he obtained a sales tax license. Since that date, he attests, he has engaged in the retail sale of fruits and vegetables at his property located within the District, and collected sales tax for those sales.

PS has raised a genuine issue of fact as to whether he is a taxpayer of the District. Defendants have not demonstrated the right to judgment as a matter of law on the basis that PS lacks a legally protectable interest in this action.

EG and JJ, in contrast, do not contend they are retail sellers within the District. Instead, EG and JJ argue they have standing to bring this suit as University City homeowners and real estate taxpayers. It is undisputed that the District and University City entered into an agreement, under which University City agreed to maintain light poles and fixtures installed by the District along the trolley route.

The status of EG and JJ as taxpayers of University City is insufficient to confer standing in this action. There must be a connection between the challenged activity of the District and a pecuniary loss incurred by the plaintiff-taxpayer. See *Weber v. St. Louis Cty.*, 342 S.W.3d 318, 323 (Mo. banc 2011). While EG and JJ may have standing to challenge a transaction by University City, their status as University City taxpayers does not give them standing to challenge the actions of the District. EG and JJ do not have a legally protectable interest in this

action, and therefore, are not entitled to the requested relief. Accordingly, Defendants' Motion for Summary Judgment is granted on this basis as to EG and JJ.

(2) Laches

As Plaintiffs EG and JJ lack standing to bring this action, PS is the sole remaining Plaintiff. Defendants argue they are entitled to summary judgment because PS's claim should be barred by laches. Laches is an equitable doctrine barring a claim where an unreasonable delay prejudices the opposing party. *O'Connell v. Sch. Dist. of Springfield R-12*, 830 S.W.2d 410, 417 (Mo. banc 1992).

More specifically, laches may successfully be invoked where the plaintiff, "with knowledge of facts that give rise to his or her rights unreasonably delays asserting those rights for an excessive period of time" and the defending party "suffers legal detriment due to the delay." *Hart v. Kupper Parker Commc'ns, Inc.*, 114 S.W.3d 342, 350 (Mo. App. E.D. 2003); see also *Back Ventures, L.L.C. Series D v. Safeway, Inc.*, 410 S.W.3d 245, 255 (Mo. App. W.D. 2013) (" 'Laches' is the neglect for an unreasonable and unexplained length of time under circumstances permitting diligence, to do what in law, should have been done."). The question of laches may be determined on summary judgment where the essential facts are not in dispute. *State ex rel. City of Monett v. Lawrence Cty.*, 407 S.W.3d 635, 639 (Mo. App. S.D. 2013).

a. Unreasonable Delay

The undisputed facts show PS unreasonably delayed in bringing this action. A plaintiff's delay in bringing a claim is not excused by his lack of knowledge. *Russell v. Russell*, 427 S.W.2d 471, 478 (Mo. 1968). Rather, the test is what the plaintiff "might have known, by the use of means of information within his reach, with the vigilance the law requires of him." *Id.* Thus, the question is when PS, exercising diligence, should have brought this claim.

The District's plan to extend certain trolley project improvements beyond the District boundaries was available to the public, including PS, since at least 2010. It is undisputed that EG learned by 2010, from various official public meetings, that the District was considering building a track loop outside the western boundary of the District at Kingsland Avenue. The parties agree that from April 20, 2011, through March 11, 2013, there were various public filing or hearings in which the District proposed extending the trolley project beyond the District boundaries. At minimum, a plaintiff exercising diligence would have brought this action by March 11, 2013, when University City granted a conditional use permit to build and operate the trolley project west of the District boundary at Kingsland Avenue.

Yet, PS did not assert any claims until approximately seven month later, when the federal suit was filed. Indeed, on October 29, 2013, four individuals, including Plaintiffs, filed suit in federal court asserting the same claim made in this case: that Defendants lack authority to construct and operate the trolley outside District boundaries.

PS's sole reliance on the federal suit caused additional delay. Again, that case was filed on October 29, 2013, and dismissed on jurisdictional grounds on April 28, 2014. Significantly, instead of immediately filing a claim in state court, PS and his fellow plaintiffs chose to seek an appeal before the Eighth Circuit. Their choice brought about certain delay. On June 20, 2015,

over a year later, the Eighth Circuit affirmed the District Court's decision to dismiss the case. However, even if PS and his fellow plaintiffs had been successful on appeal, the case would have been remanded to District Court for resolution of the merits. As a result of the delay, this action was not filed until July 20, 2015.

Most importantly, there is no evidence Plaintiffs ever sought an emergency order in state or federal court to immediately halt construction of the trolley project. A plaintiff's failure to seek preliminary injunctive relief is relevant in determining whether laches should apply. See *Orchard Container Corp. v. Orchard*, 601 S.W.2d 299, 304 (Mo. App. E.D. 1980). Therefore, the Court finds as a matter of law that PS unreasonably delayed in bringing this action.

b. Legal Detriment

Defendants suffered a legal detriment as a result of the unreasonable delay by PS in bringing this action. It is not disputed that by October 2013, approximately \$2.3 million had already been expended on various project-related efforts. In addition, the City of St. Louis applied for a federal grant in 2010 to help fund the trolley project, and the District was awarded the grant in 2012. Halting the project in October of 2013 would have jeopardized the federal grant. Furthermore, during the delay in bringing this case, utility relocation, a \$1.6 million effort, commenced in June 2014, and construction of the track began around January 2015. The record shows that as time passed, Defendants continued to incur additional construction costs, thereby suffering a legal detriment as a result of the delay.

c. Overall Fairness

Finally, whether laches bars a particular claim also depends upon "the overall fairness in permitting the assertion of the claim." *Hart*, 114 S.W.3d at 350. Overall fairness requires that

laches apply to bar the claim in this case. If the requested relief were granted, the trolley route would need to be redesigned and portions of the track would need to be removed and rebuilt. The redesign, removal, and reconstruction the trolley route would result in the expenditure of additional non-grant funds, which the District Administrator estimates to be a minimum of \$5 million.³ Thus, allowing the trolley system to operate as currently designed and constructed serves the public interest.

d. Conclusion

Accordingly, the Court finds PS's claim to be barred by laches. Defendants' Motion for Summary Judgment is granted as to this Plaintiff. Although PS's claim is barred by laches, the Court will also address "the merits" i.e., whether the District was authorized to extend the trolley route beyond District boundaries and into the disputed areas.

(3) "The Merits"

The 2.2-mile trolley route extends 300 feet beyond the boundary of the District on the eastern end of the line, and 235 feet beyond the boundary of the District on the western end of the line. Nonetheless, Defendants argue they are entitled to judgment as a matter of law because the District has authority to construct and operate the trolley project as presently designed. The Court agrees.⁴

Specifically, the trolley project, as currently designed, is authorized because it sits within the "approximate" location approved under the TDD Act and the Formation Judgment. In addition, the trolley project, as currently designed, is authorized because the improvements

³ The objections to Defendants' statement of uncontroverted material fact are considered and overruled. Specifically, the Court does not agree the estimates related to the cost of the trolley project are speculative or hearsay. Any deficiency was cured by P's supplemental affidavit.

⁴ The parties agreed during the hearing that this issue was appropriate for resolution by motion for summary judgment.

located beyond the District boundaries qualify as activity and work necessary, incidental and convenient for the design, development and operation of the trolley project.

The TDD Act does not expressly limit the location of a transportation project to the boundaries of a district. The boundaries of a transportation development district define the property subject to any sales tax or assessment, and identify those entitled to vote on the creation of the district and the imposition of a tax.⁵ To infer that the location of a transportation project must be strictly limited to the boundaries of a district would be contrary to the intent of the TDD Act.

The TDD Act was designed to allow districts flexibility when planning transportation projects. Under the TDD Act, a petition requesting the formation of a transportation district (“Formation Petition”) must contain “a *specific* description of the proposed district boundaries including a map illustrating such boundaries,” but only needs to provide “a *general* description of each project proposed to be undertaken by the district, including a description of the *approximate* location of each project.” Section 238.207.4(3)-(4) RSMo (emphasis added). By requiring only a description of the “approximate” location in the Formation Petition, the Legislature recognized the need for flexibility in designing and implementing a transportation project.

Consistent with the TDD Act, the general description of the trolley project (“Project Description”), attached to both the Formation Petition and Formation Judgment, includes a description of the “approximate” location of the trolley project:

⁵ See Section 238.235.1(1) RSMo (“Any transportation development district may be resolution impose a transportation development sales tax on all retail sales made in such transportation development district.”); Section 238.202.2 (defining qualified voters).

The approximate location of the [trolley project] improvements will be along Delmar Boulevard between Kingsland Avenue and DeBaliviere Avenue and along DeBaliviere Avenue between Delmar Boulevard and Lindell Boulevard within the boundaries of the District.

The trolley project is situated within the “approximate” location described in the Project Description and approved in the Formation Judgment. The 2.2-mile trolley route is located within the boundaries of the District, except that it extends 300 feet, or half of a block, beyond the District boundary on the eastern end of the line, and 235 feet, or half of a block, beyond the District boundary on the western end of the line. Although some portions of the trolley project extend several hundred feet beyond the District boundaries, these disputed areas still fall within the “approximate” location approved in the Formation Judgment. As a result, the trolley project, as currently designed, is authorized.

In addition, the trolley project, as presently designed, is authorized because the improvements located beyond the District boundaries qualify as activity and work necessary, incidental and convenient for the design, development and operation of the trolley project. The Project Description includes the following broad language, which highlights anticipated activities and work the trolley project “may also include”:

The [trolley project] may include the financing, installation, and construction of a trolley car and track system to run east-west along Delmar Boulevard between Kingsland Avenue...and DeBaliviere Avenue...and north-south along DeBaliviere Avenue between Delmar Boulevard and Lindell Boulevard...and within the boundaries of the District. It is anticipated that the Project **may also include**, but is not limited to: **all activities and work necessary** for the purpose of funding, promoting, planning, designing, constructing, improving, maintaining and operating or assisting in: (a) the design, construction and installation of improvements along Delmar Boulevard and DeBaliviere Avenue necessary for a trolley-car rail system;...(c) construction of one or more turn around areas for vehicular traffic and/or rail system;...(f) design, construction and installation of surface and/or structured parking or pedestrian related improvements; and (g) all other costs and fees necessary or incidental to the foregoing. Such activities

and work may also include, but is not necessarily limited to...(3) completion of activities necessary or convenient for construction, re-construction, repair or use of...trolley track, trolley car, or related improvements...(5) the construction, rehabilitation, development or redevelopment of other improvements located within or adjacent to Delmar Boulevard and DeBaliviere Avenue including but not limited to curb cuts, drive aisles, entry and exit drives, signalization, drainage, sidewalks, trees, lighting, landscaping and/or other decorative features.

(Emphasis added). This language authorizes construction of the trolley system within the District boundaries and, *in addition*, all other activities and work necessary to achieve the District's purpose as specified.

Together with the broad language in the Project Description, the TDD Act further grants the District broad authority to accomplish its purpose. In particular, the District is granted "implied powers necessary or convenient" to accomplish its purpose of funding, constructing and operating the trolley project, so long as those implied powers are not inconsistent with the District's express powers. See Sections 238.205 & .252 RSMo.

In this case, the District determined that the extension of the trolley route several hundred feet beyond the District boundary was necessary, incidental and convenient to the successful implantation of the trolley project. According to the affidavit of JE, the extension project improvements into the disputed areas was necessary, incidental and convenient to, *inter alia*, provide safe stops for riders and minimize traffic congestion along Delmar Boulevard. The District's determination to extend the route into the disputed areas is consistent with purpose of the District and its express powers.

EG's affidavit is insufficient to preclude summary judgment. According to EG, there is "nothing essential to the construction or operation of the Trolley...in the portions that extend outside District boundaries" and "no practical reason...why the Trolley line could not terminate

within the District boundaries.” While this testimony addresses the *necessity* of extending the trolley route beyond the District boundary, it does not address the *convenience* of constructing and operating the trolley system in the disputed areas. The District is authorized to construct improvements located beyond the District boundaries which are necessary or *convenient* for the design, development and operation of the trolley project. Accordingly, Defendants are entitled to judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that summary judgment is hereby entered in favor of Defendants The Loop Trolley Transportation Development District’s and The Loop Trolley Company and against Plaintiffs EG, JJ, and PS.

So Ordered:

Hon. Brian May, Division 1

Date _____

cc: Attorneys of Record