

**IN THE MISSOURI COURT OF APPEALS
FOR THE EASTERN DISTRICT**

No. ED 114037

8307 MANCHESTER, LLC; NATIONAL FEATHER-CRAFT
COMPANY, INC. d/b/a FEATHER-CRAFT FLY FISHING;
CONVERGENCE DANCE AND BODY STUDIO; and
TIME FOR DINNER, LLC,

Plaintiffs/Appellants,

v.

CITY OF BRENTWOOD,

Defendant/Respondent.

Appeal from the 21st Judicial Circuit Court of St. Louis County
The Honorable Kristine A. Kerr, Division 14
Cause No. 23SL-CC05312

APPELLANTS' BRIEF

Justin K. Gelfand, #62265
MARGULIS GELFAND, LLC
7700 Bonhomme Avenue, Suite 750
St. Louis, Missouri 63105
Tel: (314) 390-0230
Fax: (314) 485-2264
justin@margulisgelfand.com

Benjamin A. Field, DC Bar no. 1046902*
Bobbi M. Taylor, NJ Bar no. 435162023*
Robert E. Johnson, OH Bar no. 0098498*
INSTITUTE FOR JUSTICE
901 N. Glebe Rd., Ste 900
Arlington, VA 22203
Tel: (703) 682-9320
Fax: (703) 682-9321
bfield@ij.org, btaylor@ij.org,
rjohnson@ij.org
*Admitted pro hac vice

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INTRODUCTION

In *Kelo v. City of New London*, 545 U.S. 469 (2005), the U.S. Supreme Court upheld a city taking private property to give to a private developer in hopes of promoting economic development. Missouri's General Assembly responded (like many states) by disavowing *Kelo* to prohibit eminent domain for pure economic development. And because declaring an area blighted could be an end-run around that prohibition, the legislature also reined in pretextual "blight" determinations by imposing new legal requirements and authorizing prompt judicial review. Recognizing that municipalities were still abusing blight designations, the legislature in 2021 further narrowed the statutory definition.

This case illustrates why those reforms were necessary. Plaintiffs-Appellants own or operate three small-business properties in the Manchester Corridor of the City of Brentwood. The businesses are thriving in well-maintained buildings. Overall, the Corridor is an unexceptional commercial stretch, with successfully operating small businesses and increasing property values. It's nothing like the derelict zones any ordinary person thinks of as "blight."

But just as in *Kelo*, the City of Brentwood prefers a fancy new development and wants to give Plaintiffs' businesses to a private company promising more jobs and tax revenue. To enable eminent domain, the City declared the Corridor blighted. The blighting ordinance relied exclusively on a blight study focused on commonplace conditions like cracks in pavement. It didn't identify anything wrong at all with most of the properties, including Plaintiffs' properties. Given the study's cursory analysis, the City seemingly didn't expect anybody to read or challenge it.

But Plaintiffs did. To enforce their rights under the post-*Kelo* reforms, they sued under the statute for immediate judicial review. Those reforms required that any valid blight determination be based on a parcel-by-parcel analysis that individually considered whether each parcel met the statutory criteria for blight—but the City’s blight study didn’t include most of the parcels, much less identify blight-worthy conditions on them. The reforms excluded building age and inability to pay reasonable taxes as bases for blight—but the blight study relied heavily on those proscribed factors. The statute requires that blight factors predominate an area to designate it blighted—but the City’s study not only didn’t meaningfully address most parcels, it also arbitrarily assumed that any parcel with *any* minor maintenance condition was 100% blighted. And even where the study did try to identify elements of the blight definition, it did so capriciously or without substantiation. For instance, it relied heavily on cracks in parking lots even though *every* parking lot develops cracks, including at nearby City-owned buildings.

Perhaps unsurprisingly, then, the City at trial hardly defended or bolstered its study. Instead, the City shifted to a new justification: that the area was blighted because it has too great a flooding risk. Never mind that the City had disavowed that rationale in its blight study, because it had just spent nearly \$100 million on effective flood-mitigation improvements. The City nevertheless insisted the area was blighted because parking lots in the area were modeled to flood in once-every-100-years storms—even though that level of risk is common in Brentwood, in surrounding areas, and in other desirable parts of Missouri and the U.S.

Despite those glaring problems, the circuit court rejected Plaintiffs' challenges. In the court's view, all the City had to do was present *some* evidence to support *some* reason to declare the Corridor blighted. Even if it were a reason not in the blight study or the City's original decision. Even if it were a supposed problem the City didn't plan to fix. And even if the City didn't follow each of the statutory requirements. Thus, the circuit court not only allowed the City to rely on a post-hoc rationale, it also disregarded Plaintiffs' evidence on the ground that Plaintiffs were not allowed to "debat[e]" the City's asserted justifications.

The circuit court's extraordinarily deferential standard of blight review, if correct, would make the legislature's reforms meaningless. It would allow any municipality to unlock eminent domain for *Kelo*-like purposes just by labeling an area blighted—without any real judicial check. In fact, the circuit court's approach is too deferential even under how courts reviewed blight *before* the reforms.

Because challenging blight is a daunting task for small-scale property-owners like Plaintiffs, Missouri's appellate courts have had few opportunities to consider how to apply the post-*Kelo* amendments and have yet to consider this kind of challenge asking for a comprehensive interpretation. This is the case to give meaning to the General Assembly's reforms and to ensure that property owners have meaningful judicial review before their property can be taken on flimsy assertions of blight.

JURISDICTIONAL STATEMENT

Plaintiffs appeal from the judgment of the Circuit Court of St. Louis County upholding Defendant City of Brentwood's blight determination. After a trial, the circuit court entered judgment on September 25, 2025. (D.155.) Plaintiffs filed a timely motion to amend judgment on October 24, 2025 (D.158), which was denied after a hearing on December 11, 2025 (D.160). Plaintiffs filed a timely (but premature) notice of appeal on October 24, 2025. (D.156.) They then filed a timely amended notice of appeal in this Court on December 16, 2025, after the motion to amend judgment was denied and the circuit court's judgment became final.

This Court has jurisdiction because this appeal does not fall within the exclusive jurisdiction of the Supreme Court. Mo. Const. art. V, § 3; § 477.050, RSMo. Plaintiffs' application for transfer to the Supreme Court prior to disposition was denied on April 21, 2026.

STATEMENT OF FACTS

I. The Manchester Corridor Is Home To Many Successful Businesses.

The Manchester Corridor is a 77.2-acre commercial district along Manchester Road in Brentwood, abutting Deer Creek to the south and Black Creek to the east. Ex.2 at COB_015870.¹ It is made up of seventy-five parcels, most of which are privately owned and occupied by small businesses, professional offices, and retail establishments.

It looks like what one would expect from a normal suburban commercial strip. Here are a few representative pictures:



Brentwood Public Works Building, Ex.28 at P_00916.

¹ Unless otherwise noted, record citations are to the trial transcript prepared for appeal, and to the trial exhibits. Citations to deposition designations include the transcript PDF page and then the deposition page-line numbers in a parenthetical.



Scharf Tax Building, *id.* at P_00925.



Popeyes, *id.* at P_00957.



Office building, *id.* at P_00982.

Plaintiffs-Appellants are among those ordinary businesses. 8307 Manchester, LLC is owned by brothers Martin and Anthony George, who grew up working on the property that their father built. Tr.1185:14-1188:17; Ex.24. Since 1989, the George family has leased the space to Plaintiff National Feather-Craft Company, Inc. (“Feather Craft”), a specialty fly-fishing supply retailer owned by Bob Story, whose father founded the business in 1955. Tr.1217:18-1219:11; Ex.29. Feather Craft employs six people and is a well-known destination for fly-fishing enthusiasts from all over the country. Tr.1219:17-1220:15. Here is a photo:



Ex.28 at P_01015.

Down the road at 8044 Manchester Road sits Plaintiff Convergence Dance and Body Center (“Convergence”), owned by Carter Maier and his wife Roxanne. The Maiers moved into the space in 2018. Ex.4; Tr.247:1-2, 249:20-250:1. Roxanne teaches dance classes, Carter offers chiropractic services, and together, their business offers a “variety of ways to stay ... healthy.” Tr.250:2-6. Below is a photo:



Ex.28 at P_00961.

Plaintiff Time for Dinner, LLC is a meal preparation and assembly company owned by sisters Amy Stanford and Carolyn Wilson, who have run the business at 8506 Manchester Road since 2004. Tr.308:22-312:6. Time for Dinner employs 25 people, many who've worked there for years. Tr.314:1-315:5. It's in a shopping center with other small businesses, including a barber shop, two gyms, and a dog groomer. *Id.* 313:7-12. Below are Time for Dinner and its shopping center:



Ex.5a at P_12164; Ex.28 at P_00897.

Feather Craft, Time for Dinner, and Convergence have operated in the Corridor for years and want to continue. Tr.305:1-3, 333:20-334:3, 1230:1-7. They have invested substantial sums to customize and maintain their properties. *E.g.*, Tr.251:17-252:20, 330:11-331:17, 1189:14-1190:3, 1221:6-1223:3, 1229:16-25.

They aren't the only ones. Time for Dinner's landlord, Liz Baich, testified at trial that she has made recent improvements to the shopping center, including paving the lot and installing new overhangs. Tr.1180:10-1181:6; Ex.34. Ellen Mell, owner of Custom Technologies LLC, is another business owner who has invested to expand and customize her space. Tr.561:15-563:18. She shares her building with a thriving children's hockey arena, frequented by families. Tr.561:6-11.

All these owners have together invested hundreds of thousands of dollars in maintaining, improving, and expanding their businesses. Those businesses have been and continue to be very successful. *E.g.*, Tr.305:1-3 ("it's a nice place to be, our business is doing very well there"), 333:23-24 ("this is a great location for us[,]our customers know where we are").

These owners have no concerns with the Manchester Corridor's conditions. They testified that they feel safe, haven't noticed crime or vagrancy issues, and that the area is generally well-maintained. *E.g.*, Tr.268:23-269:5, 310:18-311:15, 567:23-568:15, 1228:2-1229:15. They received no indication from the City that anything was wrong with their businesses until the blight determination. Tr.264:22-265:12, 322:22-323:13, 1227:2-5.

II. The City Declared The Manchester Corridor Blighted To Facilitate A Private Commercial Redevelopment.

A. The City wanted to redevelop the area for more tax revenue and jobs.

Despite the Corridor's successful businesses, the City wanted even more taxes. After several requests for proposals, eventually one developer (called Green Street) proposed a \$400 million mixed-use project that would replace all the existing properties. Tr.891:13-19; Ex.48 at COB_017932-41, COB_17967-78. It promised over 2,400 jobs and \$266 million in additional tax revenue. *Id.* at COB_17941, COB_018002.

B. The City needed to declare the Corridor blighted to access the power of eminent domain.

The proposed development contemplated eminent domain. Ex.43 at COB_15725. But Missouri law forbids eminent domain for "solely economic development purposes" as part of its post-*Kelo* reforms. § 523.271, RSMo; *infra* pp.41-42. So the City needed to find another justification.

It hired PGAV Planners ("PGAV"), under a team lead by John Brancaglione, to study whether the Corridor was blighted. The result was hardly in doubt. Months before beginning the study, Brancaglione wrote the City a memo noting a blight determination was necessary to "retain the eminent domain capability," as part of "streamlin[ing]" redevelopment. Ex.44 at COB_17693; Tr.546:2-14. In the approximately 50 blight studies PGAV had done in the previous 10 years, it had found blight every time. Tr.347:3-349:23. His method was to start with an area already identified by the blighting authority, and tailor the study so that it resulted in a blight finding. Tr.346:11-347:8, 350:5-351:20.

PGAV had done a previous blight study for the City in 2018, which found a larger area blighted including the Corridor. Ex.49. That prior study focused on the effects of flooding in the area to support a flood-mitigation project. *Id.* at COB_019237, COB_019243-45. Its blight determination allowed the City to acquire properties by eminent domain for the flood mitigation. Ex.50 at P_103; Ex.52 at COB_3444; Tr.878:3-879:7.

But by July 2023, that previous blight determination had expired and could no longer be used to authorize eminent domain under another post-*Kelo* reform that sunset blight determinations after five years. § 523.274(2), RSMo. The General Assembly had also substantially revised the definition of blight in 2021 to crack down on municipal abuse of blight determinations. *Infra* pp.42-43.

Moreover, the Manchester Corridor had changed substantially. The City built approximately \$120 million in public improvements, including \$95 million for flood mitigation. Ex.2 at COB_15870. The mitigation project worked, keeping water off many parts of Manchester Road during historic storms in summer 2022. Tr.956:14-957:4. In addition, the Missouri Department of Transportation (“MoDOT”) had repaved and improved Manchester Road. Tr.881:11-17. The City also added a pedestrian trail system and built a destination playground and event space. Tr.880:7-23, 882:11-19. Before-and-after photos show the huge changes:



Ex.54 at P_00159 (before).



Ex.54 at P_00160 (after).

On June 15, 2023, Green Street submitted its formal redevelopment plan. It contemplated “eminent domain shall be initiated by the City as needed.” Ex.43 at COB_15721, COB_15725, COB_15729. And it predicted nearly \$28.1 million in new property taxes, with over \$19 million to the City and its schools. *Id.* at COB_15816.

C. Brentwood blights the Manchester Corridor in July 2023 based on PGAV's blight study.

But Green Street was clear: if Brentwood wanted new development and accompanying taxes, it needed eminent-domain power. PGAV was in communication with both Green Street and City officials about “re-blighting the area to retain the eminent domain capability” as early as 2022. Tr.545:18-546:8; Ex.44 at COB_17693. PGAV's new blight study was then attached to Green Street's redevelopment plan. Ex.43 at COB_015747-83.

The study was the sole factual basis for the formal blight determination, which followed three public meetings. First, the redevelopment corporation the City had established recommended adopting the development plan and blight study on June 21, 2023. Ex.17 at P_602; Ex.43 at COB_15724-25. Next, the City held a public hearing on the development plan on July 5. At that point, the blight study had been updated with a supplemental letter and map. Ex.2 at COB_15864-65. The discussion of blight at the meeting was short and consisted of the City's attorney summarizing the blight study. Ex.72 at P_10488; Ex.73 at P_10757. At the third meeting, on July 12, the City's board of aldermen made a blight finding “based on the evidence presented in the Blighting Study and the ... ‘Supplemental Blight Letter.’” Ex. 72 at P_10489.

The area was then formally declared blighted by ordinance on July 17, 2023. Ex.1. It relied only on “the evidence presented in the Blighting Study and the supplemental information attached,” i.e., the “Supplemental Blight Letter.” *Id.* at P_12301.

D. The blight study’s analysis was cursory and did not address many of the statutory requirements.

Blight was an afterthought in this process, despite the severe potential consequences for property owners. Not only was the blight study clearly not even proofread, it presented little evidence that the Manchester Corridor as a whole was blighted.

1. The study acknowledged significant changes, including successful flood mitigation.

To begin, what the study *does* say is at odds with what the City’s lawyers would later argue in court.

It describes itself as an “update” to the 2018 study, but it acknowledges significant changes. Ex.2 at COB_015868. The new studied area was smaller, as many properties had been taken and cleared for flood mitigation. *Id.* at COB_15869.

And in stark contrast to the 2018 study, the new blight study pointedly disclaimed flooding as a basis for blight because of the successful flood-mitigation improvements. The study said those “improvements *will* mitigate one of the primary blight factors described in the 2018” study—namely, “recurrent flooding”—so that the 2023 study was instead based on “*other* ‘blighted area’ conditions.” Ex.2 at COB_015868 (emphases added). It went on to explain how the mitigation project “was effective in significantly reducing the flooding.” *Id.* at COB_015876; *see infra* p.79.

Instead, the blight study was clear about what it *was* based on. It asserted that because of “deterioration of site improvements” and “insanitary or unsafe conditions,” the area is an “economic liability.” Ex.2 at COB_015881.

2. The study didn't even address most of the properties in the Corridor.

But in considering those supposed blight elements, the study didn't even address most of the Corridor's properties—even though the statutes require a parcel-by-parcel analysis and a “predominance” of blight factors to support a blight determination. §§ 99.805(1), 523.274(1), RSMo. The study's substantive analysis came in a photo appendix, which included 40 photos (without identifying addresses or parcel numbers). Ex.2 at COB_15894-15902. Of those, several photos were of the same property. *E.g., id.* at COB_15901 (four photos of one property). In all, only “around 25, or maybe as many as 27 different properties” were specifically discussed in the study, out of the 75 parcels in the Corridor. Tr.1021:25-1022:4.

Of the minority of properties that were included, the selected photos were unrepresentative of the Corridor's overall condition. The authors chose the most unflattering photos they could find, while omitting more representative, nicer buildings. For example, none of these appeared in the study:

Navigate
Building
Solutions



Ex.28 at P_01027.

LK2 Kaim
Kisner
Studio



Ex.28 at P_00997.

Karr-Bick
Kitchen &
Bath



Ex.28 at P_00939.

Olive &
Opal



Ex.28 at P_00940

Lockwood
Flooring



Ex.121a at P_12428.

RPM Auto
Repair



Ex.28 at P_01006.

Dean Team



Ex.121a at P_12427.

2653
Melvin
Ave.



Ex.121a at P_12372.

2652
Melvin
Ave.



Ex.121a at P_12377.

8131
Manchester
Rd.



Ex.28 at P_00993.

Circle K



Ex.28 at P_01000.

Scharf Tax
Building



Ex.28 at P_00925.

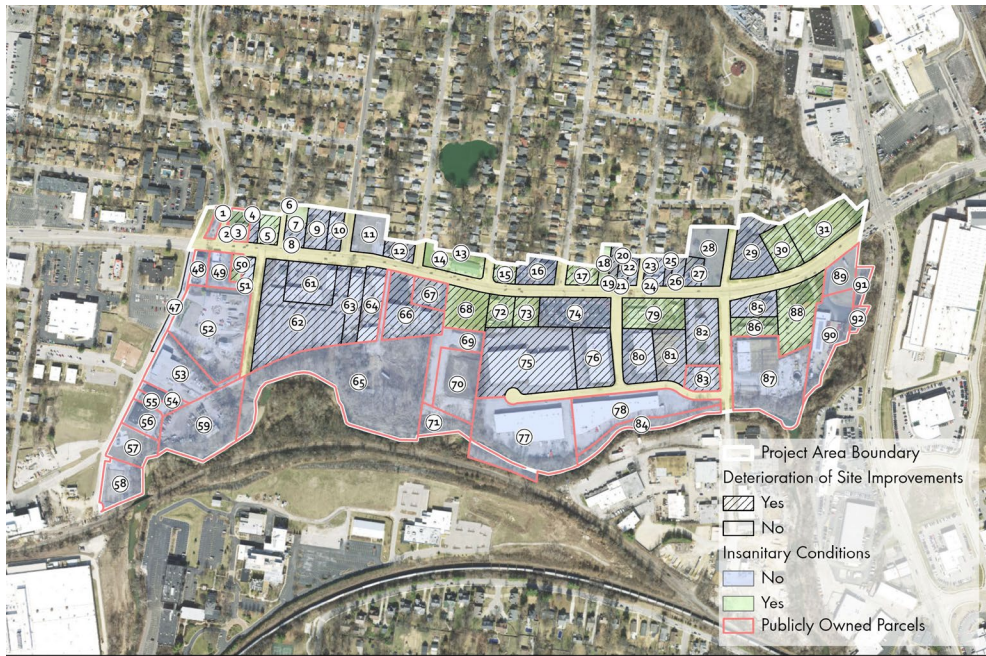
Brentwood
Public
Works



Ex.28 at P_00916.

See Tr.459:20-464:11 (study author confirming fifteen of the nicest properties were not pictured or discussed).

The closest the study came to explaining what was supposedly blight-worthy for most of the properties was a map attached to the July 5 supplemental letter:



Ex.2 at COB_15865. As one can see, it added little information. By shading and coloring parcels, it asserted that a blight factor (deterioration or insanitary conditions) was “present.” But it still didn’t say what specifically, if anything, was awry. Tr.363:11-23, 365:23-366:7, 1021:10-21. Nor did the map show how prevalent any supposed blight condition was on each property. Ex.2 at COB_15865; Tr.995:18-23. Instead, the study’s author said a parcel was deemed 100% blighted if a condition appeared on *any* part, even just 0.1%. Tr.498:11-499:18.

3. The study relied on criteria outside of the statutory blight definition.

Beyond a highly incomplete analysis of the Corridor, the blight study was also marred by a heavy focus on supposed blight factors that are *not* in the statutory definition of blight. Indeed, it focused on items the General Assembly specifically *removed* from the definition, most notably building age and “inability to pay reasonable taxes.” *Infra* p.60.

The study relied on building age throughout. Tr.485:6-487:17; *see* Ex.2 at COB_15871, COB_15873-75 (claiming “[p]hysical deterioration is often a function of building age,” and “[t]he age of the buildings makes many of them economically and functionally obsolete”); *see infra* pp.60-61. And its finding of economic liability—based on an “imbalance” between taxes and government service costs—is just another way of saying “inability to pay reasonable taxes.” *See infra* pp.61-62. The blight study also treated mere vacancy as an automatic ground to blight a property, Ex.2 at COB_15872-73, COB_15894; Tr.417:18-418:7, even though vacancy is not a statutory blight factor, either.

4. The study had no data supporting its conclusion that the Corridor is an economic liability.

The study concluded that the Corridor is an “economic liability” because of a supposed “imbalance between tax generation and demand for government services.” Ex.2 at COB_015878, COB_015881; Tr.504:17-506:8. Even setting aside whether this is a valid blight element given the statutory revisions, it also lacked supporting evidence.

Aside from a table showing property values, the study contained no information about taxes generated, no information quantifying demand for government services, and no evidence showing any imbalance between the two. Ex.2 at COB_15877-78; *see*

Tr.507:11-508:4, 510:3-13, 513:22-515:1, 1069:12-17. In fact, assessed property values *increased* substantially in the preceding years, meaning tax revenue was *rising*. Compare Ex.2 at COB_15879-80, *with* Ex.49 at COB_19251-52; *see* Tr.507:5-10, 1089:9-20.

5. The study fixated on common maintenance conditions, not serious building deficiencies.

Even for the minority of parcels that were pictured in the photo appendix, the examples of asserted deterioration on them consisted of commonplace conditions like peeling paint—not serious problems an ordinary person would consider blight. Tr.1025:2-1030:3. By far the most common condition identified was cracks in pavement. *E.g.*, Ex.2 at COB_15896, COB_15898; Tr.1029:15-19 (over nine such photos appear in study). But according to MoDOT, cracking in pavement is inevitable and ordinary. Ex.35 at P_7068; Tr.992:11-18, 1029:20-1030:3.

Beyond photos of cracked pavement or peeling paint, the study considered whole parcels deteriorated because of maintenance issues with trash enclosures, fascia or soffits, or an exterior wall; because a trailer was parked on the property; because there was an empty sign; because of fading paint on an awning; because a column was missing a single brick; because a fence was missing two or three boards; and because of a pallet leaning against a building. Ex.2 at COB_15894-15902. In contrast to these easily repaired issues, there were no photos *at all* of damage to primary building components like compromised foundations or unstable walls. *Id.*; *see* Tr.1024:15-1025:1, 1119:8-20.

The study also had inconsistencies in how properties were categorized. For example, without explanation, the City found one “vacant grassy lot” (Parcel 19) to be deteriorated,

but another very similar one (Parcel 28) was not. Ex.37 at P_7104, P_7113; *see* Tr.1003:17-1004:2, 1008:4-22. Elsewhere, the City found some parcels with construction equipment on them to be deteriorated (*e.g.*, parcels 3 and 49), while finding no blight on similar government-owned parcels. Tr.1016:1-1018:4, 1019:20-1020:1. And despite blighting many properties for cracks in pavement, the Navigate building belonging to a City contractor (pictured *supra* p.25) was not blighted despite having pavement cracking. Tr.1460 (Schluter Tr.70:4-9).

6. The study also relied on hypothetical conditions without evidence they existed.

The study also designated five properties blighted because of “insanitary or unsafe conditions.” Ex.2 at COB_15865; Tr.995:24-996:2. But nothing in the study specifically identified what conditions were insanitary or unsafe. Instead, the study gave examples of things that *could* represent insanitary or unsafe conditions. Tr.1031:18-1032:8; Ex.2 at COB_015875-76. But there was no direct evidence those conditions actually existed. *E.g.*, Tr.1033:11-21 (no evidence of harm from weeds), 481:23-25 (no evidence of vermin or harm from vermin). While the study speculated buildings *might* contain asbestos or lead paint based on building age, there’s no evidence they did. Ex.2 at COB_15873, COB_15875. And while the study contained three photos of trash enclosures, it did not explain why trash in its proper receptacles was insanitary or unsafe. *Id.* at COB_15895; Tr.476:15-478:20, 1032:14-1033:10. The study even marked Feather Craft’s building insanitary, but its only description was that it “present[s] a reasonable appearance.” Ex.2 at COB_15865 (parcel 14), COB_15897.

III. Plaintiffs Invoked Their Statutory Right To Judicial Review Of The Blight Determination.

Facing the threat of eminent domain, Plaintiffs challenged the blight determination. (D.2.) Following discovery, Plaintiffs moved for summary judgment because the City's contemporaneous justification for its blight determination—the blight study—violated the statutory requirements, was arbitrary and capricious, and lacked substantial evidence. (D.54-83, 110-12.) Plaintiffs pointed out the study lacked the parcel-by-parcel analysis required by statute, lacked objective criteria, relied on blight factors outside the statute, did not show predominance of blight, did not substantiate its economic-liability finding, and made no effort to show the asserted blight factors *caused* an economic liability. (*E.g.*, D.55 at 14-39.) The circuit court denied summary judgment in a terse order (D.125), and the parties went to trial.

IV. At Trial, The City Did Not Defend Its Blight Study. It Pivoted To An Alternative Rationale That Contradicted The Study.

At trial, Plaintiffs renewed their attacks on the problems identified at summary judgment and presented evidence to bolster their challenges to the City's blight determination. Plaintiffs introduced detailed parcel-by-parcel photographic evidence and expert testimony showing what the City labeled blight was just minor deferred maintenance issues; that the area was doing well economically with thriving businesses; and that property values in the area were rising. *E.g.*, Exs. 35, 37-38; Tr.304:18-305:3; 333:17-334:1; 569:18-570:15, 997:1-1000:18, 1230:1-17.

The City did not rebut this evidence or introduce new evidence to bolster its study's conclusions. Instead, the City pivoted to a post-hoc justification: that even after it spent

\$120 million on flood-mitigation and other improvements, the Manchester Corridor was blighted because part of it still sat in a 100-year floodplain. The City also relied heavily on information from its expired 2018 study, despite acknowledging the substantial intervening changes to the area. Altogether, the City's trial case relied almost entirely on justifications that did not appear in the blight study that was the sole basis asserted in its 2023 blighting ordinance.

While contesting that this post-hoc shift was legally permissible (*e.g.*, D.136), Plaintiffs also rebutted the new flood-risk theory. For example, testimony from the City's chief flood-mitigation-project engineer and the mayor indicated the flood-mitigation project worked as intended. Tr.947:16-948:5 (mayor confirming he told newspaper flood mitigation had been successful); 949:19-950:7 (mayor confirming project "passed with flying colors"), 1298-99 (Ibendahl Tr.30:8-30:18 (flood mitigation was "rather remarkable")). This was consistent with the blight study's own repeated statements that flood-reduction was effective. Ex.2 at COB_015868, COB_15876. And Plaintiffs and other business owners testified that their buildings, located all across the Corridor, didn't flood. *Infra* pp.82-83.

The evidence also showed that the City has no plans for further flood mitigation. Tr.956:5-957:4, 1337 (Ibendahl Tr.95:1-4). Meanwhile, it planned to build luxury condominiums in the very same area despite the floodplain designation. Ex.43 at COB_015785.

V. The Circuit Court Refused To Admit Much Of Plaintiffs' Evidence.

Plaintiffs also sought to admit additional evidence to undermine both the blight study's assertions and the City's post-hoc theories. Plaintiffs presented photos of properties in Brentwood outside of the Corridor to show they had the exact same types of conditions identified in the blight study, yet they weren't declared blighted. For example:



Ex.5b at P_12066 (damaged bricks at nearby Target).



Ex.5b at P_12074 (pothole at Brentwood's City Hall). The Court did not admit this comparator evidence. Tr.294:1-295:2; *infra* pp.52-54.

Plaintiffs also presented testimony and floodplain maps to show that merely existing within a regulatory floodplain was not alone grounds for blight. Such floodplains are common in Brentwood (and all over Missouri and the U.S.) in areas that are economically vibrant. *See* Ex.79. But the Court refused to admit or consider any of Plaintiffs' evidence outside the Corridor itself. Tr.804:7-810:12 (allowing testimony about areas outside the Corridor only as an offer of proof).

VI. The Circuit Court Upheld The Blight Determination In A Highly Deferential Decision.

Following trial, the circuit court ruled for the City and upheld the blight determination by applying an exceedingly deferential standard of judicial review. (D.155.) It held that if blight is "fairly debatable," then the City gets the "benefit of the doubt" and

the determination stands, no matter the contradicting evidence. (*Id.* at 22.) This maximally deferential standard was drawn from pre-*Kelo* case law. (*Id.* at 3.). The circuit court did not limit the City to its contemporaneous justifications, but rather blessed the blight determination based almost entirely on the post-hoc flood-risk theory. (*Id.* at 3, 13-15.)

By contrast, the circuit court decision refused to consider most of Plaintiffs' evidence on the ground that it was impermissible for blight challengers to present material "debating" a blighting authority's rationales. (D.155 at 22.). In the court's view, so long as the City put forth *some* evidence, the court's job was to rubber-stamp the blight determination.

This appeal followed.

POINTS RELIED ON

I. The General Assembly’s Post-*Kelo* Reforms Require Meaningful Judicial Review Of Blight Determinations. The Circuit Court Erred By Applying Excessively Deferential Review And Refusing To Consider Plaintiffs’ Evidence.

- §§ 99.805, 353.020, 523.261, 523.262, 523.271, 523.274, RSMo.
- *Centene Plaza Redevelopment Corp. v. Mint Props.*, 225 S.W.3d 431 (Mo. 2007).
- *State ex rel. Jackson v. Dolan*, 398 S.W.3d 472 (Mo. 2013).

II. The City’s Rationales For Its Blight Determination Based On Its Blight Study Were Legally Deficient.

- §§ 99.805, 353.020, 523.261, 523.262, 523.271, 523.274, RSMo.
- *Centene Plaza Redevelopment Corp. v. Mint Props.*, 225 S.W.3d 431 (Mo. 2007).
- *Allright Props., Inc. v. Tax Increment Fin. Comm’n of Kan. City*, 240 S.W.3d 777 (Mo. App. W.D. 2007).

III. The Circuit Court Erred By Allowing The City To Rely On Post-Hoc Justifications. Moreover, Trial Showed Those Justifications Were Arbitrary And Capricious, Unsupported By Substantial Evidence, And Advanced In Bad Faith.

- §§ 99.805, 353.020, 523.261, 523.262, 523.271, 523.274, RSMo.
- *Centene Plaza Redevelopment Corp. v. Mint Props.*, 225 S.W.3d 431 (Mo. 2007).

ARGUMENT

I. The General Assembly’s Post-*Kelo* Reforms Require Meaningful Judicial Review Of Blight Determinations. The Circuit Court Erred By Applying Excessively Deferential Review And Refusing To Consider Plaintiffs’ Evidence.

Preservation and Standard of Review

Whether the district court applied the correct legal standard is a question of law reviewed de novo. *Pearson v. Koster*, 367 S.W.3d 36, 43-44 (Mo. 2012). The circuit court’s decision not to admit evidence is reviewed for abuse of discretion, with underlying legal interpretations reviewed de novo. *Id.*; *Sherrer v. Bos. Sci. Corp.*, 609 S.W.3d 697, 705 (Mo. 2020).

All these arguments regarding the correct standards for judicial review of blight and what evidence is relevant were preserved repeatedly, including in summary-judgment briefing, post-trial proposed findings of fact and conclusions of law, a motion to reconsider evidentiary rulings, and a motion to amend judgment after the circuit court’s decision. (*E.g.*, D.55, 110, 147, 152, 154, 158.)

Argument

In *Kelo*, the U.S. Supreme Court held, 5-to-4, that economic development was a permissible public use under the Fifth Amendment’s Takings Clause. 545 U.S. at 483-84. The facts were reminiscent of this case: a city using eminent domain to seize a large area from private owners for a private commercial development it hoped would generate jobs and taxes. *Id.* at 472-75, 483. But the Court “emphasize[d] that nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power.” *Id.* at 489.

Missouri, like many states, took the invitation. The next year, the General Assembly enacted a sweeping eminent-domain reform, 2006 Mo. Legis. Serv. H.B. 1944, to “rein in” abuse. *See State ex rel. Jackson v. Dolan*, 398 S.W.3d 472, 478 (Mo. 2013). It banned *Kelo*-style takings “for solely economic development purposes,” meaning no takings just to juice “tax revenues” and “employment.” § 523.271, RSMo.

The legislature also recognized that municipalities often used blight to justify eminent domain for economic-development projects. Thus, the legislature took steps in its 2006 reforms to ensure blight couldn’t be a workaround. *See Allright Props., Inc. v. Tax Increment Fin. Comm’n of Kan. City*, 240 S.W.3d 777, 780 (Mo. App. W.D. 2007) (“[O]ne of the General Assembly’s main goals ... was to protect non-blighted parcels from a government’s taking by eminent domain.”). For example, it created a specific statutory cause of action for immediate review of blight determinations to ensure the legal “standards have been met.” § 523.261, RSMo. It required a parcel-by-parcel analysis for any blight determination to be used for eminent domain, and also made blight determinations sunset after five years for purposes of eminent domain. *Id.* § 523.274.

In 2021, the General Assembly went further still. Legislators recognized that governments were blighting “things that shouldn’t be blighted,” and they wanted to ensure that blight was “not abused.”² Accordingly, they amended Chapter 353 to substantially

² *See, e.g.*, Mo. House of Reps. Proceedings Archive (May 12, 2021), <https://sg001-harmony.sliq.net/00325/Harmony/en/PowerBrowser/PowerBrowserV2/20200831/-1/3421> (at 11:30:01-11:30:34 a.m. and 11:33:07-11:34:03 a.m.); Mo. Senate Proceedings Archive (Mar. 2, 2021), <https://media.senate.mo.gov/DebateArchive/2021/030221/030221II.mp3> (at 2:23:21-2:24:08).

narrow the blight definition to be based on more objective factors. Before the amendment, governments could find blight based on “age, obsolescence, [or] inadequate or outmoded design.” § 353.020(2), RSMo (2006). Akin to *Kelo*, a government could also declare whole areas blighted for an “inability to pay reasonable taxes.” *Id.* But the legislature removed those capacious terms and adopted a definition focused on actual building infirmities. § 99.805(1), RSMo (incorporated by reference in § 353.020(2)).

In this case, however, the circuit court refused to give force to the General Assembly’s efforts to impose guardrails on eminent domain and blight designations. The circuit court adopted far too deferential a form of judicial review (Subpart A). And it refused to consider Plaintiffs’ evidence, effectively precluding them from exercising their statutory right to challenge the blight determination (Subpart B).

A. The circuit court erred by adopting an overall too-deferential standard for judicial review of blight determinations.

The circuit court applied an excessively deferential standard of review that ignored both sets of post-*Kelo* reforms to crack down on eminent domain and blight abuse. The circuit court thought the only question before it was whether the City at trial presented *any* evidence that, considered on its own, could make it “fairly debatable” that the Manchester Corridor was blighted. (D.155 at 2-3.) At the same time, the circuit court refused to consider most of Plaintiffs’ evidence, explaining that “the applicable standard of review prohibits” “debating the City’s determination ... in the face of substantial evidence to support that decision.” (*Id.* at 22.) And even though Plaintiffs had argued (and presented evidence) that

the City had failed to comply with several specific statutory requirements, the circuit court didn't independently require substantiating each distinct statutory element.

In short, the circuit court was a rubber stamp: So long as the City put forward *some* evidence at trial that there was something that seemed blight-like *somewhere* in the Corridor, no challenge could succeed. In service of that extreme deference, the court also blinded itself to contrary evidence, and it did not independently require compliance with each statutory requirement.

1. Statutory text and case law require searching judicial review.

But this overly deferential standard cannot be squared with the statutory reforms or case law. Start with the statute. Prior to *Kelo*, challenges to blight determinations were treated the same as challenges to any municipal law, reviewed under a highly deferential rational-basis standard. *E.g.*, *City of St. Joseph v. Hankinson*, 312 S.W.2d 4, 8 (Mo. 1958). But in the post-*Kelo* reforms, the General Assembly created a specific statutory right for property owners to get judicial review. § 523.261, RSMo. This new right required blight determinations to satisfy three conditions: that they “shall” (1) “not be arbitrary or capricious,” (2) “not be ... induced by fraud, collusion, or bad faith”; and (3) “be supported by substantial evidence.” *Id.* Judicial review must ensure “these standards have been met.” *Id.*

“[W]hen the legislature amends a statute, it is presumed that its intent was to bring about some change in the existing law,” so courts “should never construe a statute in a manner that would moot the legislative changes, because the legislature is never presumed to have committed a useless act.” *Rasmussen v. Ill. Cas. Co.*, 628 S.W.3d 166, 176 (Mo.

App. W.D. 2021) (cleaned up). There would be no point in codifying judicial review—much less taking all the actions the General Assembly did to rein in eminent domain and blight—if it was meant to be as toothless as the circuit court treated it.

The specific language of the statute suggests that, too. By enacting “arbitrary or capricious” review and review for “substantial evidence,” the statute incorporates terminology from administrative law. *Compare* § 523.261, RSMo, *with id.* § 536.140; 5 U.S.C. § 706. Administrative-law review requires probing analysis to ensure the agency mustered real evidence, provided logical reasons for what it was doing, and accounted for countervailing considerations. *E.g.*, *Dep’t of Com. v. New York*, 588 U.S. 752, 773 (2019) (citing *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)); *Barry Serv. Agency Co. v. Manning*, 891 S.W.2d 882, 892-94 (Mo. App. W.D. 1995). It also requires that a governmental action be based on “objective data rather than mere surmise, guesswork, or ‘gut feeling,’” and forbids taking actions “in a totally subjective manner without any guidelines or criteria.” *Bd. of Educ. of St. Louis v. Mo. State Bd. of Educ.*, 271 S.W.3d 1, 11 (Mo. 2008) (citation omitted). And a decision-maker who “completely fails to consider an important aspect or factor of the issue before it may also be found to have acted arbitrarily and capriciously.” *Barry Serv. Agency*, 891 S.W.2d at 892.

Case law confirms that judicial review of blight must be meaningful. The leading Supreme Court case is *Centene Plaza Redevelopment Corp. v. Mint Properties*, 225 S.W.3d 431 (Mo. 2007), which invalidated a blight determination. Although the decision post-dates the 2006 reforms, the challenged blight determination *pre*-dated them. *Id.* at 433 n.2. So

the Court reserved the question of how to apply the new statutory reforms. *Id.* Yet in doing so, it recognized two important points:

First, judicial review under the new Section 523.261 imposes a *higher* standard than the old standard under which blight determinations were upheld so long as they were “reasonably doubtful or even fairly debatable.” *Id.* (citation omitted).

Second, even the old form of review was not toothless. In fact, *Centene* invalidated the blight determination at issue there under the pre-*Kelo*, more-deferential standard. *Id.* In doing so, it set a floor for what the new, higher standard must require. In particular:

- The Court required strict compliance with each distinct requirement for blight, rather than considering it as one big undifferentiated question of whether there was evidence of blight. Thus, it was fatal to the blight determination that the government had failed to establish the requirement in the statutory definition that the area was a social liability. *Id.* at 434-35.
- The Court did not simply defer to the blighting authority’s assertions, but evaluated actual evidence. *Id.* at 433-35. For instance, though the city manager testified about safety and crime concerns, the Court found there was no actual “evidence presented” for his assertions. *Id.* at 434.
- The Court relied on comparator evidence to prevent inconsistent and arbitrary decision-making, including considering whether the blighted property was distinctly worse than other properties in the area. *Id.*

- The Court rejected the blighting authority’s efforts to introduce new blight justifications at odds with its blight study (prepared by the same consultant as in this case). *Id.* at 434. Where, as here, the “study was a critical component in the blight determination,” the Court rejected the City’s efforts to defend itself with a social-liability finding at odds with the study. *Id.*

A later non-blight case confirms that the General Assembly intended to “rein in” eminent domain. *Jackson*, 398 S.W.3d at 478. There, the Supreme Court invalidated the use of eminent domain that ran afoul of Section 523.271’s prohibition on economic-development takings. *Id.* at 482. It refused to accept the condemning authority’s permissive reading of the statute because “[r]eading” it “th[at] way would render the statute a nullity.” *Id.* Although the reforms “may make a taking more difficult to effectuate, that difficulty is the *intended* result of the statute ... to *limit* the opportunities for which a condemning authority may use the power of eminent domain.” *Id.* The same logic applies to rigorously enforcing the twice-reformed blight requirements.

Other state courts’ approaches point in the same direction, treating their own states’ eminent-domain and blight laws as requiring meaningful judicial review of blight. *E.g.*, *Burgess v. City of Westworth Village*, No. 02-24-00252-CV, 2025 WL 1717142, at *8 (Tex. App. June 19, 2025) (holding judicial deference to legislative public-use determinations was overridden by “legislature’s intent to provide greater statutory limitations on matters that were the subject of the *Kelo* decision”); *see also City of Norwood v. Horney*, 853 N.E.2d 1115, 1137 (Ohio 2006) (rejecting *Kelo* under state constitution and holding judicial

review of blight determination cannot be “superficial”); *R.I. Econ. Dev. Corp. v. The Parking Co., L.P.*, 892 A.2d 87, 104 (R.I. 2006) (holding legislative determinations for condemnation “are far from dispositive” and independently finding no “legitimate public purpose”); *Young Partners, LLC v. Bd. of Educ.* 160 P.3d 830, 842 (Kan. 2007) (interpreting pre-*Kelo* eminent-domain judicial-review statute to “delegate[] the determination of whether a valid public use exists to the district court”); *Gallenthin Realty Dev., Inc. v. Borough of Paulsboro*, 924 A.2d 447, 465 (N.J. 2007) (rejecting blight determination that was based on “a bland recitation of applicable statutory criteria and a declaration that those criteria are met” because a blight designation “carries serious implications” for property owners). More generally, courts confronted with post-*Kelo* reforms have applied them to accomplish their goals of restricting eminent domain. *E.g., Norfolk S. Ry. Co. v. State Corp. Comm’n*, 915 S.E.2d 305, 308-09 (Va. 2025) (explaining “[e]minent domain statutes ... must be ‘strictly construed’” and referencing post-*Kelo* reforms); *Reading Area Water Auth. v. Schuylkill River Greenway Ass’n*, 100 A.3d 572, 583-84 (Pa. 2014) (interpreting post-*Kelo* statutory reform to give effect to legislature’s purpose “to curb ... eminent domain abuse”).

2. The circuit court’s justifications for minimal judicial review were unpersuasive.

On the other hand, the circuit court’s justifications for applying minimal judicial review are wholly unpersuasive.

To begin, the circuit court treated Plaintiffs’ challenge the same as any other challenge to “legislative actions” by a city government—ignoring that the General

Assembly created a specific statutory scheme for judicial review of blight determinations. (D.155 at 2.) Its lead citation for using the old standard was *Centene*. (*Id.*) But *Centene* expressly reserved the question of how judicial review should be conducted under the post-*Kelo* statutes. And (as just discussed), *Centene*'s application of the pre-*Kelo* standard of review was far more rigorous than what the circuit court employed here. The circuit court's other case was in a similar posture to *Centene*—evaluating a blight determination “made prior to Missouri’s eminent-domain reform.” *Land Clearance for Redevelopment Auth. of St. Louis v. Inserra*, 284 S.W.3d 641, 645 (Mo. App. E.D. 2009). Though *Inserra* went on in dicta to opine that pre-*Kelo* standards for judicial review remained valid, *id.* at 645-46, its actual analysis of the evidence in that case was far more probing than the circuit court's here. *Inserra* required compliance with each of the distinct elements of the statutory definition of blight. *Id.* at 646-47. And it approved the blight determination only because there was a blight study about the property owner's specific parcel, which showed it to be dilapidated, unused, and abandoned, “with a dirt floor and no utilities.” *Id.* at 643, 647. Neither *Centene* nor *Inserra* supports a blank-check approach.

Next, the circuit court held that arbitrary-and-capricious review was the same as its hyper-deferential form of substantial-evidence review. But that fails to give distinct meanings to separate textual requirements of Section 523.261, which requires review for *both* arbitrary-and-capricious decision-making *and* for substantial evidence. The circuit court's contrary authority is particularly unpersuasive: a law review article cited in *Inserra*. (D.155 at 2.) That article was written by a professor hired to lobby the legislature by a railroad advocating *against* significant restrictions on eminent domain in the 2006 reforms.

See Dale A. Whitman, *Eminent Domain Reform in Missouri: A Legislative Memoir*, 71 Mo. L. Rev. 721, 722, 731-32 (2006). But the reformers prevailed, not the railroads. It makes no sense to interpret the reforms to have changed nothing just because a lobbyist for the losing side says so.³

The circuit court's next authority (D.155 at 3) for using pre-*Kelo* standards was *Great Rivers Habitat Alliance v. City of St. Peters*, 246 S.W.3d 556 (Mo. App. W.D. 2008). But that case simply assumed without reason that the pre-*Kelo* standards applied, relying on cases that long predated *Kelo*. *Id.* at 562-63. Even then, the court reversed summary judgment so that the plaintiff could put on evidence at trial. *Id.* at 564-65. Thus *Great Rivers* recognized that plaintiffs' evidence contesting blight must be considered.

The circuit court's other authorities for its deferential standard predate *Kelo* by decades. (D.155 at 3 (citing cases from 1958 and 1968).) They thus have nothing to say about whether the statutory reforms heightened the judicial-review standards, and they certainly don't undermine *Centene*'s statement that they did.

*

Courts are supposed to actually confirm there is a non-arbitrary-and-capricious evidentiary basis for blight, not just accept a city's assertions at face value. This was true before *Kelo*, as *Centene* makes clear. It is doubly true now given the General Assembly's post-*Kelo* reforms. By adhering to an unduly deferential form of judicial review based

³ *Inserra* also noted that Professor Whitman's article was relied upon by Judge Stith in her *Centene* concurrence. 284 S.W.3d at 645. But that concurrence disagreed with the majority's more searching form of judicial review. It is the *Centene* majority that controls.

entirely on pre-*Kelo* standards, the circuit court did not do what it was supposed to be doing, and its decision fails on that basis.

B. The circuit court erred by improperly refusing to consider Plaintiffs’ evidence challenging the blight determination.

The circuit court did not only err by treating the City’s asserted blight justifications with far too little skepticism. It simultaneously prohibited Plaintiffs from putting on a case. This came in two forms: (1) disregarding Plaintiffs’ evidence that was admitted, and (2) wholly refusing to admit (and therefore not to consider) relevant evidence. Together, these errors had the effect of leaving Plaintiffs without some of their strongest evidence to contest the blight determination.

1. The circuit court improperly disregarded Plaintiffs’ evidence.

First, the circuit court declined to consider Plaintiffs’ evidence that the area was not blighted, on the ground that “the applicable standard of review prohibits ... debating the City’s determination that a preponderance of the area is blighted[.]” (D.155 at 22.) This essentially made it impossible for Plaintiffs to contest the blight determination, rendering judicial review illusory.

This was most glaring with respect to Plaintiffs’ blight expert, Dave Phillips, an architect and builder with decades of experience. (*See* D.155 at 21.) He conducted just the sort of detailed parcel-by-parcel analysis of the Manchester Corridor that the City should have done. (*See id.* at 21-22.) He analyzed *every* parcel, providing photographs and explaining in detail why *each* property was not blighted. Exs.35, 37. He explained that the City’s blight analysis was riddled with inconsistencies and was based on factors—such as

cracks in parking lots—that are common to almost all properties. *E.g.*, Tr.1065:15-21; Ex.35 at P_07068. He explained how even the worst faults identified by the City (on a small minority of parcels) were easily remediated at modest cost. *See, e.g.*, Tr.997:20-998:4, 998:11-12. And he provided evidence that “the Corridor is economically viable,” which the circuit court refused to credit under its Plaintiffs-can’t-debate-blight standard. Ex.35 at P_07082; (D.155 at 22). Only by wholly ignoring this evidence could the circuit court conclude that “[t]here is no evidence of arbitrary or capricious legislative action by the City.” (D.155 at 23.)

Simply ignoring Plaintiffs’ evidence cannot be squared with the post-*Kelo* statutory reforms to enhance judicial review. It can’t even be squared with the more deferential pre-*Kelo* standards. In *Centene*, the property owner successfully defeated a blight determination by “debating” the blight authorities’ evidence—including by providing evidence of inconsistencies and evidence there were no safety problems. *See* 225 S.W.3d at 434. And in the *Great Rivers* case, the court reversed a grant of summary judgment to the blighting authority because a trial was needed to test the blight justifications. 246 S.W.3d at 564-65. If courts are only allowed to consider the blighting authority’s evidence, there would have been no need for a trial.

2. The circuit court improperly declined to admit highly relevant evidence supporting Plaintiffs’ attacks on the blight determination.

In addition, the circuit court’s overly narrow review made it refuse to even admit much of Plaintiffs’ key evidence, in three basic categories: First, evidence showing comparator properties around Brentwood and other jurisdictions with similar issues, which

showed that the City’s blighting methodology was arbitrary and capricious. Second, evidence post-dating the blight determination showing the condition of the Corridor. Third, testimony undermining the City’s purported blight justifications. Fortunately, all this evidence is in the appellate record as offers of proof, allowing this Court to consider it.

The circuit court excluded this evidence on the ground that it was not relevant, based on its narrow view that the only question before it was whether the City had *some* evidence for its blight determination. Tr.802:24-803:7, 810:6-22, 1106:17-1107:1. But relevance is “a very low threshold.” *Kappel v. Prater*, 599 S.W.3d 189, 193 (Mo. 2020) (citation omitted). All it requires is that the evidence “tends to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence, or if it tends to corroborate evidence which itself is relevant and bears on the principal issue.” *Id.* (citation omitted). All the excluded evidence was plainly relevant, and any concerns about it would go to its weight, not admissibility.

First, Plaintiffs presented evidence of comparators. This included properties within Brentwood and immediately surrounding jurisdictions—including City-owned properties—that had identical maintenance issues to those the City identified in the Corridor, or which had similar flood-risk profiles. Exs.5a, 78, 79, 80.⁴ As elaborated further below, *infra* pp.64-68, this comparator evidence is plainly relevant. It tends to show the City was arbitrary and capricious in declaring certain properties blighted when other nearby

⁴ It also included other areas of Missouri and other cities with similar flood-risk profiles to show that the City’s basis for declaring blight was far too capacious. Ex. 79; *see infra* pp.81-82.

properties had the exact same conditions. Indeed, *Centene* relied on exactly this sort of comparative evidence to invalidate the blight determination in that case. 225 S.W.3d at 434.

Second, Plaintiffs presented excluded evidence that happened to post-date the July 2023 blight ordinance. *E.g.*, Exs.5a, 5b. The circuit court excluded the evidence on the ground that materials post-dating the blight determination cannot be relevant, Tr.294:1-15, even though it simultaneously relied on documents *the City* created in the months leading up to trial in 2025. (D.155 at 16.) But a central premise of the City’s blight argument, and the Court’s ruling, was that the properties in the Corridor “have not improved over time.” (*Id.* at 20.) If true, Plaintiffs’ comprehensive sets of pictures of the properties in the Corridor would be relevant, even if taken after July 2023, because they would bear on what the properties would have been like at that time. Exs.5a, 5b.⁵

Third, the circuit court rejected testimony showing the errors of the blight determination. This included testimony from Dave Phillips explaining that factors other than the City’s supposed blight factors could explain any lack of economic growth in the Corridor. Tr.1091:10-16, 1092:2-10. And testimony from Plaintiffs’ flooding expert, John Sandow, about how the City’s development plans were inconsistent with its assertions about flood-risk in the Corridor. Tr.748:4-749:17. And the court excluded documentary evidence and testimony from the City’s mayor and chosen developer that showed the economic-development goals of the redevelopment project. Tr.895:4-896:5; 891:20-

⁵ Likewise, statements and data about flood risk would bear on what the flood risk was in July 2023 because no subsequent flood mitigation was done or planned. Tr.1337 (Ibendahl Tr.95:1-8).

892:13; Ex.48. All this evidence tends to show the area was not blighted, or that the City did not actually believe it to be blighted. By refusing to admit this evidence, the circuit court not only improperly rejected relevant evidence, it also disabled Plaintiffs from showing bad faith and capricious decision-making as the judicial-review statute allows. § 523.261, RSMo.

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Taken together, the circuit court's refusals to consider Plaintiffs' evidence requires vacatur at a minimum. The circuit court should at least be required to reweigh the complete evidentiary record to determine whether it would still find the City's blight determination sufficiently supported.

More generally, the big-picture errors identified in this Part require vacatur at a minimum for the circuit court to apply an appropriately searching form of judicial review and to actually consider Plaintiffs' evidence. But as Parts II and III establish below, this Court can go further and render judgment for Plaintiffs because the record is overwhelmingly clear that the City's blight determination fails as a matter of law.

II. The City's Rationales For Its Blight Determination Based On Its Blight Study Were Legally Deficient.

Preservation and Standard of Review

A legal determination of whether the blight determination was valid is reviewed de novo based on this Court's own review of the record. *Centene*, 225 S.W.3d at 433; *North Kansas City v. K.C. Beaton Holding Co.*, 417 S.W.3d 825, 830 (Mo. App. W.D. 2014).

All these arguments regarding whether the blight determination's contemporaneous justification was legally valid were preserved repeatedly, including in summary-judgment briefing, post-trial proposed findings of fact and conclusions of law, a motion to reconsider evidentiary rulings, and a motion to amend judgment after the circuit court's decision. (*E.g.*, D.55, 110, 147, 152, 154, 158.)

Argument

We turn to how the circuit court's analysis *should* have been conducted: seriously evaluating the City's blight study, which was its only contemporaneous justification for its blight determination. That study's justifications simply do not hold up.

This Court can decide that the blight justification was invalid as a matter of law, without having to decide any close factual questions, because the blight study on its face fails to satisfy the legal standards for a valid blight determination, and the City did nothing at trial to try to rehabilitate its errors. We consider each legal violation in turn, and each is independently sufficient to invalidate the blight determination.

A. There was no valid parcel-by-parcel analysis.

The first glaring error is the failure to satisfy the statutory requirement that a “condemning authority shall individually consider each parcel of property in the defined area with regard to whether the property meets the relevant statutory definition of blight.” § 523.274(1), RSMo. The only way to give meaning to that requirement is to demand *contemporaneous* documentation of the parcel-by-parcel analysis indicating what conditions were found on each parcel in the area. Without such a contemporaneous record, a reviewing court is left with nothing but the government’s *ipse dixit* that it considered each parcel. *See Allright Props.*, 240 S.W.3d at 779 (holding “*evidence must establish*” that the blighting authority “examine[d] carefully each parcel apart from the others to determine whether or not it satisfies the statutory definition of blight” (emphasis added)). Satisfying this basic requirement has not proved difficult for other governments, which have documented individual parcels they wished to blight with parcel-specific studies. *E.g.*, *Inserra*, 284 S.W.3d at 643, 647-48 (blight studies specifically described conditions on “the landowner’s property, in particular”); *Kansas City v. Chung Hoe Ku*, 282 S.W.3d 23, 30-31 (Mo. App. W.D. 2009) (city performed “an individual analysis of the [challenger’s] Property”).

Here, neither the blight study nor any other contemporaneous documentation indicates what was supposedly wrong with each individual property. The study itself—as confirmed by its author’s trial testimony—did not discuss or even provide a photo of each individual property. *See generally* Ex.2; *see* Tr.476:2-8, 525:16-20. It provided only 40

photos of conditions that supposedly exist on (at most) 27 of the area's 75 different parcels. Ex.2 at COB_15893-15902; Tr.426:3-7, 1021:25-1022:4.

The study's treatment of Plaintiffs' properties proves the point. Time for Dinner and Convergence are *never* mentioned in the City's blight study. *See generally* Ex.2. And while Feather Craft's building is mentioned, the blight study says only that it has a "reasonable appearance," Ex.2 at COB_15897, despite asserting (without explanation) that it has insanitary or unsafe conditions, *id.* at COB_15865; *see also* Tr.423:20-424:8 (Brancaglione admitting it "may be a mistake" Feather Craft was categorized as insanitary or unsafe). Plaintiffs are thus examples of why the General Assembly's post-*Kelo* reforms required a parcel-by-parcel analysis along with the judicial-review right. Without it, there is no way for challengers to know—much less contest—why a government found their properties or area to be blighted.

The City's blight study did include a cover letter and map that asserted certain *conclusions* about each property. Ex.2 at COB_15865. But that is also not a parcel-by-parcel analysis. While the map asserted that parcels had some form of deterioration or insanitary conditions, it provided no explanation of what specific conditions supposedly existed on the properties. *Supra* p.31. In fact, the study's author conceded the map replicated versions that were removed from early drafts because they were potentially "misleading." Tr.372:24-373:3; *see* Ex.42 at COB_18483.

Moreover, even were it permissible for the City to present an after-the-fact parcel-by-parcel analysis at trial two years later—and it is not—the City failed to do so. The circuit court credited the City's attempt to rely on its prior 2018 blight study. (D.155 at 11.) But

that 2018 blight determination had sunset under the post-*Kelo* reforms, § 523.274(2), RSMo, so relying on it raises its own statutory violation. And it was of dubious value to begin with given how much had changed in the Corridor between 2018 and 2023. *Supra* pp.20-21. But even if the 2018 study *could* hypothetically fill gaps in the 2023 study, it *did* not. Like the cover-letter map in the 2023 study, all the 2018 study had was a similar map and accompanying table asserting the existence of blight factors—but also with no detail or substantiation. *See* Ex.49 at COB_19254-58. The study’s author conceded that the 2018 study provided no more detail than the 2023 study. Tr.535:23-538:4; *see also* Tr.1023:8-19, 1116:18-1117:3 (Plaintiffs’ blight expert confirming that).

The City never offered any evidentiary basis beyond raw assertion to show that it actually conducted a distinct blight analysis of each parcel. The circuit court excused the City of that obligation, based simply on its blight consultant’s say-so that he inspected each parcel. (D.155 at 18.)⁶ By failing to require actual evidence of parcel-by-parcel analysis, the circuit court abdicated its duty to enforce the statutory requirement and made it meaningless. But this Court should enforce the statute by holding that the blight determination violates the requirements of Section 523.274.

⁶ The circuit court’s order suggested in an errant line that Plaintiffs only challenged the blight determination as to four parcels. (D.155 at 23.) But in the hearing on Plaintiffs’ post-trial motion to amend judgment, the court clarified that it fully understood that Plaintiffs’ challenge was to the blight determination covering all the parcels in the Corridor. Tr.1250:10-13.

B. The City relied on blight factors proscribed by the legislature.

As explained above, *supra* pp.42-43, the General Assembly in 2021 amended the statutory definition of blight specifically to tighten it and to rein in municipal abuse of blight determinations.

Two changes are particularly relevant. First, the legislature specifically rejected building age as a blight factor when it revised the blight statutes. Chapter 353’s definition of blight *used* to include “age,” “obsolescence,” and “outmoded design” as blight factors. § 353.020(2), RSMo (2020). But the General Assembly amended the statute by cross-referencing Section 99.805’s blight definition, which does not include age-related factors. *See* § 353.020(2), RSMo; *id.* § 99.805(1).

Second, the legislature eliminated the blight result of “inability to pay reasonable taxes.” That had been in the previous definition of “blighted area”—listed separately from economic liability, indicating they meant different things. *See* § 353.020(2), RSMo (2020). But Section 99.805’s blight definition does not include “inability to pay reasonable taxes.” So when Section 353.020(2) was replaced with a cross-reference to Section 99.805, the General Assembly specifically eliminated “inability to pay reasonable taxes” as a valid blight result.

By relying on each of those excised factors, the City violated the statutes.

First, the blight study improperly relied—heavily—on building age. Ex.2 at COB_15871, COB_15873-75, COB_15881. In fact, building age was so crucial that it was used to support each part of the statutory blight definition: The study treated age as “physical deterioration,” as an “insanitary” condition, and as evidence of “economic

liability.” *See* Tr.485:6-487:7 (Brancaglione confirming age supported each element). At trial, the study’s author repeatedly invoked the prior 2018 blight study to try to fill gaps, but—as he acknowledged—the 2018 study relied explicitly on the age-related blight factors that were removed by the legislature in 2021. *E.g.*, Tr.476:6-10, 483:11-17; *see* Ex.49 at COB_19235-37.

Other parts of the blight study simply repackaged age with other labels. The study hypothesized the presence of “asbestos ... or lead-based paint” in buildings, but its basis was the mere age of the buildings. Ex.2 at COB_015875. At trial, the author confirmed he simply inferred these conditions’ presence from building age. Tr.491:22-492:16. And the blight study noted that zoning changes in the Manchester Corridor made “most of the current development non-conforming uses.” Ex.2 at COB_15871. But that is just saying that some buildings were old and so zoning had changed since they were built. The blight study itself recognized that zoning non-conformance was simply a function of “[t]he age of the buildings.” Ex.2 at COB_15874-75.

All told, with age-related factors removed, the blight determination would collapse.

Second, the City’s conclusion that there was a blight result was based entirely on the removed “inability to pay reasonable taxes.” That’s because the blight study’s sole identified blight result—“economic liability”—was based entirely on a supposed “imbalance between tax generation and demand for governmental services.” Ex.2 at COB_015878, COB_015881; *see* Tr.679:20-23.

But that is the same as saying an “inability to pay reasonable taxes,” the very blight result the General Assembly removed. Compounding that problem, the legislature forbid

the use of “eminent domain for solely economic development purposes”—and that prohibition is defined to include “tax base” and “tax revenues” as two components of economic development. § 523.271(2), RSMo.

Because economic liability was the sole blight result identified in the blight study, *see infra* p.73, and the economic-liability finding relied on the proscribed inability to pay reasonable taxes, the City is left without any valid blight result. And because a blight result is a necessary condition of the blight definition, § 99.805(1), RSMo, that leaves the entire blight determination invalid.

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Plaintiffs repeatedly pointed out that the City’s blight determination was based on unlawful blight factors that had been removed from the statute. *E.g.*, Tr.488:5-14, 491:24-492:9, 510:6-16, 510:21-511:14; (D.154 at 54-59). Yet the circuit court’s opinion did not even address the problem. Again, it ran roughshod over the General Assembly’s work. This Court should enforce the legislature’s reforms and invalidate the blight determination that relied on improper blight factors.

C. The other blight factors on which the City relied were arbitrary and capricious, and they also lacked substantial evidence.

The City also failed on the first element of the statutory blight definition: establishing at least one of the three enumerated blight factors. *See* § 99.805(1), RSMo (incorporated by reference in § 353.020(2)). Here, the City putatively relied on two of them: “deterioration of site improvements” and “insanitary or unsafe conditions.” The City was required to establish that those existed in a manner that was not “arbitrary or

capricious” and in a manner “supported by substantial evidence.” *Id.* § 523.261. It failed on both fronts.

1. The blight factors were identified in an arbitrary and capricious manner.

To begin, the City’s consideration of blight factors was inherently arbitrary and capricious for two reasons.

First, the blight study itself showed—confirmed by evidence at trial—that the City failed to use any “kind of objective data rather than mere surmise, guesswork, or ‘gut feeling,’” and that it therefore contravened the basic principle that reasoned decision-making cannot be done “in a totally subjective manner without any guidelines or criteria.” *Bd. of Educ. of St. Louis*, 271 S.W.3d at 11 (citation omitted).

At trial, the study’s author confirmed he followed no objective guidelines or criteria. He had no checklists or written standards, and he testified that his assessment was simply a matter of applying his own “judgment.” Tr.381:22-382:3, 382:8-383:1. This is reliance on exactly the sort of “gut feeling” rejected by Missouri law because it is arbitrary and capricious. *Bd. of Educ. of St. Louis*, 271 S.W.3d at 11 (citation omitted).

That was particularly problematic because the conditions the study primarily relied on are among the most common sorts of routine upkeep which any building will require, such as “deteriorating window frames”; “overhangs” or “trim elements” that need paint; or “signs of minor deterioration,” such as paint or “other tupes [sic] of repairs.” Ex.2 at COB_015873, COB_015894-15902. By far the most common asserted condition was “cracking” in parking-lot pavement. *E.g., id.* at COB_15872-75, COB_15894-15902

(cracked pavement in at least nine photos). But neither the study nor trial testimony provided assurance the City followed objective guidelines to avoid capriciously finding properties blighted for normal maintenance issues. Indeed, the author testified that even minor cracking or a single nick in paint could be enough to blight an entire property, without regard to how hard it would be to repair. Tr.444:24-445:5, 459:12-15, 499:14-500:19.

In short, nothing in the blight study indicated that any objective standards were applied, and its author's testimony confirms that none were. Based on his "methodology," *any* property could be blighted by squinting at it and saying it had a crack in its driveway or a chip in its paint. That is arbitrary and capricious.

Second, the City's lack of objective standards is confirmed because the study treated materially identical properties differently, or failed entirely to consider obvious comparisons. *See, e.g., Gen. Chem. Corp. v. United States*, 817 F.2d 844, 854 (D.C. Cir. 1987) (to not be arbitrary and capricious, evidence must be considered "in a rational and consistent manner"); *Barry Serv. Agency*, 891 S.W.2d at 892 (similar). To begin with, as discussed above, *supra* pp.33-34, the study was inconsistent *within* the Corridor by treating essentially identical properties differently—finding blight on some but not on next-door parcels with the same conditions.

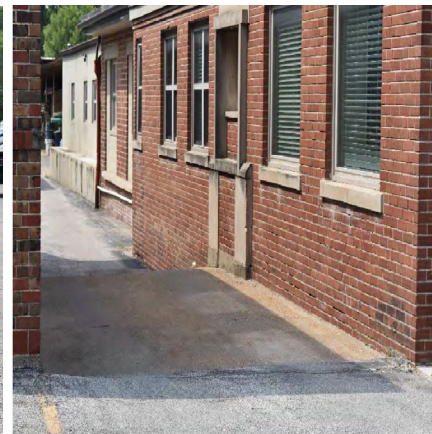
But equally glaring is the study's complete failure to ensure properties within the Corridor were treated consistently with properties in other parts of Brentwood with the exact same conditions. In the specific context of blight determinations, Missouri's Supreme

Court has recognized that failure to be consistent with obvious comparators outside the blight area renders a blight determination invalid. *See Centene*, 225 S.W.3d at 434.

Here, the blight study itself made no effort to show whether the supposed blight conditions in the Corridor were any different or worse than other parts of Brentwood or surrounding areas. Ex.2 at COB_15877-81. Its author confirmed that he did not attempt to compare the Corridor to other parts of the City or surrounding area. Tr.466:21-467:17, 527:22-528:17. For instance, despite fixating on cracked pavement, the blight study did not analyze whether that cracking was abnormal. If the study had done so, it would have had to acknowledge that even MoDOT recognizes cracking in pavement is normal and to be expected. Tr.992:11-18.

When confronted with other prominent buildings in Brentwood that were *not* declared blighted, Brancaglione confirmed that his methodology would have blighted Brentwood's City Hall, police station, and the recently developed Promenade shopping center. Tr.404:7-15, 451:15-24, 453:17-454:6 (offer of proof).

It's telling to compare pictures in the blight study of properties found to be blighted, with those other areas in the City *not* blighted. According to the study, these parcels are blighted because of cracked parking lots (even though the first two are impossible to connect to a specific property):



Ex.2 at COB_15896, COB_15898.

But these parcels (outside the Corridor) were not blighted:



Ex.5b at P_12059 (Brentwood Police Department)



Ex.5b at P_12066 (Target store at Brentwood Promenade)



Ex.5b at P_12073 (Brentwood City Hall).

The total lack of consistency, both within the Corridor and without, proves that the City's blight determination was hopelessly arbitrary and capricious.

2. The blight factors lacked substantial evidence.

On top of that, the asserted blight conditions also lacked substantial evidence.

The principal blight factor on which the blight study relied was “deterioration of site improvements.” But the City's evidence—focused on things like cracked pavement and chipped paint—doesn't rise to that level. An ordinary reader of a blight statute using a freighted term like “deterioration of site improvements” would take it to mean significant, difficult-to-remedy issues; not the sort of minor maintenance issues one can find on any building. A more demanding definition aligns with the General Assembly's amendment that replaced “physical deterioration”—a more capacious term—with the more rigorous “deterioration of site improvements.” *Compare* § 353.020(2), RSMo (2006), *with id.* § 99.805(1); *see also* Tr.988:6-21 (Phillips's expert testimony based on decades of

experience that “deterioration of site improvements” typically refers to substantial issues affecting building safety or requiring significant resources to fix).

A representative example of why this matters is parcel 29. Although one of “the newest buildings in the area,” Ex.2 at COB_015902, it was nevertheless found blighted because the building was “beginning to show signs of minor deterioration and need[s] paint or other t[y]pes of repairs,” *id.* Yet the building is unremarkable, and no reasonable person would describe it as presenting “deterioration of site improvements”:



Ex.2 at COB_015902. If this building is blighted because of “deterioration of site improvements,” then all buildings are blighted. Indeed, the study failed to provide any evidence of a single instance of serious property damage, nor did the City present any at trial. Tr.1024:15-1025:1, 1119:8-20.

The blight study also addressed insanitary conditions as a secondary blight factor. But on that front, the City relied on mere speculation. It said old buildings *might* have asbestos or lead-based paint that wasn’t properly contained, but without evidence any of

the buildings actually *did* have those conditions. *See* Tr.491:22-494:22; *supra* p.34. Likewise, the study speculated that if there was overgrowth, vermin would breed in it. Ex.2 at COB_15875. But its author confirmed that there was no direct evidence of vermin, Tr.481:23-25, 1033:14-20, and the City presented none at trial. The study also speculated there were encampments for transients, but the City provided no evidence of such an encampment. Tr.443:10-444:11.

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At each turn, then, the City’s blight study failed to offer evidence of actual deterioration of site improvements or of insanitary conditions, and the City adduced none at trial. The circuit court made no effort to justify these problems. Indeed, in its opinion, the circuit court did not elaborate which blighting factors were present, except to note that PGAV “described” some of them. (D.155 at 20.) That was error and should be reversed.

D. The City’s blight study did not even try to meaningfully substantiate three other requirements of the statutory definition: predominance, economic liability, and causation.

Turning to the rest of the statutory definition of blight, the blight study did not even really try to substantiate three of the required elements. The detailed definition at Section 99.805(1) (incorporated by reference in Section 353.020(2)) requires four distinct elements:

1. *Blight factors*: The area must display a defined set of blight factors, namely “insanitary or unsafe conditions, deterioration of site improvements, or the existence of conditions which endanger life or property by fire and other causes.”
2. *Predominance*: There must be a “predominance” of blight factors.

3. *Blight results*: There must be one of a defined set of resulting conditions in the area: (a) “retard[ing] the provision of housing accommodations,” (b) “economic ... liability,” (c) “social liability,” or (d) “a menace to the public health, safety, or welfare.” These conditions must affect the area’s “present condition and use.”
4. *Causation*: A blight result must exist “by reason of” the predominance of blight factors. That is, the blight factors must *cause* the blight results.

See Inserra, 284 S.W.3d at 646-48 (breaking down statutory definition in similar fashion); *Great Rivers*, 246 S.W.3d at 560, 565 (similar).

Yet here, the blight study didn’t even try to establish three of those: (1) a predominance of blight factors, (2) a blight result, or (3) the blight factors *caused* the blight result. Nor did the City bolster any of those at trial. Each of these failings is sufficient to doom the blight determination. *See Centene*, 225 S.W.3d at 434-35 (invalidating blight determination for failing to establish one of the requirements of the statutory definition).

1. Predominance

A “blighted area” must be characterized by a “predominance of” blight factors. § 99.805(1), RSMo. One court of appeals has interpreted the “predominance” requirement in line with its plain meaning to mean that “the overall area is blighted.” *Allright Props.*, 240 S.W.3d at 780.

Here, the body of the blight study merely asserted that a predominance exists without any substantiation. Ex.2 at COB_15877. The supplemental cover letter asserted that blight factors predominate because “blighting factors are present on 48 of the 75 parcels within the redevelopment area, comprising approximately 63.6% of overall area

(excluding rights-of-way).” Ex.2 at COB_15864. But the cover letter did nothing more than count parcels where a blight factor was asserted merely to be “present.” That approach of merely counting parcels with *any* blight conditions—but without quantifying the actual prevalence of blight conditions—is so unlikely to establish predominance that it was specifically rejected in *Allright Properties*, 240 S.W.3d at 780.

And recall that the study’s asserted deterioration consisted of minor things like chipped paint on a window-frame or commonplace parking-lot cracks. *Supra* pp.33, 63-64, 68-69. If those minor maintenance issues are removed from the calculation—as they should be, given that those conditions are not really blight—then the number of parcels nosedives to a tiny minority.

The City did nothing to cure this lack of meaningful predominance analysis at trial. To the contrary, Brancaglione confirmed that the 48 parcels with supposed blight conditions were just the same parcels the City labeled as having physical deterioration of any kind. Tr.497:23-498:10, 498:16-500:19. And he testified the City counted a parcel as 100% blighted even if blight factors appeared on only 0.1%, Tr.499:14-18, meaning it could find a predominance even if blight factors covered far less than a majority of the Corridor.

Thus, the City didn’t really attempt to establish predominance. At minimum, its predominance finding was arbitrary and capricious by allowing minimal deterioration to justify blighting a vast swath of surrounding property. The circuit court didn’t confront any of these problems. It simply accepted the testimony of the City’s blight consultant that he “found that a preponderance of the proposed redevelopment area is blighted,” (D.155 at

19)—without requiring that the blight study (or even bolstering trial evidence) actually substantiate that.⁷

2. Blight result: Economic liability

The blight definition also requires a blight result. § 99.805(1), RSMo; *supra* pp.70-71. Here, only one of the enumerated blight results was identified in the blight study: economic liability. Ex.2 at COB_15877-78; Tr.501:3-13.

Yet the study did not substantiate economic liability. To the contrary, it showed (confirmed by trial testimony) that property values in the Corridor *went up* by as much as 50 percent in the five years leading up to the blight determination. *Compare* Ex.2 at COB_15879-80, *with* Ex.49 at COB_19251-52; *see* Tr.507:5-10, 1089:9-20.

Nevertheless, the study said there was economic liability because the cost of government services in the Corridor outstripped tax revenue. Ex.2 at COB_15877-78; *see* Tr.507:11-16. Even setting aside that this is an improper basis for blight because “inability to pay reasonable taxes” was removed as a valid blight result, *supra* pp.61-62, there is no data in the study *at all* about the cost of government services in the Corridor, much less any comparison to revenues generated. Ex.2 at COB_15877-78; *see* Tr.507:11-508:4, 510:3-13, 513:22-514:1. Indeed, nothing in the study suggests that there was even an unusually high use of government services in the Corridor. Ex.2 at COB_15877-78; Tr.508:7-10. The study’s author conceded there was no comparative data to show the

⁷ Instead, the circuit court found predominance principally based on the City’s improper post-hoc flood-risk rationale. (D.155 at 23.) That was wrong, too, even if such a rationale were improperly considered. *See infra* Part III.B.

Corridor experienced higher numbers of calls for service than did other areas. Tr.508:25-509:4. Nor did the City put forward any additional such evidence at trial.

Thus, the City's *sole* rationale for the *sole* blight result was without evidence. The circuit court did not confront this problem or explain how economic liability could be substantiated on the trial record.

3. Causation

Finally, a blighting authority must show that the relied-upon blight result exists “by reason of” the blight factors. § 99.805(1), RSMo. In this case, that means the deterioration of site improvements and insanitary conditions (the relied-upon blight factors) must have *caused* the Corridor to be an economic liability (the asserted blight result). Evidence of causation must be based on probative facts, not on “mere speculation or conjecture.” *Bond v. Cal. Comp. & Fire*, 963 S.W.2d 692, 697 (Mo. App. W.D. 1998).

Here, that's a tall order because the blight factors were routine maintenance issues like peeling paint and parking-lot cracks. Ex.2 at COB_15894-15902. It would be surprising if these commonplace conditions were responsible for the Manchester Corridor being an economic liability. Yet the City's blight study did not even *attempt* to show that the area's purported economic problems exist “by reason of” the blight factors the City identified. Ex.2 at COB_15877-78.

Instead, the study simply asserted that because the supposed blight conditions exist, the Corridor will require government services and generate less tax revenue. *Id.* at COB_15877. The study did not explain *how* the isolated maintenance instances documented in the blight study would do so.

Nor is there anything in the study to show that *other* potential causes don't explain whatever economic problems the City thought existed. The City itself increased the number of properties in the Corridor that did not pay taxes by acquiring 16 parcels during the flood-mitigation project, taking them off the tax rolls. Ex.2 at COB_15881; Tr.530:4-16. The City also conducted a major rezoning in 2019, and businesses were dissuaded from moving into the Corridor because the new zoning made it impossible to operate as prior users had. *See* Tr.1092:2-10. In addition, for roughly a year, the City imposed a moratorium on new development in the Corridor. *See* Ex.52 at COB_3465, COB_4572-73. The blight determinations themselves likely suppressed investment because potential new businesses would be concerned with investing in an area at risk of eminent domain. And roadwork accompanying the public-improvement project was a burden on businesses until that project was completed in 2023. *See* Tr.258:21-259:9. The City presented no evidence to show supposed economic issues were caused by pavement cracks and peeling paint rather than these more obvious alternative causes.

The circuit court made no effort to explain how the record substantiated that the blight factors identified in the City's blight study *caused* the economic imbalance.

*

On all of the foregoing discrete issues, then, the circuit court made no effort to require the City actually show its contemporaneous blight justifications satisfied the statutory requirements. The record is clear that they did not. And no evidence at trial bolstered those deficiencies. This Court should therefore reverse and hold that the blight determination is invalid as a matter of law.

III. The Circuit Court Erred By Allowing The City To Rely On Post-Hoc Justifications. Moreover, Trial Showed Those Justifications Were Arbitrary And Capricious, Unsupported By Substantial Evidence, And Advanced In Bad Faith.

Preservation and Standard of Review

A legal determination of whether the blight determination was valid is reviewed de novo based on this Court’s own review of the record. *Centene*, 225 S.W.3d at 433; *North Kansas City*, 417 S.W.3d at 830.

All these arguments regarding the correct method for judicial review of blight and whether the City’s post-hoc flood-risk rationales satisfied the blight requirements were preserved repeatedly, including in summary-judgment briefing, a pre-trial statement, post-trial proposed findings of fact and conclusions of law, and a motion to amend judgment after the circuit court’s decision. (*E.g.*, D.55, 110, 147, 152, 154, 158.)

Argument

Finally, we address what the City retreated to and the circuit court accepted: flood-risk justifications. In Subpart A, we explain that reliance on these post-hoc rationales, which contradicted the City’s actual blight study and contemporaneous statements at the time of the blighting ordinance, should not have been considered. Because the circuit court’s decision was entirely dependent on that legally improper shift in rationales, it can be vacated on that basis alone. Out of an abundance of caution, though, Subpart B addresses the post-hoc justification head on and shows it was invalid even on its own terms.

A. The circuit court erred by allowing the City to shift rationales and to contradict its blight study.

As a threshold matter, the circuit court erred by relying on post-hoc justifications rather than the City’s contemporaneous rationales for its blight determination.

1. The blight statutes require judicial review of the contemporaneous justification for a blight determination.

Baked into the General Assembly’s post-*Kelo* statutory reforms is the principle that courts should evaluate the *actual* rationales for blight determinations put forward *contemporaneously* with a blight enactment.

Starting with the judicial-review provision’s text, it authorizes review of a specific “legislative determination that an area is blighted.” § 523.261, RSMo. That indicates review should be of an *actual* “legislative determination,” not some subsequent determination conjured by lawyers at trial.

The statute’s other requirements confirm that. It requires review for “arbitrary and capricious” decision-making and for “bad faith”—which by their nature turn on how the *actual* determination was made. The statute’s administrative-law-style language should also be read to incorporate the bedrock administrative-law principle that government action “must be judged” on the grounds “upon which the record discloses that its action was based.” *SEC v. Chenery Corp.*, 318 U.S. 80, 87 (1943); *see, e.g., State ex rel. Keeven v. City of Hazelwood*, 585 S.W.2d 557, 561 (Mo. App. E.D. 1979) (stating *Chenery* principle).

Procedurally, the statute allows any “affected property owner” to immediately “seek a determination as to whether [the statutory] standards have been met” once a blight determination is made. § 523.261, RSMo. Courts “give preference” to these challenges so

they can be resolved “within thirty days of having been filed” if the parties wish. *Id.* Appeals are treated in a similarly “expedited manner.” *Id.* If blighting authorities were permitted to substitute wholly new reasons for a blight determination, thereby requiring building a new record about those new justifications, proceedings could not be handled so expeditiously.

The overall structure and purpose of the post-*Kelo* reforms confirm this reading. The thrust of the reforms is to make eminent domain harder, and to narrow the bounds for using blight for eminent domain. Allowing a city to flout the statutory requirements when blighting an area, only to come up with new justifications after the fact, makes those requirements illusory. It also overrides democratic accountability if a city is permitted to disavow in court what it told its constituents when enacting a blight determination.

The circuit court’s reasons for allowing the City to rely on post-hoc rationales is not persuasive. It cited a pre-*Kelo* case (as quoted in *Inserra*) for the proposition that “courts are not limited to the record presented to the legislative body.” (D.155 at 3 (relying on *State ex rel. Helujon, Ltd. v. Jefferson County*, 964 S.W.2d 531 (Mo. App. E.D. 1998)).) But pre-*Kelo* cases cannot answer how the blight reforms operate. Nor did *Inserra* consider whether the statutory reforms require evaluating contemporaneous justifications; it just parroted pre-*Kelo* cases on this point. 284 S.W.3d at 646. And even if a blighting authority is permitted to present new evidence *bolstering* the justifications it put forward when enacting a blight determination, that does not mean it can *replace* or *contradict* those justifications. Indeed, we know from *Centene* that even the pre-*Kelo* standards didn’t allow a City to

blatantly contradict its blight study on which its blight determination was based. 225 S.W.3d 431; *supra* pp.46-47.

2. The circuit court erred by relying on post-hoc justifications that contradicted the contemporaneous justification.

Yet the circuit court’s key findings to uphold the blight determination are almost *entirely* about flooding. (D.155 at 23.)

That is wholly at odds with the City’s contemporaneous justification. Indeed, the City’s blight study pointedly said that flood-risk was *not* its basis. On its first page, it noted that flood-risk had been a basis for the 2018 blight determination, and it said that the soon-to-be-completed flood-mitigation project “*will* mitigate” that “blighting factor[]” of “recurrent flooding.” Ex.2 at COB_15868 (emphasis added). Nowhere did the study identify properties in floodplains or subject to flood-risk. Tr.524:14-24. Its cover letter identified parcels that were supposedly blighted—and those were based solely on supposed deterioration, *not* flood-risk. Tr.525:16-24. The 2023 study copied large portions verbatim from the 2018 study—but none of the flooding language was carried over. Tr.674:1-20. Despite trial testimony that properties in floodplains would count as being insanitary and unsafe, Tr.656:3-18, the actual blight study did not categorize the properties that way. To the contrary, only a handful of properties were marked as insanitary despite being in floodplains, and those included *none* of the properties immediately adjoining the creek. Ex.2 at COB_015865; Tr.676:8-14.

Allowing the City to contradict itself so blatantly makes a mockery of the General Assembly's efforts to rein in pretextual and poorly supported blight determinations. That is enough to reverse.

B. Even if the City were permitted to rely on a post-hoc flood-risk rationale, the trial record overwhelmingly showed it was legally invalid.

The flood-risk rationale, even if permitted, is still legally invalid. In turn, we explain it was (1) arbitrary and capricious, (2) unsupported by substantial evidence, and (3) advanced in bad faith.

1. The flood-risk justification was arbitrary and capricious.

Trying to use flood-risk to blight the Manchester Corridor was hopelessly capricious because the evidence showed areas in Brentwood outside the Manchester Corridor have *worse* flood-risk but were not blighted. The City's own 2018 blight study highlighted flooding *outside* the Manchester Corridor. *E.g.*, Ex.49 at COB_19266-70. The City's own data showed *more* flood damage to properties *outside* the Corridor than within (even before the flood-mitigation project). *See* Ex.64 at COB_17627; Ex.H1. Its blight study likewise indicated that historic storms in 2022 caused many parts of St. Louis County to experience flooding issues, whereas the Manchester Corridor did comparatively well. Ex.2 at COB_015870.

The City didn't even try to apply any sort of flood-risk analysis consistently or to show that the Corridor was distinctive. Testimony from both Brancaglione (in an offer of proof) and the city's lead engineer on its flood-mitigation project show the City did not compare flood-risk in the Manchester Corridor to other parts of the City that were not

declared blighted. Tr.527:22-528:17; Tr.1351-52 (Ibendahl Tr.118:6-118:11). Indeed, FEMA floodplain maps introduced as an offer of proof also show that significant portions of Brentwood outside the Manchester Corridor—especially in the Hanley Industrial Court area just to the north—have just as much commercial property in floodplains, yet those were not declared blighted. *See* Ex.78 at P_12267, P_12270; Ex.80 at P_12286.

Instead of trying to show the Corridor had any unusual level of flood-risk, the City instead relied on a theory that anything in a FEMA-designated 100-year floodplain is sufficiently high-risk to automatically count as blight. *E.g.*, Tr.666:9-19 (Brancaglione testifying he found anything in a floodplain blighted). The circuit court accepted this assertion, which was the foundation of the court’s blight finding. (D.155 at 23.)

But all a 100-year flood-plain designation means is that *some* water will be on the land for *some* period of time in a storm of a severity modeled to occur 1% of the time in a given year. Tr.724:9-13. Floodplain maps introduced as an offer of proof confirm why it would be irresponsible to treat merely being in such a floodplain as automatic blight. It would mean that vast swaths of St. Louis County, Jefferson City, and Kansas City are blighted. *See* Ex.79 at P_12276 (Jefferson City), P_12277-79 (Kansas City); Ex.80 (state floodplain maps of St. Louis County); Tr.804:8-810:11. Outside Missouri, such a theory would (for example) treat almost the entire city of Norfolk, VA as blighted, as well as much of the National Mall and surrounding areas in Washington, DC. *See* Ex.79 at P_12282 (Norfolk), P_12285 (Washington); Tr.808:2-809:13. That’s not a meaningful method for identifying true blight. Brancaglione himself confirmed as much when he testified that automatically treating floodplains as blight would be so irresponsible that he would have

to turn in all his credentials if he did so. Tr.684:4-9. Yet that is the methodology the circuit court relied on.

And even if the floodplain-equals-blight standard weren't inherently arbitrary, the City applied it in an arbitrary fashion. Its own blight map failed to find every property in a floodplain in the Corridor to have blight conditions. Ex.2 at COB_015865; Tr.526:4-18. Indeed, the evidence showed roughly a dozen government-owned properties in floodplains, yet they were not marked as blighted. *Id.*

2. The post-hoc flood-risk justification also lacked substantial evidence.

Even setting aside the arbitrariness of how the flood-risk rationale was applied, the evidence at trial also showed that, in fact, there is no special flood-risk predominating the Manchester Corridor.

The City's own statements indicate that the flood-mitigation project worked. The blight study said so. *E.g.*, Ex.2 at COB_15876 (calling the project "effective at significantly reducing the flooding"). So did the mayor. *E.g.*, Tr.957:11-14 (mayor commenting that the flood mitigation was "working" as early as August 2022). So did the City's lead engineer on the flood-mitigation project. *E.g.*, Ex.86 at COB_022145; Tr.1350 (Ibendahl Tr.116:6-17).

Testimony from the four Plaintiffs, as well as third parties Ellen Mell and Liz Baich, confirmed that the project worked. Flood waters had either never entered their buildings in most cases, or at least had not since 2008. Tr.295:22-298:5, 300:6-301:5 (Convergence), 332:24-333:5 (Time for Dinner), 1194:13-17 (8307 Manchester), 1224:1-16 (Feather

Craft). That includes during the once-in-a-thousand-year storms in 2022 that flooded many *other* parts of St. Louis County. Ellen Mell’s business didn’t flood despite being one of the properties in the Corridor closest to Deer Creek. Tr.578:20-579:5. And Plaintiffs’ stormwater expert, John Sandow, remarked that the buildings would not flood during a 100-year storm event based on the City’s own preferred flood modeling. Tr.842:7-16.

The only evidence the City mustered in response was a spreadsheet showing modest damage to a handful of buildings during that historic 1,000-year storm in 2022. *See* Ex.H1. Not only is that handful of properties nowhere near a predominance of the entire Corridor, that modest damage during such a historic storm only confirms the effectiveness of the flood-mitigation project.

The circuit court’s analysis didn’t confront *any* of this. It simply accepted being in a floodplain as automatic blight, without considering whether the evidence showed actual flood-risk impeding the businesses operating in the Corridor.

3. The post-hoc flood-risk justification was offered pretextually and establishes the bad faith of the blight determination.

If anything, trial revealed that the City did not authentically believe the flood-risk theory and asserted it as a pretext, which independently requires reversal because Section 523.261 prohibits blight determinations “in bad faith.”

To begin, had flood risk been a real reason, it would have been provided in the blight study. Yet the study instead *disclaimed* flood-risk as the basis for the blight determination, and it had no floodplain maps or anything akin to the flood-risk arguments the City presented at trial. Indeed, the floodplain maps the City relied on at trial were created long

after the July 2023 blight designation. The City principally focused on a map with hand-drawn interpretations of floodplains that was prepared in *April 2025*. Ex.98; Tr.1351 (Ibendahl Tr.117:11-16). Even that was not good enough, and the City introduced a further map created *two days before trial*. See Ex.H4; Tr.1131:4-7.

Evidence at trial also showed that the City did not subjectively believe flood-risk was an overriding concern after the flood-mitigation project. Contemporaneously to the blight determination, the mayor was giving interview after interview lauding the effectiveness of the flood-mitigation project. See Tr.942:12-966:13. The City's principal flood-mitigation engineer similarly testified that the flood-mitigation project worked just as intended and had impressive results. Tr.1350 (Ibendahl Tr.116:6-13). She also testified that, in 2023, the City was actively contesting the very same flood-risk modeling it would later rely on at trial, and that in fact the City successfully persuaded state officials that the modeling was too pessimistic. See, e.g., Tr.1339-40, 1354, 1379-80 (Ibendahl Tr.98:23-99:18, 122:10-20, 161:8-162:4).

Moreover, if the City were truly concerned about ongoing flood risk, it would have some plan to address it. But testimony revealed it has no plans for further flood-mitigation, either in July 2023 or today. Tr.1366 (Ibendahl Tr.140:24-141:2).

And the City's own behavior conflicts with the theory it presented at trial that any property in a floodplain is dangerous and blighted. The City's redevelopment plan calls for building residential housing in areas that are in the 100-year floodplain. Ex.43 at COB_15785; see Tr.749:5-17. Testimony also established that other parts of Brentwood are in floodplains, too, but the City has not declared them blighted or taken steps to mitigate

flood-risk there. Tr.526:4-527:2; 1337, 1367-370 (Ibendahl Tr.96:8-10, 143:10-145:3, 145:12-22, 147:24-148:2).

The City's dubious assertions about flood-risk dovetail with other evidence of pretext. For instance, the City selected a blight consultant virtually guaranteed to find blight, and who had urged the City to re-blight the Corridor before even beginning his study. *Supra* p.19. On top of that, the City's development documents were not concerned with remediating blight, but rather on how the City stood to gain millions from redevelopment. *See* Ex.43 at COB_15816. That's reflected in the blight study itself. Ex.2 at COB_15878, COB_15881. At the same time, the City did not genuinely have concerns with the kinds of routine maintenance emphasized in the blight study, as it never alerted property owners to these supposed issues. Tr.264:22-265:12, 322:22-323:13, 392:17-393:7, 567:10-20, 1194:6-12. To the contrary, the City's planning director testified that on the handful of occasions when the City issued a citation, maintenance issues were quickly fixed. Tr.1413 (Kelly Tr.115:6-116:1).

Yet all the circuit court had to say in response to all that evidence is that there isn't "any evidence of pretext," with no further explanation. (D.155 at 23.) This is of a piece with its general approach to ignoring Plaintiffs' evidence, and is another ground to reverse.

CONCLUSION

The judgment of the circuit court should be reversed.

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Justin K. Gelfand, #62265
MARGULIS GELFAND, LLC
7700 Bonhomme Avenue, Suite 750
St. Louis, Missouri 63105
Tel: (314) 390-0230
Fax: (314) 485-2264
justin@margulisgelfand.com

Respectfully Submitted,

/s/Benjamin A. Field
Benjamin A. Field, DC Bar no. 1046902*
Bobbi M. Taylor, NJ Bar no. 435162023*
Robert E. Johnson, OH Bar no. 0098498*
INSTITUTE FOR JUSTICE
901 N. Glebe Rd., Ste 900
Arlington, VA 22203
Tel: (703) 682-9320
Fax: (703) 682-9321
bfield@ij.org, btaylor@ij.org,
rjohnson@ij.org
*Admitted pro hac vice

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the foregoing brief contains the information required by Rule 55.03 in the signature block. In addition, it complies with the word limits of Rule 84.06(b) and Local Rule 360 because it contains 15,474 words, excluding those words exempted by rule.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was e-filed with the Court of Appeals and served via electronic mail on May 11, 2026, to the following counsel of record:

CARMODY MacDONALD P.C.

Gerard T. Carmody, #24769
 Kevin M. Cushing, #27930
 Branden S. Stein, #74257
 Alexis F. Rose, #75741
 120 South Central Avenue, Suite 1800
 St. Louis, Missouri 63105
 Telephone (314) 854-8600
 Facsimile (314) 854-8660

gtc@carmodymacdonald.com
 kmc@carmodymacdonald.com
 bss@carmodymacdonald.com
 afr@carmodymacdonald.com

/s/ Benjamin A. Field