

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

MRB DEVELOPERS, APRIL KHOURY,)	
HOMEBUILDERS ASSOCIATION OF)	
MIDDLE TENNESSEE,)	
OLD SOUTH CONSTRUCTION LLC,)	
ASPEN CONSTRUCTION, and)	
GREEN EGGS & HOMES,)	
)	No. 19-0534-I
Plaintiffs,)	
)	
v.)	
)	
METROPOLITAN GOVERNMENT OF)	
NASHVILLE AND DAVIDSON)	
COUNTY,)	
)	
Defendant.)	

ORDER FOR SUPPLEMENTAL BRIEFING

The Court has under advisement Plaintiff’s *Motion for Partial Summary Judgment* and Defendant’s *Motion for Summary Judgment*. Both motions raise the issue of the proper standard or test to be applied in assessing Plaintiffs’ constitutional challenges to the Metropolitan Government’s (“Metro”) sidewalk ordinance as unlawful takings. The United States Court of Appeals for the Sixth Circuit recently issued its opinion in *James Knight; Jason Mayes v. Metropolitan Gov’t of Nashville & Davidson Cnty.*, No. 21-6179, 2023 WL 3335869 (6th Cir. May 10, 2023), holding the “unconstitutional conditions” test adopted by the United States Supreme Court in *Nollan v. California Coastal Comm’n* is the proper test to be applied to Metro’s sidewalk ordinance challenged as an unlawful taking (reversing district court’s application of the deferential “balancing” test under *Penn Central Transp. Co. v. New York City*). In light of the Sixth Circuit’s opinion in *Knight*, the Court requests Plaintiffs and Metro to file supplemental briefs on the pending motions for summary judgment addressing the Sixth Circuit’s opinion and its effect on

the issues presented and the parties' respective positions in this case. The Court requests that the parties' supplemental briefs be filed within **thirty (30)** days after entry of this order.

IT IS SO ORDERED.

s/ Patricia Head Moskal

PATRICIA HEAD MOSKAL
CHANCELLOR, PART I

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that I have forwarded a true and exact copy of the foregoing via U.S. Mail, first-class, postage pre-paid, to the below-named parties and/or their counsel.

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s/ Julie Spencer

Deputy Clerk & Master

5/26/23

Date