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

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

2020 DEC 31 PM 1:38

MEMORANDUM AND ORDER ON DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS

This matter came before the Court for hearing on June 19, 2020, on Defendant Metropolitan Government of Nashville and Davidson County's ("Metro") Motion for Judgment on the Pleadings under Rule 12.03 of the Tennessee Rules of Civil Procedure.[1] Plaintiffs responded in opposition to the motion. Participating in the hearing were Attorney Allison Bussell, representing Metro, and Attorneys Braden H. Boucek and Meggan S. DeWitt, representing Plaintiffs. Based on the pleadings, motion, response, and reply, the parties' briefs and arguments of counsel, and the entire record in this cause, the Court finds that the motion should be granted in part and denied in part, for the reasons discussed below.

[1] Metro's motion for judgment on the pleadings originally was noticed for an in-person hearing in March 2020. Due to the COVID-19 pandemic and the Tennessee Supreme Court Orders, as amended, No. ADM2020-00428, suspending and limiting in-person hearings, the hearing was continued and rescheduled for June 19, 2020 by videoconference.

I. PROCEDURAL BACKGROUND

The Court previously set forth a statement of the case and its background in an earlier ruling on Metro's motion to dismiss the complaint, as follows:

> Plaintiffs are property owners in Nashville, Davidson County, Tennessee. They filed their complaint on April 22, 2019, seeking prospective relief and restitution based on allegations of ongoing violations of their constitutional rights under Tenn. Code Ann. § 1-3-121 and 42 U.S.C. § 1983. They allege that Metro's then-existing sidewalk law, set forth at Metro Code § 17.20.120, required property owners in specified areas to construct sidewalks, curbs, and gutters before Metro would issue building permits to construct single or two-family residential homes. Plaintiffs allege that Metro's enforcement of the sidewalk law was an unconstitutional taking of their property rights without just compensation under the 5th and 14th Amendments of the United States Constitution and Article I, § 21 of the Tennessee Constitution (Count One). They further allege that Metro's actions in ordering the construction of curbs and gutters as part of compliance with Metro's sidewalk law was beyond the scope of Metro's authority under the sidewalk law, *ultra vires*, and void (Count Two). Plaintiffs seek a declaration that the sidewalk law is unconstitutional under the United States and Tennessee Constitutions and that Metro has been unjustly enriched through the collection of fees and a permanent injunction against Metro from enforcing the sidewalk law. They further request the Court to mandate Metro's return of fees paid by Plaintiffs as restitution, mandate Metro's return of any easements and rights-of-way dedicated to Metro, mandate Metro's issuance of building permits without conditions imposed under the sidewalk law, and award attorneys' fees and costs.
>
> After the complaint was filed, Metro enacted Ordinance BL2019-1659 effective July 19, 2019, which amends Metro's sidewalk law "by

> deleting [Metro Code § 17.20.120] in its entirety and replacing" it with a new sidewalk law.

Jan. 6, 2020 Order.

Metro moved to dismiss Plaintiffs' claims for declaratory and injunctive relief under Rule 12.02(1) of the Tennessee Rules of Civil Procedure for lack of subject matter jurisdiction on the basis that those claims became moot with the repeal of the challenged sidewalk ordinance and enactment of a new sidewalk ordinance. Metro further moved to sever Plaintiffs' remaining claims for restitution under Rules 20 and 21 of the Tennessee Rules of Civil Procedure, on the basis that the Plaintiffs' separate claims did not involve the same transactions or occurrences. Plaintiffs opposed the motion to dismiss and motion to sever. The Court granted Metro's motion to dismiss the declaratory and injunction claims for prospective relief on the grounds of mootness. The Court denied the motion to sever the claims, but without prejudice to refiling that motion in the future. The Court found that although the individual restitution claims involve unique facts likely requiring separate evidentiary hearings, there are sufficiently common questions of law or fact among the claims to justify continued consolidation for purposes of discovery or dispositive motions. Metro filed its answer to the complaint on February 10, 2020. Among the affirmative defenses asserted by Metro are lack of ripeness and statute of limitations bar as to certain Plaintiffs, and lack of standing of Plaintiff Home Builders Association of Middle Tennessee ("Home Builders").

II. METRO'S MOTION FOR JUDGMENT ON THE PLEADINGS

Metro moves for judgment on the pleadings on the basis that the restitution claims of all but three Plaintiffs[2] fail as a matter of law. Metro asserts that (i) claims relating to those properties

---

[2] Metro does not move for judgment on the pleadings as to the following three Plaintiffs and their identified properties: April Khoury for property located at 6227 Robin Hill Road, Old South Construction,

where Plaintiffs did not first seek a variance from the Metropolitan Board of Zoning Appeals ("BZA") are not final decisions and not ripe for adjudication; (ii) the claims of those Plaintiffs accruing prior to April 22, 2018, are barred by the one-year statute of limitations; and (iii) Plaintiff Home Builders lacks standing.

Plaintiffs respond that their restitution claims do not fail as a matter of law, and Metro's motion should be denied. On the issue of ripeness, Plaintiffs argue that (i) exaction takings claims are not subject to the ripeness doctrine; (ii) regulatory takings claims ripen when the regulation is enacted; (iii) the "one-plaintiff rule" applies, meaning that if *some* Plaintiffs' claims are ripe, then *all* Plaintiffs' claims are ripe; and (iv) any attempt to exhaust administrative remedies before the BZA would have been futile.

On the statute of limitations issue, Plaintiffs argue that (i) the applicable statute of limitations is either ten years for constitutional law claims, or three years for injuries to property; (ii) under the "continuing violation" doctrine, the statute of limitations has not yet accrued because Metro continues to deprive Plaintiffs of their property rights; and (iii) the one-year statute of limitations for inverse condemnation actions does not apply to exaction takings.

On the issue of Home Builders' lack of standing, Plaintiffs argue that (i) under the "one plaintiff" rule, three Plaintiffs have standing, so all Plaintiffs, including Home Builders, have standing; (ii) Home Builders meets the "individual participation standard" through Plaintiffs Aspen Construction ("Aspen") and Old South Construction, LLC ("Old South"); and, (iii) individual member participation is not required because Plaintiffs do not seek money damages or because the issues raised involve questions of law.

LLC for property located at 4701 Dakota Avenue, and Aspen Construction for property located at 917 South Street and 919 South Street.

III. STANDARD OF REVIEW

Rule 12.03 of the Tennessee Rules of Civil Procedure allows any party to move for a judgment on the pleadings "after the pleadings are closed but within such time as not to delay trial." Tenn. R. Civ. P. 12.03. The standard for a Rule 12.03 motion is similar to the standard for a motion to dismiss for failure to state a claim under Rule 12.02(6). *See Young v. Barrow*, 130 S.W.3d 59, 63 (Tenn. Ct. App. 2003). The trial court must "accept as true 'all well-pleaded facts and all reasonable inferences drawn therefrom alleged by the party opposing the motion." *Cherokee Country Club, Inc. v. City of Knoxville*, 152 S.W.3d 466, 470 (Tenn. 2004) (citation omitted). The Court is not required to accept legal conclusions as true, and a motion for judgment on the pleadings should only be granted when the moving party is "clearly entitled to judgment" as a matter of law. *McClenahan v. Cooley*, 806 S.W.2d 767, 769 (Tenn. 1991) (citation omitted).

IV. THE SIDEWALK ORDINANCE AND APPLICABLE LEGAL PRINCIPLES

A. Metro's Former Sidewalk Ordinance

The former sidewalk ordinance that Plaintiffs challenge was passed by the Metropolitan Council and became effective July 1, 2017. It is now repealed in its entirety and replaced by the current sidewalk ordinance. Relevant excerpts of the repealed ordinance provide as follows:

> Section 17.20.120. Provision of Sidewalks.
>
> Sidewalks are required to facilitate safe and convenient pedestrian movements for residents, employees and/or patrons, and to reduce dependency on the automobile, thus reducing traffic congestion on the community's streets and protecting air quality.
>
> A. Applicability.
>
> * * *
>
> 1. Single-family or two-family construction. Single family or two-family construction when the property is within the Urban Zoning Overlay, or within a center designated in the general plan, or any of the property frontage is within a quarter mile of the boundary of a center designated in the general plan, or the property is on a street in the Major and Collector Street plan in the Urban Services District.

3. Contribution to the pedestrian network as an alternative to sidewalk installation required under this section shall be received by the Department of Public Works and written confirmation of the contribution sent to the Department of Codes Administration prior to the issuance of a building permit.

E. Dedication of Right-of-Way and Easements Required. Dedication of right-of-way and/or public pedestrian easement is required to permit present or future installation of a public sidewalk built to the current standards of the Metropolitan Government. For properties abutting an existing sidewalk or planned sidewalk identified in the Priority Sidewalk Network in the Strategic Plan for Sidewalks and Bikeways, all driveways, walkways and other improvements within public right-of-way or pedestrian easements shall be designed and graded in accordance with Public Works' design standards necessary to accommodate future sidewalk construction.

F. Improvements required or elected on public rights-of-way and/or public pedestrian easements under subsection C of this section shall be reviewed for compliance by the Department of Public Works. No building permit shall be issued by the Department of Codes Administration until the Department of Public Works has released the building permit. Prior to the Department of Codes Administration authorizing final use and occupancy, the Department of Public Works shall inspect and approve the sidewalk improvements in the public rights-of-way and/or public pedestrian easements.

Section 17.20.125. Right to Appeal and Seek Variances.

The provisions of Section 17.20.120 may be varied or interpretations appealed in conformance with Chapter 17.40, Administration and Procedures. The Board of Zoning Appeals may require a contribution to the pedestrian network consistent with subsection D of this section, an alternative sidewalk design or other mitigation for the loss of public improvement as a condition to a variance.

Section 17.40.340. Limits to Jurisdiction.

* * *

B. The board shall not grant variances within the following sections, tables, zoning districts, or overlay districts without first considering a recommendation from the Planning Commission.

Sections/Tables
Section 17.20.120 (Provision of Sidewalks)

* * *

> Section 17.04.060. Definitions of General Terms.
>
> * * *
>
> "Pedestrian benefit zones" means the sixteen zones in which contributions in lieu of sidewalk construction may be collected, and where such contributions shall be spent for the safety and convenience of pedestrians. . . .
>
> [Defines the 16 pedestrian benefit zones]
>
> * * *
>
> "Sidewalk" means all Streetside Elements included in the Major and Collector Street Plan and Streetside Elements for local streets required by other standards of the Metropolitan Government located within the public right-of-way or a pedestrian easement.
>
> * * *

B. Applicable Legal Principles

The Constitutional Takings Clauses. Plaintiffs allege causes of action under 42 U.S.C. § 1983 and Tenn. Code Ann. § 1-3-121, claiming that Metro's repealed sidewalk ordinance violated the takings clauses of the United States and Tennessee Constitutions. Both federal and state constitutions prohibit governments from taking private property for public use without providing "just compensation." U.S. Const., Fifth Amendment; Tenn. Const. Art. I, § 21.

The Tennessee legislature has enacted eminent domain and inverse condemnation statutes to implement the protections afforded under Article I, § 21 of the Tennessee Constitution. Tenn. Code Ann. §§ 29-16-101, *et seq.*; Tenn. Code Ann. §§ 29-17-101, *et seq.*; *Edwards v. Hallsdale-Powell Util. Dist. Knox Cnty., Tenn.,* 115 S.W.3d 461, 464 (Tenn. 2003). The eminent domain statutes provide the procedures for the government to constitutionally take private property. *See Jackson v. Metro. Knoxville Airport Auth.,* 922 S.W.2d 860, 861 (Tenn. 1996). The inverse condemnation statutes provide the method for property owners to assert a taking of their property and recover just compensation from the government where it has not exercised the power of eminent domain. *Id.* (citing *Johnson v. City of Greeneville*, 435 S.W.2d 476, 478 (Tenn. 1968)).

A taking of property can occur through the government's physical taking of real property. It can also occur where the government does not physically take property, but imposes land use regulations that impact the value of property or otherwise interferes with or restricts the use of the property that amounts to a "regulatory taking." *See Pennsylvania Coal Co. v. Mahon*, 260 U.S. 363, 415 (1922).

Regulatory Takings and the Requirement of Finality. Local governments are authorized to use their police powers to regulate the use and development of property within their jurisdictions. *See Penn Cent. Transp. Co. v. New York City,* 438 U.S. 104, 124-125 (1978); *Draper v. Haynes*, 567 S.W.2d 462, 465 (Tenn. 1978).[3] The imposition of land use regulations generally is not an unconstitutional taking, unless the regulations go "too far." *Pennsylvania Coal*, 260 U.S. at 415 (recognizing that land use regulations that go too far can be a taking with compensation owed). Determining those instances where land use regulations go "too far" is frequently litigated. *See Williamson Cnty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 186 (1985) (and cases cited therein). The United States Supreme Court in *Lingle v. Chevron U.S.A., Inc.*, recognized two narrow categories of regulatory takings as *per se* takings under the Fifth Amendment—permanent physical invasions of property and total regulatory takings. 544 U.S. 528, 538 (2005) (citations omitted). In all other cases of regulatory takings, certain factors are to be considered to determine whether government regulatory action is a taking that requires just compensation. *Penn Central*, 438 U.S. at 124. Two primary factors include "[t]he economic impact of the regulation on the claimant and, particularly, the extent to which the regulation has interfered with distinct investment-backed expectations." *Id.* (citation omitted). A third factor that

---

[3] This power rests originally with the state and is delegated to the cities by the Tennessee General Assembly. *See Family Golf of Nashville, Inc. v. Metro. Gov't of Nashville & Davidson Cnty.*, 964 S.W.2d 254, 258 (Tenn. Ct. App. 1997).

may be considered is the "character of the governmental action." All facts and relevant circumstances of a particular case are to be considered in determining whether a regulation affecting property is a taking requiring just compensation. *Id.*

The Tennessee Supreme Court, in a case of first impression, recognized that regulatory takings can arise under the Tennessee Constitution to the same extent as they arise under the Fifth Amendment to the United States Constitution. *Phillips v. Montgomery Cnty.*, 442 S.W.3d 233, 244 (Tenn. 2014). In reaching this conclusion, the Court relied on the textual similarities between the federal and state takings clauses. The Court also relied on the language of the statutes implementing the takings clause under Article I, § 21 of the Tennessee Constitution, which "strongly protect private property rights" through the sparing use of the government's power of eminent domain and require just compensation when private property is taken for public purposes. *Id.* at 243 (citations omitted).

Under federal constitutional law principles, final action by the governmental agency is required before a landowner can pursue a regulatory takings claim. *See Williamson Cnty.*, 473 U.S. at 185-186. This finality requirement means that the governmental entity responsible for implementing the regulations must have "reached a final decision regarding the application of the regulations to the property at issue."[4] *Id.* It requires the landowner to have first applied for a

---

[4] The U.S. Supreme Court in *Williamson County* distinguished the requirement of "finality" from the separate requirement of "administrative exhaustion." *Williamson County*, 473 U.S. at 192. The Court explained that "the finality requirement is concerned with whether the initial decisionmaker has arrived at a definitive position on the issue that inflicts an actual, concrete injury; the exhaustion requirement generally refers to administrative and judicial procedures by which an injured party may seek review of an adverse decision and obtain a remedy if the decision is found to be unlawful or otherwise inappropriate." *Id.* at 193. *Williamson County* required the plaintiff to exhaust available state court remedies, *in addition to obtaining a final decision*, before bringing an unconstitutional takings suit in federal court. The U.S. Supreme Court recently overruled *Williamson County* with respect to the exhaustion requirement; however, the finality requirement under *Williams County* remains good law. *See Knick v. Township of Scott, Pennsylvania*, 139 S.Ct. 2162, 2168-69 (2019).

permit or sought a variance or waiver as permitted under the regulation. *Id.* at 187-188. Tennessee adheres to this principle of finality for regulatory takings claims, which are not deemed ripe until the permitting authority has made a final decision regarding the property. *Phillips*, 442 S.W.3d at 238 n.7 (citing *B&B Enter. of Wilson Cnty., LLC v. City of Lebanon*, 318 S.W.3d 839, 846-49 (Tenn. 2010) (holding regulatory takings claim ripen when agency makes "final decision" regarding the property, and not when judicial review of the administrative decision is concluded)).

Exaction Takings. Exaction takings occur where the government imposes conditions on the grant of land use or development permits in exchange for the owners' relinquishment of some portion of their property without just compensation. *See Nollan v. Calif. Coastal Comm'n*, 483 U.S. 825, 834 (1987). Exaction takings are within the "unconstitutional conditions" doctrine, "which provides that 'the government may not require a person to give up a constitutional right—here the right to receive just compensation for property taken for public use—in exchange for a discretionary benefit conferred by the government where the benefit has little or no relationship to the property.'" *Lingle*, 544 U.S. at 547. Conditions on the issuance of a regulatory development permit can permissibly be imposed so long as (i) an "essential nexus" exists "between the condition and the original purpose of the building restriction," *Nollan*, 483 U.S. at 837, and (ii) the condition imposed is "roughly proportional" to any impact the proposed development may have. *Dolan v. City of Tigard*, 512 U.S. 374, 388 (1994). The United States Supreme Court extended the application of the "essential nexus" and "rough proportionality" tests in *Nollan/Dolan* to circumstances where "in-lieu of" fees are required in exchange for building permits, and not the land itself. *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 618-19 (2013).

In exaction cases, a distinction can be drawn between land use regulations that are legislatively-imposed and apply equally to *all* property with little or no discretion left to the

permitting authority, and those that are considered adjudicative in nature, meaning they are imposed by the government agency through *individualized*, case-by-case decisions whether permitting conditions are applied to specific properties. *Dolan*, 512 U.S. at 391, n. 8. Both *Nollan* and *Dolan* concerned adjudicative, or individualized, exaction takings. *Nollan*, 483 U.S. at 828; *Dolan*, 512 U.S. at 379-380. The U.S. Supreme Court has left uncertain whether the *Nollan/Dolan* test applies to takings claims based on legislatively-imposed conditions as contrasted with individualized or adjudicative cases. *See Koontz*, 570 U.S. at 618-19; *see also* Glen Hansen, *Let's Be Reasonable: Why Neither Nollan/Dolan Nor Penn Central Should Govern Generally-Applied Legislative Exactions after Koontz*, 34 Pace Envtl. L. Rev. 237, 239-40 (2017).

In this case, the conditions imposed on landowners by Metro through its former sidewalk ordinance in order to obtain building permits applied to *all* property located within specific areas of Metro, as defined in the ordinance, making the conditions appear to be "legislative" in nature. *See* Metro Code § 17.20.120(A). At the same time, the former sidewalk ordinance provided property owners with the right to seek variances of the ordinance requirements or appeal interpretations of the ordinance as applied to their individual properties, making the conditions appear to be more adjudicative in nature. *See* Metro Code § 17.20.125.

V. ANALYSIS

Under Rule 12.03, the Court finds that Metro's motion for judgment on the pleadings is timely because the pleadings are closed but the case is not yet set for trial. The Court addresses each of the issues raised in Metro's motion.

A. Ripeness

Metro argues that under the repealed sidewalk ordinance, all Plaintiffs had the right to seek variances or appeal the requirements of the ordinance to their individual properties before the BZA.

Based on the allegations of the complaint, only three Plaintiffs—owning four properties—sought variances and timely filed this lawsuit. As to all other properties that are the subject of the complaint, Plaintiffs did not seek a variance. As a result, Metro contends that all restitution claims for which Plaintiffs did not seek variances are not ripe for adjudication under the finality requirement of *Williamson County* and *B&B Enterprises*, and Metro is entitled to a judgment on the pleadings and dismissal of those claims.

Ripeness is a doctrine of justiciability that limits the courts' power and its jurisdiction to cases that present existing legal controversies. *West v. Schofield*, 468 S.W.3d 482, 490 (Tenn. 2015). Ripeness concerns the timing of a claim and "whether the dispute has matured to the point that it warrants a judicial decision." *Id.* (citing *B&B Enters. of Wilson Cnty.*, 318 S.W.3d at 848)). The requirement of ripeness prevents courts from deciding cases that "involve uncertain or contingent future events that may or may not occur as anticipated, or, indeed, may not occur at all." *Id.* (citation omitted). This requirement also precludes "premature resolution of constitutional questions." *Miles Christi Religious Order v. Township of Northville*, 629 F.3d 533, 537 (6th Cir. 2010). As discussed above, both the United States and Tennessee Supreme Courts hold that disputes concerning land use regulations ripen when the government agency makes a final decision regarding how the regulations at issue apply to the property. *Williamson Cnty.*, 473 U.S. at 192; *B&B Enterprises*, 318 S.W.3d at 846-49. Where a regulation includes a process for requesting and obtaining variances, there is no final decision concerning the property and any takings claim is not ripe until the property owner seeks a variance and is denied. *Williamson Cnty.*, 473 U.S. at 193.

Plaintiffs make three arguments in an effort to avoid the application of the ripeness doctrine. First, they argue that this is an *exaction* takings case and the finality requirement under

Williamson County applies only to *regulatory* takings. They claim that exactions are "more akin to a physical taking," and there is no need to consider the scope and burden of the subject regulation to determine whether it "goes too far" and amounts to a taking. Plaintiffs cite to a federal case from Ohio as support. *Talismanic Props., LLC v. Tipp City*, 2016 WL 6829649 at *3 (S.D. Ohio 2016), *vacated on other grounds,* 309 F. Supp. 3d 488 (S.D. Ohio 2017). The Court finds the Ohio decision is distinguishable. The court held that where the defendant in that case had removed a state court takings lawsuit case to federal court, the requirement of exhaustion of state law remedies was waived. The ripeness issue was limited to the exhaustion of state remedies requirement, and was not addressed to the separate issue of finality that is still required under *Williamson County* and is the issue presented in this case. *Id.*

Metro, in turn, relies on a recent state trial court decision that dismissed a challenge to a Metro ordinance as an unconstitutional exaction taking on several grounds, including lack of ripeness. *See Home Builders Ass'n of Middle Tenn. v. Metro. Gov't of Nashville & Davidson Cnty.*, Davidson County Chancery Court, No. 17-0386-II, (Oct. 31, 2017).[5] The trial court rejected the plaintiff's argument that the ripeness doctrine did not apply to an exactions case, finding no authority for excluding exaction takings from the finality requirement of *Williamson County*. In addition, federal courts and other state courts require finality of government decisions in a variety of land use cases, including exaction cases. *See e.g., Murphy v. New Milford Zoning Comm'n*, 402 F.3d 342, 349-50 (2nd Cir. 2005) (ripeness test of *Williamson County* not strictly confined to regulatory takings) (citing cases from the 3rd, 7th, and 9th Circuits); *Insomnia Inc. v. City of*

[5] The trial court dismissed the complaint for lack of ripeness, lack of standing, and the absence of a private right of action under state law. The plaintiff appealed, but the Court of Appeals dismissed the appeal as moot following the enactment of a state law invalidating the challenged Metro ordinance, and vacated the judgment of the trial court and dismissed the case. *Home Builders Ass'n of Middle Tenn. v. Metro. Gov't of Nashville & Davidson Cnty.*, No. M2018-00834-COA-R3-CV, 2019 WL 369271 (Tenn. Ct. App. Jan. 30, 2019), *perm. app. denied* (Tenn. June 20, 2019).

Memphis, Tenn., 278 F. Appx. 609, 613-614 (6th Cir. May 8, 2008) (applying finality requirement to variety of land use regulation challenges).

The Court concludes that the finality or ripeness requirement of *Williamson County* and *B&B Enterprises* applies to Plaintiffs' alleged exaction takings claims, and there is no authority for excluding exaction takings claims from that requirement. Based on the facts alleged in the complaint, only Plaintiffs Khoury, Old South, and Aspen (with respect to four of Aspen's properties) requested a variance or appeal from the BZA to satisfy the finality or ripeness requirement.

Plaintiffs next argue that finality is not required because Metro's former sidewalk ordinance was legislatively-imposed, rather than through individual decision-making by the BZA. As a result, Plaintiffs contend that their claims "ripened" when the former ordinance was enacted. Metro replies that this argument might otherwise be valid if Plaintiffs had alleged only facial challenges to the sidewalk ordinance (which claims previously were dismissed on mootness grounds). Plaintiffs, however, also allege claims for restitution based on their "as applied" challenges to the sidewalk ordinance as to each property. Because the BZA had adjudicative authority to grant or deny variances as to each Plaintiff's individual properties under the sidewalk ordinance, Metro maintains that a final decision by the BZA is required.

The Court finds that, although the Metro ordinance was passed and imposed by a legislative body, it incorporated a variance and appeal procedure that provided a measure of adjudicative discretion on the part of the BZA in applying the sidewalk ordinance to individual parcels. The Court concludes that the former sidewalk ordinance was capable of being applied in an individualized, adjudicative manner, and the finality requirement must be met as to each Plaintiff's "as-applied" challenges for those restitution claims to be ripe.

Plaintiffs alternatively argue that even if a final decision by the BZA is required under the variance and appeal procedure of the sidewalk ordinance, it would have been "futile" for them to pursue the variance process, which excuses their compliance with the finality requirement. Metro responds that because the ordinance authorizes the BZA to grant variances, the property owners must have at least first applied for a variance before claiming futility.

Based on the factual allegations of the complaint and as noted above, Plaintiffs Khoury, Old South, and Aspen (for Aspen's properties at 1001 9th Avenue South, 903 Archer Street, 919 South Street and 917 South Street),[6] are the only Plaintiffs that allege they sought at least one variance from the BZA, and those variance requests were either denied or granted to the limited extent of requiring payment of a fee "in lieu"[7] of building a sidewalk. *See* Complaint, ¶¶ 49-57, 68-74, 83-86, 90-95. With respect to the remaining Plaintiffs, only Plaintiffs Old South and MRB allege facts supporting the excuse of futility or raising a reasonable inference of futility. Complaint, ¶¶ 75, 115-16.

Plaintiffs, however, do not cite to any Tennessee cases applying futility as an excuse or exception to the finality requirement in land use regulatory takings cases where a variance and appeal procedure is available. They rely instead on a Tennessee case concerning the Employment Retirement Income Security Act of 1974 (ERISA), recognizing futility as an exception to exhaustion of administrative remedies requirement in ERISA cases. *Cantrell v. Walker Die Casting, Inc.*, 121 S.W.3d 391, 396 n.3 (Tenn. Ct. App. 2003). Several federal cases hold, however, that landowners in takings cases must have sought at least one variance from the

---

6 Metro argues, however, that Aspen's claims as to 1001 9th Avenue South and 903 Archer Street are barred by the applicable statute of limitations.

7 Plaintiffs argue that the "in lieu of" fee requirement as not a variance at all.

permitting authority before invoking a claim of futility.[8] *See Bannum, Inc. v. City of Louisville, Ky.*, 958 F.2d 1354, 1363 (6th Cir. 1992) (aggrieved landowner must have submitted at least one "meaningful application" for a variance before claiming futility) (citations omitted); *Lilly Investments v. City of Rochester*, 674 F.App'x 523, 527 (6th Cir. 2017) (finding futility where permitting authority refused to revoke stop-work order on plaintiff's development unless plaintiff waived all claims and paid $40,000, despite plaintiff's compliance with development standards); *Seguin v. City of Sterling Heights*, 968 F.2d 584, 587-588 (6th Cir. 1992) (rejecting futility where ordinance provided variance procedure in "exceptional or extraordinary circumstances" or where "necessary" to preserve substantial property rights); *Miller v. City of Wickliffe, Ohio*, 852 F.3d 497, 504 (6th Cir. 2017) (requiring final decision by the permitting authority to demonstrate further applications would be idle and futile); *F.P. Development, LLC v. Charter Township of Canton*, 2020 WL 1952537, ---F.Supp.3d--- (E.D. Mich., W.Div., Apr. 23, 2020) (finding futility where permitting authority had no discretion to grant a variance of ordinance's requirements).

Taking the factual allegations as true and allowing all reasonable inferences in favor of the non-movants as required on a Rule 12.03 motion for judgment on the pleadings, the Court concludes that only Plaintiffs Old South and MRB alleged facts, or reasonable inferences that can be drawn from those facts, to support claims of futility that may excuse the finality requirement as to their individual properties for purposes of the Rule 12.03 motion. None of the other Plaintiffs allege facts supporting a claim of futility.

As their last argument, Plaintiffs contend that the "one-plaintiff rule" permits consideration of all Plaintiffs' claims so long as one plaintiff's claim is ripe. Metro replies that the one plaintiff

---

[8] The Court notes that the more recent federal cases apply a different Rule 12 pleading standard of "plausibility" of the claim, as contrasted with the more liberal, notice pleading standard applied under Tennessee Rule 12. *See Webb v. Nashville Area Habitat for Humanity*, 346 S.W.3d 422, 426, 437 (Tenn. 2011).

rule applies only to Article III constitutional standing, and not to "prudential" standing. The one-plaintiff rule is a federal court *standing* doctrine, under which "the presence of one party with standing is sufficient to satisfy Article III's case or controversy requirement." *Liberty Legal Found. v. Nat'l Democratic Party of the USA, Inc.*, 875 F.Supp.2d 791, 800 (W.D. Tenn. 2012) (citation omitted). The "one-plaintiff rule" is not addressed to the separate issue of ripeness. All of the cases Plaintiffs cite address the issue of the parties' standing, and not the ripeness of their claims.[9] While standing and ripeness are related justiciability doctrines, they are conceptually distinct. *Warth v. Seldin,* 422 U.S. 490, 499 n.10 (1975). The Court concludes that the "one-plaintiff rule," which may be applicable to the concept of standing, does not apply as an exception to the ripeness requirement.

In summary, on the issue of ripeness requiring a final decision by the government, the Court concludes that, with the exception of Plaintiffs Khoury as to Robin Hill Road, Old South as to Dakota Avenue, Aspen with respect to four properties (9th Avenue South, Archer Street, and 917 and 919 South Street),[10] and MRB with respect to six properties, all other Plaintiffs' claims should be dismissed for the reason the claims are not ripe for lack of finality.

B. Statute of Limitations

Metro next argues that with respect to those restitution claims for which a final decision was made by the BZA, the claims are subject to a one-year statute of limitations measured from the date of the BZA's "final decision" regarding each property. Based on the complaint, Plaintiff

---

9 The law review article cited by Plaintiffs notes that courts in the 6th Circuit do not uniformly apply the "one good plaintiff" rule even on the issue of standing. Aaron-Andrew P. Ruhl, *One Good Plaintiff is Not Enough*, 67 Duke L.J. 2017 481, 493 (2017).

10 But see the discussion below on the timeliness of Plaintiff's Aspen's claims under the applicable statute of limitations.

Aspen alleges it requested and was granted variances as to its 9th Avenue South and Archer Street properties on November 17, 2017, and as to its South Street properties on May 10, 2018. This lawsuit was filed on April 22, 2019, more than one year after the November 17, 2017 variance decisions. Metro contends that Aspen failed to file suit within one year of the BZA's final November 17, 2017 decisions on the 9th Avenue South and Archer Street properties, and those claims are time-barred.[11]

The applicable statute of limitations is determined by the "gravamen of the complaint." *McFarland v. Pemberton*, 530 S.W.3d 76, 109 (Tenn. 2017) (quoting *Benz-Elliott v. Barrett Enters., L.P.*, 456 S.W.3d 140, 151 (Tenn. 2015)). This principle applies to each claim alleged within the complaint. *Id.* Courts ascertain the gravamen of a complaint or claim by "consider[ing] the legal basis of the claim and then consider[ing] the type of injuries for which damages are sought." *Id.* The applicable statute of limitations is determined by the subject matter of the controversy, and not by remedies sought. *Molin v. Perryman Const. Co.*, No. 01-A-019705CV00232, 1998 WL 83737, at *3 (Tenn. Ct. App. Feb. 27, 1998) (quoting *Taylor v. Trans Aero Corp.*, 924 S.W.2d 109, 113 (Tenn. Ct. App. 1995)).

Plaintiffs allege that the former sidewalk ordinance imposed unconstitutional conditions, requiring Plaintiffs to relinquish their right to receive just compensation for takings of their properties in exchange for building permits. They allege Metro's actions are impermissible exaction takings under the state and federal constitutions. The legal bases of Plaintiffs' claims are violations of Art. I, § 21 of the Tennessee Constitution and the Fifth Amendment to the U.S. Constitution. The injury for which Plaintiffs seek restitution remedies is the deprivation of their property rights.

---

[11] Metro does not seek judgment on the pleadings with respect to Aspen's properties at 917 and 919 South Street for which Aspen sought a variance ***and*** filed suit within one year of the BZA's decision.

The procedural vehicles under which Plaintiffs' claims are brought are 42 U.S.C. § 1983 and Tenn. Code Ann. § 1-3-121. Section 1983 recognizes a cause of action where a person's "federal constitutional rights have been violated by persons acting under color of state law." *Payne v. Brewer*, 891 S.W.2d 200, 202 (Tenn. 1994). Section 1-3-121 recognizes a cause of action "for any affected person who seeks declaratory or injunctive relief in any action brought regarding the legality or constitutionality of a governmental action."

Plaintiffs' § 1983 Claims. Metro contends that Plaintiffs' section 1983 claims are subject to a one-year statute of limitations, citing *Trent v. Anderson*, 2010 WL 3155193, at *3 (Tenn. Ct. App. Aug. 10, 2010). The lawsuit was filed on April 22, 2019, and Metro asserts that any claims accruing before April 22, 2018 are time-barred.

Under federal law, section 1983 claims are characterized as personal injury actions to which a state's personal injury limitations period applies. *See Nunn v. Tenn. Dep't of Correction*, 547 S.W.3d at 163, 179, n.10 (Tenn. Ct. App. 2017). Tennessee law specifically provides for a one-year personal injury statute of limitations for "[c]ivil actions for compensatory or punitive damages brought under the federal civil rights statutes." Tenn. Code Ann. § 28-3-104(a)(1)(B).

Plaintiffs argue, however, that because they seek only declaratory relief and restitution—and not compensatory damages—Tenn. Code Ann. § 28-3-104(a)(1)(B) does not apply to their section 1983 claims. They instead argue that the three-year statute of limitations for injury to property applies as the "most analogous statute of limitations." The Court of Appeals addressed and rejected this same argument in *Nunn,* where the plaintiff sought only declaratory relief for constitutional rights violations and did not seek damages of any kind. The Court reasoned that while Tenn. Code Ann. § 28-3-104(a)(1)(B) "does not specifically mention section 1983 actions seeking *declaratory* relief, it should also encompass such actions . . . because it would govern the

underlying direct claim sought to be asserted in the declaratory judgment action." *Id.* at 178 (emphasis in original). The Court concluded that claims for declaratory relief brought under section 1983 are subject to the same statute of limitations as claims for damages brought under section 1983. *Id.* at 179. In any event, Plaintiffs' section 1983 claims in this case are not actions for injuries to property, but are claims for violations of Plaintiffs' federal constitutional rights. The fact that they do not seek compensatory damages does not change the analysis.

The Court concludes that Plaintiffs' federal constitutional claims brought under 42 U.S.C. § 1983 are subject to a one-year statute of limitations under Tenn. Code Ann. § 28-3-104(a)(1)(B).

Plaintiffs' Claims Under Tenn. Code Ann. § 1-3-121. Section 1-3-121 provides the state vehicle under which a plaintiff may seek declaratory relief regarding the constitutionality of government action. This statute recently was enacted, and the Court is not aware of any appellate decisions interpreting the statute. Plaintiffs contend that because section 1-3-121 does not contain a specific statute of limitations, Tennessee's 10-year general limitations period should apply under the rationale in *Nunn*.

In response, Metro argues that Tenn. Code Ann. § 12-1-206 supplies the statute of limitations for a property owner's action against the government for an unconstitutional taking of property, as follows:

> An owner of private property shall commence *any proceeding claiming a government action is an unconstitutional taking* within the same limitation of actions period as provided in § 29-16-124 for actions commenced pursuant to § 29-16-123.

Tenn. Code Ann. § 12-1-206 (emphasis added). Section 29-16-123 is Tennessee's inverse condemnation statute and recognizes the right of property owners to sue for takings of their property. The statute of limitations period specific to such actions is set forth in section 29-16-124, as follows:

> All actions that could be brought under § 29-16-123(a), *regardless of the cause of action or remedy sought* . . . shall be commenced within twelve (12) months after the land has been actually taken possession of, ...

Tenn. Code Ann. § 29-16-124 (emphasis added).

Reading the plain language of these statutes together, the Court concludes that the specific one-year statute of limitations for inverse condemnation claims applies to claims for unconstitutional takings under Tenn. Code Ann. § 1-3-121. The decision in *Nunn* applying Tennessee's general 10-year statute of limitations to the plaintiff's state constitutional law claims seeking declaratory relief is distinguishable because there were no analogous statutory proceedings that afforded the plaintiff the relief he sought. *Nunn*, 547 S.W.3d at 189-90. Here, there is an analogous statute, section 12-1-206, that affords Plaintiffs the relief they seek. This statute expressly incorporates the one-year limitations period for inverse condemnation actions, under Tenn. Code Ann. § 29-16-123 and -124.

Plaintiffs again attempt to avoid the application of the inverse condemnation statutes and the one-year limitations period by arguing they do not seek monetary compensation. Their argument is unavailing. By its terms, Tenn. Code Ann. § 12-1-206 applies to "*any proceeding claiming a government action is an unconstitutional taking*" and provides for the same one-year limitations period that is applied to inverse condemnation actions under § 29-16-124, *regardless of the cause of action or remedy sought*. The cardinal rule of statutory construction is to effectuate legislative intent and purpose, using the natural and ordinary meaning of the language used without "forced or subtle construction that would limit or extend the meaning of the language." *Lipscomb v. Doe*, 32 S.W.3d 840, 844 (Tenn. 2000).

Applying the plain language of section 12-1-206, the Court concludes the one-year statute of limitations applies to Plaintiffs' constitutional takings claims under section 1-3-121. Because

Plaintiff Aspen's claims as to its properties on 9th Avenue South and Archer Street accrued more than one year before the Complaint was filed, those claims are barred by the statute of limitations.

The "Continuing Violations" Doctrine. Plaintiffs next argue that the doctrine of "continuing violations" extends the statute of limitations for their federal section 1983 claims. They contend that because Metro could return their property to avoid further injury, so long as Metro continues to hold their property—through in-lieu fees, rights-of-way, and easements—their injuries continue. Metro responds that the continuing violations doctrine rarely applies in section 1983 actions, and Plaintiffs' alleged injuries are "residual effects of past decisions, not new or repeated acts."

The court in *Nunn* recognized that the "continuing violation doctrine is a federal common law doctrine," applied largely in federal anti-discrimination matters and only rarely in § 1983 actions. 547 S.W.3d at 179 (internal citations omitted). "The critical distinction in the continuing violation analysis is whether the plaintiff complains of the present consequences of a one time violation, which does not extend the limitations period, or the continuation of that violation into the present, which does." 547 S.W.3d at 180-181. In this case, it was the application of Metro's former sidewalk law to Plaintiffs' properties in the first instance that gave rise to the alleged constitutional "violations." The fact that Metro continues to hold Plaintiffs' properties is merely the consequence of alleged one-time violations. Plaintiffs have not alleged any facts that Metro is engaged in any recurring or continuing acts, and the Court concludes that Plaintiffs have failed to allege sufficient facts to invoke the continuing violations doctrine to extend the one-year statute of limitations as applied to their Section 1983 claims.

C. Home Builders' Lack of Standing

Metro also moves for judgment on the pleadings on the grounds that Plaintiff Home Builders lacks associational standing. Generally, an organization may represent its members in a lawsuit, even without the organization having suffered a direct injury itself. *Union Cnty. Educ. Ass'n v. Union Cnty. Bd. of Educ.*, No. E2013-02686-COA-R3-CV, 2014 WL 4260812, at *4 (Tenn. Ct. App. Aug. 28, 2014) (citation omitted). To have standing to represents its members' interests, an organization must establish three elements: (1) the organization's members must otherwise have standing to sue in their own right; (2) the interests it seeks to protect must be germane to the organization's purpose; and (3) neither the claims asserted nor the relief requested require the participation of individual members in the lawsuit. *American Civil Liberties Union of Tennessee, et al. v. Darnell*, 195 S.W.3d 612, 626 (Tenn. 2006) (citations omitted). To satisfy the first prong of the associational standing requirement, the organization's members must have (1) suffered a cognizable injury in fact; (2) the injury must be traceable to the defendant's challenged conduct, and (3) the injury must be redressable by a favorable court decision. *Northeast Ohio Coalition for the Homeless and Serv. Employees Intern. Union, Local 1199 v. Blackwell*, 467 F.3d 999, 1010 (6th Cir. 2006) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992)).

Metro argues that because the Court already has dismissed Plaintiff's claims for prospective declaratory and injunctive relief, the only remaining claims "involve facts that are unique to [Plaintiffs'] respective properties and will likely require separate proceedings as to the appropriate relief, if any, to which each Plaintiff may be entitled." Metro further argues that the participation of Home Builders' individual members is required, and Home Builders does not meet the third prong of the organizational standing test.

Plaintiffs argue that Home Builders has standing because (i) at least three other plaintiffs have standing and the "one-plaintiff rule" applies; (ii) Plaintiffs Aspen and Old South are members of Home Builders and meet the individual participation requirement; and, alternatively, (iii) individual member participation is not required because Plaintiffs do not seek money damages or because the questions involved are purely legal questions.

"The standing inquiry requires careful judicial examination of a complaint's allegations." *ACLU of Tennessee*, 195 S.W.3d at 620. Under Tennessee law, "courts are more likely to find organizational standing when the nature of the relief sought is prospective," as with declaratory or injunctive relief. *Union County*, at * 4 (citing *Hunt v. Wash. State Apple Adver. Comm'n.*, 432 U.S. 333, 343 (1977)).

Plaintiffs' complaint alleges that Home Builders is a non-profit trade group formed for "the promotion and protection of the home building industry in the Middle Tennessee area, including Nashville and Davidson County," that individual plaintiffs Old South and Aspen are members of Home Builders, and that Old South and Aspen have been subject to the challenged sidewalk law. *See* Complaint, ¶ 14. The complaint also alleges facts concerning Old South's and Aspen's individual claims. *See* Complaint. ¶¶ 65-81, 82-105, and 144-151. Taking the allegations of the complaint as true, they establish, and Metro does not dispute, that Home Builders meets the first two requirements of associational standing. It is the last requirement of associational standing that Metro claims is absent.

One Plaintiff Rule. Plaintiffs argue that the "one plaintiff" rule applies, and the existence of at least one plaintiff with standing confers standing on Home Builders. Plaintiffs also advanced this theory on the issue of ripeness and revisit the doctrine here. Metro responds that Plaintiffs conflate constitutional standing with prudential standing and contends the one-plaintiff rule applies

only to constitutional standing, whereas associational standing is prudential in nature. Courts in the 6th Circuit do not uniformly apply the "one plaintiff" rule even when determining the issue of standing, holding that the "determination of standing is both plaintiff- and provision-specific. That one plaintiff has standing to assert a particular claim does not mean that all of them do." *Fednav, Ltd. v. Chester*, 547 F3d 607, 615 (6th Cir. 2008) (citing *Allen v. Wright,* 468 U.S. 737, 752, 104 S.Ct. 3315, 82 L.Ed.2d 556 (1984)). The Court declines to apply the "one plaintiff" rule to determine Home Builders associational standing based on the allegations of the complaint.

Individual Participation Requirement. Plaintiffs argue that they have alleged two of its members are participating in the lawsuit, satisfying the third requirement of associational standing. Alternatively, they argue that because they do not seek money damages, individual participation is not required. They further argue that this case presents a purely legal question, which also excuses the individual participation requirement.

The complaint alleges that Plaintiffs Old South and Aspen are members of Home Builders, and Metro acknowledges that Old South and Aspen have standing and some of their claims survive the motion for judgment on the pleadings. Metro points out, however, that the remaining claims are "as-applied" challenges to the sidewalk ordinance, requiring the Court to conduct an individualized assessment of the ordinance's application to each plaintiff's property. The United States Supreme Court has explained the difference between standing of an association for claims seeking prospective relief and standing of an association for claims involving injury to its members:

> [W]hether an association has standing to invoke the court's remedial powers on behalf of its members depends in substantial measure on the nature of the relief sought. If in a proper case the association seeks a declaration, injunction, or some other form of prospective relief, it can reasonably be supposed that the remedy, if granted, will inure to the benefit of those members of the association actually injured. Indeed, in all cases in which

> we have expressly recognized standing in associations to represent their members, the relief sought has been of this kind. . . .
>
> The present case, however, differs significantly as here an association seeks relief in damages for alleged injuries to its members. [Rochester Home Builders Association] alleges no monetary injury to itself, nor any assignment of the damages claims of its members. No award therefore can be made to the association as such. Moreover, in the circumstances of this case, the damages claims are not common to the entire membership, nor shared by all in equal degree. To the contrary, whatever injury may have been suffered is peculiar to the individual member concerned, and both the fact and extent of injury would require individualized proof. Thus, to obtain relief in damages, each member of [Rochester Home Builders Association] who claims injury as a result of respondents' practices myst [*sic*] be a party to the suit, and [Rochester Home Builders Association] has no standing to claim damages on his behalf.

Warth v. Seldin, 422 U.S. 490, 515-16 (1975).

The same analysis applies here. The question is not whether Home Builders' members are, in fact, participating in the lawsuit. The question is whether their participation in the lawsuit is necessary to adjudicate claims or afford relief. As in *Warth,* Plaintiffs' claims are "not common to [Home Builders'] entire membership." *Id.* at 516. The injuries alleged are peculiar to the individual members and will require individualized proof of their claims. *Id.* Home Builders cannot obtain any relief in this matter that Old South and Aspen cannot obtain for themselves, and Home Builders cannot obtain any relief on behalf of any of its members not participating in this lawsuit.

Plaintiffs alternatively argue that because they do not seek money damages and only restitution, "individual participation" is not required. Regardless of the nature of the remedy sought, Plaintiffs' "as-applied" claims of unconstitutional takings will require individual determinations as to the application of the sidewalk ordinance to each plaintiff's property.

Plaintiffs additionally argue that because the question presented is purely a matter of law, individual member participation unnecessary. The Court finds that each Plaintiff's claims involve

questions of law and issues of fact that are specific to the individualized properties owned by each Plaintiff. Plaintiffs fail to explain how the Court may make these individualized determinations as to the challenged sidewalk ordinance as applied to each Plaintiff's property.

The Court concludes that Home Builders lacks associational standing.

VI. CONCLUSION

The Court concludes that the "final decision" requirement in *Williamson County* applies to exaction takings cases as well as regulatory takings cases, and the restitution claims of those Plaintiffs who did not apply for building permits or seek variances from the repealed sidewalk ordinance before the BZA are not ripe and should be dismissed. The Court further concludes, however, that Plaintiffs Old South and MRB have plead sufficient facts to raise a reasonable inference that any attempt to seek a variance would have been futile, and its claims are not dismissed for lack of a final decision. The Court concludes that the one-year statute of limitations applies to Plaintiffs' federal constitutional claims brought under 42 U.S.C. § 1983, and to their constitutional claims brought under Tenn. Code Ann. § 1-3-121. Thus, the claims of Plaintiff Aspen that accrued more than one year prior to the date the lawsuit was filed are barred by the statute of limitations. Finally, the Court concludes that Plaintiff Home Builders lacks associational standing because individual participation of its members is necessary to adjudicate the claims asserted.

It is, therefore, ORDERED that Defendant's Motion for Judgment on the Pleadings under Rule 12.03 of the Tennessee Rules of Civil Procedure is hereby GRANTED, in part, and DENIED, in part, as follows:

A. Defendant's motion as to the claims of Plaintiffs Aspen and Green Eggs & Homes, where Plaintiffs did not apply for building permits, seek variances of the sidewalk

ordinance's requirements, or appeal the application of the sidewalk law to their individual properties, is GRANTED, and those claims are DISMISSED as not ripe;

B. Defendant's motion as to the claims of Plaintiff MRB Developers on the grounds of ripeness is DENIED based on the allegations of futility;

C. Defendant's motion as to the claims of Plaintiff Aspen for its properties on 9th Avenue South and Archer Street that accrued more than one year prior to the filing of the Complaint is GRANTED, and those claims are DISMISSED as barred by the statute of limitations; and

D. Defendant's motion as to Plaintiff Home Builders Association of Middle Tennessee for lack of standing is GRANTED, and all claims asserted by Plaintiff Home Builders Association of Middle Tennessee are DISMISSED.

All other issues are reserved.

PATRICIA HEAD MOSKAL
CHANCELLOR, PART I

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing is being forwarded via U.S. Mail, first-class, postage pre-paid, to the following:

Braden H. Boucek, Attorney at Law
Meggan S. DeWitt, Attorney at Law
Beacon Center of Tennessee
[redacted]

Lora Barkenbus Fox, Metropolitan Attorney
Allison Bussell, Metropolitan Attorney
[redacted]

Deputy Clerk & Master **Date** 12/31/20