

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
Case Type: Declaratory Judgment/Contract

Stephanie Woodruff, Dan Cohen, and Paul
Ostrow,

Plaintiffs,

v.

City of Minneapolis,

Defendant.

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFFS'
MOTION FOR TEMPORARY
RESTRAINING ORDER**

Court File No.: 27-CV-13-21254

The above-entitled matter came on for hearing before the Honorable Mel I. Dickstein, Judge of District Court, on December 12, 2013, pursuant to Plaintiffs' Motion for Temporary Restraining Order. Plaintiffs appeared personally and Peter Ginder, Esq., and Susan Segal, Esq. appeared on behalf of Defendant.

Based upon the all the files, records, and proceedings herein, and the arguments of counsel, the Court makes the following:

ORDER

1. Plaintiff's Motion for Temporary Restraining Order and Injunctive Relief is **DENIED** as to Counts One, Two, Four and Five.
2. Plaintiffs' Motion for a Temporary Restraining Order is **GRANTED** as to Count Three in order to maintain the status quo until the parties, including the Minneapolis Park and Recreation Board, have an opportunity to more fully address the issues raised in Count 3.

3. Plaintiffs shall submit a reasoned memorandum of law and facts, along with any appropriate supporting affidavits, by **4:30 p.m. on Monday, December 16, 2013** on the issues raised in Count 3 of the Complaint, specifically, whether the Minneapolis Park and Recreation Board has the exclusive authority under the Minneapolis City Charter to acquire and maintain land for public parks.
4. Defendants shall respond by **4:30 p.m. on Tuesday, December 17, 2013**.
5. The Court will hold a hearing on the issues raised in Count 3 on **Wednesday, December 18, 2013 at 1:30 p.m.** in Courtroom 1553 of the Hennepin County Government Center.
6. The attached Memorandum is incorporated herein by this reference.

IT IS SO ORDERED.

BY THE COURT:

 SigPlus1
12/13/2013 10:05:41am

Dated: December 13, 2013

Mel I. Dickstein
Judge of District Court

MEMORANDUM

I. Procedural Posture

Plaintiffs failed to comply with the procedural requirements for a motion for a temporary restraining order under Minn. R. Civ. P. 65.01, which requires that a request for a Temporary Restraining Order be accompanied by an appropriate affidavit. Neither did Plaintiffs properly notice this matter for a Temporary Injunction hearing in conformance with the notice requirement provided for by the Rules, nor petition the Court for a shorter time period.

Both parties, however, expressed the need for urgency in this matter, and as a result the Court heard extensive oral argument on less than one day's notice. Since neither party had the opportunity to adequately prepare for this motion, and the Court did not benefit from the parties' respective briefs as would normally occur, the Court applies the legal standard for a temporary injunction, but treats this matter as a request for a temporary restraining order so that the parties have the opportunity to further develop the record.¹

II. Background

This matter arises from a Complaint filed and served on December 11, 2013. The Complaint alleges that the City of Minneapolis should be precluded from acting upon a resolution authorizing the execution of contract documents and the issuance of \$65 million in general obligation revenue bonds to finance the Downtown East Development Project (hereinafter referred to as "Downtown East"). Plaintiffs describe Downtown East as a 5 block project, in the immediate area of the new Vikings Stadium, consisting of office space, a parking ramp, a public park, skyways, office space and residential development.

¹ The City originally objected to the Court's jurisdiction because the City had not acted upon the proposed legislation at issue, and therefore the matter involved a political question and did not constitute a justiciable issue. The Court agrees, but on Friday, December 13, 2013 at 2:19 p.m. the Court was informed that the legislation at issue has been passed by the City Council and signed by the Mayor.

The Complaint contains five Counts. Plaintiffs first assert that the proposed Downtown East project is in violation of Minn. Stat. § 473J.11 Subd. 4(b), which provides for a \$150 million limit to the City’s contribution for the construction of the Vikings’ Stadium. Specifically, Plaintiffs assert that Minn. Stat. § 473J.07 establishes the Minnesota Sports Facilities Authority (“the MSFA”), and § 473J.08- §473J.09 gives the MSFA the power to acquire the land and proceed with the construction of a professional football stadium. §473J.11 limits the City of Minneapolis’ financial share of the stadium “for construction and annual cost and capital contributions” to \$150 million. *Id.* at Subd.4(b). The Complaint asserts that if the City pays \$32.63 million for a Downtown East parking ramp (“the Block 1 Ramp”), the City will exceed its statutory funding limit for the Vikings Stadium.

Second, Plaintiffs assert that by financing the construction of the Block 1 Ramp, the City is assuming financial obligations that are solely the obligation of the Minnesota Vikings, and as a consequence while the City’s action serves a private benefit, it fails to serve any legitimate public purpose.

Third, Plaintiffs assert that under the Minneapolis City Charter the City Council has no authority to establish or maintain a park—authority which, the plaintiffs say, is solely within the power and jurisdiction of the Minneapolis Park and Recreation Board (“Park Board”). Specifically, Plaintiffs maintain that under the Minneapolis City Charter there are certain powers and responsibilities reserved for the City Council, and certain powers and responsibilities delegated to Boards duly elected or appointed. In the case of City parks, Plaintiffs assert that the Charter clearly gives the authority to create and maintain parks to the Park Board, and only the Park Board. Minneapolis Charter, Chapter 16 § 2 provides in pertinent part:

The Park and Recreation Board of the City of Minneapolis and its successors shall have the power and it shall be its duty to devise, adopt, and maintain parks and

parkways in and adjacent to the City of Minneapolis, and from time to time to add thereto; to cause the same to be platted, surveyed, and plats thereof filed in the office of the Secretary of said Board, and in the office of the Department of Public Works of the City of Minneapolis; and the right to take possession upon obtaining title to the same or any part thereof, to hold improve, govern and administer the same for such purposes.

Finally, Plaintiffs allege that the Port Authority's designation of the Downtown East district as "marginal property" under §469.058 Subd. 3(b), and §469.048 Subd. 5, fails because the property at issue cannot reasonably be designated as "marginal property" within the meaning of the law.

III. Legal Analysis

A temporary injunction is an extraordinary equitable remedy, the purpose of which is to preserve the status quo until adjudication of the case on its merits. *Miller v. Foley*, 317 N.W.2d 710, 712 (Minn. 1982). "Not every change in circumstances merits such relief, however. Because a temporary injunction is granted prior to a complete trial on the merits, it should be granted only when it is clear that the rights of a party will be irreparably injured before a trial on the merits is held." *Id.*

A party seeking an injunction must establish that the injunction is necessary to prevent irreparable harm and that there is no adequate legal remedy. *Cherne Indus., Inc. v. Grounds & Assoc., Inc.*, 278 N.W.2d 81, 92 (Minn. 1979). Although irreparable injury is not always susceptible to precise proof, the injury must be of such a nature that money damages alone would not provide adequate relief. *Haley v. Forcelle*, 669 N.W.2d 48, 56 (Minn. Ct. App. 2003) *rev. denied* (Minn. Nov. 25, 2003).

"If a plaintiff can show no likelihood of prevailing on the merits, the district court errs as a matter of law in granting a temporary injunction." *Metropolitan Sports Facilities Comm'n v. Minn. Twins P'ship*, 638 N.W.2d 214, 226 (Minn. Ct. App. 2002). "But if a plaintiff makes even

a doubtful showing as to the likelihood of prevailing on the merits, a district court may consider issuing a temporary injunction to preserve the status quo until trial on the merits.” *Id.*

Additionally, the decision whether to grant a preliminary temporary injunction requires consideration of the five *Dahlberg* factors: (1) the nature and background of the relationship between the parties preexisting the dispute giving rise to the request for relief; (2) the harm to be suffered by the plaintiff if the temporary restraint is denied as compared to that inflicted on the defendant if the injunction issues pending trial; (3) the likelihood that one party or the other will prevail on the merits when the fact situation is viewed in light of established precedent fixing the limits of equitable relief; (4) the aspects of the fact situation, if any, which permit or require consideration of public policy expressed in statutes, State and Federal; and (5) the administrative burdens involved in judicial supervision and enforcement of the temporary decree. *Dahlberg Bros., Inc v. Ford Motor Co.*, 137 N.W.2d 321-22 (Minn. 1965).

The Court addresses these factors as follows:

1. Likelihood of Success of the Merits

1. Count One: “City Expenditures Contrary to State Law”

The Court concludes that Plaintiffs have failed to sustain their burden to demonstrate a likelihood of success on the merits on their claim that the Downtown East project exceeds the City’s statutory limit for contribution to the Vikings Stadium. Plaintiffs’ claims are premised, in part, on the assertion that the City’s expenditure for the Downtown East Block 1 Ramp is actually an end run around its statutorily limited contribution to the Vikings Stadium. The Court concludes, however, that the Block 1 Ramp is an integral part of the mixed use development described as Downtown East. As Exhibit D to the Complaint, Plaintiffs submitted “Request for City Council Committee Action from the Department of Community Planning and Economic

Development (CPED) and the Department of Finance and Property Services” (“the Request”). The Request describes the project as a mixed use project which includes, among other elements, over 1 million square feet of office space in two skyway-connected towers on blocks 3 and 4 of the project, and a 1600 stall parking ramp on block 1. The City anticipates that approximately 5,000 people will work in the towers. The Request states that, “[t]he ramp will be open to the general public and provide a certain amount of dedicated parking on game days.” The Request also describes the construction of approximately 400 units of market rate housing, of which 280 are to be constructed adjacent to the two office towers.

The Court concludes, as a result, that the ramp is an integral part of the Downtown East development. The primary purpose of the ramp is to serve the individuals who will work in the adjacent towers, and may also serve the people who live in and visit the residents of the multifamily units which comprise an integral part of this development. While the Block 1 Ramp also provides a concomitant benefit to the Vikings Stadium, its primary use is as a part of the large commercial residential development at issue. The City’s financing of the Block 1 Ramp, therefore, exists independent of the Stadium and does not violate the statutory limit on the City’s contribution.

2. Count Two: “Violation of Public Purpose Doctrine”

The Court also rejects Plaintiffs’ related assertion that the City’s financing of the Block 1 Ramp serves a private purpose for the Vikings, but fails to serve a public purpose. As discussed, the ramp is an integral part of the Downtown East development, providing parking for those who work in the two office towers and potentially for those who live in and visit the residential units nearby.

In *City of Pipestone v. Madsen*, 178 N. W. 2d 594 (Minn. 1970), the Minnesota Supreme Court took an expansive view of the public purpose doctrine. The Court explained that public expenditures are frequently approved for popular projects, especially when the economic welfare of the governmental entity—in this case the City—is at issue. *Id.* at 600. While a project may not only serve a private purpose, the project passes muster when it primarily serves a public purpose, even if a private party also benefits. *Id.* at 599. In addition, the determination of a public benefit by a legislative body is entitled to great weight. *Id.*

In the present case, the City has asserted that Downtown East will bring over \$400 million of investment to an area that has languished largely as surface parking lots for decades. The City also asserts that Downtown East increases the tax base, supports jobs, adds residents to downtown, and provides other amenities to the City. *See* Exhibit D to Plaintiffs’ Complaint, p.8. Additionally, the Downtown East project is intended to reverse the deleterious effect of the Peripheral Parking Strategy, which the City concludes has contributed to the present day disuse and economic dislocation in the Downtown East area. *Newman Aff.*, Ex. 1.

The Court concludes that the primary purpose of Downtown East, of which the Block 1 Ramp is an integral part, primarily serves a public purpose within the meaning of the law. Plaintiffs are not likely to succeed on the merits of the claim that the Block 1 Ramp fails to satisfy the public interest test.

3. Count Three: “Exercise of Powers Reserved for the Minneapolis Park and Recreation Board”

Plaintiffs argue that the City’s action in financing the purchase of land for a park, and in the planned design and operation of the park, all exceed its authority under the Minneapolis City Charter (“the Charter”) and should therefore be restrained. Plaintiffs maintain that the Charter specifically reserves to the Minneapolis Park and Recreation Board (“the Park Board”) those

powers associated with adoption and maintenance of parks and parkways in the City. Plaintiffs argue that Charter Chapter 16 § 2 provides that:

The Park and Recreation Board of the City of Minneapolis and its successors **shall** have the power and it **shall** be its duty to devise, adopt and maintain parks and parkways in and adjacent to the City of Minneapolis, and from time to time to add thereto [and] to designate lands and grounds to be used and appropriated for such purpose...

Charter Chapter 16 § 2 (emphasis supplied).

The City counters that while the Park Board is given the powers enumerated in Chapter 15, those powers are not exclusive, and do not prohibit the City Council from independently acquiring land and engaging in the design and operation of parks within the City. The City cites Chapter 1 §2 entitled “Powers,” which provides in relevant part that the City of Minneapolis may, “take and hold, lease and convey all such real, personal and mixed property as the purposes of the corporation may require....” The City maintains that the establishment of a park and the conveyance of real property constitute two of the general powers enjoyed by municipalities.

In support of its position, the City cites Minn. Stat. § 471.15, entitled “Recreational Facilities by Municipalities,” which states, in relevant part, that:

[A]ny home rule charter or statutory city or...any board thereof...may operate a program of public recreation and playgrounds; acquire, equip and maintain land, buildings, or other recreational facilities...and expend funds for the operation of such program pursuant to the provisions of sections 471.15 to 471.19. The city...may issue bonds pursuant to chapter 475 for the purpose of carrying out the powers granted in this section.

Minn. Stat. § 471.15 (a). The City also relies upon *State ex rel. Town of Lowell v. City of Crookston*, 91 N.W.2d 81, 83 (Minn. 1958), for the proposition that “in matters of municipal concern, home rule cities have all the legislative power possessed by the legislature of the state.” *Id.* Finally, the City asserts that the Park Board is a department of the City government and as

such the City maintains the same powers as those given to the Park Board under the Charter. *See State ex rel. Merrick v. Dist. Court of Hennepin Cnty.*, 22 N.W. 625 (Minn. 1885).

At this preliminary stage the Court reserves ruling on the nature and extent of the City's authority to purchase, design and operate a park, separate from those powers conveyed to the Park Board under the Charter. The Court has not had the benefit of the fulsome consideration of the issue by both parties given the brief time within which this matter came before the Court. The Court also does not have the benefit of the Park Board's views on the nature and extent of its powers in relation to the City's. The Court has determined that in order to adequately address this issue, the Park Board is a necessary and indispensable party to this action. *See Order Joining Minneapolis Park and Recreation Board*, dated December 13, 2013.

The Court notes that Minn. Stat. § 471.15 specifically provides that a board of any home rule charter or statutory city may be constituted to operate any program of public recreation and acquire, equip and maintain other recreation facilities. The Court also notes that in *Crookston*, 91 N.W.2d 81, 83, the Minnesota Supreme Court specifically observed that a city may adopt city charter provisions for the orderly conduct of municipal affairs though they may differ from those existing under general laws, and that the provisions of a charter may prevail over general statutes relating to the same subject matter. *Crookston*, Id. Finally, the Court notes the 1885 decision in *Merrick*, 22 N.W. 625, may have limited application to the current operations of the Park Board.

The Court concludes only that there are issues regarding the authority of the City to acquire and maintain parks independent of the Park Board that must still be addressed, and that those issues require the involvement of the Park Board before resolution.

4. Count Four: “Inadequate Findings in the Establishment of an Industrial Development District” and Count Five: “Exceeding the Power Granted by the Port Authority Act”

Plaintiffs also assert that the City has failed to meet the requirements of Minn. Stat. § 469.059, because the Port Authority is not advancing the public interest by acquiring land in order to advance the public policy aimed at developing marginal property within the meaning of the statute. Specifically, Plaintiffs argue that the City failed to make the requisite findings under Minn. Stat. § 469.048, and that the findings of the Community Development Committee on December 10, 2013, were arbitrary and capricious.

The Court finds the Plaintiffs are unlikely to succeed on the merits on its claim because the city has detailed the basis for its conclusion that the properties at issue are marginal, and the city’s position is not arbitrary and capricious. “Marginal property” is defined in Minn. Stat. § 469.048 as

property that suffers from at least one of the conditions in this subdivision: (1) faulting planning causing deterioration, disuse, or economic dislocation [and]... (7) lack of use or proper use of areas, resulting in stagnant or unproductive land that could contribute the public health, safety and welfare...

Minn. Stat. § 469.048 subd. 5.

The CPED Report entitled “Description of Marginal Property within the Downtown East Development District” explains that “the predominance of surface parking lots within the district represents a lack of use or improper use of areas, resulting in a stagnant and unproductive condition of land potentially useful and valuable for contributions to the public health, safety and welfare.” The Report details how the “1970 Metro Center ’85 Plan” contributed to the current disuse in the district. The Report also details the district’s stagnant property values relative to other areas of the city, the deterioration of most of the buildings within the district, and the

contamination of some of its properties. The Report concludes that Downtown East meets two of the conditions of the definition of “marginal property” within Minn. Stat. § 469.048 subd. 5.

In addition, the Department of the CPED and the Department of Finance and Property Services both conclude in a Request for City Council Committee Action dated December 10, 2013, that for years the city has grappled with the challenge of bringing more consistent activity and new development to the Downtown East area. Complaint, Ex. D. The Departments explain how Downtown East has languished while other downtown areas have received new development, new residences and new business.

The Court concludes, as a result, that Plaintiffs are unlikely to prevail on their claim that the City has failed to make appropriate findings that the properties at issue meet the definition of “marginal property” or that the conclusions of the Community Development Committee on December 10, 2013, are arbitrary and capricious.

5. Conclusion

In sum, the Court finds that the Plaintiffs are not likely to succeed on the merits of Counts 1, 2, 4, and 5 of the Complaint, but the record requires further development as to Count 3.

2. Balance of Harms

For a court to grant an injunction, the moving party must show irreparable harm from the conduct of the opposing party. *Thompson v. Barnes*, 200 N.W.2d 921, 925 (Minn. 1972). “Irreparable harm” is harm that is not fully compensable by money damages. *Morse v. City of Waterville*, 458 N.W.2d 728, 729-730 (Minn. Ct. App. 1990). The Court must weigh the harm suffered by the moving party if the restraining order is denied against the harm suffered by the party opposed party if the restraining order is granted.

Plaintiffs assert that they will be irreparably harmed because unless an injunction is issued, the City will approve the Downtown East development and sign contracts and issue bonds which will impose taxes upon Minneapolis citizens, contrary to law.

Defendant argues a temporary restraining order would threaten a \$400 million development project that promises the City, the Minneapolis School District, the Park Board, and Hennepin County an estimated \$150 million in new property tax revenues over the next thirty years. Defendant also maintains that a delay would threaten the loss of thousands of new construction jobs, as well as the loss of a public amenity.

The Court finds both parties have established potential irreparable harm, and therefore, this factor does not weigh in favor of either party.

3. Relationship of the Parties

The Court finds that the relationship of the parties is not a significant factor in this case. Plaintiffs are citizens of Minneapolis and Defendant is a duly authorized City under state law. The duties and responsibilities of the parties to one another are defined and proscribed within the terms of the Minneapolis City Charter and such laws, statutory and common, as have developed over time. This is a neutral element in a consideration of parties' respective interest upon the application for injunctive relief currently before the Court.

4. Public Policy

The City may not act outside of its authorized authority or contrary to law. The City has the right, however, to proceed as it reasonably determines so long as its actions conform to the laws of this State and the Charter pursuant to which it is formed. Both parties have a right to see that the laws of the State and the terms of the City Charter are given effect. This is a neutral factor that does not militate in favor of either party on the present motion.

5. Administrative Burden

Administrative burden to the Court is not a significant factor in this case.

III. Conclusion

Because the Court finds that the *Dahlberg* factors weigh in favor of denying the requested injunction with respect to Counts 1, 2, 4, and 5, the Court denies Plaintiffs' Motion for Temporary Restraining Order as to those Counts. However, because the record requires further development as to Count 3, the Court issues a temporary restraining order to maintain the status quo until the parties, including the Park Board, have an opportunity to more fully address the issues raised in Count 3.

At this time, the Court does not require Plaintiffs to post security because the Court intends to address the remaining issue within the next week. Defendants should suffer no irreparable harm before a final order issues.

M.I.D.