

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT  
CASE TYPE: Environmental/Contract

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State of Minnesota by Friends of the  
Riverfront, Grove Street Flats Association, and  
Sidney and Lola Berg,

Case File No. \_\_\_\_\_

Plaintiffs,

v.

City of Minneapolis, Minneapolis Park and  
Recreation Board, Minneapolis Community  
Development Agency, now known as  
Minneapolis Community Planning and  
Economic Development Department,  
DeLaSalle High School and Barbara Johnson,

**COMPLAINT FOR DECLARATORY  
AND OTHER RELIEF**

Defendants.

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Plaintiffs State of Minnesota by Friends of the Riverfront (Friends), Grove Street Flats Association (GFSA), and Sidney and Lola Berg (Sublessees) (collectively, Plaintiffs) for their complaint allege as follows:

**THE PARTIES**

1. Friends is a group of concerned citizens and park users, many of whom occupy homes on Nicollet Island in Minneapolis as long-term sublessees of the land on which their homes are located. The subleases contain covenants that restrict and limit use of property on Nicollet Island. Friends' mission is to conserve, protect and enhance the historic, cultural and natural resources of the state-funded Central Mississippi Riverfront Regional Park (Park). The Park is located along the Minneapolis downtown riverfront from the Plymouth Avenue bridge to just below the Stone Arch bridge, and it is part of the Mississippi National River and Recreation Area (MNRRA), which is a unit of the National Park Service. The federal government

established MNRRA in 1988 in part to protect the historical and cultural resources in the St. Anthony Falls Historic District. The entire 41.2-acre Nicollet Island is within the St. Anthony Falls Historic District.

2. GSFA is a non-profit corporation comprised of unit owners in the Grove Street Flats, a condominium located in the 1877 Grove Street Flats building. The Grove Street Flats building located on Grove Street on Nicollet Island was identified as being of "special significance" on the original 1971 nomination for the St. Anthony Falls Historic District.

3. Sublessees are residents of the upper residential area of Nicollet Island, and they are parties to residential ground subleases (Ground Subleases) with Defendant City of Minneapolis (City), acting by and through Defendant Minneapolis Community Development Agency (MCDA), which is now known as Defendant Minneapolis Community Planning and Economic Development Department (CPED), as the sublessor.

4. City has final approval authority over several aspects of DeLaSalle's proposed athletic facility, including without limitation (a) certificate of appropriateness, (b) street vacation, (c) conditional use permit and (d) site plan review.

5. Defendant Minneapolis Park and Recreation Board (MPRB) is a department of City, and it is charged with the management of City's parklands. MPRB is the lessor to the June 14, 1985 Nicollet Island Ground Lease Agreement (Ground Lease) with CPED as the lessee. MPRB is also a party to the September 2, 1992 Agreement and Restrictive Covenant (1992 Agreement) between City, acting by and through MPRB, and Metropolitan Council.

6. CPED is a department of City, and it is charged with various development projects for City. As the successor to MCDA, CPED is a party to the Ground Subleases with Sublessees.

7. Defendant DeLaSalle High School (DeLaSalle) is a private Catholic high school. The northern most end of DeLaSalle's campus is located along Grove Street and adjacent to the southern most edge of the upper residential area of Nicollet Island.

8. Defendant Barbara Johnson (Johnson) is the City Council President and an officer on the Executive Committee of the DeLaSalle High School Board of Trustees.

### **JURISDICTION & VENUE**

9. Jurisdiction and venue are appropriate under Minn. Stat. § 116B.03, subs. 1 and 4.

### **FACTS**

10. In April 1866, the Nicollet Island landowners signed a plat and certified that "we donate the Streets and Alleys herein shown for public use forever." (Emphasis added). Grove Street was one of the six streets shown on the original plat.

11. From 1866 to the present, Grove Street has been continuously platted and used by the public with a west-to-east alignment. This alignment demarcates the upper residential area of Nicollet Island from the lower mixed-use, commercial area of Nicollet Island.

12. DeLaSalle has proposed on behalf of itself and MPRB to construct an athletic facility — notably, a 750-person capacity football stadium — on and across the eastern half of historic Grove Street.

13. Under the proposal, DeLaSalle would construct a permanent 118-foot long by 39-foot deep by 25.33 to 29.66-foot high brick and stucco football stadium (complete with bleachers, locker rooms, concession and ticket stands, public restrooms and a press box with a filming platform), as well as a regulation size football/soccer field, goal posts, loudspeakers, field lighting, pedestrian lighting, a scoreboard, flag poles, three junior soccer fields, a narrow pedestrian path, perimeter fencing and a parking lot.

14. The proposed football stadium is designed to run north-to-south (or perpendicular to) the west-to-east alignment of Grove Street. As a result of its layout design, DeLaSalle proposes to build its athletic facility on the 1.3 acres of regional open-space parkland on the north side of the eastern half of Grove Street and across the entire .44-acre, one-block length of the eastern half of Grove Street. Before it could be built upon, the eastern half of Grove Street would have to be vacated and the .22-acre underlying fee belonging to City, acting by and through MPRB, would automatically revert to regional open-space parkland. DeLaSalle proposes to build its 80-stall parking lot on an additional 1.43 acres of regional open-space parkland between East Island Avenue and the Mississippi River.

15. The obvious and fatal problem with DeLaSalle's proposal is that it is in a completely inappropriate location — namely, on nearly three acres of regional open-space parkland and across a whole block of a historic street in the upper residential area of historic Nicollet Island. DeLaSalle could not have selected a less fitting location for its proposal. For good reason, the applicable restrictive covenants and heritage preservation protections bar the ill-conceived proposal.

16. DeLaSalle's proposed athletic facility is barred by the restrictive covenants on the affected public property, including without limitation (a) the Ground Lease (b) the Ground Subleases, and (c) the 1992 Agreement. The restrictive covenants require the affected property to be maintained and developed consistent with specified plans, and these covenants are enforceable by Sublessees.

17. In City's own words, "Nicollet Island is a jewel in a unique historical setting." Not surprisingly, then, the entire 41.2-acre Nicollet Island is designated as a state historic place

under Minn. Stat. § 138.664, subd. 64, and it is protected within the historically designated St. Anthony Falls Historic District.

18. The first of the three "Key Master Plan" concepts for the upper residential area of Nicollet Island is to "provide regional open space facilities," which (as already determined by the Metropolitan Council) excludes formal athletic facilities such as football stadiums.

19. Rather than "provid[ing] regional open space facilities," DeLaSalle's proposed athletic facility would displace nearly 12.3% (or 1.695 acres of the 12.1 acres) of regional open-space parkland in the 21.5-acre upper residential area of Nicollet Island. There is, of course, no way to ever replace this loss of regional open-space parkland on the island.

20. One of the agreed upon "design and planning principles . . . to guide the development . . . for Nicollet Island" is to "[p]reserve the integrity of the original (1866) street plan of the island." Grove Street was part of the original six-street 1866 street grid for Nicollet Island, and it has for the last 140 years been the main east-to-west street across the upper residential area of Nicollet Island.

21. Exclusive of the broader adverse impacts to the surrounding historic area (notably, the displacement of significant amounts of open-space parkland), the construction of the proposed athletic facility would require the entire .44-acre, one-block length of the eastern half of historic Grove Street to be vacated, demolished and graded over with massive amounts of fill so that the ground level elevation of the eastern most end of the street would be raised by over nine feet from its current elevation. The result would be the complete and total destruction of the eastern half of the historic street, together with the permanent loss of its existing and historically preserved alignment, circulation pattern (*e.g.*, street grid), topography, scenic views and overall enhancement of the rest of the upper residential area of the island.

22. DeLaSalle's proposed athletic facility is also barred by the Minnesota Environmental Rights Act (MERA). Minn. Stat. chapter 116B.

23. Based just on the impact to the eastern half of historic Grove Street, City previously determined on September 8, 2005 that DeLaSalle's proposed athletic facility would cause "the destruction, in whole or in part, . . . of a property that is listed on the National Register of Historic Places or State Register of Historic Places." That decision is now final and unappealable.

24. MERA protects against, among other things, such destruction of historic resources. MERA requires those requesting such destruction to demonstrate that, among other things, there is "no feasible and prudent" alternative site for the proposal. The Minnesota Supreme Court has clarified that this burden under MERA requires the applicant to prove that the alternative would "itself create extreme hardship" and, per the legislature, "economic considerations alone shall not constitute" such hardship.

25. DeLaSalle has not and cannot meet its burden of proof under MERA. Unless and until DeLaSalle meets its burden of proof, DeLaSalle's construction and City, MPRB and CPED approvals of the proposed athletic facility on the Grove Street site would violate MERA and must be undone and/or temporarily and permanently enjoined.

### **CAUSES OF ACTION**

#### **I. BREACHES OF CONTRACT (Sublessees against City, MPRB and CPED)**

26. City, MPRB and CPED contractually agreed to comply with the applicable restrictive covenants.

27. City, MPRB and CPED's approvals and threatened approvals of DeLaSalle's proposed athletic facility at the Grove Street site are and would be inconsistent with the applicable restrictive covenants.

28. City, MPRB and CPED must be made to rescind their approvals of and be temporarily and permanently enjoined from approving DeLaSalle's proposed athletic facility at the Grove Street site.

## **II. DECLARATORY JUDGMENT (Sublessees against City, MPRB and CPED)**

29. Sublessees and City, MPRB and CPED dispute whether DeLaSalle's proposed athletic facility is inconsistent with and barred by the applicable restrictive covenants.

30. Sublessees are entitled to a declaration that DeLaSalle's proposed athletic facility is inconsistent with and barred by the applicable restrictive covenants.

## **III. MERA (Plaintiffs against DeLaSalle)**

31. DeLaSalle's proposed athletic facility at the Grove Street site would destroy a historic resource.

32. DeLaSalle has not shown and cannot show that it does not have a "feasible and prudent alternative" site to the Grove Street site for its proposed athletic facility.

33. DeLaSalle seeks to violate MERA with its proposed athletic facility at the Grove Street site, and it must be temporarily and permanently enjoined from doing so.

## **IV. MERA (Plaintiffs against City, MPRB and CPED)**

34. City, MPRB and CPED have approved some aspects and threatened to approve other aspects of DeLaSalle's proposed athletic facility at the Grove Street site in violation of MERA.

35. City, MPRB and CPED must be temporarily and permanently enjoined from violating MERA by approving of DeLaSalle's proposed athletic facility at the Grove Street site.

**V. DECLARATORY JUDGMENT  
(Plaintiffs against DeLaSalle, City, MPRB and CPED)**

36. The parties dispute:

- (a) Whether the eastern half of Grove Street is a historic resource to Nicollet Island and the St. Anthony Falls Historic District;
- (b) Whether DeLaSalle's proposed athletic facility at the Grove Street site would cause the destruction of a historic resource; and
- (c) Whether DeLaSalle has proven (or can prove) that there is "no feasible and prudent" alternative site to the Grove Street site for its proposed athletic facility.

37. Plaintiffs are entitled to a declaration that:

- (a) The eastern half of Grove Street is a historic resource to Nicollet Island and the St. Anthony Falls Historic District;
- (b) DeLaSalle's proposed athletic facility on the Grove Street site would cause a destruction of a historic place; and
- (c) DeLaSalle has failed to (and cannot) show that there is "no feasible and prudent" alternative site to the Grove Street site for its proposed athletic facility.

**VI. DECLARATORY JUDGMENT  
(Plaintiffs against Johnson)**

38. Plaintiffs dispute with City and Johnson whether Johnson has an ethical conflict and is barred from voting on or in any way influencing matters relating to DeLaSalle's proposed athletic facility because, among other things, she is an officer on the Executive Committee of the DeLaSalle High School Board of Trustees.

39. Plaintiffs are entitled to a declaration that Johnson has an ethical conflict and is barred from voting on or in any way influencing City's approvals relating to DeLaSalle's proposed athletic facility.


## **RELIEF REQUESTED**

Plaintiffs respectfully request the following relief:

1. A recovery by Sublessees against City, MPRB and CPED of their damages proximately caused by City, MPRB and CPED's breaches of the applicable restrictive covenants;
2. A declaration in favor of Sublessees against City, MPRB and CPED that DeLaSalle's proposed athletic facility is inconsistent with and barred by the applicable restrictive covenants;
3. A temporary and permanent injunction barring DeLaSalle's construction of its proposed athletic facility at the Grove Street site;
4. A rescission of any approvals by City, MPRB and CPED of any aspect of DeLaSalle's proposed athletic facility at the Grove Street site;
5. A temporary and permanent injunction barring City, MPRB and CPED from approving any aspect of DeLaSalle's proposed athletic facility at the Grove Street site;
6. A recovery by Plaintiffs against Defendants of their reasonable costs, disbursements and attorneys' fees incurred in bringing this MERA action;
7. A declaration in favor of Plaintiffs that (a) the eastern half of Grove Street is a historic resource to Nicollet Island and the St. Anthony Falls Historic District (b) DeLaSalle's proposed athletic facility at the Grove Street site would cause the destruction of a historic resource, and (c) DeLaSalle has failed to show that there is "no feasible and prudent" alternative site to the Grove Street site for its proposed athletic facility;
8. A declaration in favor of Plaintiffs that Johnson is ethically barred from voting on and in any way influencing City's approvals relating to DeLaSalle's proposed athletic facility; and
9. All other legal and equitable relief deemed appropriate by the Court.

DATED: October 25, 2006


**BRIGGS AND MORGAN, P.A.**

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**ACKNOWLEDGMENT**

The parties, through their undersigned counsel, hereby acknowledge that sanctions may be imposed for a violation of Minn. Stat. § 549.211, subd. 2 pursuant to Minn. Stat. § 549.211, subd. 3.

  
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Jack Y. Perry

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