

1 STATE OF ILLINOIS)
) SS:
 2 COUNTY OF C O O K)
 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
 3 COUNTY DEPARTMENT - CHANCERY DIVISION
 PROTECT OUR PARKS, INC.)
 4 ELIZABETH F. BYRNE, MARY)
 BETH MEYER, and DAWN DODGE,))
 5 Plaintiffs,)
 vs.) No. 08 CH 14027
 6 LATIN SCHOOL OF CHICAGO, a)
 private educational)
 7 institution, CHICAGO PARK)
 DISTRICT, a municipal)
 8 corporation, GERY J. CHICO,))
 President, Board of)
 9 Commissioners, ROBERT J.)
 PICKENS, Vice-President,)
 10 Board of Commissioners,)
 DR. MARGARET T. BURROUGHS,)
 11 Commissioner, M. LAIRD)
 KOLDYKE, Commissioner,)
 12 REVEREND DANIEL MATOS-REAL,))
 Commissioner, CINDY)
 13 MITCHELL, Commissioner,)
 ROUGY J. SHALABI,)
 14 Commissioner, CITY OF)
 CHICAGO, a municipal)
 15 corporation, MARA S.)
 GEORGES, Corporation)
 16 Counsel, THE CHICAGO PLAN)
 COMMISSION, ARNOLD L.)
 17 RANDALL, Commissioner,)
 DEPARTMENT OF PLANNING AND)
 18 DEVELOPMENT, and RICHARD)
 RODRIGUEZ, Commissioner,)
 19 DEPARTMENT OF BUILDINGS,)
 Defendants.)

20
 REPORT OF PROCEEDINGS at the hearing
 21 of the above-entitled cause before the Honorable
 Presiding Judge Dorothy Kirie Kinnaird, Judge of
 22 said Court, at the Richard J. Daley Center,
 Room 2403, on the 25th day of April, 2008, at
 23 the hour of 1:00 o'clock a.m.

24 Reported By: Denise M. Mills, CSR, RPR

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1 APPEARANCES:
2 THOMAS J. RAMSDELL & ASSOCIATES
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11
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21 (312) 474-7971
22 Representing the Defendant Latin
23 School of Chicago, a private
24 educational institution;

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1 APPEARANCES: (Continued)
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9 Gery J. Chico, President, Board of
10 Commissioners, Robert J. Pickens,
11 Vice-President, Board of
12 Commissioners, Dr. Margaret T.
13 Burroughs, Commissioner, M. Laird
14 Koldyke, Commissioner, Reverend
15 Daniel Matos-Real, Commissioner,
16 Cindy Mitchell, Commissioner, Rougy
17 J. Shalabi, Commissioner;

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1 APPEARANCES: (Continued)
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4 BY: MR. DAVID R. DONNERSBERGER,
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20 Representing the Defendant
21 City of Chicago.
22
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1 THE COURT: Good afternoon. I'm sorry to
2 keep you all waiting. We needed to do some
3 final touches on some things here.
4 Do both of the court reporters have all
5 of the Counsels' names?
6 MS. OFFICIAL REPORTER: Yes, Judge.
7 THE COURT: And I have asked the official
8 court reporter to also take the matter. I know
9 you were bringing your own, but she is going to
10 prepare the order over the -- the transcript
11 over the weekend. It will be filed as part of

12 what I am going to be reading into the record,
13 so that if you decide as such to take an appeal,
14 you will have the transcript with the findings
15 already so the Appellate Court will have what is
16 needed.

17 The parties left the other day. They
18 asked as you were leaving, did I want an order.
19 I said, oh, sure, give me an order; put it over
20 until today. And I neglected to enter an order
21 on the spot there about the page limit briefs
22 and everything else. I subsequently did that
23 that day, and I believe -- has everyone received
24 that order?

6

1 MR. RAMSDELL: Yes, Judge.

2 THE COURT: Okay. So we're all up to speed.

3 And I am going to try to read this all
4 in without coughing too much, but I am prepared
5 to stop a few times, if necessary.

6 This case is before the Court for
7 ruling on plaintiffs' petition for a temporary
8 restraining order. The Court has considered
9 plaintiffs' verified complaint for declaratory
10 injunctive and equitable relief. The verified
11 answer filed by the Defendant The Latin School
12 of Chicago, the Chicago Park District,
13 Defendant's verified answer and Plaintiffs'
14 memorandum in support of its petition, also the
15 City Defendant's response, Latin's school memo
16 in opposition, the Park District's Defendant's
17 amended memorandum in opposition and Plaintiffs'
18 omnibus reply.

19 The Court has also considered certain
20 affidavits and exhibits submitted by the
21 parties, as well as the relevant statutory,
22 constitutional and case authorities, and I heard
23 the oral argument of Counsel.

24 Finally, the Court is cognizant that

7

1 there are pending motions to dismiss filed by
2 the Latin School of Chicago and the Park
3 District Defendants which have not been briefed
4 or argued.

5 This case involves construction of a

6 priority use artificial turf soccer field in the
7 north meadow of south field of Lincoln Park in
8 Chicago under an agreement dated December 1,
9 2006 between the Latin School of Chicago and the
10 Chicago Park District. Plaintiffs, a charitable
11 and not-for-profit organization, and three
12 individuals seek a declaratory judgment that the
13 agreement was entered into in violation of the
14 Chicago Lakefront Protection Ordinance, the
15 Chicago Park District's own code relating to the
16 nondiscriminatory distribution of its facilities
17 and services, Article 8, Section 1 of the
18 Illinois Constitution and the public trust
19 doctrine.

20 Plaintiffs also maintain that certain
21 required permits were not obtained from the City
22 of Chicago prior to excavation and construction
23 of the Latin facility.

24 The verified complaint is pled in eight

8

1 counts. In count one, plaintiffs seek a writ of
2 mandamus against the Chicago Park District, the
3 City and certain elected and appointed
4 officials. In count -- the theory of count one
5 is the violation of a Lakefront Protection
6 Ordinance.

7 In count two, plaintiffs seek an
8 emergency writ of mandamus requiring the City
9 and one of the City defendants to stop a work
10 order -- I'm sorry, to issue a stop work order
11 against Latin. Temporary, preliminary and
12 injunctive relief is also sought under count
13 two. The theory of count two is the alleged
14 failure of the Latin School to apply for and
15 obtain necessary building permits.

16 Counts three and four relate to the
17 alleged violation of a consent decree in a 1982
18 case in the United States District Court. The
19 consent decree was vacated in 1989, and various
20 portions thereof were incorporated into the
21 Chicago Park District Code. Declaratory and
22 injunctive relief is sought under counts three
23 and four.

24 In counts five and six, plaintiffs also

1 seek declaratory and injunctive relief
2 respectively under Article 8, Section 1 of the
3 Illinois Constitution.

4 In counts seven and eight, plaintiffs
5 similarly seek declaratory and injunctive relief
6 respectively under the Public Trust Doctrine.

7 Plaintiffs' verified complaint is very
8 precise, and the exhibits attached thereto
9 appear to support, for the most -- for the most
10 part, their well-pled facts. Some of the most
11 important facts alleged in the verified
12 complaint are not expressly denied in either the
13 answers or the affidavits filed by the
14 defendants. The answers do not allege any
15 affirmative matter or any affirmative defenses.

16 The Court has painstakingly reviewed
17 the verified pleadings in this case. Most of
18 the pertinent facts before the Court on this
19 summary proceeding do not appear to be in
20 dispute. There is no dispute that the Lincoln
21 Park South Field Agreement was entered into on
22 December 1, 2006. It appears that prior to the
23 signing of the agreement the project referred to
24 therein was only discussed at two public

1 meetings. A public meeting is a meeting held by
2 a public body subject to the Open Meetings Act
3 where minutes are taken and subsequently made
4 available under the Freedom of Information Act.
5 Both of the meetings prior to the signing of the
6 agreement were held on October 25th, 2006. A
7 committee on administration meeting at 10 -- I'm
8 sorry. A committee on the administration
9 meeting at 10:30 a.m. and a Chicago Park
10 District continued meeting on October 25th at
11 4:00 p.m. That is the day that the agreement
12 was approved by the Chicago Park District.

13 It is also undisputed that the matter
14 was never submitted for review by the Chicago
15 Plan Commission under the Lakefront Protection
16 Ordinance.

17 Construction on the project began on
18 November -- on or after November 1, 2007. It is
19 not clear how much work was done in the winter

20 months, but now that the weather has improved,
21 the project is approximately 56 percent complete
22 with the field to be substantially complete
23 within the next five weeks or by May 26th, 2008.
24 It does not appear to be in dispute

11

1 that the Latin School has already paid
2 approximately \$2 million in construction costs
3 and that it is counting on using the field for
4 its upcoming summer camp.

5 There are many, many pertinent facts
6 that have not been placed before this Court.
7 There is no schematic drawing of the proposed
8 facility in final form. No environmental
9 studies or other studies have been referenced.
10 There are many unanswered questions about the
11 number of playing fields in Lincoln Park, the
12 usage by the public of those fields, the usage
13 of those fields to date by the Latin School, the
14 future plan for additional fields in Lincoln
15 Park and the overall guidelines as to how much
16 of Lincoln Park will remain undeveloped green
17 space.

18 Apparently, there have been some
19 agreements to modify the agreement which Latin
20 signed, changes in the times and changes
21 relating to lighting and an additional drinking
22 fountain. However, this Court and the
23 plaintiffs have no specific information about
24 any amendments to the agreement.

12

1 Most of the issues in this case are
2 legal and emotional ones. There are really two
3 separate issues at play here. Can the Chicago
4 Park District build an artificial turf soccer
5 field in the north meadow of south field with
6 lighting the score board, goal posts, bleachers,
7 et cetera, without first submitting an
8 application to and having a hearing before the
9 Chicago Planning Commission; and, two, can the
10 Chicago Park District enter into an agreement
11 for someone else to build a field granting
12 almost exclusive or priority use to the builder
13 of the field.

14 This case pits a citizens group and
15 three citizens against the City of Chicago and
16 the Chicago Park District and an elite, private
17 and well-connected school. It has been
18 presented as one of the classic David and
19 Goliath cases which we so frequently see. It
20 may be that after all is known and sorted out
21 this Court or a higher court will find that
22 there is absolutely nothing amiss or illegal
23 here. But right now at this juncture, this
24 Court does not believe that it can say that.

13

1 There is something very troubling about this
2 case. And it involves secrecy, lack of public
3 hearings and lack of available information, even
4 lack of sufficient information after hearing on
5 a fully briefed motion for a temporary
6 restraining order.

7 Defendant The Latin School has cited
8 numerous public meetings which have taken place
9 after the agreement was signed. It confuses,
10 however, public hearings required by law and
11 public relations meetings to improve the
12 school's image in the community. This Court is
13 well aware that a temporary restraining order is
14 an extraordinary, drastic measure to be used
15 sparingly, only in exceptional circumstances and
16 only for a brief duration. It is designed to
17 preserve the status quo until a hearing can be
18 held on a preliminary injunction.

19 In my fourteen years in this division,
20 I have been very careful not to enter a
21 temporary restraining order unless I believe it
22 is absolutely necessary. In this case I believe
23 that the entry of a limited temporary
24 restraining order is necessary in this case.

14

1 I am prepared to make findings that, as
2 to count one, the Lakefront Protection Ordinance
3 count, counts five and six relating to
4 Article 8, Section 1 of the Illinois
5 Constitution and count seven and eight relating
6 to the Public Trust Doctrine, plaintiffs have a
7 clearly ascertainable right in need of

8 protection and a likelihood of success on the
9 merits. Irreparable harm will occur without the
10 issuance of a temporary restraining order.

11 Plaintiffs have no adequate remedy at law and
12 the balance of hardship favors the plaintiff.

13 In regard to count one, the question of
14 relief that the plaintiffs are seeking, the
15 mandamus relief, and it may be that upon a
16 briefing and amended complaint we are dealing
17 with a declaratory judgment regarding the
18 Lakefront Protection Ordinance. However, the
19 Lakefront Protection Ordinance issue is in this
20 case.

21 There is no question here that the
22 Chicago Park District has broad authority to lay
23 out, construct, maintain and supervise the
24 operation of the parks. It may issue permits

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1 and licenses, and it may decide who can use the
2 permitted sections of the parks, when and under
3 what circumstances.

4 There is also no question here that
5 this agreement is not a sale or a conveyance of
6 the fee interest in Park District property.

7 I have read the Lakefront Protection
8 Ordinance. The complete title is Lake Michigan
9 and Chicago Lakefront Protection Ordinance. In
10 all seventeen cases that I have been able to
11 find relating to its interpretation, it appears
12 that the plaintiffs have a likelihood of success
13 on the question of Chicago Park District, the
14 Chicago Park District, was required to submit
15 the building of the subject artificial turf
16 field to the Chicago Plan Commission for review.
17 The Act to me is very clear. Any public
18 agency -- that means the Park District under the
19 case law. Any public agency that proposes a
20 physical change involving excavation or
21 construction of any kind shall forward that
22 proposal to the Chicago Plan Commission not less
23 than 90 days, nor more than 365 days, prior to
24 the initiation of the action proposed. That,

16

1 then, also goes on to talk about the public

2 hearing requirements, the notice requirements
3 and the input of the public.

4 Reading the two Clement cases, which
5 were a discussion in much of the briefs, the
6 Supreme and the Appellate Court cases, it --
7 there is no question in this Court's mind that
8 the issue must be submitted by a patient.
9 Notice has to be given. A public hearing must
10 be held. The Plan Commission must comply with
11 the Act and must make a determination with
12 respect to the application.

13 The Chicago Park District need not
14 follow the Plan Commission's recommendation.
15 Members of the public can't challenge the
16 district's action under the Act if the district
17 does not follow the Plan Commission's
18 recommendation. That is what the case law says.
19 But the public must be given an opportunity to
20 know what is going on and an opportunity to be
21 heard.

22 There are other issues here that
23 haven't even been addressed. Apparently, the
24 popular trend nowadays is for public-private

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1 partnerships. How far can such partnerships go?
2 How many other schools along the lakefront will
3 get to do what the Latin School is doing. When
4 a public-private partnership is created, does
5 the public body throw out public building
6 requirements? This is particularly important in
7 this case where, if the plaintiffs ultimately
8 prevail and the agreement with Latin is
9 invalidated, the Park District may have to
10 reimburse the Latin School \$2 million or more.

11 Finally, for purposes of this
12 temporarily restraining order, I do not find
13 defendants' arguments regarding Laches in
14 standing prevailing as to these counts, and I
15 believe that plaintiffs have demonstrated under
16 the case law that they have a likelihood of
17 success to prevail on those issues.

18 I am not certain that we would be here
19 today if the Chicago Park District had just
20 decided to build this field itself. Even if the
21 Plan Commission, supposing it had been presented

22 with the issue, said the field should not be
23 built, it would be extremely difficult for
24 anyone to prevail in court absent some true

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1 environmental issues -- environmental issues
2 about the building of a playfield in a park.
3 We are here because of the agreement
4 with the Latin School. Construction is more
5 than half done. The completion is scheduled for
6 May 26th. This Court really hasn't heard or
7 seen anything sufficient for me to second-guess
8 the Park District's decision that it is
9 appropriate to construct an artificial turf
10 soccer field in the north meadow of south field
11 of Lincoln Park. Quite frankly, a completed
12 artificial turf soccer field is going to be a
13 lot better than what we have there here today.

14 So I am going to allow the completion
15 of the field itself, but the defendant -- and
16 the defendants may finish the landscaping, the
17 drainage, pathways, the fencing on one side, as
18 described in court, and the drinking fountains.
19 They may not put in the lighting. They may not
20 put in the scoreboard, permanent affixed goal
21 posts, permanent or removable benches, permanent
22 or removable bleachers or signage, including any
23 corporate or individual sponsorship signage on
24 plaques, paving stones or bricks.

19

1 I am also going to enjoin the priority
2 usage of the field by the Latin School.

3 Now, I have prepared a temporary
4 restraining order with notice. I am going to
5 hand it out to you all so you can all take a
6 look at it. I don't normally enter these unless
7 everybody looks at them, understands them and
8 the defendants are able to say: What does this
9 mean? I'm not sure what we are talking about.
10 I have a question. Or could we change this or
11 that.

12 And I am going to take a brief recess
13 to allow you to do that. It looks like I have
14 more -- I am not entering any injunction
15 whatsoever against the City of Chicago. Where

16 is the City of Chicago? Over there, okay.
17 So we have two copies for plaintiffs'
18 side, four copies for all these people on this
19 side. And if you want to take a look at it, and
20 I will be out in about 15 minutes and you can
21 let me know what the problems are, especially
22 Latin as far as whatever the problems are,
23 because I have put in there that we are going to
24 have a preliminary injunction hearing. It is

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1 going to start on May 20th and it is going to
2 keep going until we are done.
3 I am prepared to deal with any of your
4 motions to dismiss prior to that time. Put it
5 on an expedited schedule. If we have to hear
6 them at 8:30 in the morning or after I finish my
7 trial at 4:30 at night, we will do that. So you
8 need to talk about how fast you can get these
9 motions briefed. And I am ready to go with the
10 preliminary injunction hearing May 20th, and I
11 am going to finish it. We are going to go every
12 day. Probably most days I will give you the
13 schedule when I come back out. But most days --
14 that first day it will be 11:00 to 4:30 and that
15 whole week, and I will even give up a Friday,
16 which is my administrative day when I am usually
17 not in Court, and we can go all day Friday, if
18 you want to. But I want you to get ready for
19 it. And, of course, discovery can start
20 immediately, even though there are some motions.
21 I think that there is going to be some issues
22 that survive any motions, so you can start in
23 discovery for the preliminary injunction
24 hearing.

21

1 MR. RAMSDELL: Thank you.

2 MR. MECKLER: Thank you, Judge.

3 (Recess taken.)

4 THE COURT: Does anybody want to talk about
5 any of the provisions, not whether it's right or
6 wrong or you agree or disagree, but what is
7 doable or not doable?

8 MR. MECKLER: Your Honor, I would. I'm
9 sorry.

10 THE COURT: Okay.
11 MR. DONNERSBERGER: I think you said that the
12 building should be complete -- or that the field
13 could be completed.
14 THE COURT: Right.
15 MR. DONNERSBERGER: If it's completed, is
16 there a possibility that people could use it?
17 THE COURT: I didn't say somebody couldn't
18 use it. It's just that Latin can't have
19 priority usage under this agreement or any other
20 agreement.
21 MR. DONNERSBERGER: So I think that is going
22 to segway into something that Mr. Meckler is
23 going to say.
24 MR. MECKLER: It does, your Honor. There is

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1 actually three things that need to -- one thing
2 I need to advise the Court on, which was
3 discussed in our oral arguments on Wednesday,
4 which is the scoreboard has already been
5 erected. It has not been electrified, but it
6 has been erected.
7 THE COURT: It wasn't in my pictures or
8 anything, and I don't remember hearing in the
9 argument. Did they say it was erected?
10 MR. MECKLER: It was mentioned, your Honor,
11 that a -- the scoreboard was erected a while
12 ago.
13 THE COURT: Do you see it in any picture that
14 you have and the picture that I was given?
15 MR. MECKLER: Your Honor, if I may, if I may
16 refresh the Court's recollection, in fact, I
17 remember my opponent --
18 THE COURT: It's there?
19 MR. MECKLER: -- my opponent making a comment
20 about couldn't tell on the scoreboard what it
21 says.
22 THE COURT: How big is it?
23 MR. RAMSDELL: It's here. May I approach?
24 THE COURT: Yeah, sure.

23

1 MR. MECKLER: Eight feet tall, your Honor.
2 MR. RAMSDELL: Do you want to see that?
3 THE COURT: Yeah, sure.

4 MR. RAMSDELL: It appears to be it.
5 THE COURT: What does it say?
6 MR. DONNERSBERGER: It doesn't say anything.
7 "Visitors" and "Home Team", I guess those are
8 the only two things.
9 MR. RAMSDELL: Right. I am not even sure if
10 it says that yet. It's hard to tell if there is
11 any writing.
12 MR. DONNERSBERGER: There is no markings on
13 it saying, "Latin School"?
14 THE COURT: Anything else been erected of
15 this besides the scoreboard?
16 MR. MECKLER: Just the scoreboard, your
17 Honor.
18 THE COURT: Wow. Well, I don't think I can
19 order mandatory relief on a TRO. I think the
20 Appellate Court would laugh at me. I think I
21 have to leave it there. But you can't put
22 anything on it, can't operate it, can't use it,
23 can't do anything else to it.
24 MR. MECKLER: And it is not electrified.

24

1 There is no electricity.
2 THE COURT: Okay. It is just going to sit
3 there for now.
4 I mean, I don't know that the Plan
5 Commission -- you may or may not ultimately have
6 to go to the Planning Commission, and it may be
7 that the Planning Commission says the scoreboard
8 is perfectly fine, and you may decide you are
9 going to whether -- no matter what they say, you
10 want to keep it there.
11 I don't know. Are there any other
12 scoreboards in Lincoln Park right around there?
13 I have not seen a scoreboard in Lincoln Park.
14 MR. MECKLER: I am not sure, your Honor.
15 THE COURT: I haven't been there in years,
16 but I don't have --
17 MR. MECKLER: There are -- there are two
18 other issues I would like to raise that are
19 related to this. One is that the lighting poles
20 are actually on site, and they're quite large.
21 THE COURT: Well, good. They don't go in the
22 ground. Let them stay there or move them
23 someplace. But they are not going to go up yet

24 until we get this sorted out because there were

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1 all kinds of issues about the lighting, and you
2 guys even said we -- the modified lighting. I
3 couldn't find, "modified lighting" in any public
4 meeting or any agreement or anything. I don't
5 know what the lighting is.

6 MR. MECKLER: There is a third issue, your
7 Honor.

8 THE COURT: Okay.

9 MR. MECKLER: Which is -- it is the last
10 issue, which is, so the field is playable, as
11 Mr. Donnersberger asked about, so it's playable,
12 we would like to put the goal posts in. They
13 can be removed, if the Court wants them removed,
14 but we would like to at least put the goal posts
15 in so that the youth can use them.

16 THE COURT: How big are the goal posts, and
17 are they permanent? I mean, are these --

18 MR. MECKLER: They could be removed.

19 THE COURT: Let's go right now. Right now,
20 before this whole thing was built and you are
21 playing soccer, don't you guys bring out your
22 own goal posts? Don't you bring out -- I mean,
23 this is soccer.

24 MR. DONNERSBERGER: There's holes in the

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1 ground where they -- they can be affixed into
2 the ground.

3 MR. MECKLER: Right.

4 MR. DONNERSBERGER: And then once the game is
5 over, you can pull them out. So just because
6 they are in there doesn't mean they have to stay
7 there 24 hours.

8 MR. RAMSDELL: I think, Judge, the problem we
9 are struggling with is -- and I -- I -- we
10 probably disagree, but it's the same problem
11 we're squaring here.

12 The Court has not preserved the status
13 quo with this order. It's -- that is what a TRO
14 is for. And, instead, the turf field can go
15 ahead and be built, and May 20th \$600,000 for
16 artificial turf could be spent, as opposed to
17 just --

18 THE COURT: Well, they told me yesterday they
19 have already spent their money.
20 MR. MECKLER: That's correct.
21 THE COURT: The affidavit said they have
22 already paid \$2 million, and I can't imagine
23 they are going to pay more.
24 You going to pay more? I mean --

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1 MR. MECKLER: No, I don't believe so.
2 MR. DONNERSBERGER: I hope not.
3 MR. MECKLER: We hope not, your Honor.
4 MR. RAMSDELL: We need this ruling, for
5 clarification purposes, to be very clear, that
6 the Court is not maintaining the status quo with
7 this order. Work will continue.
8 THE COURT: Right.
9 MR. RAMSDELL: Okay. Just needed to make
10 sure that that's -- that --
11 THE COURT: But I'm concerned.
12 I mean, you refer to these as Latin's
13 goal posts. I mean, no, the Park District are
14 you going to -- are you going to take control of
15 the goal posts? Are you going to put them in
16 for other people? Whose goal posts are these?
17 MR. MECKLER: Well, these are -- these are
18 goal posts that would be affixed to the field.
19 If the Court wants them or at some point to be
20 removed, they can be removed. But they are
21 going to be in the field.
22 THE COURT: Well, you are not going to have
23 the field done until the 26th. We are going to
24 have a preliminary injunction hearing on the

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1 20th. For now the goal posts don't go in. Just
2 leave it that way. I mean, you can -- you can
3 come in --
4 MR. DONNERSBERGER: Judge, put some kind of
5 goal posts in for temporary games if there are
6 people that want to use it?
7 THE COURT: That's always a possibility.
8 I think there is some kind of issue
9 also. Isn't there an issue these days about not
10 having, for safety purposes, solid goal posts?
11 I mean, aren't there all kinds of lawsuits that

12 are going on all over the place if you don't put
13 the right kind of goal post in?

14 MR. RAMSDELL: You mean ones that, if they
15 are hit by a child, don't give it all?

16 THE COURT: Yeah, if they are hit by a --
17 yeah.

18 Well, no, but I -- no, but I'm saying
19 that some of these loose ones that they just
20 carry off and they put on for the game, those
21 may be dangerous.

22 MR. RAMSDELL: Judge, I mean --

23 THE COURT: I don't know, but I have read
24 some stuff about dangerous goal posts.

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1 MR. MECKLER: All we want, your Honor, is the
2 field is ready for people to be able to use it.

3 MR. DONNERSBERGER: We could come in before
4 you and ask for some relief.

5 THE COURT: You can always come in before
6 May 20th and say, okay, we got everything else
7 ready and we've got these posts -- you know, we
8 want to start and this is who want -- you know,
9 this is who we want to give it to, but you have
10 to realize it's not their field. It is the Park
11 District's field, and people should be able to
12 start, you know -- I'm enjoining, you know, the
13 exclusive usage of Latin. If people want to
14 start lining up and making applications, you
15 know, we'll have to deal with it.

16 City of Chicago.

17 MR. MINE: Judge, I would love to open my
18 mouth, but just for clarity's sake, we do intend
19 to file a motion to dismiss. I'm curious on
20 behalf of the City: Do you envision any
21 potentiality that the City is in peril on the
22 preliminary injunction? Do you envision --

23 THE COURT: What does, "imperial" mean?

24 MR. MINE: Potentially subject to preliminary

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1 injunctive relief. And I would think your
2 reasoning on the TRO would apply, but I just
3 want to know if we should plan to be
4 participating.

5 THE COURT: Well, I didn't buy any of the

6 stuff on the count two, which is the stop work
7 order because they don't have permits because I
8 can't figure out what permit they don't have.
9 MR. MINE: That's why I'm asking.
10 THE COURT: So there no.
11 I am disappointed that, you know, they
12 didn't get -- there -- you got certain
13 defendants and I don't even think they should be
14 here. I don't know why Mara Georges is here.
15 MR. MINE: I don't know, Judge.
16 THE COURT: I mean, there -- I'm reading the
17 complaint, and I can't find her mentioned that
18 you want her to do anything.
19 MR. RAMSDELL: Well, we mentioned her because
20 she's -- as we described her, she is the -- she
21 is one of the law enforcement personnel, the top
22 attorney in the City who should be enforcing the
23 Lakefront Protection Ordinance and isn't. So
24 when -- so when --

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1 THE COURT: But you don't ask for any relief
2 against her; do you?
3 You ask for relief against a guy by the
4 name of Rodriguez, who I think they said isn't
5 even the right person. Did I read that
6 correctly?
7 MR. MINE: He's the building commissioner.
8 THE COURT: You asked for relief against the
9 City and Rodriguez in your count one.
10 MR. DONNERSBERGER: And Rodriguez is now --
11 THE COURT: Maybe that's count two.
12 MR. DONNERSBERGER: -- the head of the
13 airport.
14 MR. RAMSDELL: Right. Well, that happened
15 the day we filed, I think, but -- which we could
16 amend on its face on that. I guess we'll --
17 THE COURT: No, I'm not really -- to answer
18 your question, I'm not thinking that the City is
19 going to -- it may be that ultimately down the
20 line there is a finding that they -- we are not
21 going to go ahead with this agreement at all
22 until they go to the lakefront protection.
23 And it may be that you want to submit,
24 too, in the meantime without prejudice to your

1 rights in this case. I mean, they have to give
2 you a hearing within 60 days. It may be that
3 you want to go ahead and get an application in
4 front of -- and I don't know how that affects
5 anything else.

6 I don't know if the Park District has
7 taken the position that in all your artificial
8 turf fields that you plan to build elsewhere,
9 you are going to lose ground if you don't -- if
10 you go to the Plan Commission. But I think you
11 need to look at that a little bit more closely.

12 MR. DONNERSBERGER: Probably, your Honor, on
13 the Gold Coast, so we are not too worried about
14 that.

15 THE COURT: No, there is two of them.
16 According to your papers, there is two of them
17 going to be put in at Foster.

18 MR. DONNERSBERGER: Yes.

19 THE COURT: They are not there yet, but I
20 don't know whether or not they are started.

21 And there is a reference that some
22 group is real excited, in the papers, that Latin
23 is getting out of Montrose or something because
24 they get to go use there and there may -- there

1 is something in the papers about some more
2 fields going in, and I was concerned as to
3 whether these fields are going to get brought in
4 front of the Plan Commission if it is major
5 excavation. I think the papers said you have
6 two more coming out.

7 As far as the City's question, I can't
8 think of an injunction in the preliminary
9 injunction hearing I would be issuing, but let
10 me hear from the plaintiff.

11 Are you going to ask -- are you going
12 to proceed under your count two for the
13 preliminary injunction for the whole thing?

14 MR. RAMSDELL: Judge, I have yet -- we --
15 when we were on Wednesday asked to talk amongst
16 ourselves, one of the -- some of the talking we
17 did was asking the City, what is your position
18 on whether they have got the permits, and they
19 said, we don't know yet.

20 So I'm not sure whether count two is in
21 play or not. Nobody seems to know who needs
22 what permits for this. All we knew is that when
23 we looked there weren't any. I mean when we did
24 the FOYA request.

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1 THE COURT: Oh, and, yeah, those FOYA
2 requests and the responses thereto were really
3 something.

4 MR. MECKLER: Right. We should have looked
5 at the field, but that's -- at this point --

6 MR. RAMSDELL: Well, we have photographs. We
7 did look at the field.

8 MR. MECKLER: At this point -- at this
9 point -- at this point -- you know, at this
10 point, your Honor, that's it in terms of
11 clarification of the order. We now know what
12 the Court wants.

13 THE COURT: Yeah, I'm -- at this point I'm
14 not quite -- you know, I can't say for sure that
15 there wouldn't be something entered against the
16 City, only if the City didn't act. In other
17 words, if the Chicago Plan Commission, if they
18 submit an application and they don't do
19 anything, then, you know, maybe. I can't
20 imagine that there is a mandamus here and
21 certainly not on an preliminary injunction.

22 MR. DONNERSBERGER: Another question. Are
23 you going to date this Monday or --

24 THE COURT: I think -- I am going to ask you

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1 about that.

2 Do you want the transcript attached and
3 have your appeal time start running from Monday?
4 Both sides, do you want that?

5 MR. RAMSDELL: Sure.

6 THE COURT: I mean, you are not going to do
7 anything exciting over the weekend. I mean, you
8 might do some more construction, but it's not
9 going to be finalized.

10 MR. RAMSDELL: Well, I think that -- hold on
11 now. We need to have --

12 MR. DONNERSBERGER: Don't say that to the
13 Judge.

14 MR. RAMSDELL: If it's a -- if the purpose of
15 this is to allow the transcript to be
16 completed --
17 THE COURT: No, it will be ready. She'll
18 have it ready right away.
19 MR. RAMSDELL: I think the -- I think the
20 order should be entered right away, absolutely.
21 THE COURT: So you want the order right away?
22 MR. RAMSDELL: Yes.
23 THE COURT: Okay. All I need to do is make
24 some changes to it, and let's talk about the

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1 changes that we are talking about because of the
2 goal posts now.
3 MR. MECKLER: Well, the one change, your
4 Honor, would be in paragraph 1A, which is --
5 which is my clarification for the Court that the
6 scoreboard has already been erected.
7 THE COURT: Okay.
8 MR. RAMSDELL: And the clarification is it
9 cannot be not used; is that the --
10 THE COURT: Right.
11 MR. MECKLER: It can't be used; there is no
12 electric to it. So it's not like Wrigley. No
13 one goes in the scoreboard to change it.
14 THE COURT: How about this: They may not
15 install the lighting, permanent or affixed goal
16 posts, permanent or removable bleacher,
17 permanent or removable benches or signage,
18 period, okay, and they may not complete the
19 lighting to the scoreboard or otherwise use the
20 scoreboard. We will just put another sentence
21 on there.
22 MR. RAMSDELL: Are you going to do this back
23 in chambers?
24 THE COURT: Yes. You're going to have them

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1 in a couple minutes, okay? Is that right?
2 MR. DONNERSBERGER: The scoreboard as erected
3 can be maintained --
4 MR. RAMSDELL: Well, yes. As to the form,
5 it's perfect, your Honor.
6 THE COURT: Okay, as to the form. Scoreboard
7 is going to stay there for now.

8 MR. DONNERSBERGER: Yes.
9 THE COURT: Bearing in mind the whole -- you
10 know, depending on how things shake out, the
11 whole thing might come out and you're all going
12 to come -- you're completing that knowing that
13 that is a possibility. You have -- Latin has
14 asked to complete the field. It -- you know,
15 depending on what happens there is always that
16 possibility. I don't know where we are going to
17 go on this because we haven't -- this is a
18 summary proceeding, and I have to be very
19 careful what I can consider and what I can't
20 consider.
21 What else in the order that needs
22 changing?
23 How many drinking fountains are you
24 putting in? I couldn't figure that one out. I

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1 don't have anything on this.
2 MR. MECKLER: I thought one, your Honor, one.
3 I'm being told one drinking fountain.
4 THE COURT: But then there is an agreement to
5 put another one in, so was this only one?
6 MR. RAMSDELL: Yes.
7 THE COURT: Okay, so I will just take the "s"
8 off of the drinking fountain.
9 Anything else?
10 You all available starting at
11 11:00 o'clock on May 20th? Everybody in town?
12 MR. RAMSDELL: We'll have to be, yes.
13 THE COURT: What are we going to do about our
14 motions to dismiss? How soon can we get them
15 heard?
16 MR. MECKLER: If -- well, what I -- we -- the
17 moving party on motion to dismiss, as the Court
18 recalls, we need to file -- re-file a memorandum
19 in support of our motion so that --
20 THE COURT: So do they.
21 MR. MECKLER: Okay.
22 MR. MIN: We, actually, have a date set for
23 Tuesday at 10:00 o'clock.
24 MR. RAMSDELL: The defendants have answers on

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1 file right now, so there has to be some

2 procedural work.
3 MR. DONNERSBERGER: We would ask for leave to
4 withdraw our verified answers --
5 MR. MECKLER: Yes.
6 MR. DONNERSBERGER: -- and let the motion to
7 dismiss --
8 MR. MECKLER: As those -- as those last four,
9 your Honor.
10 THE COURT: Find. And you can do a
11 separate -- you can do a separate order on that,
12 too.
13 And you have got to file a motion for
14 preliminary injunctions because I don't have
15 one. So I -- like I set the motion, but there
16 isn't one.
17 MR. MECKLER: Your Honor, we can -- we can
18 establish a briefing schedule now on the motion
19 to dismiss; although, with total candor, we may
20 be in the Appellate Court as early as Monday.
21 THE COURT: That's fine.
22 MR. MECKLER: But having said that, if the
23 Court wants to set a briefing schedule, we can
24 do that. We can have our memorandum in support

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1 of motion to dismiss, I would suggest, on
2 Wednesday.
3 THE COURT: Okay. Could I have the red book,
4 please, Dianne.
5 MR. MECKLER: So our memorandum is done. We
6 just have to cut it down.
7 THE COURT: No, but I was going to enter it
8 right now and be done with it.
9 MR. RAMSDELL: Let's do it. That's fine.
10 MR. DONNERSBERGER: That puts -- you know, if
11 they are planning to appeal, which I think they
12 are, then it is going to be short for you to
13 respond and all of these other things.
14 MR. RAMSDELL: Well, we'll get it done. If
15 there is an appeal filed, then we're out of here
16 for the time being, right?
17 THE COURT: That's fine, yeah.
18 MR. RAMSDELL: The Court will be -- lose its
19 jurisdiction, so that's what --
20 THE COURT: That's fine.
21 MR. RAMSDELL: Should we somehow report to

22 the Court -- does that make sense -- as to
23 what's going to happen maybe early next week so
24 we don't set a lot of stuff that might not ever

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1 materialize?

2 THE COURT: Well, I can give you the schedule
3 or you can come in on Tuesday.

4 MR. MECKLER: I would suggest -- I would
5 suggest -- I would suggest we come in on
6 Tuesday, and by that point we will know whether
7 or not we're in the Appellate Court or not.

8 MR. RAMSDELL: Right. And that -- and we
9 will be prepared to talk timing.

10 MR. MECKLER: Right. It doesn't make any --
11 it is a waste of the Court's time to set a
12 briefing schedule now.

13 THE COURT: Okay. And you said you were
14 going to have -- now, somebody motioned
15 something up for Tuesday?

16 MR. MIN: Yes. Our motion is motioned up for
17 Tuesday, so at that point we can discuss the
18 briefing schedule.

19 MR. RAMSDELL: What time is that? What time
20 is that?

21 MR. MIN: At 10:00 a.m.

22 MR. RAMSDELL: But, basically, if we could
23 have a status.

24 THE COURT: Yeah, that's fine. 10:00 a.m. on

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1 Tuesday is fine.

2 MR. RAMSDELL: I think that makes sense.

3 THE COURT: Okay. And so just give me a
4 separate order then. I won't put it on here for
5 a status on setting the motions to dismiss on
6 Tuesday.

7 MR. RAMSDELL: Okay.

8 THE COURT: And so the only change we are
9 making to this order -- I want to make sure
10 I'm -- the third page, we are taking the "s" out
11 of fountains, and the second page, in
12 paragraph 1A, we are taking out the word,
13 "scoreboard"?

14 MR. MECKLER: Correct.

15 THE COURT: And then we are adding -- we will

16 fix the punctuation.
17 And then we are adding a sentence that
18 says, the scoreboard currently in place may not
19 be lit, not be connected to lighting and may not
20 otherwise be used.
21 MR. MECKLER: That's fine, your Honor.
22 THE COURT: Okay, thank you.
23 MR. RAMSDELL: Thank you, Judge.
24 MR. DONNERSBERGER: And you are going to sign

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1 the --
2 THE COURT: In just a couple minutes before I
3 go to my 3:00 o'clock meeting.
4 (Which were all the proceedings
5 had in the above cause this
6 date and time.)
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1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF C O O K)
4
5 DENISE M. MILLS, being first duly
6 sworn, on oath says that she is a court reporter
7 doing business in the City of Chicago; and that
8 she reported in shorthand the proceedings of
9 said hearing, and that the foregoing is a true

10 and correct transcript of her shorthand notes so
11 taken as aforesaid, and contains that
12 proceedings given at said hearing.

13

14

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16 _____
Registered Professional Reporter

17

18

19 SUBSCRIBED AND SWORN TO

20 before me this _____ day

21 of _____, 2008

22

23

24 _____
Notary Public