

THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

PROTECT OUR PARKS, INC., ELIZABETH F. )  
BYRNE, MARY BETH MEYER, and DAWN )  
DODGE, )

Plaintiffs, )

vs. )

LATIN SCHOOL OF CHICAGO, a private )  
educational institution, CHICAGO PARK )  
DISTRICT, a municipal corporation, GERY J. )  
CHICO, President, Board of Commissioners, )  
ROBERT J. PICKENS, Vice-President, Board of )  
Commissioners, DR. MARGARET T. )  
BURROUGHS, Commissioner, M. LAIRD )  
KOLDYKE, Commissioner, REVEREND )  
DANIEL MATOS-REAL, Commissioner, )  
CINDY MITCHELL, Commissioner, ROUHY J. )  
SHALABI, Commissioner, CITY OF CHICAGO, )  
a municipal corporation, MARA S. GEORGES, )  
Corporation Counsel, THE CHICAGO PLAN )  
COMMISSION, ARNOLD L. RANDALL, )  
Commissioner, DEPARTMENT OF )  
PLANNING AND DEVELOPMENT, and )  
RICHARD L. RODRIGUEZ, Commissioner, )  
DEPARTMENT OF BUILDINGS. )

Defendants. )

Case No.

FILED-4  
2008 APR 16 AM 10:22  
CIRCUIT COURT OF COOK  
COUNTY, ILLINOIS  
CHANCERY DIV.  
DOROTHY BROWNE  
CLERK  
08CH 11 027

**VERIFIED COMPLAINT FOR DECLARATORY, INJUNCTIVE,  
AND OTHER EQUITABLE RELIEF**

NOW COME Plaintiffs, PROTECT OUR PARKS, INC. ("POP"), ELIZABETH F.  
BYRNE, MARY BETH MEYER, and DAWN DODGE, and complaining of defendants,  
LATIN SCHOOL OF CHICAGO ("Latin"), a private educational institution, CHICAGO  
PARK DISTRICT ("CPD"), a municipal corporation, GERY J. CHICO, President, Board  
of Commissioners, ROBERT J. PICKENS, Vice-President, Board of Commissioners, DR.

MARGARET T. BURROUGHS, Commissioner, M. LAIRD KOLDYKE, Commissioner, REVEREND DANIEL MATOS-REAL, Commissioner, CINDY MITCHELL, Commissioner, ROUHY J. SHALABI, Commissioner, CITY OF CHICAGO (the "City"), a municipal corporation, MARA S. GEORGES, Corporation Counsel, THE CHICAGO PLAN COMMISSION, ARNOLD L. RANDALL, Commissioner, Department of Planning and Development, and RICHARD L. RODRIGUEZ, Commissioner, Department of Buildings, state as follows:

1. This Complaint seeks a declaratory judgment that the Agreement between the Chicago Park District and the Latin School of Chicago, dated December 1, 2006, and entered into without public notice or hearing as required under the Lake Michigan and Chicago Lakefront Protection Ordinance ("LPO"), violates: (a) the CPD's own Code relating to the non-discriminatory distribution of its facilities and services; (b) Article VIII, § 1 of the Illinois Constitution, which provides that all public property shall be used only for a public purpose; and (c) the Public Trust Doctrine, which prohibits the CPD and its Commissioners from permitting public property, held in their trust, to be used for a purpose inconsistent with its originally intended public use, particularly the relinquishment of public lands to the self interest of private parties.

2. This suit is also brought to preliminarily and permanently enjoin defendant Latin from any further illegal and improper excavation, construction, and construction-related activities, pertaining to the development and erection of a privileged and priority-use artificial turf soccer field, lighting, goal posts and/or netting, benches, bleachers, a scoreboard, signage, landscaping, drainage, pathways, fencing, and drinking fountains (hereinafter collectively the "Latin Facility"), which activities are currently ongoing in what is commonly known as North Meadow of South Field in

Lincoln Park (hereinafter "South Field"). (See April 13, 2008 photographs of excavation work and construction equipment attached hereto as Ex. A) South Field is a public park and subject to the LPO. Latin is a private school that has begun excavating and constructing the Latin Facility on South Field without (a) approval of the City of Chicago Plan Commission, as required under the LPO, Chapter 16-4-150 Municipal Code of Chicago, and (b) obtaining the requisite permits from the City of Chicago for the excavation and construction of the Latin Facility.

3. The suit also seeks a writ of mandamus, requiring that (a) the Plan Commission of the City of Chicago abide by the Lakefront Protection Ordinance and provide notice, hold a public hearing, and provide a recommendation relating to the Latin Facility, (b) the City of Chicago enforce and abide by the terms of the Chicago Building Code, the LPO, and the private agreement between the CPD and Latin (the "Agreement"), which requires Latin to "obtain all local, state and federal permits required for the construction of the [Latin Facility] including the Park District Permit" (see Ex. B hereto, p. 3), and issue a STOP WORK ORDER relating to any further excavation and construction related activities at the Latin Facility in South Field.

#### The Parties

4. Plaintiff Protect Our Parks, Inc. (formerly known as Committee to Keep Lincoln Park Public (CKLPP)) is a charitable and educational not-for-profit corporation, and an IRS 501(c) (3) registered entity, dedicated to monitoring the actions of the Chicago Park District and taking action to preserve public park land and open space and to oppose privatization of public park land.

5. Plaintiff Elizabeth F. Byrne is a citizen, resident and taxpayer of the 44th Ward of the City of Chicago, and a mother with a minor child, Shane Byrne-Slepicka,

age 8, who, until the Agreement has been regularly participating in the various recreational activities provided by the Menomonee Club including flag football games in North Meadow of Lincoln Park South Field.

6. Plaintiff Mary Beth Myer is a citizen, resident and taxpayer of the 43rd Ward of the City of Chicago, and is a property owner at 1550 N. Lake Shore Drive, the location closest to Lincoln Park South Field. As provided in the LPO, Chap. 16-4 -100 (c) of the Municipal Code of Chicago, she was entitled to have received notice by certified mail of the proposed Latin Facility construction and afforded the right to participate in a public hearing to object to the change in use and alteration of South Field proposed by the CPD and Latin in the Agreement.

7. Plaintiff Dawn Dodge is a citizen, resident and taxpayer of the 43d ward of the City of Chicago and a mother with a minor child, Asia, age 11, who lives in a neighborhood, with a large minority population, that has been denied adequate and improved local park and recreational facilities comparable to those being provided to the Latin School of Chicago and that, regardless of the community need, has been underserved by the Chicago Park District.

8. Defendant Latin is a private educational institution, located at 59 W. North Blvd., Chicago, Illinois.

9. Defendant CPD is a municipal corporation and unit of local government of the State of Illinois, created pursuant to 70 ILCS 1505/0.01 *et seq.*

10. Gery J. Chico, President, Board of Commissioners, Robert J. Pickens, Vice-President, Board of Commissioners, Dr. Margaret T. Burroughs, Commissioner, M. Laird Koldyke, Commissioner, Reverend Daniel Matos-Real, Commissioner, Cindy Mitchell, Commissioner, and Rouhy J. Shalabi, Commissioner (collectively "Commissioners"),

have been appointed and presently serve as Commissioners of the CPD, in which capacity they are charged with the responsibility of protecting, administering, and developing the park uses of public park lands located in the City of Chicago, with special fiduciary duties relating to dedicated public park lands which are held in public trust, such as Lincoln Park. These defendants are sued in their official capacities.

11. Defendant City of Chicago is a municipal corporation and home rule unit of government, located in Cook County, Illinois.

12. Defendant Mara S. Georges is the Corporation Counsel of the City of Chicago, and as such is the legal officer of the City primarily responsible for enforcing the various ordinances contained in Municipal Code of the City of Chicago. She is sued in her official capacity.

13. Defendant Chicago Plan Commission ("Plan Commission") is an agency of the City of Chicago, which, *inter alia*, is charged with those duties as set forth in Section 16-4-100 (a) - (e) of the Chicago Municipal Code, relating to notice of a public hearing, holding a public hearing, and providing a recommendation relating to any improvement, construction, alterations or building activity occurring on public property subject to the LPO.

14. Defendant Arnold L. Randall is the Commissioner of the City of Chicago Department of Planning and Development, and is charged with certain duties and obligations under the LPO. He is sued in his official capacity.

15. Defendant Richard L. Rodriguez is the Commissioner of the Department of Buildings, and is charged with certain duties and obligations, including issuing STOP WORK ORDERS for illegal and improper construction and work activities for which permits have not been obtained. In October 2007, the Department of Construction and

Permits was merged with the Department of Buildings, and thus Rodriguez is also responsible for the duties and functions of DCAP contained in the LPO. He is sued in his official capacity.

### Background to the Controversy

16. The area commonly known as North Meadow of South Field in Lincoln Park, located at approximately 1800 N. Cannon Drive, is an historic open, grassy, multi-use, dedicated public park space adjoining the Lincoln Park Zoo, Farm in the Zoo and South Pond park facilities. It also serves as a portal to the Passarelle Bridge, the most heavily traveled pedestrian, handicapped and bicycle access to and from the North Avenue Beach. (Pre-construction photograph of South Field area is attached hereto as Exhibit C)

17. Construction of a Latin School soccer field in North Meadow was first proposed in 2002, and at that time properly submitted for public review, discussion and approval in a series of open town meetings organized by the Alderman of the 43d Ward, with formal presentations by representatives of the Park District and Latin School. After extended debate, the proposal was almost unanimously rejected by the residents and taxpayers of the community and withdrawn by the Park District and Latin School from further consideration or implementation.

18. On or about December 1, 2006, Defendant CPD disclosed the existence of an exclusive ten (10) year, renewable for an additional ten (10) year term, Agreement with Defendant Latin granting Latin the privilege to "design, develop and construct" in North Meadow for Latin's priority use a "new soccer field with an artificial turf surface, lined, as applicable, for regulation soccer and field hockey play [a minimum 195 by 330 feet plus reasonable recommended buffers], lighting for nighttime use, seasonal goal

posts and netting, two (2) benches for participants to use and one (1) bleacher area with seating, a scoreboard, landscaping, drainage, pathways, unlocked fencing, drinking fountains, an electric junction box and trash receptacles," and to install sponsorship signage including "the name, logo or insignia of such sponsor." (See ¶¶ 1, 8 of Agreement, which is attached hereto as Exhibit B, and incorporated herein)

19. The scope and detailed terms and conditions of the previously rejected December 1, 2006 Latin School soccer field plan were not made known to the Park District's own registered Lincoln Park Advisory Council (LPAC), or to Friends of the Park (FOTP), the long established public interest park watchdog organization, and, unlike 2002, the customary notice and disclosure procedures were not followed and there was no informative public announcement given or arrangements made to submit the proposed Agreement to public hearings and discussion, and the detailed scope, terms and conditions of the Latin School Agreement remained secret until after the Agreement was executed. In fact, the CPD representatives who addressed the LPAC at its September 13, 2006 meeting did not mention Latin when discussing the soccer field proposal. It was not until the October 25, 2006 CPD Commissioners meeting, at which the CPD approved the Latin Facility and Agreement, that LPAC was informed of Latin's involvement. (See LPAC letter to Gery Chico, minutes<sup>1</sup> and FOFTP comments on the Agreement attached as Group Exhibit D)

20. The Agreement will provide Latin, a private school, with a privileged and priory-use right to use the Latin Facility located in and on a park dedicated to public use

---

<sup>1</sup> The dates of the minutes indicated as May 2006 – November 2006 LPAC meeting, reflect the wrong year. The year should be 2007. The March 2007 LPAC meeting should read March 2008.

and held in public trust. Exhibit C to the Agreement allows Latin the following priority use:

- a. Spring Preseason (March 1 – March 31):
  - i. Monday – Friday: 3pm - 7pm
  - ii. Saturday: 9am – 1pm
  - iii. Spring Break: 9am – 12 pm
- b. Spring Sports Season (April 1 – May 31):
  - i. Monday – Friday: 3pm - 7pm
  - ii. Saturday: 9am – 3pm
  - iii. Saturday: 12 pm – 4pm
- c. Summer Camp Season (June 15 – July 31):
  - i. Monday – Friday: 9am – 1pm
- d. Fall Preseason (August 15 – August 31):
  - i. Monday – Friday: 8am – 12pm and 1pm - 5pm
  - ii. Saturday: 9am – 1 pm
- e. Fall Sports Season (September 1 – October 31):
  - i. Monday – Friday: 3pm - 7pm
  - ii. Saturday: 9am – 3 pm
  - iii. Sunday: 12 pm – 4pm

21. In sum, the Agreement will allow Latin priority usage of the field for all but 49 days of the year during non-winter months, or 13% of available usage time. Latin gets the other 87% of available time.



22. Recently, the exact date of which is unknown to plaintiffs at this time, excavation and construction work for the Latin Facility began on South Field. (See Exhibit A)

23. The Agreement was executed in violation of applicable CPD protocol. In 1982 the Chicago Park District was sued by the United States Justice Department, 82 C 7308, for "policies and practices which discriminated against residents of black and Hispanic communities in the City of Chicago in the supply, distribution and maintenance of recreational services, programs and facilities of the Chicago Park District." The Chicago Park District entered into a Consent Decree which required, "the adoption of new standards for determining the relative needs of community areas and parks within the District," and that, "the Park District shall be guided by professional engineering and architectural surveys," and the "statistical system" and "objective criteria" on "estimates of need, including population density, availability of other facilities and community income, in identifying and establishing the relative priority of a community for construction of a new facility." (See Exhibit E)

24. The legal obligations of the CPD to comply with the spirit and principles of the Consent Decree were incorporated into the Park District Code, Chapter XIII Section A. (Attached hereto as Exhibit F)

25. The Latin School of Chicago is a wealthy, exclusive private school in the 42nd ward and it and the North Meadow of the South Field of Lincoln Park are located in the highest statistical income and least needy area of the City. Upon information and belief, the racial background of Latin's student body is predominantly white.

26. Plaintiffs served the Park District with a Freedom of Information Request (FOIA) for "All studies, reports and recommendations relating to construction of a

soccer field in Lincoln park for the use of Latin School, including 'Professional engineering and architectural surveys in identifying and establishing relative priority' of a soccer field; the Park district system study 'based on factors of need which include population density, availability of other park and/or recreational facilities and community income in identifying and establishing the relative priority of a community for construction of a new facility'; objective criteria or measure of need in identifying and establishing the relative priority of a park for improvements."

27. In response to plaintiff's FOIA request, the CPD admitted that there were "No documents responsive to your request." (See February 27, 2008 CPD response attached hereto as Exhibit G, at ¶ e.)

28. The verbatim transcript of proceedings before the Committee on Administration of the Chicago Park District on October 25, 2006 (Ex. H hereto), at which time proposed construction of the Latin Facility was approved, evidences and confirms that none of the prerequisite policies, studies or reports required by the Park District Code and the 1993 Consent Decree were prepared, offered into the record, considered by the Park District Board or applied to justify construction of the Latin Facility and approval of the Agreement.

29. The Agreement thus violates the spirit and intent of the Consent Decree and CPD Code, and is in violation of the CPD's obligations thereunder.

30. The Park District Code has no administrative procedure by which a citizen, resident and taxpayer may formally challenge Park District actions or obtain a review or appeal of the action taken on October 25, 2006, and plaintiffs, taxpayers and citizens who enjoy Lincoln Park and South Field, have no adequate remedy at law since

the Agreement will operate to their exclusion therefrom, for the benefit of a private, wealthy institution, for which damages and harms cannot be assigned a monetary value.

31. On information and belief, Menomonee Club, a not for profit public service institution, has for over fifty (50) years provided recreational activities for public school and underprivileged boys and girls and held the only grandfathered permits for organized play in North Meadow, and has now been totally displaced and denied continued use of the North Meadow by the Agreement and the intrusive construction activities taking place at South Field.

**COUNT I**  
**(Writ of Mandamus)**

1 - 31. Plaintiffs repeat and reallege the allegations of ¶¶ 1-31 as ¶¶ 1-31 of this Count I.

32. This count is brought pursuant to Article XIV of the Code of Civil Procedure of Illinois, 735 ILCS 5/14-101 *et seq.*

33. Section 16-4-100 of the Lake Michigan and Chicago Lakefront Protection Ordinance ("LPO") requires that the Chicago Plan Commission perform the following duties relating to applications for development activities on properties subject to the LPO:

(a) To receive from any applicant or public agency an application, on such forms as the Commission may provide, to undertake any landfill, excavation, impoundment, mining, drilling, roadway building or construction regulated by this Ordinance...to review, approve or disapprove of application, provided that (1) a public hearing is noticed and held in accordance with the provisions of subparagraphs (b), (c), (d) and (e) hereof, and (2) a written report is prepared and filed with the Commission by the Commissioner of the Department of Planning and Development in accordance with the provisions of 16-4-11- hereof.

(b) Within seven days from the date of receipt of said application, the commission shall schedule a public hearing on

the question of same setting forth a date within 60 days thereof, time and place and causing written notice to be given the transmitting public agency and the applicant. . .

(c) In addition to the notice requirements hereinabove provided, each applicant subject to the provisions hereof shall, not more than 30 days before filing said application, serve written notice, either in person or by regular mail (provided the applicant prepares a written affidavit attaching a list of all owners to whom any such regular mail written notice was sent), on the owners of all property within 250 feet in each direction of the lot line of the subject property. . .

(d) The commission shall conduct the public hearing as provided by subparagraph (b) hereof and shall provide a reasonable opportunity for all interested parties to express their opinions under such rules and regulations as the commission shall adopt for the purpose of governing the applications and proceedings of the commission. . .

(e) The commission shall make a determination with respect to the proposed application, plan, design or proposal in writing within 30 days after the hearings are concluded and shall notify the forwarding public agency and the applicant of the commission's approval or disapproval thereof, setting forth findings of fact constituting the basis for its decision. . .

34. The Chicago Plan Commission has performed none of its obligations under § 16-4-100 (a) – (e) of the Municipal Code of Chicago.

35. Section 16-4-110 of the LPO requires that the Commissioner of the Department of Planning and Development perform the following duties relating to applications for development activities on properties subject to the LPO:

(a) To forward every proposal or application submitted to the Chicago plan commission under the provisions of this chapter to the department of environmental control and to any other public agency he shall deem appropriate;

(b) To receive from the commissioner of the environment, and any other public agency, a report of comments and recommendations;

(c) To make such investigation relative to each application or proposal as he deems necessary;

- (d) To prepare and forward to the Chicago plan commission a written report which shall include his findings and recommendations on each application or proposal no less than five days prior to the scheduled hearing;
- (e) To forward within five days to the Chicago plan commission certain applications for a permit, as specified in Section 16-4-150 of this chapter, in any planned development located within the Lake Michigan and Chicago Lakefront Protection District;
- (f) To forward within five days to the Chicago plan commission such applications for permit not exempted in Section 16-4-150 of this chapter and not in any planned development located within the Lake Michigan and Chicago Lakefront Protection District, and to return to the executive director of the department of construction and permits such applications as are exempted by Section 16-4-150 of this chapter;
- (g) To receive the decision of the Chicago plan commission prior to the issuance of any permit and to consider that decision binding;
- (h) To approve all applications for permits as specified in Section 16-4-150 of this chapter when said permits conform to the decision of the Chicago plan commission.

36. The Commissioner of the Department of Planning and Development has performed none of his obligations under § 16-4-110 (a) – (h) of the Municipal Code of Chicago.

37. Section 16-4-120 of the LPO requires that the Executive Director of the Department of Construction and Permits perform the following duties:

- (a) To forward within five days to the Chicago plan commission and the commissioner of planning and development any application for a permit in the Lake Michigan and Chicago Lakefront Protection District, together with a statement of zoning considerations by the zoning administrator, at any location within the Lake Michigan and Chicago Lakefront Protection District;
- (b) To receive the decision of the Chicago plan commission, and the approval of the commissioner of planning and development, prior to the issuance of any permit and to consider that decision binding.

38. The Director of the Department of Construction and Permits has performed none of his obligations under § 16-4- 120 (a) - (b) of the Municipal Code of Chicago.

39. Section 16-4-150 of the LPO contains the following provisions:

**16-4-150 Approval Required-Exemptions**

It shall be unlawful for any physical change, whether temporary or permanent, public or private, to be undertaken, including, but not limited to, landfill, excavation, impoundment, mining, drilling, roadway building or construction of any kind, within the Lake Michigan and Chicago Lakefront Protection District, as set forth in Sections 16-4-060 and 16-4-070...without first having secured the approval therefor from the Chicago plan commission as provided in Sections 16-4-100 through 16-4-140 of this chapter. (Emphasis added)

40. The excavation and construction activities currently ongoing and relating to the Latin Facility are unlawful.

41. The Agreement, Exhibit B, ¶ 5(d), expressly requires that "Latin must obtain all local, state and federal permits required for the construction of the project including the Park District Permit."

42. Each of the Defendants' activities (or lack thereof) relating to the unlawful construction/development activities on the Latin Facility are in violation of one or more Chicago Municipal Ordinances.

43. Under §§16-4-100(a), 120(a), and 150, Latin was to apply to the Chicago Plan Commission and the Department of Construction and Permits before undertaking any construction or development activities on the Latin Facility.

44. Under §16-4-100 (c) Latin was to provide written notice to owners of all property within 250 feet in every direction of the Latin Facility.

45. Under §16-4-100 (b) the Chicago Plan Commission was to schedule a public hearing on Latin's proposed construction/development activities on the Latin Facility. This public hearing was to take place within 60 days of receipt of Latin's application.

46. Under §§16-4-100 (a) and 110, the Commissioner of the Department of Planning and Development was to have forwarded Latin's application to the Department of Environmental Control and any other appropriate agency; investigate Latin's application, and provide a written report with the Plan Commission prior to the public hearing.

47. The scheduling of a public hearing on a complete and valid application, such as the one that Latin was supposed to have filed, is a ministerial, non-discretionary function of the defendants, specifically the Plan Commission, and is mandated by law.

48. The review and recommendation requirements of the Commissioner of the Department of Planning and Development concerning complete and valid applications, such as the one that Latin was supposed to have filed, is a ministerial, non-discretionary function of the defendants, specifically Commissioner of the Department of Planning and Development, and is mandated by law.

49. As of the date of the filing of this Complaint, (a) Latin has not filed an application prior to performing construction/development activities on the Latin Facility, in violation of §16-4-150; (b) Latin has not notified all property owners within 250 feet of the Latin Facility, in violation of §16-4-100; (c) the Plan Commission has not scheduled a public hearing on the non-existent application, in violation of §16-4-100; (d) the Commissioner of the Department of Planning and Development has not provided a written recommendation of the non-existent application to the Plan Commission, in

violation of §16-4-110; and (e) the Plan Commission has not conducted the mandated public hearing, in violation of §16-4-100.

50. Plaintiffs have repeatedly demanded and sought (a) that Latin be required to file an application seeking permission to perform its construction/development activities on the Latin Facility, (b) that Latin be required to provide written notice of its application to all property owners within 250 of the Latin Facility; (c) that the Plan Commission schedule a public hearing on the yet to be filed Latin application; (d) that the Commissioner of the Department of Planning and Development provide a written recommendation on the yet to be filed Latin application; and (e) that the Plan Commission hold a public hearing on the yet to be filed Latin application. *See* Group Exhibit I.

51. The defendants are thus under a plain duty to (a) require that Latin adhere to the permit application and notice provisions of the Agreement and the LPO, (b) perform their mandated review and recommendation functions, and (c) hold a public hearing on Latin's yet to be filed application.

WHEREFORE, plaintiffs Protect Our Parks, Inc., Elizabeth F. Byrne, Mary Beth Meyer, and Dawn Dodge, pray for judgment in their favor and against the defendants, and the following relief:

a. A writ of mandamus directing defendants CPD, Commissioners, City, Georges, Plan Commission, Randall and Rodriguez, to require Latin to adhere to the application and notice provisions of the LPO;

b. A writ of mandamus directing defendants CPD, Commissioners, City, Georges, Plan Commission, Randall and Rodriguez to schedule a public hearing on Latin's application, once filed, before the Plan Commission, as required under the LPO;



c. A writ of mandamus directing defendants CPD, Commissioners, City, Georges, Plan Commission, Randall and Rodriguez, to perform the reviews and recommendations concerning Latin's application as mandated by §16-4-100, 110, and 120 of the LPO;

d. A writ of mandamus directing defendants CPD, Commissioners, City, Georges, Plan Commission, Randall and Rodriguez to provide notice of and hold the public hearing mandated by §16-4-100 of the LPO, within a time frame to be determined by the Court but in no circumstances later than sixty (60) days following Latin's filing of application as requested herein;

e. An award of Plaintiffs' damages, costs, and attorney's fees incurred as a result of the defendants' refusal to follow their own codes and ordinances relating to construction/development activities on protected lakefront public lands; and

d. Such other and further relief as this Court deems appropriate and just.

**COUNT II**  
**(Mandamus - Issuance of Stop Work Order)**

1-51. Plaintiffs repeat and reallege the allegations of ¶¶ 1-51 of this Complaint as ¶¶ 1-51 of this Count II.

52. This count is brought pursuant to Article XIV of the Code of Civil Procedure of Illinois, 735 ILCS 5/14-101 et seq.

53. The ordinances of the City of Chicago, Chapters 11-16, 13-32, 13-56 et al., require building permits for excavation, plumbing, electrical and construction work and permits for signage to be erected.

54. Neither Latin nor the CPD has applied for or received building permits for the excavation, plumbing, electrical and signage work commenced and in progress on the Latin Facility.

55. In March 2008, Plaintiffs served the Chicago Park District with a Freedom of Information Request (FOIA) seeking, *inter alia*, all applications for and park permits issued to Latin School, its contractors and subcontractors for work on the Latin Facility. See Group Exhibit J.

56. In response to plaintiff's FOIA requests, the CPD stated that it was unable to respond to this request because of the "broad and general nature of [the] request." Notwithstanding, and belying CPD's assertions of being unaware of the specifically requested permits, CPD did produce the 45 page agreement between itself and Latin, wherein Latin was unlawfully granted the access to build the Latin Facility and priority use thereon (and required to obtain all Federal, State and local permits). See Group Exhibit J.

57. Also in March 2008, Plaintiffs served the City of Chicago Department of Buildings with a FOIA request seeking any and all building permits for "Lincoln Park South Field approximately 1800 North Cannon Drive" from 1993 to present and relating to any "excavation, concrete, plumbing, electrical, signage, or fencing" work. See Group Exhibit J.

58. In response to Plaintiff's FOIA request, the Department of Buildings provided Plaintiff with a printout indicating that from 2000 to present, the only permits issued for that location were for event canopies. See Group Exhibit J.

59. Section 13-32-130 of the Chicago Municipal Code contains the following provision:

**13-32-130 Operations without permit – Stop work order.**

No person or entity shall begin any work for which a building permit is required or any work of excavation in preparation therefor until the permit has been issued. If any person or entity violates this section, the building commissioner shall order the work stopped at once as provided in Section 13-12-080 and enforce the stop order in addition to the penalties for the violation provided in Sections 13-12-050 and 13-32-035.

60. Under §13-32-130, the Building Commissioner must issue a stop work order because Latin failed to apply for and obtain permits prior to beginning construction/development activities at the Latin Facility, in violation of both the Municipal Code of Chicago, and the Agreement.

61. The issuing of a stop work order because of Latin's violations of the Chicago Municipal Code as it relates to permits, is a ministerial, non-discretionary function of the defendants, specifically the Building Commissioner, and is mandated by law.

62. As of the date of the filing of this Complaint, (a) Latin has not applied for building permits relating to its construction/development activities at the Latin Facility; (b) Latin has not obtained building permits for its construction/development activities at the Latin Facility; and (c) the building commissioner has failed to put a stop to Latin's unlawful construction/development activities by issuing a stop work order.

63. Plaintiffs served notice of the violation upon Mara S. Georges, Corporation Counsel of the City of Chicago, and called the appropriate number to report permit violations, 3-1-1, and have received no acknowledgment or reply, or the filing of a Stop Work Order and prosecution of the violation. See Exhibit I.

64. In the absence of the required permits for Latin's construction/development activities at the Latin Facility, the defendants, and specifically the Building

Commissioner, are under a plain duty to immediately issue a stop work order and put a halt to Latin's unlawful construction/development activities.

WHEREFORE, plaintiffs Protect Our Parks, Inc., Elizabeth F. Byrne, Mary Beth Meyer, and Dawn Dodge, pray for judgment in their favor and against the defendants, and the following relief:

- a. An emergency writ of mandamus directing defendants City and Rodriguez to issue a stop work order against Latin's unlawful construction/development activities at the Latin Facility;
- b. A temporary restraining order, and preliminary and permanent injunction, against Latin and any other defendants involved in the excavation and construction related activities pertaining to the Latin Facility, enjoining any and all further excavation, construction, and construction related activities at the Latin Facility on South Field;
- c. An award of Plaintiffs' damages, costs, and attorney's fees incurred as a result of the defendants' failure to prevent or stop Latin's unlawful construction/development activities; and
- d. Such other and further relief as this Court deems appropriate and just.

### COUNT III

(Declaratory Judgment - Violation of Consent Decree/CDC)

1 -64. Plaintiffs repeat and reallege the allegations of ¶¶ 1-64, as ¶¶ 1-64 of this Count III.

65. The final order entered in the federal court action, 82 C 7308, recites that "the parties have represented that the original objectives of this Consent Decree with regard to the Park District's allocation of recreational personnel and programs and the

establishment of fair and equitable schedules and systems for the maintenance, repair and upkeep of facilities and grounds have been achieved and that the Park District has been, is and will remain in compliance with these allocations, schedules and systems.”

66. The CPD Code (Ex. F), incorporated various provisions of the Consent Decree, including the following:

**Chapter XIII - Distribution of Services and Facilities**

**Section A - Basis for Distribution**

The Park District shall distribute its resources, services and facilities in a fair and equitable basis throughout the District.

1. The Park District shall distribute any unexpended capital improvement bond funds for the years 1986, 1987, 1988 and 1989 in a manner consistent with the Consent Decree entered in the United States of America v. Park District, et al., 83 C 7308, as amended.

2. The Park District shall expend its Capital Improvement Bond Funds in accord with the following criteria:

- a. The Park District will use professional engineering and architectural surveys in identifying and establishing the relative priority of any rehabilitation and necessary repair and maintenance of Park District facilities;
- b. The Park District shall be guided by a system based on factors of need which include population density, availability of other park and/or recreational facilities and community income in identifying and establishing the relative priority of a community for construction of a new facility;

- c. The Park District shall be guided by objective criteria or measure of need in identifying and establishing the relative priority of a park for landscape improvements and playground rehabilitation; and
- d. The Park District shall distribute funds for all its activities, including city-wide and specialized facility construction or improvement, land acquisition and other construction in a manner which does not discriminate on the basis of race or national origin as between the community areas of the city.

67. Notwithstanding these representations of the CPD to the federal court, and the provisions made part of the Park District Code, the Agreement with the Latin School of Chicago was implemented without the prerequisite studies, reports and recommendations relating to construction of a soccer field in Lincoln Park for the use of Latin School, including "Professional engineering and architectural surveys in identifying and establishing relative priority" of a soccer field; the Park district system study "based on factors of need which include population density, availability of other park and/or recreational facilities and community income in identifying and establishing the relative priority of a community for construction of a new facility; objective criteria or measure of need in identifying and establishing the relative priority of a park for improvements."

68. The Chicago Park District has discriminated in favor of a wealthy, exclusive, private school, Latin, in the statistically wealthiest per capita neighborhood in the City of Chicago and against public school children living in underserved and underprivileged neighborhoods.

69. Defendants Mara S. Georges and the City of Chicago have a conflict of interest and are disqualified to act on behalf of the plaintiffs and the citizens and taxpayers of the city of Chicago and plaintiffs have no adequate remedy at law.

70. This Count is brought pursuant to 735 ILCS 5/2-701.

71. There exists between the parties an actual and justiciable controversy relating to the validity and enforceability of the Agreement between CPD and Latin, which Agreement is operating, and will operate, to deprive plaintiffs, particularly plaintiff Dawn Dodge, and other taxpaying citizens of the City of Chicago of a fair, non-discriminatory distribution of services and facilities by the CPD, particularly in historically underserved areas of the City.

WHEREFORE, plaintiffs Protect Our Parks, Inc., Elizabeth F. Byrne, Mary Beth Meyer, and Dawn Dodge, pray for judgment in their favor and against the defendants, and the following relief:

- a. A declaration that the Agreement is in violation of the Consent Decree and subsequent Chicago Park District Code;
- b. A declaration that the Agreement is null and void;
- c. A declaration that all actions of Latin and CPD pursuant to or in furtherance of the Agreement are prohibited, null and void;
- d. A declaration that the defendants shall be jointly and severally responsible for restoring South Field to its condition and state prior to Latin's commencement of construction activities on the Latin Facility, including removal of all existing alterations and additions to the South Field landscape;
- e. An award of Plaintiffs' damages, costs, and attorney's fees incurred as a result of the defendants' wrongful activities as alleged herein; and

- d. Such other and further relief as this Court deems appropriate and just.

**COUNT IV**  
(Injunction - Violation of Consent Decree/CDC)

1 - 71. Plaintiffs repeat and reallege the allegations of ¶¶ 1-71, as ¶¶ 1-71 of this Count IV.

72. Plaintiffs have suffered and will continue to suffer immediate and irreparable harm for which there is no adequate remedy at law as a result of the CPD's violations of its own Code and failure to fairly distribute its services and facilities in a fair, open and non-discriminatory manner.

WHEREFORE, plaintiffs Protect Our Parks, Inc., Elizabeth F. Byrne, Mary Beth Meyer, and Dawn Dodge, pray for judgment in their favor and against the defendants, and the following relief:

- a. A temporary restraining order, and preliminary and permanent injunction, against Latin and any other defendants involved in the excavation and construction related activities pertaining to the Latin Facility, enjoining any and all further excavation, construction, and construction related activities at the Latin Facility on South Field;
- b. An award of Plaintiffs' damages, costs, and attorney's fees incurred as a result of the defendants' wrongful activities as alleged herein; and
- c. Such other and further relief as this Court deems appropriate and just.

**COUNT V**  
(Declaratory Judgment - Violation of Art. VIII, § 1 of the Illinois Constitution)

1 - 72. Plaintiffs repeat and reallege the allegations of ¶¶ 1-72, as ¶¶ 1-72 of this Count V.



73. The Illinois Constitution, Article VIII, § 1, provides “Public funds, property or credit shall be used only for a public purpose.”

74. The Latin School of Chicago, unlike its private school peers, has chosen to locate and expand its facilities without purchasing and developing a private outdoor athletic stadium or facility.

75. The Agreement with Latin serves the recreational needs and convenience of Latin, by granting to Latin, a wealthy private entity, with private needs and purposes, the privileged use for a period of up to twenty (20) years of approximately four (4) acres of public park property in South field, including the design and construction of an artificial surface soccer structure for its needs; priority reserved prime time use of the new structure (Exhibit B, paragraph 9, Exhibit C to Exhibit B attached hereto); right to sell sponsorship advertising in the park (Exhibit B, paragraph 8); Park District payment of \$250,000 or more for, “all installation (including bringing power to the site), maintenance, replacement and electricity costs associated with lighting the site during the term thereof” (paragraph 6 d); “maintenance of the Project substantially in accordance with the manufacturer’s suggested standards and guidelines and keep the project in a broom clean condition during the term thereof” (paragraph 6 e); “cover the field to protect it from the elements during the off season” (paragraph 6 e); “be responsible for .., repair or replacement” (paragraph 6f); “ removing all trash and recyclable; and maintaining, repairing and replacing the landscaping, fencing and other related improvements for the Project.”

76. Plaintiffs have served notice to cease and desist upon the Park District and Latin School (Attached hereto as Exhibit I) and have received no acknowledgment or reply or consent to stop construction of the soccer structure.

77. The Agreement is in violation of Art. VIII, § 1, in that South Field, a public property held in public trust by the CPD, is being used by Latin for private purposes.

78. This Count is brought pursuant to 735 ILCS 5/2-701.

79. There exists between the parties an actual and justiciable controversy relating to the validity and enforceability of the Agreement between CPD and Latin, which Agreement is operating, and will continue operate, to deprive plaintiffs of the use and enjoyment of public land held in public trust by the CPD, and, whether Latin's private use of the public land pursuant to the Agreement is in violation of Art. VIII, § 1 of the Illinois Constitution.

80. Defendants Mara S. Georges and the City of Chicago have a conflict of interest and are disqualified to act on behalf of the plaintiffs and the citizens and taxpayers of the city of Chicago and plaintiffs have no adequate remedy at law.

WHEREFORE, plaintiffs Protect Our Parks, Inc., Elizabeth F. Byrne, Mary Beth Meyer, and Dawn Dodge, pray for judgment in their favor and against the defendants, and the following relief:

- a. A declaration that the Agreement is in violation of Art. VIII, § 1 of the Illinois Constitution;
- b. A declaration that the Agreement is null and void;
- c. A declaration that all actions of Latin and CPD pursuant to or in furtherance of the Agreement are prohibited, null and void;
- d. A declaration that the defendants shall be jointly and severally responsible for restoring South Field to its condition and state prior to Latin's commencement of construction activities on the Latin Facility, including removal of all existing alterations and additions to the South Field landscape;

e. An award of Plaintiffs' damages, costs, and attorney's fees incurred as a result of the defendants' wrongful activities as alleged herein; and

d. Such other and further relief as this Court deems appropriate and just.

#### COUNT VI

(Injunction - Violation of Art. VIII, § 1 of the Illinois Constitution)

1 - 80. Plaintiffs repeat and reallege the allegations of ¶¶ 1-80, as ¶¶ 1-80 of this Count VI.

81. Plaintiffs have suffered and will continue to suffer immediate and irreparable harm for which there is no adequate remedy at law as a result of the CPD's violation of Art. VIII, § 1 of the Illinois Constitution.

WHEREFORE, plaintiffs Protect Our Parks, Inc., Elizabeth F. Byrne, Mary Beth Meyer, and Dawn Dodge, pray for judgment in their favor and against the defendants, and the following relief:

a. A temporary restraining order, and preliminary and permanent injunction, against Latin and any other defendants involved in the excavation and construction related activities pertaining to the Latin Facility, enjoining any and all further excavation, construction, and construction related activities at the Latin Facility on South Field;

b. An award of Plaintiffs' damages, costs, and attorney's fees incurred as a result of the defendants' wrongful activities as alleged herein; and

c. Such other and further relief as this Court deems appropriate and just.

#### COUNT VII

(Declaratory Judgment - Violation of Public Trust Doctrine)

1 - 81. Plaintiffs repeat and reallege the allegations of ¶¶ 1-81, as ¶¶ 1-81 of this Count VII.

82. The public trust doctrine was created by the United States Supreme Court in *Illinois Central R.R. Co. v. Illinois*, 146 U.S. 387 (1892).

83. The CPD is required to preserve public parks, such as South Field, which it holds in public trust, for the use of the public. The CPD may not either reallocate its resources to more restrictive uses or subject public uses to the self-interest of private parties. *Timothy Christian Schools v. Village of Western Springs*, 285 Ill.App.3d 949, 957-58 (1st Dist. 1996).

84. The dedicated parklands of the City, including South Field, are held in trust for the free and open use of the entire public at large and may not be negotiated away for the privileged use and benefit of a private party.

85. The actions of the CPD and Commissioners in approving the Agreement for the development of the Latin Facility on South Field will cause and permit the public property to be used for a purpose inconsistent with its originally intended public use.

86. The aforementioned actions of the CPD and Commissioners, as alleged above, are arbitrary and irrational.

87. Defendants Gery J. Chico, Robert J. Pickens, Dr. Margaret T. Burroughs, M. Laird Koldyke, Reverend Daniel Matos-Real, Cindy Mitchell, Roughy J. Shalabi, Commissioners of the Chicago Park District, and Mara S. Georges, Corporation Counsel, have a fiduciary duty to enforce the law and protect the interests of the citizens, residents and taxpayers of the City of Chicago, and to protect lands held in public trust for public use. These duties and obligations may not be delegated or relinquished to the self interest of private parties.

88. The Park District Agreement with the Latin School is an unlawful transfer of public property to a private party.

89. Defendants Mara S. Georges and the City of Chicago have a conflict of interest and are disqualified to act on behalf of the plaintiffs and the citizens and taxpayers of the city of Chicago and plaintiffs have no adequate remedy at law.

90. This Count is brought pursuant to 735 ILCS 5/2-701.

91. There exists between the parties an actual and justiciable controversy relating to the validity and enforceability of the Agreement between CPD and Latin, which Agreement is operating, and will continue operate, to deprive plaintiffs of the use and enjoyment of public land held in public trust by the CPD, and, whether Latin's private use of the public land pursuant to the Agreement is in violation of the public trust doctrine.

WHEREFORE, plaintiffs Protect Our Parks, Inc., Elizabeth F. Byrne, Mary Beth Meyer, and Dawn Dodge, pray for judgment in their favor and against the defendants, and the following relief:

- a. A declaration that the Agreement is in violation of the Public Trust Doctrine;
- b. A declaration that the Agreement is null and void;
- c. A declaration that all actions of Latin and CPD pursuant to or in furtherance of the Agreement are prohibited, null and void;
- d. A declaration that the defendants shall be jointly and severally responsible for restoring South Field to its condition and state prior to Latin's commencement of construction activities on the Latin Facility, including removal of all existing alterations and additions to the South Field landscape;
- e. An award of Plaintiffs' damages, costs, and attorney's fees incurred as a result of the defendants' wrongful activities as alleged herein; and

d. Such other and further relief as this Court deems appropriate and just.

**COUNT VIII**  
(Injunction - Violation of Public Trust Doctrine)

1 - 91. Plaintiffs repeat and reallege the allegations of ¶¶ 1-91, as ¶¶ 1-91 of this Count VIII.

92. Plaintiffs have suffered and will continue to suffer immediate and irreparable harm for which there is no adequate remedy at law as a result of the CPD's violation of the public trust doctrine.

WHEREFORE, plaintiffs Protect Our Parks, Inc., Elizabeth F. Byrne, Mary Beth Meyer, and Dawn Dodge, pray for judgment in their favor and against the defendants, and the following relief:

a. A temporary restraining order, and preliminary and permanent injunction, against Latin and any other defendants involved in the excavation and construction related activities pertaining to the Latin Facility, enjoining any and all further excavation, construction, and construction related activities at the Latin Facility on South Field;

b. An award of Plaintiffs' damages, costs, and attorney's fees incurred as a result of the defendants' wrongful activities as alleged herein; and

c. Such other and further relief as this Court deems appropriate and just.

April 16, 2008

PROTECT OUR PARKS, INC., ELIZABETH  
F. BYRNE, MARY BETH MEYER, and  
DAWN DODGE,

Plaintiffs,

  
One of Their Attorneys

Thomas J. Ramsdell  
Anthony S. Hind  
Carl E. Myers  
THOMAS J. RAMSDELL & ASSOCIATES  
One East Wacker Drive  
Suite 2020  
Chicago, IL 60601  
(312) 267-0071  
Firm No.: 41868

Herbert L. Caplan  
Attorney & Counselor at Law  
3300 N. Lake Shore Drive  
Chicago, IL 60657-3937  
(773) 929-7428  
Firm No.: 01847

**VERIFICATION**

I, Herbert L. Caplan, Board Member of Protect our Parks, Inc., under penalties provided by law pursuant to § 1-109 of the Illinois Code of Civil Procedure, certify that the statements set forth in the foregoing Verified Complaint for Declaratory, Injunctive and Other Equitable Relief are true and correct, except as to matters stated therein to be on information and belief, and as to such matters certify as aforesaid that I verily believe the same to be true.

Dated: 4/14/08

Herbert L. Caplan  
Herbert L. Caplan