

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

MARGARET FIGIEL, JOHN FIGIEL, )  
JANE THOMAS, RICHARD DAMASHEK, )  
SUSAN GOLO, DUNCAN BOURNE, )  
LESLIE LODGSON, NANCY KIMBLE, )  
MARK KIMBLE, ERIC LENTING, )  
GINA GUZMAN, LOBA EMAMI, )  
VICTORIA CARTON, JOHN WIZGIRD, )  
ANNA ANTHONY, GAYLY OPEM, )  
ROBERT OPEM, ALLAN GOLD, )  
JUDITH GOLDMAN, SUSAN PRICE, )  
KIM LILLY, ARNOLD HIRSCH, )  
ELAINE D. COTTEY, PAUL T. COTTEY, )  
PEARL KREPES, NANCY HUNTER, )  
CUTTIE BACON, JEFFERY J. QUACKENBUSH, )  
GENE NOZICKA, MARK GREENBERG, )  
HAYDEE PAMPEL, and JEFF BADDELEY, )

Plaintiffs, )

v. )

THE CHICAGO PLAN COMMISSION, THE )  
CHICAGO CHILDREN'S MUSEUM, THE )  
CHICAGO PARK DISTRICT, a municipal )  
corporation, THE CITY OF CHICAGO, a )  
municipal corporation, )  
LINDA SEARL, CHAIRMAN, )  
ALD. WILLIAM J.P. BANKS, )  
ALD. EDWARD M. BURKE, )  
MAYOR RICHARD M. DALEY, )  
DAVID WEINSTEIN, LEON D. FINNEY, JR., )  
DORIS B. HOLLEB, LYNEIR RICHARDSON, )  
CAROLE BROWN, SMITA SHAH, )  
TOM BYRNE, ARNOLD L. RANDALL, )  
GEORGE W. MIGALA, )  
ALD. PATRICK O'CONNOR, )  
JOHN H. NELSON, NANCY A. PACHER, )  
ALD. MARY ANN SMITH, )  
ALD. BERNARD L. STONE, )  
GRACIA M. SHIFRIN, )  
ALD. REGNER "RAY" SUAREZ, and )  
PATRICIA SCUDIERO, )

Defendants. )

No. 08CH32919

**FILED**  
CH-802  
SEP 05 2008  
DOROTHY BROWN  
CLERK OF THE CIRCUIT COURT  
OF COOK COUNTY, IL

**COMPLAINT FOR DE NOVO JUDICIAL REVIEW OF AND TO  
VOID A CHICAGO ZONING AMENDMENT**

NOW COME the plaintiffs, MARGARET FIGIEL, JOHN FIGIEL, JANE THOMAS, RICHARD DAMASHEK, SUSAN GOLO, DUNCAN BOURNE, LESLIE LODGSON, NANCY KIMBLE, MARK KIMBLE, ERIC LENTING, GINA GUZMAN, LOBA EMAMI, VICTORIA CARTON, JOHN WIZGIRD, ANNA ANTHONY, GAYLY OPEM, ROBERT OPEM, ALLAN GOLD, JUDITH GOLDMAN, SUSAN PRICE, KIM LILLY, ARNOLD HIRSCH, ELAINE D. COTTEY, PAUL T. COTTEY, PEARL KREPES, NANCY HUNTER, CUTTIE BACON, JEFFERY J. QUACKENBUSH, GENE NOZICKA, MARK GREENBERG, HAYDEE PAMPEL, and JEFF BADDELEY, by their attorneys, Litchfield Cavo LLP, and complaining of the defendants, THE CHICAGO PLAN COMMISSION, THE CHICAGO CHILDREN'S MUSEUM, THE CHICAGO PARK DISTRICT, a municipal corporation, THE CITY OF CHICAGO, a municipal corporation, LINDA SEARL, CHAIRMAN, ALD. WILLIAM J.P. BANKS, ALD. EDWARD M. BURKE, MAYOR RICHARD M. DALEY, DAVID WEINSTEIN, LEON D. FINNEY, JR., DORIS B. HOLLEB, LYNEIR RICHARDSON, CAROLE BROWN, SMITA SHAH, TOM BYRNE, ARNOLD L. RANDALL, GEORGE W. MIGALA, ALD. PATRICK O'CONNOR, JOHN H. NELSON, NANCY A. PACHER, ALD. MARY ANN SMITH, ALD. BERNARD L. STONE, GRACIA M. SHIFRIN, ALD. REGNER "RAY" SUAREZ, and PATRICIA SCUDIERO, state as follows:

**Nature of the Action**

1. This is a complaint for de novo judicial review, pursuant to 65 ILCS 5/11-13-25 of an amendment to a zoning ordinance adopted by the City Council of Chicago on June 11,

2008. The plaintiffs seek a judgment declaring the amendment void as arbitrary, capricious, unreasonable, and in violation of law.

2. In addition, plaintiffs allege they were unconstitutionally deprived of both substantive and procedural due process at each stage of the decision-making that occurred in connection with this matter.

### Parties

3. At all times herein, plaintiffs own property at 340 East Randolph and 360 East Randolph, Chicago, Illinois, within 250 feet of the property known as Grant Park, which is owned and/or controlled by defendants, Chicago Park District and the City of Chicago.

4. The Chicago Plan Commission (the "Commission") is a commission created by an ordinance of the City of Chicago. Pursuant to 65. ILCS 5/11 – 122 – 4 et seq., the following defendants are members of the commission:

- Linda Searl, Chairman;
- Ald. William J.P. Banks;
- Ald. Edward M. Burke;
- Mayor Richard M. Daley;
- David Weinstein;
- Leon D. Finney, Jr.;
- Doris B. Holleb;
- Lyneir Richardson;
- Carole Brown;
- Smita Shah;
- Tom Byrne;
- Arnold L. Randall;
- George W. Migala;
- Ald. Patrick O'connor;
- John H. Nelson;
- Nancy A. Pacher;
- Ald. Mary Ann Smith;
- Ald. Bernard L. Stone;
- Gracia M. Shifrin;
- Ald. Regner "Ray" Suarez;
- Patricia Scudiero;

5. Upon information and belief defendant, Chicago Children's Museum (the "Museum"), was, and is, a non-profit corporation, organized under the laws of the State of Illinois.

6. Defendant Chicago Park District (the "District.") is a municipal corporation organized pursuant to state statute and local ordinances. The District owns the property that is the subject of this lawsuit and is listed as a co-applicant on the Chicago Children's Museum's application.

7. Defendant, the City of Chicago, (the "City") is a home rule municipal corporation and has been notified of this action by service of a copy of the summons and complaint on Richard M. Daley, its chief executive officer.

#### **Statute Involved**

8. 65 ILCS 5/11-13-25 provides as follows:

Section 11-13-25 actions subject to de novo review; due process.

- (a) Any special use, variance, rezoning, or other amendment to a zoning ordinance adopted by the corporate authorities of any municipality, home rule or non-home rule, shall be subject to de novo judicial review as a legislative decision, regardless of whether the process of its adoption is considered administrative for other purposes. Any action seeking the judicial review of such a decision shall be commenced not later than 90 days after the date of the decision.
- (b) The principles of substantive and procedural due process of law apply at all stages of the decision-making and review of all zoning decisions.

#### **Planned Development Zoning Provisions**

9. Article 17-8-0900 Of the Chicago Zoning Ordinance provides, in part, the following:

**17-8-0902 Other Regulations**

Except as otherwise expressly stated, planned developments must comply with any special regulations that apply to the subject property, such as the Chicago Landmark Ordinance and The Lake Michigan and Chicago Lakefront Protection Ordinance.

10. Article 17-13-0100 of the Chicago Zoning Ordinance provides, in part, the

following:

**17-13-0106 Burden of Proof**

Unless otherwise expressly stated, the burden of demonstrating that an application complies with applicable review and approval criteria is on the applicant. The burden is not on the city or other parties to show that the criteria have not been met.

11. Article 17 -- 13 -- 0600 of the Chicago zoning ordinance provides, in part, the

following:

**17-13-0604-C**

The Plan Commission must provide a reasonable opportunity for all interested parties to express their opinions under such rules and regulations as the Plan Commission may adopt.

**17-13-0606 Hearing-City Council Committee on Zoning**

The City Council Committee on Zoning must hold a public hearing on all planned development proposals for the purpose of reviewing the proposed project and taking testimony. Written, Published and Posted Notice of the Committee on Zoning's public hearing must be provided in accordance with Section 17-13-0107-B and Section 17-13-0107-C.

**17-13-0609 Review and Decision-Making Criteria**

In reviewing and making decisions on proposed plan developments, review bodies and decision-making bodies must consider at least the following factors:

**17-13-0609-A**

Whether the proposed development complies with the standards and guidelines of Section 17-8-0900;

**17-13-0609-B**

Whether the proposed development is compatible with the character of the surrounding area in terms of uses, density and building scale;

### **17-13-0160 Effect of Planned Development Approval**

After the adoption of a planned development ordinance, every application for permit or license within the planned development boundaries must be reviewed by the Commissioner of Planning and Development for a determination that the proposed use, building or structure complies with all provisions of the planned development ordinance. Zoning and occupancy certificates may be issued by the Zoning Administrator for uses, buildings or structures within the planned development only upon receipt of written approval by the Commissioner of Planning and Development. Any permit, license or certificate issued in conflict with the planned development ordinance is null and void.

### **17-13-0612 Lapse of Approval**

17-13-0162-A Every planned development ordinance will lapse and be null and void unless construction, as authorized by a building permit, has commenced within six years of the day of city Council approval of the plan development ordinance and is there after diligently pursued to completion.

17-13-0612-D Thereafter, if construction does not begin within the time set forth, or the construction does not proceed with reasonable diligence, or if construction in a multi-phased development does not proceed according to the specific schedule set forth in the planned development ordinance, then the planned development ordinance will lapse and be null and void.

17-13-0612-E. Should a planned development ordinance lapse, as provided in this Section, the Commissioner of Planning and Development must initiate a zoning ordinance map amendment to rezone the subject property to the zoning classification that applied to the subject property before approval of the planned development in accordance with the procedures of Section 17-13-0300.

### **Rules and Procedures of Chicago Plan Commission**

12. The Rules and Procedures of Chicago Plan Commission provide, in part, the following:

#### **Section 9. Staff Reports.**

Department of Planning Staff Reports for Planned Development and Lakefront matters shall be submitted to each Commission member no fewer than five (5) working days prior to a Commission meeting. These reports shall be in a form acceptable to the Commission, and shall include indications of known community opposition to any matter.

Section 10. Background Review Materials.

Planned Development and Lakefront applications along with all supporting materials, studies, drawings, etc. submitted by the applicant shall be available for the public and the Commission to review in the Department of Planning 28 days prior to the Commission meeting at which the matter is scheduled to be heard or in the event of materials received within said 28 day period, upon receipt thereof by the Department of Planning.

**Background Facts**

13. On April 2, 2008, an application to the Plan Commission under the Lake Michigan and Chicago Lakefront Protection Ordinance was filed by the Chicago Children's Museum and the Chicago Park District and is attached hereto as Exhibit A.

14. On April 11, 2008, an application for an amendment to the Chicago Zoning Ordinance to rezone 337 E. Randolph St., southeast corner of Randolph St. and Columbus Drive, was filed by the Chicago Children's Museum and the Chicago Park District, and is attached hereto as Exhibit B.

15. On May 2, 2008, an application for amendment to Institutional/Transportation Planned Development No. 677 and application to the Chicago Plan Commission under Lake Michigan and Chicago Lakefront protection ordinance was filed by the Chicago Children's Museum and the Chicago Park District, and is attached hereto as Exhibit C.

16. On May 15, 2008, the Department of Planning and Development filed a Report (attached as Exhibit D) with the Commission recommending that the IPD application be approved and recommended to the City Council Committee on Zoning (the "Zoning Committee"), and recommending that the Commission approve the application under the Lakefront Protection Ordinance.

17. On May 15, 2008, the Commission held a public hearing and by resolution (attached as Exhibit E), approved the application under the Lakefront Protection Ordinance, and

recommended to the Zoning Committee approval of the application filed by the Chicago Children's Museum and the Chicago Park District.

18. Effective June 11, 2008, and by vote of the City Council of Chicago (the "City Council"), an ordinance was published amending the Chicago Zoning Ordinance and amending Institutional Transportation Planned Development No. 677 so as to allow construction of a Chicago Children's Museum in Grant Park. (See Exhibit F).

**The Amendment to Institutional/Transportation Planned Development  
No. 677 is Void as Arbitrary, Capricious, and Unreasonable**

19. Plaintiffs seek a declaration that the ordinance enacted by the City Council amending Institutional/Transportation Planned Development No. 677 so as to allow construction of a so-called "Chicago Children's Museum" in Grant Park is void as arbitrary, capricious, unreasonable and without justification in law or in fact.

20. The amendment to Institutional/Transportation Planned Development No. 677 will diminish the property values of neighboring property owners, including plaintiffs, who relied on the protections established by the Lakefront Protection Ordinance, as well as pre-existing covenants, dedications, court decisions and injunctions which provide, among other things, that the public ground between Randolph and Madison streets and fronting upon Lake Michigan is not to be occupied with buildings of any description.

21. That the adoption of the amendment to Institutional/Transportation Planned Development No. 677 bears no rational relationship to the public health, safety or welfare.

22. In presenting its (a) request for an amendment to Planned Development No. 677 and (b) its Lakefront Protection Ordinance application to the Commission and the Zoning Committee, the Museum and the District failed to carry the burden of demonstrating, and did not



prove, that its applications complied with applicable approval criteria as required by Article 17-13-0106 of the Chicago Zoning Ordinance.

23. Contrary to the provisions of the Chicago Zoning Ordinance, the amendment to Institutional Transportation Planned Development No. 677:

- (a) Does not substantially comply with the underlying zoning (Section 17-8-0901);
- (b) Does not comply with the regulations of the Lakefront Protection Ordinance;
- (c) Does not provide any valid or reasonable justification for the enactment of the amendment allowing construction of a structure within the public property known as Grant Park;
- (d) Falsely and unreasonably, and without evidentiary support, recites that the amendment to Institutional Transportation Planned Development No. 677 conforms to the intent and purpose of the Chicago Zoning Ordinance, and all requirements thereof, and satisfies the established criteria for approval;
- (e) Violates a series of long-standing Supreme Court decrees which prohibit the placement or erection of buildings and structures in or on the property commonly known as Grant Park.

24. By reason of the above, in addition to other proofs plaintiffs will present at trial, adoption of the amendment to Institutional Transportation Planned Development No. 677 deprived plaintiff's of their constitutional rights to due process pursuant to both United States and Illinois Constitutions, as arbitrary, capricious, unreasonable and without justification in law or in fact and violates a series of long-standing Supreme Court decrees which prohibit the placement or erection of buildings and structures in or on the property commonly known as Grant Park.

**Plaintiffs Were Deprived of Procedural and Substantive Due Process**

25. Plaintiffs were deprived of procedural and substantive due process at the Commission hearing on May 15, 2008, in that, among other infractions of those rights:

- (a) At the hearing, plaintiff's witnesses and their representatives were repeatedly interrupted and denied the opportunity to present their arguments in opposition to proposed amendment.

- (b) Plaintiffs' representatives were not reasonably afforded the right of cross-examination; and.
- (c) Proponents of the proposed amendment were allowed to present legal arguments in support of the amendment while opponents, including the plaintiffs, were denied the opportunity to present legal arguments against the proposed amendment.

26. Plaintiffs were deprived of procedural and substantive due process at the City

Council hearing on June 11, 2008, in that, among other infractions of those rights:


- (a) At the hearing, plaintiffs' witnesses and their representatives were repeatedly interrupted and denied the opportunity to present their arguments in opposition to proposed amendment.
- (b) Plaintiffs' representatives were not reasonably afforded the right of cross-examination; and,
- (c) Proponents of the proposed amendment were allowed to present legal arguments in support of the amendment while opponents, including the plaintiffs, were denied the opportunity to present legal arguments against the proposed amendment.

Wherefore, the plaintiffs respectfully request that the Court enter judgment declaring the Amendment to Institutional/Transportation Planned Development No. 677 void as arbitrary, capricious, unreasonable and in violation of law, and for such other relief, including awarding plaintiffs their fees and costs, as the Court deems just.

Respectfully submitted,

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