

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Friends of the Terrace, LLC,
Plaintiff,

Case Type: MERA/Other Civil
Judge Michael K. Browne

v.

ORDER

BRE Non-Core 2 Owner B LLC,

Defendant.

Court File No.: 27-CV-16-12544

The above-entitled matter came before the Honorable Michael K. Browne, Judge of District Court, for a temporary restraining order (“TRO”) hearing on the 13th day of September, 2016, at 4:30 p.m. in courtroom 953 of the Hennepin County Government Center, located at 300 South Sixth Street, Minneapolis, MN 55487. Erik Hanson, Esq. represented the Plaintiff, Friends of the Terrace, LLC. Marc Simpson, Esq. represented Defendant BRE Non-Core 2 Owner B, LLC. Andrew Biggerstaff, Esq. appeared on behalf of the Robbinsdale Economic Development Authority (“REDA”).

ORDER

Based on the submissions made to the Court and the applicable precedent under Minnesota Law, the Court **HEREBY ORDERS:**

1. Plaintiff’s Motion for a Temporary Restraining Order is **DENIED**.
2. REDA’s Motion for a Surety Bond is **DENIED** as moot.
3. The attached Memorandum of Law is incorporated herein.

IT IS SO ORDERED.

BY THE COURT

MEMORANDUM

I. FACTUAL BACKGROUND

A. THE HISTORICAL SIGNIFICANCE OF THE TERRACE THEATER

The Terrace Theater (“Terrace”) is a movie theater built in 1951, and is located 3508 France Avenue North in the City of Robbinsdale, County of Hennepin, State of Minnesota. Pl. Comp., ¶3. Friends of the Terrace, LLC (“Friends”) is a Minnesota Nonprofit Corporation based out of Robbinsdale, Minnesota with a registered office address at 4011 Hubbard Avenue North, Robbinsdale, Minnesota, 55422. Pl. Comp., ¶1. BRE Non-Core 2 Owner B LLC (“BRE”) is a Delaware Limited Liability Corporation with a registered office address at 2345 Rice Street, Suite 230, Roseville, Minnesota, 55113. Pl. Comp., ¶3.

The Terrace is an early modern theater designed by the architecture firm Liebenberg & Kaplan, which was the most prolific theater designer in the upper Midwest in the early- to mid-twentieth century. Pl. Comp., ¶10. In Minnesota alone, Liebenberg & Kaplan is responsible for the design of the Hollywood Theater in Northeast Minneapolis, the Ely State Theater in downtown Ely, the Edina Theater in Edina, the Granada and Uptown Theaters in Uptown Minneapolis, the Varsity Theater in Dinkytown Minneapolis, the NorShor Theatre in Duluth, the State Theatre in Hutchinson, the Orpheum Theatre in Fergus Falls, and the Village Theater in Fairbault. Pl. Comp., ¶10. Still, the Terrace Theater is considered by many to be Liebenberg & Kaplan’s crown jewel in Minnesota. Pl. Comp., ¶12.

The design of the Terrace was a departure from Lindberg & Kaplan’s earlier Art Deco and Streamline Moderne theater styles. Pl. Comp., ¶ 13. It was designed to be decidedly modern, with sharp angles and a block-like structure. *Id.* The theater was considered the top of the line and its amenities state of the art for decades after its construction. Pl. Comp. Ex. A.

The Terrace was erected for the Volk brothers, Sidney and William. Hanson Aff., Ex. A. The Volk brothers established their movie theater business in the 1930s with theaters operating around the Twin Cities. *Id.* Even during the Great Depression, the Volks’ business thrived. *Id.* Yet, their trajectory was thwarted during World War II: like most movie exhibitors, the Volks’ new theater construction was prohibited during the war, and, therefore, the Terrace’s construction was postponed. *Id.*

When construction began, the Terrace was built to be the center of a shopping district in the rapidly growing Robbinsdale community. *Id.* It was built on a small hilltop, overlooking a sprawling landscaped area and large parking lot. *Id.* The theater was built to accommodate 1,300 people, and was eventually split to house three screens. *Id.* It also had unique features: lounge areas and a television room, with sofas, arm chairs, and a colored television where groups could watch television events. *Id.* The Volk Brothers’ Terrace Theater opened May 23, 1951 with a showing of *Father’s Little Dividend*.¹ *Id.* Indeed, the Terrace brought a piece of Hollywood to the Robbinsdale area.

In 2004, and again in 2015, the Minnesota Historic Preservation Office determined that the Terrace Theater was eligible for inclusion on the National Register of Historic Places (“National Register”), due to its significance, age, uniqueness, and a variety of other factors. Pl. Comp., ¶ 20. Nonetheless, a private property cannot be listed in the National Register without the consent of its owner. Gardner Aff., ¶ 3.

¹ *Father’s Little Dividend* (1951) is a sequel to the original *Father of the Bride* (1950), featuring such Hollywood stars as Spencer Tracy, Joan Bennett, and Elizabeth Taylor. The full black and white movie can be viewed on YouTube.com.

B. THE CURRENT STATE OF THE TERRACE

The theater was eventually closed in 1999 and has been vacant ever since. Def. Mem., p. 2. The Terrace and adjacent strip mall have struggled financially for years. Glick Supp. Aff., ¶ 2. Moreover, the attached mall has been largely vacant since the closing of the Rainbow Foods grocery store located East of the Terrace in 2013.² *Id.*

Today, this “gem of the lakes” has lost its luster. Its interior lies in complete disrepair. Glick Aff., Ex. A. Its mid-century modern décor, lush red carpeting, and once-luxurious maroon seating are a thing of the past, as all the furnishings have been torn out of the building. *Id.* The ceiling of the once-grand lobby is sagging, and has collapsed in multiple places. Gray Aff., ¶3. There are holes in the roof through which the sky is visible from inside the theater. *Id.* The stained glass windows are broken. Glick Aff., Ex. A., *supra*. The walls are crumbling, are covered in graffiti, and are stained from water damage and mold. *Id.* Animal droppings speckle the floor. Glick Aff., ¶14.

The exterior of the building mirrors the neglect and disrepair of the interior. Linear cracking, fissures in the brick structure indicative of differential settlement, stretching the entire height of the Terrace is apparent on much of the façade.³ Glick Aff., Ex. B. The metal lath is rusting and separating from the building’s framework. *Id.* The lintels and steel columns are corroded and visibly dilapidated. *Id.* The building is currently inhabitable: there is no running water, no working restrooms, nonfunctional lighting, and no operable HVAC system. *Id.*

² The Terrace mall was built on a large deck, which was anchored by dozens of footings or pilings, driven approximately 70 feet into the ground. Glick Supp. Aff., ¶3. This method was used to mitigate the bad soil on the parcel. *Id.* The mall was originally built to be an indoor mall, but when it became apparent that the mall was struggling financially, it was renovated to become a strip mall. *Id.*, at ¶2.

³ This is indicative of different parts of the structure settling into the ground at different speeds, resulting in a lopsided and structurally unsound building.

As a result of the theater being vacant for the past 17 years, vandals and other trespassers have frequented the property. Gray Aff., ¶ 5. Now, due to the condition in which the Terrace finds itself, in combination with the risks attached to traversing through its sagging ceilings, missing flooring, and mold, Robbinsdale police officers evidently refuse to enter the building. *Id.*

The building is shell of its former glory, unrecognizable to those appreciative of its rich history. The Hollywood glamor brought to Robbinsdale by the Terrace could not be further away.

C. IMPROVEMENT OPPORTUNITIES AND THE ROBBINSDALE REDEVELOPMENT PROJECT.

Development of the area has been paramount for the City of Robbinsdale. Murphy Aff., ¶2. Many developers have expressed interest in the parcel on which the Terrace sits, but no applications or serious offers have been made to the City until the Redevelopment Project. *Id.* Previously, the building next to the Terrace on the parcel was occupied by Appelbaum's grocery store, then subsequently a Rainbow Foods grocery store. Glick Supp. Aff., ¶4. This was the only grocery store in Robbinsdale until its closed in 2013.⁴ *Id.* As a result, the City has specifically targeted grocers as potential developers of the Terrace Mall site, but none have expressed any interest. Murphy Aff., ¶4.

⁴ There exist small corner stores in the area, but the nearest full-scale grocery store is a Cub Foods in Crystal, MN, approximately 1.5 miles away from the Terrace.

On or about October 13, 2015, BRE entered into a binding purchase agreement with Inland Development Partners (“IDP”) for the sale of the Terrace Center property. Bauman Aff., ¶3. IDP purchased the property for a Redevelopment Project in which investments will exceed \$30 million. Carlson Aff., ¶4. This Redevelopment Project will include demolition of the existing buildings on the site, construction of a 91,000 square foot Hy-Vee grocery store, renovation of an office building to create new office space for North Memorial Health Care, and reconstruction of the intersection to serve the site. *Id.* Accordingly, IDP will only be able to close on the property and pay the requisite \$5.2 million if it is able to “assemble all of the necessary elements of the Redevelopment Project,” including the space necessary to build it – through demolition of the Terrace Theater. *Id.*, at ¶17.

Other parties have inquired into purchasing the Terrace Theater. Save the Historic Terrace Theatre (STT), a subcommittee of the Robbinsdale Historical Society, initially contacted BRE about acquiring the Terrace through purchase or lease in November 2014. Leonhardt Aff., ¶2. The parties engaged in several conversations over the course of the ensuing months, though BRE made it clear from the first conversation that there was a competing interest in the property. *Id.* STT contacted BRE in August 2015 to express STT’s continued interest in acquiring the Terrace. *Id.*, at ¶4. During that phone call, BRE discussed the possibility of STT purchasing the theater should the Redevelopment Project fall through. *Id.*

In September 2015, BRE told STT that it would be allowed to survey the property. Leonhardt Aff., at ¶5. Nevertheless, five days prior to signing the purchase agreement with IDP, BRE rescinded its offer to allow STT to survey the property, citing that the contract would be executed shortly and the parties to the contract were no longer interested in providing STT access to the site for survey.⁵ *Id.*, at ¶ 6.

Another community member, Tim Braun, who was the president of an independent DVD and movie production company, disclosed in an affidavit to the Court, that he and a group of investors attempted to contact BRE to make an offer on the property. Braun Aff., ¶ 4-7. Mr. Braun stated that his group of investors was constantly rebuffed when attempting to make purchase offers, and that BRE told them that unless they wanted to convert it to an office space, BRE was not interested in entertaining offers from the group. *Id.*, at ¶ 7. The timing of these events is ambiguous, as there are no dates in Mr. Braun's Affidavit. It is, therefore, unclear whether this occurred before or after the Redevelopment Project plan was introduced.⁶

⁵ In his affidavit to the Court, Mr. David Leonhardt, Board Chair of STT, stated that he continued to contact Defendant to inquire about a purchase price for the property and to schedule a time for STT to survey the property. Defendant did not respond to these requests.

⁶ Converted or refurbished office space is part of the Redevelopment Project, so it is likely that Mr. Braun's group's contact occurred after the redevelopment plan was made, eliciting such a response from BRE.

In late 2015, IDP approached the Robbinsdale Economic Redevelopment Authority (“REDA”) with its proposal to redevelop the entire Terrace Mall site. Glick Aff., ¶3. On June 24, 2016, IDP filed a formal application for the Redevelopment Project. *Id.* As part of the plan, IDP requested Tax Increment Financing (“TIF”), as the proposal is estimated to create 150 full-time jobs and 550 part-time positions. Glick Supp. Aff., ¶6. Due to the TIF request, REDA was required to review and approve the Project. *Id.*, at ¶4. In assessing the viability of the buildings on the property in question, REDA found that it would take approximately \$2.4 million to bring the Terrace Theater up to code – not taking into account the cost of repurposing or refurbishing the building. Glick Aff., ¶12; *see also* LHB Report Appx. B.

REDA unanimously voted to approve the Redevelopment Project, citing the higher taxes that would be elicited from the property (an approximate 503% increase), the impact of the blighted property on the community, and the job growth that will be realized upon redeveloping the property. Glick Aff., ¶6; 18. Additionally, REDA conducted a survey of Robbinsdale residents and found that 85% of the residents supported the Redevelopment Project. *Id.*, at ¶18.

On August 17, 2016, BRE requested that the City of Robbinsdale issue a demolition permit for the Terrace Theater. Pl. Comp. Ex. D. On August 19, 2016, due to the contention surrounding the Terrace, Hy-Vee postponed its plans to build a new store on the property, pending the fate of the theater. Pl. Comp. Ex. C. Hy-Vee representatives stated that the company would “wait and see what [would] happen,” as it wanted to respect the cultural and historical landmarks of the communities it enters. *Id.* Friends of the Terrace filed its Articles of Incorporation establishing a nonprofit corporation on August 22, 2016, and filed this suit the next day on August 23, 2016.

II. CONCLUSIONS OF LAW

Plaintiff claims that the Terrace is eligible to be categorized as a historic site pursuant to the Minnesota Environmental Rights Act (“MERA”), and as a result, it must be protected from demolition by its current owner, Defendant. Plaintiff has standing and brings its claim for injunctive relief pursuant under MERA. *See* Minn. Stat. § 116B.03 (2015).

“A temporary injunction is an extraordinary equitable remedy. Its purpose is to preserve the status quo until adjudication of the case on its merits.” *Miller v. Foley*, 317 N.W.2d 710, 712 (Minn. 1982). Injunctive relief can only be granted if, as a threshold matter, the party seeking the injunction has no adequate remedy at law. *See Borom v. City of St. Paul*, 184 N.W.2d 595, 598 (Minn. 1971); *Allstate Sales and Leasing Co., Inc. v. Geis*, 412 N.W.2d 30, 32 (Minn. Ct. App. 1987). If the threshold inquiry is satisfied, “[i]njunctive relief should be awarded only in clear cases, reasonably free from doubt and when necessary to prevent great and irreparable injury.” *AMF Pinspotters, Inc. v. Harkins Bowling, Inc.*, 110 N.W.2d 348, 351 (Minn. 1961). The Court evaluates the situation in light of five considerations:

1. The nature and background of the relationship between the parties preexisting the dispute giving rise to the request for relief;
2. The harm to be suffered by plaintiff if the temporary restraint is denied as compared to that inflicted on defendant if the injunction issues pending trial;
3. The likelihood that one party or the other will prevail on the merits when the fact situation is viewed in light of established precedents fixing the limits of equitable relief;
4. The aspects of the fact situation, if any, which permit or require consideration of public policy expressed in the statutes, State and Federal; and
5. The administrative burdens involved in judicial supervision and enforcement of the temporary decree.

Dahlberg Bros. v. Ford Motor Co., 137 N.W.2d 314, 321–22 (Minn. 1965). The burden of proof rests entirely on the moving party. *Cherne Indus., Inc. v. Grounds & Associates, Inc.*, 278 N.W.2d 81, 92 (Minn. 1979). See also *Modern Computer Systems, Inc. v. Modern Banking Systems, Inc.*, 871 F.2d 734, 737 (8th Cir. 1989).

A. The Nature and Background of the Relationship Between the Parties Preexisting the Dispute Will Be Altered by a Temporary Restraining Order.

The Court’s first important consideration is whether the issuance of the TRO will maintain the *status quo* of the relationship. *Eason v. Indep. Sch. Dist. No. 11*, 598 N.W.2d 414, 419 (Minn. Ct. App. 1999) (citing *Dahlberg*, 137 N.W.2d at 322). In this case, the parties’ relationship is as plaintiff and defendant in this law suit. Before the lawsuit was filed, the parties had no relationship, as Friends was not formed as an entity until one day before the filing of this suit. In essence, Friends would be creating a relationship between the parties, where one does not exist, if the Court issued the temporary restraining order as requested.

Furthermore, Friends claims that there are interested investors (some of whom are members of Friends), who have attempted in the past, and are still willing, to purchase the Terrace from Defendant. In contrast, Defendant asserts that the Redevelopment Project is the first legitimate purchase offer it has received for the Terrace. As the relationship currently stands, Defendant is able to develop, raze, or do nothing with its property, with the approval of the Robbinsdale City Council and REDA. Currently, Friends’ only option, without the TRO, is to make its case for the preservation of the Terrace to the public at large, but it cannot interfere in BRE’s development or demolition of its own property without judicial intervention.

As a result, the relationship between the parties will change if the Court grants the TRO: if the TRO is granted, Defendant will lose the freedom to use its property as it desires, and Plaintiff will obtain a “bargaining chip” in its efforts to acquire the Terrace from Defendant.

In addition, the property's sale prospects will be limited: Defendant will have to (1) refurbish the Terrace for sale as a historical property; (2) redesign the Redevelopment Project around the Terrace, which may lead to permanent loss of Hy-Vee's involvement in the Project and, therefore, the loss of the Project as a whole; or (3) leave it to deteriorate further and lose the value of the land as an investment property. All options result in a financial disadvantage to Defendant.

Further, as stated above, a TRO immediately gives Plaintiff a newfound advantage in any future negotiations with Defendant. In other words, if Defendant is limited to the three options above, Plaintiff will have a seat at the negotiating table that it did not have before the TRO. Additionally, Plaintiff will be bargaining from a place of power since Defendant would be extremely limited in its ability to conduct its business as usual. In this context, the current *status quo* will be significantly altered should a TRO be granted; therefore, this factor weighs against granting the TRO.

B. The Harm Suffered by Plaintiff if TRO is Granted is Irreparable.

The Terrace is unique and historically significant to the Robbinsdale community and to American architectural history at large. It has stood on France Avenue overlooking Bottineau Boulevard for over 60 years, and its impact on three generations of Robbinsdale-area residents is unquestionable. The structure, once demolished, is irreplaceable, as a facsimile of the original will never retain its value or significance. The beauty and splendor of iconic buildings lies in the mark they made at the time of their construction, the historical significance the building develops as it matures, and integrity of the original construction being maintained over time.

It is clear to the Court that granting the TRO will impact Defendant. The delay in litigation will result in the loss of the \$5.2 million IDP deal and Defendant will then need to market the property again for redevelopment. Nevertheless, although the Redevelopment Project is the first meaningful proposal for redevelopment of the property, it does not change the fact that the Terrace is a one-of-a-kind building and its destruction would be an irreparable loss to both Plaintiff and the architectural community. Therefore, this factor weighs in favor of granting the TRO.

C. It is More Likely that Defendant Will Prevail if the Claim is Adjudicated.

At issue are two statutory schemes: one to protect natural resources, the other to eliminate blight. Plaintiff brings its suit under the Minnesota Environmental Rights Act (“MERA”), which states:

Any person residing within the state [...] or corporation [...] may maintain a civil action in the district court for declaratory or equitable relief in the name of the state of Minnesota against any person, for the protection of the [...] natural resources located within the state, whether publicly or privately owned, from [...] destruction.

Minn. Stat. § 116B.03, subd. 1 (2015). A “natural resource” includes mineral, animal, botanical, air, water, land, timber, soil, quietude, recreational and *historical* resources. Minn. Stat. § 116B.02, subd. 2 (2015) (*emphasis added*).

Under MERA, a plaintiff must make a *prima facie* showing that there is a protectable natural resource and that it is under threat of destruction. Minn. Stat. § 116B.04 (2015); *see also State, by Powderly v. Erickson*, 285 N.W.2d 84, 87 (Minn. 1979). The defendant then “must either rebut plaintiff’s *prima facie* case or demonstrate as an affirmative defense that no feasible and prudent alternative exists and that its conduct will promote the public health, safety, or welfare.” *People for Environmental Enlightenment & Responsibility (PEER), Inc. v. Minnesota Environmental Quality Counsel*, 266 N.W.2d 858, 867, citing *MPIRG v. White Bear Rod & Gun Club*, 257 N.W.2d 762, 769 (Minn. 1977).

- i. *Plaintiff made a prima facie showing that the Terrace may be designated as a historical resource and that its destruction is imminent.*

The parties agree that MERA does not define the term “historical resource.” Courts turn to the criteria used by the National Park Service to determine which buildings are included on the National Register of Historic Places:

The quality of significance in American history, architecture, archeology, and culture is present in districts, sites, buildings, structures and objects of State and local importance that possess integrity of location, design, setting, materials, workmanship, feeling and association and:

- (1) That are associated with events that have made a significant contribution to the broad patterns of our history; or
- (2) That are associated with the lives of persons significant in the past; or
- (3) That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- (4) That have yielded, or may be likely to yield, information important in history or prehistory.

State by Archabal v. Cnty. of Hennepin, 495 N.W.2d 416, 421 (Minn. 1993) (*quoting Powderly*, 285 N.W.2d at 88). Plaintiff contends the Terrace qualifies as a historical resource since it embodies the distinctive characteristics of a type, period, or method of construction and represents the work of a master, as outlined in *State by Archabal*.

First, it has been established that the Terrace's distinct, luxurious, and, at the time, state-of-the-art design made the Terrace an architectural wonder. The Terrace was designed and built by the prolific movie theater architects Lindenberg & Kaplan, and has been lauded as a pivotal moment in theater architecture. Its modern design was a departure from Lindenberg & Kaplan's earlier Art Deco and Streamline Moderne styles. Further, it has been designated twice by the Minnesota Historic Preservation Office as eligible for placement on the National Register of Historic Places. For the purposes of this motion, this Court will not make a determination regarding whether the Terrace is, in fact, a historical site; rather, it will defer to the expertise of the Minnesota Historic Preservation Office and will hold that the Terrace would likely be designated a historic resource at trial.

Second, all parties have conceded that destruction of the property is nigh, given the Robbinsdale City Council's approval for demolition of the Terrace Theater. Redevelopment of the property is contingent on its demolition, therefore, the theater is likely to be demolished to achieve that end.

Thus, Plaintiff has made a *prima facie* case of the existence of a protectable natural resource and the imminent destruction of that resource, as required by *PEER. Supra*, 266 N.W2d., at 867. The burden now shifts to Defendant to either rebut the *prima facie* case or demonstrate an affirmative defense.

ii. *Defendant has submitted facts that may establish an affirmative defense at trial.*

Defendant advances the affirmative defense that even if the Terrace is found to be eligible for categorization as a historical resource, there exists a lack of a feasible and prudent alternative, and the Redevelopment Project will promote the public's health, safety or welfare. *See* Minn. Stat. § 116B.04 (2015). While this Court recognizes that economic considerations *alone* shall not constitute a defense, the analysis does not end with review of the financial aspects of the project. *Id.* "Implicit in the operation of MERA is the principle that environmentally damaging action cannot be taken if there is another, less damaging way to achieve the desired result." *PEER*, 266 N.W.2d at 873.

Here, the Terrace has been vacant since 1999. Over the 17-year period, the building has decayed, and while Plaintiff has submitted evidence of purchase attempts, none have culminated in proposals to REDA or the Robbinsdale City Council for approval. One attempt to purchase the Terrace, discussed above, was a local business owner's multiple inquiries to purchase of the theater. *See* Braun Aff., ¶7. Additionally, members of the Robbinsdale Historical Society have inquired into purchasing or leasing the property in order to restore the Terrace and reopen it as a theater. Leonhardt Aff., ¶ 2. Other ideas have included turning the Terrace into a brew pub, or a film studio and screening area. *See* Braun Aff., ¶¶ 4-6. These proposals are creative solutions undergirded by good intentions, but are nebulous in their practical application. None of the affidavits that have been submitted to the Court in support of the TRO have any tangible or concrete information regarding who will be purchasing the Terrace, where the money will come from, what they plan on doing with the property, and when the renovation would be accomplished.

It is difficult for this Court to rely on these unformulated and abstract proposals and consider them to be legitimate, “feasible and prudent alternative[s]” in contrast to the written and actionable Redevelopment Project, particularly in light of the City’s support for the latter.

Finally, the facts support the contention that Defendant’s plan will bolster the health, safety, and welfare of the public. *See PEER, supra*, at 867. Courts have long held that the clearing of blighted areas serve a public purpose. *See, e.g. Housing and Redevelopment Authority In and For City of Minneapolis v. Minneapolis Metropolitan Co.*, 104 N.W2d 864 (Minn. 1960); *Berman v. Parker*, 348 U.S. 26, 75 S.Ct. 98, 99 L.Ed. 27 (1954). Affidavits submitted to the Court demonstrate that the building is structurally unsound and has attracted trespassers. People have been living in the building, requiring forcible removal by BRE, and graffiti artists have marked the walls. Gray Aff., ¶ 5. The current condition of the roof poses a safety risk: ceilings are caving in, and there are places where the outdoors are visible through holes in those ceilings. Glick Aff., ¶ 14. Collapse of the roof seems imminent with injuries to trespassers likely to occur. Additionally, it is most troubling that blighted properties attract crime, but are also so unsafe as to deter local police from the building, and put them at a great safety risk should they execute their statutory law enforcement duties while at the property. *Id.*

In addition to the safety concerns that will be alleviated by the Redevelopment Project, the Project will create an additional 700 jobs. It will also provide a grocery store to a city that does not have one, which alleviates the problem of having residents commute to a neighboring city for essential amenities. These two features bolster the public’s access to positive health outcomes, both because of increased employment as well as healthier and more readily available food options.

Finally, the Project boosts the economic welfare of the City of Robbinsdale. It creates revenue for the City and also attracts other businesses to the area, which in turn create more jobs, more access, and more revenue.

Accordingly, at trial, it is likely that a court would determine that the Plaintiff's preservation ideas do not establish a feasible and prudent alternative compared to Defendant's tangible and articulated Redevelopment Project. Also, it is likely the Defendant would be able to demonstrate an effective affirmative defense at trial. Therefore, this factor weighs against granting the TRO.

D. The Public Policy Considerations Weigh in Favor of Denying the TRO.

This specific issue embodies the intersection of two distinct policies: the right to preserve historic buildings for future Minnesotans and the right of a community to redevelop blighted areas. *Compare* Minn. Stat. §116B.01 *et. seq.* (*establishing* the Minnesota Environmental Rights Act) *with* Minn. Stat. § 469.001 *et. seq.* (*establishing* the Housing and Redevelopment Authorities Act (“HRA Act”). MERA was first passed in 1971. Minn. Stat. § 116B.02 (2015). The HRA Act passed in 1987. Minn. Stat. § 469.00, *et seq* (2015). When two statutes passed in different sessions are acrimonious, the law latest in date of final enactment shall prevail. Minn. Stat. § 645.26. subd. 4 (2015).

Plaintiff argued that the statutes are acrimonious and, therefore, according to *PEER*, when two statutes are acrimonious, the older controls. In Plaintiff's view, MERA undermines the HRA Act. In *PEER*, Plaintiffs challenged three statutes dealing with the same subject – environmental law. *See PEER*, 266 N.W.2d 858, generally.

In *PEER*, the parties were in contention over the construction permit for a high voltage transmission line issued by the Minnesota Environmental Quality Council (MEQC). *Id.* at 861. In question was the interplay between MERA, the Minnesota Environmental Policy Act (“MEPA”) and the Power Plant Siting Act (“PPSA”):

In 1973, the legislature enacted three other pieces of environmental legislation to complement MERA: (1) Section 116C.01, which created the MEQC to provide the interagency interaction necessary for the solution of complex environmental problems; (2) MEPA, c. 116D, which required all state agencies to consider environmental factors before making decisions that potentially have significant environmental effects; and (3) the PPSA, ss 116C.51 to 116C.69, which, according to s 116C.55, subd. 1, would ensure the “sit(ing of) large electric power facilities in an orderly manner compatible with environmental preservation and the efficient use of resources.”

Id. at 865. The court of appeals determined the subsequent statutes were not intended to supersede MERA, rather they were enacted to ensure administrative agencies fully discharge their environmental responsibilities. *Id.*

This case is different. *PEER* deals with three laws that impact the same subject matter and, therefore, needed to be reconciled. In this case, Plaintiff is attempting to juxtapose two separate public policies as acrimonious when they are, in fact, harmonious. Simply, Plaintiff could have proposed a renovation plan that would have eliminated the blight while maintaining the historical resource of the Terrace; but, Plaintiff did not submit a proposal to REDA when it was considering the Redevelopment Plan. Accordingly, Plaintiff’s action is more akin to a protest of Defendant’s plan rather than an advocacy for its own competing proposal to renovate the Terrace site. Thus, Plaintiff has not made a showing that its plan, and the MERA objectives, were somehow neglected or ignored by REDA when the agency undertook its work.

E. The Administrative Burden on the Court Weighs Against the TRO.

Plaintiff argues that there will be minimal administrative burden on the Court. Conversely, in this case, Plaintiff is requesting this Court to step into the role of an administrative economic development body – such as REDA – and substitute its judgment for the Court’s assessment. By granting the TRO, the Court is making the determination that Plaintiff’s tenuous ideas for the Terrace are feasible and prudent plans for the salvation of the property and also the economic rejuvenation of the area.

Essentially, Plaintiff is inviting the Court to turn back the clock on the administrative decision-making process and either force REDA to consider a long-overdue, conjectural preservation plan for the Terrace; or take on the administrative decision-making role itself and consider various environmental and economic proposals for renovation, without the benefit of the expertise an economic development agency enjoys.

The Court considered granting Plaintiff’s request for a TRO in order to give it time to develop and present an alternative plan to REDA for the renovation of the Terrace Theater in Robbinsdale. Yet, this action would be a significant administrative burden for the judiciary, since: (1) REDA made its decision by considering all feasible and prudent options available at the time, taking a survey of the residents of Robbinsdale, and speaking to stakeholders; and (2) Plaintiff and its allies have had 17 years to propose plans to repurpose the Terrace. The Court forcing REDA to reconsider its decision almost three months after it was made is unnecessarily deleterious to REDA and any stakeholders in its decision making process. It would also ultimately require the Court to replicate REDA’s documented efforts to confirm the viability of a development plan for the site.

In short, the Court will not insert itself into REDA's administrative functions, nor will it overextend itself in granting a TRO and assuming REDA's responsibilities. Accordingly, this factor weighs in favor of denying the TRO.

CONCLUSION

Given the above analysis, four out of the five *Dahlberg* factors weigh in favor of denying the TRO: the relationship of the parties would be significantly altered, Defendant is likely to prevail if the matter is adjudicated, public policy weighs against the TRO, and the administrative burden would be too demanding of the Court. Accordingly, should the Court issue a temporary injunction, it would change the *status quo* rather than preserve it. This contravenes the purpose of granting injunctive relief.

While a tribute to the Terrace Theater in the Redevelopment Project would be apt, maintaining the Terrace as it stands is a sad and unworthy tribute to its former self. Despite being touted as the "gem of the lakes" and standing as an icon of the City of Robbinsdale for decades, its final service to its community may be to give way to more practical and fruitful endeavors. We must preserve our history and culture, but not at the expense of the health, safety, and welfare of our communities.

MKB