

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

NORTHWESTERN UNIVERSITY,

Plaintiff,

No. 00 C 7309

v.

THE CITY OF EVANSTON,

Defendant.

Judge Aspen

CONSENT DECREE

Plaintiff, Northwestern University (the "University"), and Defendant, the City of Evanston (the "City"; each a "Party" and collectively, the "Parties"), by their respective attorneys, have agreed upon a basis for settlement of the matters alleged in Plaintiff's Amended Complaint, and for the entry of this final and binding Consent Decree to resolve this action.

WHEREAS, the University filed a Complaint against the City on November 20, 2000, subsequently amended on July 17, 2001, to declare illegal and unconstitutional the City's action in designating the Northeast Evanston Historic District (the "Local Historic District") and including University property in the Local Historic District, and to enjoin the City from enforcing Ordinance No. 56-0-00, entitled "An Ordinance Designating the Northeast Evanston Historic District as an Evanston Historic District" (the "Designation Ordinance"), creating the Local Historic District, as the Designation Ordinance pertained to the University;

WHEREAS, on October 26, 2001, the City filed a motion for summary judgment with respect to all six counts in the University's Amended Complaint, and on September 11, 2002, the

Court granted the City's motion for summary judgment with respect to Counts II, III, IV and VI, and denied the City's motion with respect to the University's claims in Counts I and V;

WHEREAS, in Count I of its Amended Complaint, the University alleged, *inter alia*, that the City violated the University's right to equal protection and treated the University differently than other similarly situated property owners by including the University's T1 and T2 District properties in the Local Historic District because of its animus against the University;

WHEREAS, in Count V of its Amended Complaint, the University alleged, *inter alia*, that the City violated the "unconstitutional conditions" doctrine by conditioning the exclusion of University property from the Final Local District on the University's agreement to waive its Charter right to be free from property taxation;

WHEREAS, the City has answered the Amended Complaint, denying the material allegations and asserting certain affirmative defenses thereto, and further specifically denies that it has engaged in any conduct violative of the United States Constitution or any other laws in connection with the designation of the Local Historic District or the enactment of the Designation Ordinance;

WHEREAS, on or about May 15, 2003, the Parties jointly submitted a Final Pre-Trial Order regarding Counts I and V, and thereafter, the Court set a trial commencement date of March 1, 2004;

WHEREAS, to avoid the further expense, burden and uncertainty of trial, the Parties have agreed to settle this matter, and further have agreed that entering into this Consent Decree does not constitute an admission by the City of any wrongdoing or liability, nor a concession by the University that its claims are not well founded;

WHEREAS, this Consent Decree does not constitute an adjudication of any issue of fact or law;

WHEREAS, this Consent Decree constitutes a complete settlement and release by the Parties of any and all claims that were or could have been asserted by the Parties in connection with the designation of the Local Historic District or the enactment of the Designation Ordinance;

WHEREAS, the Parties agree that this action shall be dismissed with prejudice, except for the retention of jurisdiction by this Court for the purpose of enforcing the Consent Decree, as provided in Paragraph 12 below;

WHEREAS, the Parties have waived any right to appeal from this Consent Decree;

WHEREAS, this Consent Decree, including all exhibits attached hereto, contains the entire agreement between the parties and supercedes any prior or contemporaneous agreements or understandings between the University and the City, whether written or verbal, and shall only be modified by a written instrument signed by or on behalf of the City, the University and the Court.

NOW THEREFORE, upon the consent of the Parties, it is hereby ORDERED, ADJUDGED, AND DECREED:

1. Jurisdiction. This Court has jurisdiction of the subject matter of this action and over the parties herein pursuant to 28 U.S.C. § 1331 and § 1334.
2. Definitions. All terms not defined herein, but capitalized, are intended to be defined as provided in the Amended Complaint.
3. University/City Committee. The University and the City have agreed to establish a special committee, comprised of (i) two representatives from the University, one of

whom shall be the Vice President with responsibility for development and land use issues, or other Vice President with responsibility for the issues to be discussed by the committee; (ii) two representatives of the community, who shall be chosen by and serve at the pleasure of the City Council; and (iii) the Alderman of the First Ward. The Committee shall meet on a regular basis, or as needed, in meetings open to the public, to discuss and make good faith efforts to resolve issues relating to: (i) the University's proposed demolition of existing structures on, and/or new construction plans for, the University's current T1 and T2 District properties and the University's current U1 District properties; and (ii) other issues relating to planning, land use, building and zoning pertaining to the University's current T1 and T2 District properties and the University's current U1 District properties. Such issues shall include, but not be limited to, zoning, congestion, parking, noise, siting and appearance. This Committee shall also meet, as necessary, and as early as practicable, as part of a good faith effort to resolve issues between the Parties that may arise from time to time which relate to matters the City may be contemplating that would impact the University's current T1 and T2 District properties and the University's current U1 District properties, such as binding appearance review and parking issues. Nothing in this paragraph shall require the Committee to reach an agreement on the issues discussed.

4. T1 Properties. The University and the City have agreed that certain University properties in the T1 District shall be and are hereby excluded from the Local Historic District (the "T1 Excluded Properties"). The T1 Excluded Properties are identified on the list attached hereto as Exhibit 1 and their boundaries are depicted on the map attached hereto as Exhibit 2. All other University T1 District properties in the Local Historic District shall remain within the district. The map attached hereto as Exhibit 3 depicts the revised boundaries of the Local Historic District east of Sherman Avenue.

5. T2 Properties. The University and the City have agreed that certain University properties in the T2 District shall be and are hereby excluded from the Local Historic District (the "T2 Excluded Properties"). The T2 Excluded Properties are identified on the list attached hereto as Exhibit 1 and their boundaries are depicted on the map attached hereto as Exhibit 2. All other University T2 District properties in the Local Historic District shall remain within the district. The map attached hereto as Exhibit 3 depicts the revised boundaries of the Local Historic District east of Sherman Avenue.

6. Consent Decree Governs. Upon entry, this Consent Decree shall supercede anything in the Designation Ordinance that is inconsistent with this Consent Decree relating to the applicability of the Preservation Ordinance to the T1 Excluded Properties or the T2 Excluded Properties. Accordingly, the T1 Excluded Properties and the T2 Excluded Properties will not be subject to the Preservation Ordinance and the Preservation Commission's jurisdiction or review, except as provided in paragraph 8 of this Consent Decree below. The revised boundaries of the Local Historic District, east of Sherman Avenue, shall conform to the boundaries shown on Exhibit 3. Moreover, it is agreed that the T1 Excluded Properties and the T2 Excluded Properties shall not be designated as individual Evanston or national landmarks in the future, nor included in any future historic district, without the explicit consent of the University.

7. Binding Appearance Review. The University and the City have agreed that all University properties in the current U3 District, together with the T1 Excluded Properties and the T2 Excluded Properties, shall be exempt from binding appearance review as has been proposed by the City, and any similar future ordinance or proposal.

8. Consolidation. The University may consolidate for development any of its properties, or portions thereof, including, but not limited to, the T1 Excluded Properties and the

T2 Excluded Properties, in accordance with applicable ordinances. Without limiting the generality of the foregoing sentence, if a consolidation involves a property that is not part of the Local Historic District and a property that is part of the Local Historic District, the University shall comply with applicable provisions of the Preservation Ordinance relating to consolidation, and all other applicable ordinances.

9. Moratoria. The University and the City have agreed to: (i) a twenty (20) year moratorium on any new construction in the open space on Foster Street, which is north of, and adjacent to, the Foster-Walker Undergraduate Housing Complex; and (ii) a ten (10) year moratorium on demolition of the existing structures located at 2010 and 2016 Sheridan Road and on construction on the T2 Excluded Properties fronting Sheridan Road in the block between Foster Street and Library Place (collectively the "Moratoria Properties"). The foregoing moratoria shall not restrict any maintenance of, renovations and repairs to, additions to, or demolition in the event of a material casualty to, any of the Moratoria Properties, as deemed reasonably necessary or appropriate by the University, in accordance with applicable ordinances.

10. University Contribution. The University shall pay the City the sum of Seven Hundred Thousand Dollars (\$700,000) (the "University Contribution") upon the entry of this Consent Decree by the Court.

11. Release; Costs and Fees. Upon entry of this Consent Decree, the Parties release each other from any and all claims that were or could have been brought relating in any way to the designation of the Local Historic District or the enactment of the Designation Ordinance. This case is hereby dismissed with prejudice. The City and the University agree that each party shall bear its own attorneys' fees and costs incurred in the litigation.

12. Disputes. The Parties shall attempt to resolve informally any disputes that may occur under this Consent Decree. If the parties are unable to reach agreement, the issue may be submitted by either Party to the Court for resolution; provided, however, that nothing in this sentence shall allow the parties to submit to the Court for resolution the failure of the University/City Committee referred to in Paragraph 3 to reach agreement on the issues discussed by the Committee. Insofar as any of the provisions of this Consent Decree or any actions taken pursuant to such provisions may be inconsistent with any state law or regulation, the provisions of this Consent Decree shall prevail in accordance with the supremacy of federal law under the U.S. Constitution. Notwithstanding the provisions of this Consent Decree concerning dismissal of this action, jurisdiction is retained by this Court for the purpose of enforcing this Consent Decree.

13. Signatories. Each undersigned representative certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document. The Consent Decree may be simultaneously executed in two or more counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute a single agreement.

[Signature Page to Follow]

Dated: _____, 2004

CONSENTED TO:

NORTHWESTERN UNIVERSITY, Plaintiff

By: _____

One of Its Attorneys

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CITY OF EVANSTON, Defendant

By: _____

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ENTERED:

Hon. Marvin E. Aspen

United States District Judge

DATE: _____

EXHIBIT 1

LIST OF EXCLUDED PROPERTIES

TI Excluded Properties:

619 Colfax Street

625 Colfax Street

629 Colfax Street

T2 Excluded Properties:

(1) T2 Properties Bounded by Garrett Place to Library Place

Sheil Catholic Center: 2110 Sheridan Road

2046 Sheridan Road

Private home: 2044 Sheridan Road

2040 Sheridan Road

(2) T2 Properties Bounded by Library Place to Foster Street

Family Institute: 618 Library Place

2016 Sheridan Road

2010 Sheridan Road

Blomquist Recreation Center: 617 Foster Street

Parking areas and parking lots as shown on the map attached as Exhibit 2 (the parking lot west of Blomquist Recreation Center is not a T2 Excluded Property, as shown on Exhibit 2

(3) T2 Properties Bounded by Foster Street to Emerson Street

Foster-Walker complex: 1927 Orrington Avenue (the basketball courts north of Foster-Walker are not a T2 Excluded Property, as shown on the map attached as Exhibit 2)

Searle Hall: 633 Emerson Street

Transportation Center: 600 Foster Street

619 Emerson Street

All parking areas and parking lots

Open space on Foster Street