

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

East Phillips Neighborhood Institute, Inc.
and Cassandra Holmes,

Plaintiffs,

v.

The City of Minneapolis,
Minnesota Pollution Control Agency,
and Minnesota Environmental Quality Board,

Defendants.

Judge Edward T. Wahl

Court File No. 27-CV-20-8414

**ORDER DENYING
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

The above-entitled matter came on for a hearing before the Honorable Edward T. Wahl, Judge of District Court, on December 15, 2022 to consider Plaintiffs' Motion for Preliminary Injunction. Plaintiffs East Phillips Neighborhood Institute, Inc. ("EPNI") and Cassandra Holmes seek to enjoin Defendant City of Minneapolis (the "City") from demolishing the Roof Depot building in the East Phillips Neighborhood as part of the City's Hiawatha Campus Expansion Project. Plaintiffs allege that the demolition of the Roof Depot building will cause irreparable harm to the environment and the health of the East Phillips community.

The Court took the Motion for Preliminary Injunction under advisement at the conclusion of the December 15, 2022 hearing. On January 26, 2023, the Minneapolis City Council voted to approve the demolition, which is now expected to begin the week of February 27, 2023. On February 6, 2023, the Minnesota Court of Appeals affirmed the adequacy of the City's Environmental Assessment Worksheet (EAW) for the project and the City's determination that no Environmental Impact Statement (EIS) is required.

The Court reached its decision on Plaintiffs' Motion for Preliminary Injunction after

careful consideration of both parties' thoughtful arguments. The Court will issue a full opinion outlining its legal analysis and reasoning soon. In the meantime, given the recent developments and the impending demolition, the Court now issues the following **ORDER** to provide immediate clarity to both parties:

ORDER

1. A temporary injunction is an extraordinary remedy and should only be granted “when it is clear that the rights of a party will be irreparably injured before a trial on the merits is held.” *Pickerign v. Pasco Marketing, Inc.*, 228 N.W. 2d 562, 564 (Minn. 1975). The moving party has the burden to show that the injunction is necessary to prevent great and irreparable injury. *Metro. Sports Facilities Comm’n v. Minn. Twins P’ship.*, 638 N.W.2d 214, 222 (Minn. Ct. App. 2002). The mere possibility of harm is not sufficient to merit a temporary injunction. *See Miller v. Foley*, 317 N.W.2d 710, 713 (Minn. 1982).

2. The *Dahlberg* factors are the proper standard for the Court to apply here. *See Drabik v. Martz*, 451 N.W.2d 893 (Minn. Ct. App. 1990) (holding that the *Dahlberg* factors are the appropriate factors in an action for injunctive relief under MERA). The *Dahlberg* factors are: (1) the relationship between the parties; (2) the harm to the plaintiff if the injunction is denied compared to the harm to the respondent if the injunction is granted; (3) likelihood of success on the merits; (4) public policy; and (5) the administrative burden on the courts. *Dahlberg Brothers, Inc. v. Ford Motor Co.*, 272 Minn. 264, 274–75, 137 N.W.2d 314, 321–22 (1965).

3. The Court finds that Plaintiffs have not met their burden of demonstrating that demolition of the Roof Depot site *will* cause irreparable harm instead of just the potential of harm. Given that the City owns the Roof Depot site and has no plans to sell it, the Court cannot make a finding of irreparable harm based on the loss of Plaintiffs' aspirational urban farm concept. The

affidavits Plaintiffs submitted generally address the historic and existing health, socioeconomic, racial, and environmental burdens faced by members of the East Phillips Neighborhood, which the Court recognizes and is sympathetic to. Other affidavits raise concerns about traffic-related air pollution associated with the Hiawatha Campus Expansion Project. But to grant a preliminary injunction, the Court must make a finding that the destruction of the Roof Depot building (instead of other collateral environmental consequences) will cause irreparable harm if not enjoined, which the Court cannot do based on the evidence presented.

4. The pollution risk Plaintiffs suggest that is tied specifically to the Roof Depot demolition is the arsenic in the soil under the building. Affidavits from emeritus professor Edward Nater contend that there is a “potential” for the Roof Depot demolition to cause contaminants to be dispersed into the East Phillips Neighborhood. (*See* Nater Aff. at 6–7; Nater Rebuttal Aff. at 4–5). But there is insufficient evidence for the Court to find that this contamination is certain or even likely, particularly given the City’s retention of soil remediation experts to clean up the site.

5. For these reasons, Plaintiff’s Motion for Preliminary Injunction is **DENIED**. The Court’s full opinion and legal analysis is forthcoming.

IT IS SO ORDERED.

DATED: February 13, 2023

BY THE COURT:



Honorable Edward T. Wahl
Judge of District Court