

CAUSE NO. _____

CHARLOTTE BARNER AND ROBERT BARNER,	§	IN THE DISTRICT COURT
<i>Plaintiffs,</i>	§	
<i>v.</i>	§	_____ JUDICIAL DISTRICT
CITY OF DALLAS AND REVERCHON PARK	§	
SPORTS AND ENTERTAINMENT, LLC,	§	
<i>Defendants.</i>	§	DALLAS COUNTY, TEXAS

PLAINTIFFS' ORIGINAL PETITION

Charlotte Barner and Robert Barner (*Plaintiffs* or the *Barners*) sue the City of Dallas (the *City*) and petition this Court to declare that Contract No. PKR-2019-00011143 (the *Stadium Lease*) between the City and Reverchon Park Sports and Entertainment, LLC (*RPSE*) is void.

On January 8, 2020, the Dallas City Council (the *Council*) voted to approve the Stadium Lease—which apparently has yet to be finalized—in violation of the applicable procedural and substantive requirements in Chapter 26 of the TEXAS PARKS & WILDLIFE CODE (the *Parks Code*).¹ Even if the City and the Council had complied with the public notice and hearing requirements in Chapter 26 of the Parks Code, which they did not do, the proposed Stadium Lease will unlawfully cede ultimate control over public park land to RPSE, a private developer, for an excessive period of time in violation of longstanding Texas law.² The Barners ask this Court to enter a judgment declaring that the Council failed to comply with Chapter 26 of the Parks Code when it voted to approve the Stadium Lease; that the Council exceeded its lawful power by ceding ultimate control of public park land to a private party for an excessive period of time in violation of state law; and that the Stadium Lease is void and of no force or effect.³

¹ TEX. PARKS & WILDLIFE CODE §§ 26.001-.004.

² *River Road Neighborhood Ass'n v. South Texas Sports*, 720 S.W.2d 551, 560-61(Tex. App.—San Antonio 1986, *dism'd*).

³ See TEX. CIV. PRAC. & REM. CODE §§ 37.001-.011).

The Barners are not asserting any cause of action against RPSE at this time. Instead, the Barners have named RPSE as a party in accordance Section 37.006(a) of the UNIFORM DECLARATORY JUDGMENTS ACT (the UDJA). RPSE has an interest in the Stadium Lease that may be affected by the declaratory relief the Barners seek against this City in this lawsuit.⁴

OVERVIEW

1. The proposals for the Stadium Lease would grant to RPSE—a private developer—exclusive possession, control, and use of roughly 6 acres of public park land within Reverchon Park for the next 40 years. According to RPSE’s proposals, this extraordinary grant of this long-term leasehold estate will include the right to convert open public park land in an historic Lone Star Legacy Park into a private, 3,500-seat commercial sports stadium and concert venue hosting a projected quarter of a million paying customers attending over 130 private, ticketed professional sporting and entertainment events each year.⁵ Under the proposed Stadium Lease, RPSE has ultimate and exclusive control over event scheduling, ticket pricing, and other operating decisions. Texas law does not permit the City to cede such ultimate control over its public park lands to a private party.⁶

2. Even if the City had the power to cede such control of public park land to a private developer for a period of up to 40 years, Chapter 26 of the Parks Code establishes other

⁴ *Id.* at § 37.006(a).

⁵ Due to the lack of transparency, the text of proposed Stadium Lease has not been made public, and some public disclosures indicate that it is still being negotiated. The allegations concerning the terms of the proposed Stadium Lease were obtained from presentations by RPSE and information obtained from public documents of the City. Some information is conflicting, such as a pamphlet suggesting that the stadium may have a seating capacity as high as 5,000 seats.

⁶ *South Texas Sports*, 720 S.W.2d at 560-61.

important procedural and substantive legal safeguards to preserve and protect public park lands. The City and the Council ignored these state statutory requirements when the Council voted to approve the Stadium Lease.

a. Subsection 26.001(b) and Section 26.002 of the Parks Code require the City to publish detailed public notices and to hold public hearings *before* the Council votes to approve any proposed “program or project,” such as the Stadium Lease,⁷ “that requires the use ... of any public land designated and used prior to the arrangement of the program or project as a park....”⁸ The City *did not* publish the public notices or hold the public hearings required by Section 26.002 of the Parks Code. Any Council vote to approve the Stadium Lease without first publishing proper notice and holding public hearings is void.

b. In addition to requiring the City to satisfy these procedural notice and hearing requirements, Subsection 26.001(a) of the Parks Code requires the Council to make certain substantive factual determinations *before* voting to approve a proposed project or program, such as the Stadium Lease. The Council must specifically determine that that (i) “*there is no feasible and prudent alternative*” to the proposed program or project, and (ii) that the program or project “*includes all reasonable planning to*

⁷ TEX. PARKS & WILDLIFE CODE § 26.001(b) (“A finding required by Subsection (a) of this Section may be made *only after* notice and a hearing as required by this chapter.”); see TEX. PARKS & WILDLIFE CODE § 26.002 (a)-(d) (establishing notice, publication, and hearing requirements under Chapter 26).

⁸ *Id.* at § 26.001(a) (requiring that governing body of municipality make substantive factual determination (a) that there are “*no feasible and prudent*” alternatives to the use of public land for the proposed program or project and (2) that “*all reasonable planning*” to minimize harm to the public land from its use for any approved program or project has been undertaken).

minimize harm to the land, as a park, recreation area, scientific area, wildlife refuge, or historic site, resulting from the use” of the park land for the proposed project or program.⁹ The statute also requires that the Council “shall consider clearly enunciated local preferences.”¹⁰

c. To ensure compliance with the notice and hearing requirements, Subsection 26.001(b) of the Parks Code prohibits the Council from making the substantive determinations under Subsection 26.001(a), *until after* the City has published the notices and held the public hearings required under Chapter 26.¹¹ Chapter 26’s prohibition against the use of a protected public park area for a proposed project or program is mandatory unless the Council makes the findings that justify the approval of the program or project.¹²

d. The City and the Council failed every statutory test for a legally valid Council vote to approve the Stadium Lease. The City failed to publish the required notices and to hold the required hearings, but the Council voted anyway to approve the Stadium Lease without them. The Council compounded these legal errors by voting to approve the Stadium Lease without making the substantive factual determinations

⁹ *Id.* at § 26.001(a).

¹⁰ *Id.* at § 26.001(c).

¹¹ *Id.* at § 26.001(b) (“A finding required by Subsection (a) of this Section may be made only after notice and a hearing as required by this chapter”).

¹² *Id.* at § 26.001(c) (“The governing body or officer shall consider clearly enunciated local preferences, and the provisions of this chapter do not constitute a mandatory prohibition against the use of the area if the findings are made that justify the approval of a program or project.”).

required under Subsection 26.001(a) of the Parks Code. For these reasons, the Stadium Lease is invalid under Chapter 26 of the Parks Code.

e. Even if the City were to claim disingenuously that the Council silently or implicitly made the required factual determinations, the determinations would be invalid. Under Subsection 26.001(b), the City must publish the statutory notices and hold the public hearing before the Council makes the factual determinations under Subsection 26.001(a) that are the essential legal predicates to a lawful Council vote to approve the Stadium Lease. Subsection 26.001(b) thus deprives the Council of any lawful power to make the predicate factual determinations necessary to any legally valid Council vote to approve the Stadium Lease. In sum, the City and the Council failed in every possible way to comply with Chapter 26 of the Parks Code. The Barners ask the Court to enter a judgment declaring the Stadium Lease to be void.

3. The City and the Council deprived the Barners and citizenry of Dallas of the legal process due them under Chapter 26 of the Parks Code. To vindicate these statutory rights, the Barners seek declaratory, supplemental, and other non-monetary relief. In addition, the Barners seek monetary relief in the form of such attorneys' fees and costs as the Court finds are reasonable and just under Section 37.009 of the UDJA in an amount within the jurisdictional limits of this Court of less than **\$100,000**.¹³ The City legislature waived sovereign or governmental immunity to this claim.¹⁴

¹³ TEX. R. CIV. P. 47.

¹⁴ See *infra* footnote 24.

LEVEL 2 — RULE 190.3 DISCOVERY CONTROL PLAN

4. The Barners intend to conduct discovery pursuant to Rule 190.3 of the TEXAS RULES OF CIVIL PROCEDURE (Level 2).

SERVICE

5. Defendant, the **City of Dallas**, is a home rule municipal corporation located primarily in Dallas County, Texas. The City of Dallas may be served with process by serving its Mayor, **Eric Johnson**, at Dallas City Hall, 1500 Marilla Street, Dallas, Texas 75201, or by serving the City Secretary, **Billiere Johnson**, at Dallas City Hall, 1500 Marilla Street, Room 5D South, Dallas, Texas 75201.

6. Defendant, **Reverchon Park Sports and Entertainment, LLC**, may be served with process by serving its registered agent, Amerock Promotional Enterprises, Inc., 2595 Dallas Parkway, Suite 430, Frisco, TX 75034.

*No notice to the City—other than service of process— is required
as a predicate to the Barners’ right to file or to maintain
this suit or to recover the relief sought.*

7. The City is a home rule municipal corporation located primarily in Dallas County, Texas. No notice to the City, other than service of process, is required under Ch. XXIII, Sections 1 or 2 of the Dallas City Charter or any other provision of state or local law as a prerequisite to filing this lawsuit or the Barners’ entitlement to the relief sought.

8. The Barners’ claims are not subject to the TEXAS TORT CLAIMS ACT. The Barners do not seek to hold the City liable for personal injuries or for any claims for monetary damages

for an injury to real or personal property caused by the negligent act or omission of the City or its officers, servants, or employees.

VENUE

9. Venue is proper in Dallas County, Texas, because it is the county where the Barners' claims accrued and where the seat of the Dallas City government is located.¹⁵

JURISDICTION

*This Court has subject matter jurisdiction
to decide the Barners' claims.*

10. The Barners' Petition affirmatively demonstrates that this Court has subject matter jurisdiction to decide this cause.

a. Section 26.003 of the Parks Code specifically authorizes judicial review of the Barners' claim that the Council voted to approve the Stadium Lease in violation of Chapter 26.¹⁶ The Barners timely filed this petition for judicial review of the Council's unlawful vote to approve the Stadium Lease. Under Section 26.003, the validity or invalidity of the Stadium Lease is properly reviewable by this Court. This Court thus has subject matter jurisdiction to decide the Barners' claims under Section 26.003 of the Parks Code.

¹⁵ TEX. CIV. PRAC. & REM. CODE § 15.002 (Westlaw 2020).

¹⁶ TEX. PARKS & WILDLIFE CODE § 26.003 ("A petition for the judicial review of the approval or disapproval of a program or project under this chapter must be filed within 30 days after the approval or disapproval is announced, or the review is barred.").

b. In addition, or in the alternative, this Court has general subject matter jurisdiction over the Barners' claims. Texas's "trial courts are courts of general jurisdiction."¹⁷ The Texas Constitution provides that a trial court's jurisdiction "consists of exclusive, appellate, and original jurisdiction of all actions, proceedings, and remedies, except in cases where exclusive, appellate, or original jurisdiction may be conferred by this Constitution or other law on some other court, tribunal, or administrative body."¹⁸ By statute, trial courts, including this one, have "the jurisdiction provided by Article V, Section 8, of the Texas Constitution," and "may hear and determine any cause that is cognizable by courts of law or equity and may grant any relief that could be granted by either courts of law or equity."¹⁹ Courts of general jurisdiction presumably have subject matter jurisdiction unless a contrary showing is made. The City can make no such contrary showing.

*This Court has jurisdiction because the City does not have,
or has waived, sovereign immunity.*

11. The City does not have, or has legislatively waived, sovereign or governmental immunity.

12. This Court has jurisdiction, despite any assertion of governmental immunity by the City, because Subsection 26.003 of the Parks Code specifically authorizes judicial review.

¹⁷ *Dubai Petroleum Co. v. Kazi*, 12 S.W.3d 71, 75 (Tex.2000).

¹⁸ TEX. CONST. art. V, § 8 (emphasis added).

¹⁹ TEX. GOV'T CODE §§ 24.007–.008.

13. Moreover, the City does not enjoy sovereign or governmental immunity from suit or from liability for the relief the Barners seek under the UDJA: a declaration that the Stadium Lease is invalid.²⁰

14. As a general rule, Section 37.003 of the TEXAS CIVIL PRACTICE & REMEDIES CODE does not confer subject matter jurisdiction on trial courts; instead, “it authorizes courts to issue declaratory relief as a form of remedy, in addition to others, in cases in which the court is otherwise vested with constitutional and statutory subject-matter jurisdiction over the dispute.”²¹ This Court, as noted above, is otherwise vested with such jurisdiction.

15. “In any proceeding that involves the validity of a municipal ordinance or franchise, the municipality must be made a party and is entitled to be heard....”²² By requiring that the “*relevant governmental entities be made parties*,” the legislature “*thereby waive[d] immunity*” in suits such as this one challenging the validity of a municipal ordinance or franchise.²³ The Barners do not seek a declaration against the City of their own rights under Stadium Lease; instead, they seek a declaration invalidating the Stadium Lease itself due to the City’s violations of Chapter 26 of the Parks Code. This Court has subject matter jurisdiction over the Barners’

²⁰ *City of El Paso v. Heinrich*, 284 S.W.3d 366, 373 & n. 6 (Tex. 2009); see *Wichita Falls State Hosp. v. Taylor*, 106 S.W.3d 692, 697–698 (Tex.2003) (“[I]f the Legislature requires that the State be joined in a lawsuit for which immunity would otherwise attach, the Legislature has intentionally waived the State’s sovereign immunity.”).

²¹ *City of Dallas v. E. Vill. Ass’n*, 480 S.W.3d 37, 45–46 (Tex. App.—Dallas, review denied) (citing *City of Dallas v. Albert*, 354 S.W.3d 368, 378 (Tex.2011) and *Texas Lottery Comm’n v. Bank of DeQueen*, 325 S.W.3d 628, 634 (Tex.2010)).

²² *E. Vill. Ass’n*, 480 S.W.3d at 45 (quoting TEX. CIV. PRAC. & REM. CODE § 37.006 (b)).

²³ *E. Vill. Ass’n*, 480 S.W.3d at 45–46 (quoting *City of El Paso v. Heinrich*, 284 S.W.3d 366, 373 & n. 6 (Tex. 2009) (emphasis added)).

challenge to the validity of the Stadium Lease and jurisdiction to grant them declaratory, supplemental, and other relief authorized under the UDJA.

16. The legislative waiver of the City's sovereign immunity includes the Barners' claims against the City for recovery of costs and attorneys' fees under the UDJA.²⁴

The Barners' claims are ripe.

17. Ripeness is a component of subject-matter jurisdiction.²⁵ "Ripeness is 'peculiarly a question of timing'—specifically, whether the facts have developed sufficiently that a plaintiff has incurred or is likely to incur a concrete injury."²⁶ A "claim need not be fully ripened at the time suit is filed."²⁷ Instead, a claim is ripe for judicial determination when the facts are sufficiently developed for the court to determine that an injury has occurred or is likely to occur

²⁴ *Texas Educ. Agency v. Leeper*, 893 S.W.2d 432, 446 (Tex. 1994) (stating that "[w]e conclude that by authorizing declaratory judgment actions to construe the legislative enactments of governmental entities and authorizing awards of attorney fees, ***the DJA necessarily waives governmental immunity for such awards***") (emphasis added); *City of El Paso v. Croom Const. Co., Inc.*, 864 S.W.2d 153, 155 (Tex. App.—El Paso 1993, writ denied) (stating that "[w]e find that the legislature expressly included municipal corporations within the full ambit of the Uniform Declaratory Judgments Act, and there is nothing in the Act exhibiting a legislative intent to exempt municipalities from the Section authorizing awards of attorney's fees and costs.").

²⁵ *Robinson v. Parker*, 353 S.W.3d 753, 755 (Tex.2011).

²⁶ *Texas Ass'n of Bus. v. City of Austin, Texas*, 565 S.W.3d 425, 432 (Tex. App.—Austin 2018, pet. filed) (citing *Perry v. Del Rio*, 66 S.W.3d 239, 249–51 (Tex. 2001) (quoting *Regional Rail Reorganization Act Cases*, 419 U.S. 102, 140 (1974))).

²⁷ *Lone Star Coll. Sys. v. Immigration Reform Coal. of Texas (IRCOT)*, 418 S.W.3d 263, 277 (Tex. App.—Houston [14th Dist.] 2013, pet. denied) (citing *Robinson*, 353 S.W.3d at 755).

as opposed to being contingent or remote.²⁸ Texas courts “examine both the fitness of the issues for judicial decision and the hardship occasioned by the court’s denying judicial review.”²⁹

18. The Barners’ declaratory judgment claims against the City are fit for judicial determination. The Barners seek a judgment against the City declaring that the Stadium Lease is invalid. The material facts necessary to determine whether the Stadium Lease is or is not valid have already occurred and are essentially undisputed. The City did not publish the notices or hold the hearings required by Subsection 26.001(b) and Section 26.002 of the Parks Code. Nor did the Council make the mandatory factual determinations required by Subsection 26.001(a). But the Council, nevertheless, unlawfully voted to approve the Stadium Lease without complying with these predicate legal requirements. None of these material events are uncertain or contingent future events that may not occur.³⁰ On these facts, the City and the Council failed to comply with Chapter 26 of the Parks Code. This validity of the Stadium Lease is ripe for judicial resolution.

19. Texas law also permits a trial court to consider “the hardship occasioned by the court’s denying judicial review “in such cases.³¹ The hardships on the Barners are considerable.

²⁸ *Robinson*, 353 S.W.3d at 755.

²⁹ *Perry v. Del Rio*, 66 S.W.3d 239, 253 (Tex. 2001) (“[r]ipeness ... focuses on whether the case involves ‘uncertain or contingent future events that may not occur as anticipated, or indeed may not occur at all,’ and requires that we ‘evaluate both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration.’”); *Save Our Springs All. v. City of Austin*, 149 S.W.3d 674, 683 (Tex. App.—Austin 2004, no pet.).

³⁰ See *Perry v. Del Rio*, 66 S.W.3d at 253 (stating that court must evaluate both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration).

³¹ *Id.*

20. Once begun, RPSE's private stadium project cannot be undone. Mature trees will be felled. Construction of a **3,500**-seat, private, professional sports stadium and concert venue will follow. And, once the stadium is built, RPSE plans to put on over **130** private, ticketed events per year—including professional sporting events and concerts—with the attendant noise; PA announcements; amplified music; unregulated alcohol use during pre- and post-event tailgating; panhandlers drawn by the crowds; and shining stadium lights. These events will generate crowds, the inevitable scattering of trash, the proliferation of traffic, and the metastasis of unauthorized parking on private property and on public streets surrounding Reverchon Park, including on Fairmount Street where the Barners reside.

21. Theirs are not the only hardships. The century-old trees felled by construction cannot be replaced, even though the law may compel RPSE to remove or discontinue the use of the stadium improvements built under the void Stadium Lease.³² The Council's unlawful vote to approve the Stadium Lease, the illegal directive in the resolution ordering the Acting City Attorney and the President of the Park Board to sign the void Stadium Lease, and the act of signing it are all outside of the scope of any governmental or official immunity and expose

³² *Swain v. Bd. of Adjustment of City of Univ. Park*, 433 S.W.2d 727, 735 (Tex. Civ. App.—Dallas 1968, writ ref'd n.r.e.) (stating that party who erected structure under void zoning ordinance could be required to discontinue nonconforming use).

Council members and these City officials to suit and liability for their *ultra vires* acts.³³ A public officer has no discretion or authority to misinterpret or to ignore the law.³⁴

22. A declaration by the Court that the Stadium Lease is valid or invalid, subject only to the parties' rights to appeal, will end this legal controversy. No future act, omission, or event will affect the validity of the Stadium Lease. It is either valid or invalid based on presently existing facts. The Council simply did not have the legal power to approve the Stadium Lease without complying with Chapter 26. The issue is thus ripe for judicial review and determination.

STANDING

*The Barners have suffered, or probably will suffer, injuries
distinct from those suffered by the general public.*

23. The Barners have suffered, or are likely to suffer legally cognizable injuries, which are not contingent or remote. The Council voted to approve the Stadium Lease on January 8, 2020, and the resolution approving it directs the Acting City Attorney and the President of the Park Board to sign it. The City published the resolution approving the Stadium

³³ *City of El Paso v. Heinrich*, 284 S.W.3d 366, 373 (Tex. 2009) (stating that “because the rule that *ultra vires* suits are not “suit[s] against the State within the rule of immunity of the State from suit, ... it follows that these suits ... must be brought against the state actors in their official capacity”).

³⁴ *In re Smith*, 333 S.W.3d 582, 585 (Tex. 2011).

Lease. By these and other public acts, the City and RPSE assert that the Stadium Lease is legally valid. But it is not.

24. The Barners' injuries from the commercial development of a professional sports stadium with at least **3,500** seats on public park land in Reverchon Park under the auspices of the Stadium Lease are likely, if not virtually certain, to occur.

25. The proposed commercial development of the stadium project contemplated by the Stadium Lease will adversely affect what the Barners see, hear, and experience around their home in the 3300 Block of Fairmount Street at the Park Towers on Turtle Creek. Built in 1964, the Park Towers are encircled by green space. They are not gated. The Barners hope their home will remain this way. But the proposed commercial stadium development threatens to dash their hope.

26. Reverchon Park is at the front door of the Barners' home. The entrances to their home are across the street from tennis courts between Fairmount Street and Maple Avenue. The main drive entering Reverchon Park on Maple Avenue is a short walk from the Barners' front doors.

27. Reverchon Park, including the baseball field, is clearly visible from the Barners' home. Given their close proximity to Reverchon Park, the Barners are regular visitors to, and are familiar with, the Park; they attend numerous public events there year around.

28. The close proximity of Reverchon Park to the Barners' home exposes the Barners and their property to particularized injuries from the private stadium development contemplated in the Stadium Lease. These particularized injuries differ materially from those

suffered by members of the general public as a result of this private development project on public park land within sight, sound, and scent of the Barners' home.

29. The Barners, unlike others who do not live so close, can literally see, hear, and smell much of what goes on in Reverchon Park.

a. During the day, the Barners can see virtually anything going on that's not under tree cover: dog walkers in lower and upper meadows, football, outdoor basketball players, and clear view of the ball field. When the existing stadium lights shine at night, however, they shine brightly in the Barners' windows, requiring the Barners to close the blinds and drapes.

b. The more powerful lights common in a professional sports stadium and concert venue suitable for professional sporting events and the concert "show" lighting at the proposed stadium will no doubt shine brighter, shine later, and shine more often to illuminate the planned 130-plus private commercial sporting events and concerts to be held at the new stadium each year. The increased frequency and intensity of the lighting from the new stadium project will diminish the Barners' use and enjoyment of their property. The prospect of fireworks and other pyrotechnics, now common at sporting events and concerts, will be another source of both light and noise pollution. The increased light and noise pollution will tend to diminish the market value of the Barners' home.

c. The Barners' home also is within earshot of Reverchon Park. They can hear music at the band shell, live bands in any area of Park, relatively infrequent PA

announcements, small crowds cheering (in and out of the ball field), and the soft and loud white noise of people at events are all clearly heard. Between public events, this area is extremely quiet, and one can hear kids on the playground. These quiet interludes will be fewer and shorter.

d. RPSE projects that attendance at the **130** programmed stadium events each year to average over **2,000** ticketed customers per event, roughly **3** times the maximum seating capacity of the stands at the existing ball park. The crowds will be far bigger, and the cheers, as well as the boos, will be far louder and more frequent. A new PA system likely will announce the goings-on in the new professional sports stadium more often and at higher decibel levels than the PA system serving the existing baseball diamond. And, as any minor league baseball fan knows, the PA system plays an outsized and out loud role with continual announcements, promotions, and gags to entertain the fans when the errant fielding and wild pitching that is part of minor league ball does not.

e. Instead of public concerts, most performed with minimal amplification, concerts featuring professional musicians and powerful amplifiers will fill the air with sounds at previously unheard volumes on many more otherwise quiet nights. The Barners live too close to the Park to escape the noise.

f. Odors from outdoor cooking at a few public events already, but infrequently, waft their way from Reverchon Park to the Barners' balcony. Cooking

enough food to feed the estimated **2,000** customers for each of **130** or more events each year will generate unwelcome commercial cooking odors.

g. Tailgating at professional sporting events and concerts has become the norm. The cooking odors, noise, garbage, and trash in and around the Park will multiply and subtract exponentially from the Barners' use and enjoyment of their property.

h. The proposed professional sports stadium development has the potential to impact adversely the natural area and wildlife in and around Reverchon Park. RPSE apparently is responsible for some clean up in Reverchon Park. The expected crowds, the number of events, and the types of concessions sold at a professional stadium will, in the normal course, create additional garbage, trash, and traffic in and around Reverchon Park. Who cleans up the garbage scattered in and outside the Park?

i. The Barners are avid bird watchers and keep binoculars nearby (and a set in the car). A pair of barred owls and a pair of hawks bring their offspring on hunting expeditions over Reverchon Park each season. Falcon also hunt in the Park.

Woodpeckers can be heard and seen, including pileated woodpeckers nesting there. Waterfowl are frequently seen in Turtle Creek within the Park. Mallards, herons, egrets, and wood ducks have been sighted. Watching a great heron land on the trees above the creek and then descend to fish is quite a sight. But it does not appear that the City or RPSE have seen fit to commission any studies to assess the potential impact of the

proposed stadium development, the crowds, the light, the noise, and the trash on the wildlife who now inhabit this wooded oasis surrounded by Dallas's concrete jungle.

j. None of the wildlife would be possible without the many historic trees. The American Elms next to the ball field are over **100** years old and were obviously saved when the 1920 ballpark was built. These trees feed moths and butterflies. The trees also nest bats whose acrobatics reduce any mosquito population. The new stadium will kill many of them.

k. Terraforming the approximately **6.25** acres to accommodate the new stadium means destroying trees and artificially backfilling the earth along Turtle Creek. This natural area is already part of the flood zone for the Trinity River; disturbing this area to make way for acres of artificial turf poses unknown risks without proper study to determine the nature and extent of any adverse impact of the proposed stadium development on this environmentally sensitive area. What are the effects of displacing several acres of natural grass with heat retaining artificial turf? On wildlife? On drainage? On storm water runoff? No one knows because the City and RPSE did not ask.

l. The proposed stadium development within Reverchon Park will adversely impact traffic congestion exacerbate existing parking shortages at and around the Barners' home. There are only **3** streets – all 2-lane – critical to Reverchon Park access: Maple Avenue, Turtle Creek Blvd., and Fairmount St. The Barners' property abuts Turtle Creek Blvd. on the North, and Fairmount Street on the West. The main

entrance to Reverchon Park is located at the intersection of Turtle Creek Blvd. and Maple Avenue, and the limited entrance to the Recreation Center (w/limited parking) is located off Maple Avenue a short distance to the North of main entrance. There is no parking along Maple Avenue. So, drivers park on Fairmount St. and Turtle Creek Blvd. when visiting Reverchon Park and the Katy Trail.

m. Traffic is already very challenging for the Barners along Fairmount St. and Turtle Creek Blvd., especially during events and on weekends. The Barners' condo's parking areas (guest and staff sections) are continually used by drivers who have no right to park there; visitors to the park either can't find any available parking or view the Barners' street-facing visitor parking spots as the easiest solution to the lack of parking in and around Reverchon Park. There are times when cars just line up and down the Barners' narrow street. The additional traffic generated by professional sporting events and concerts will exacerbate the already serious parking shortage and add to the traffic congestion and unauthorized parking in and around the Barners' property.

n. The prospect of increases in traffic constitutes a distinct injury to the Barners and other property owners in the immediate vicinity of Reverchon Park. Maple Avenue and Fairmount St. are the points of access to the Barners' home, to Oak Lawn Avenue and then to the Dallas North Tollway, Harry Hines, and Stemmons (35E). Current commuter traffic during daily rush hours is already bumper to bumper. Professional sporting event and concert patrons will cause existing traffic congestion

and illegal parking conditions around the Barners' home to worsen. Emergency vehicle access around the Barners' home and in and around Reverchon Park will be adversely impacted.

o. A traffic study for the Prescott development, a 5.5-acre project on private land that includes hotel, office building, and apartments, projects a significant increase in traffic directly in Maple Avenue, Fairmount Street, and Turtle Creek Boulevard. The incremental increase in traffic created by the stadium development on public park land has not been studied, quantified, or accounted for.

p. The stadium development is likely to increase criminal activity. RPSE is responsible for security only inside its facilities within Reverchon Park. The area around Reverchon Park, already beset with growing crime, is facing a high probability of even more. Thieves and panhandlers will follow influx of crowds and cars at events. The Barners have already been alerted to meetings called by other homeowners concerned about the very real prospect of stadium events increasing crowds, cars, and crime. The Barners, and fellow homeowners, also have been forced to consider hiring private security staff either permanently or periodically to coincide with RPSE's events to protect their persons and property. Today, Dallas Police Departments' current low staff count cannot address the City's existing policing needs. The projected crowds at stadium events will only compound the existing security problems, unauthorized parking epidemic, and traffic congestion.

q. In sum, the Barners anticipate a foreseeable increase in activity, crowds, traffic, and attendant crime as a direct result of the proposed stadium development. These additional risks and costs fall on property owners, such as the Barners, in the immediate vicinity of the proposed stadium development. These injuries are distinctly different in kind, quality, and frequency from other kinds of harm common to members of the general public.

r. Last, but not least, the Barners reasonably expect the value of their home to decline as a result of the proposed stadium development. The current activity levels already produce lights, noise, drug use, odors, traffic, panhandling, and crime. RPSE projects massive increases in the number of events and the number of attendees that will change the very nature of Reverchon Park. A significant portion of this public park will become an intensely used commercial entertainment venue drawing crowds for single events numbering in the thousands and drawing over a quarter of one million customers each year at **130** or more stadium events. These crowds must navigate narrow streets in a largely residential neighborhood to attend private, ticketed professional sporting events and concerts in a park that was never intended for, and is legally protected from, such commercial uses. The light, noise, traffic, parking, odors, and other conditions created or exacerbated by the proposed private stadium development on public land in Reverchon Park negatively impacts the Barners' use, enjoyment, and value of their property next to Reverchon Park.

FACTS

30. The facts relevant to the Barners' entitlement to a judgment declaring the Stadium Lease to be void are relatively few and indisputable.

31. On January 8, 2020, the City Council voted 11-4 to approve the Stadium Lease. The resolution approving the Stadium Lease directs the Acting City Attorney and the President of the Park Board to sign it.³⁵

32. The Barners filed this petition for judicial review of the approval of the program or project authorized in the Stadium Lease within **30** days after the Council announced its approval.³⁶

33. The Stadium Lease requires the use of approximately **6** acres of public park land (the *Stadium Park Land*) within Reverchon Park. The City designated this land as public park land over a century ago, and the citizens of Dallas have used the land in question as a public park for over a century.

34. The Council did not determine that "there is no feasible and prudent alternative to the use" of the Stadium Park Land for the program or project authorized under the terms of the Stadium Lease.

³⁵ Whether or not the Stadium Lease has yet been signed does not affect its validity or invalidity under applicable law.

³⁶ TEX. PARKS & WILDLIFE CODE § 26.003 ("A petition for the judicial review of the approval or disapproval of a program or project under this chapter must be filed within 30 days after the approval or disapproval is announced, or the review is barred.").

35. The Council did not determine that the program or project authorized under the terms of the Stadium Lease “includes all reasonable planning to minimize harm to the land, as a park, recreation area, scientific area, wildlife refuge, or historic site” resulting from the use of the Stadium Park Land for the program or project authorized under the terms of the Stadium Lease.

36. The City did not give or publish any notice of any hearing under Chapter 26 of the Parks Code.³⁷

37. The City did not hold any public hearing pursuant to a notice given and published in accordance with Chapter 26 of the Parks Code.

38. The foregoing material, undisputed facts establish that the City failed to comply with the notice and hearing requirement in Chapter 26; that the Council voted in violation of Chapter 26; and that the Stadium Lease is void. The City simply failed to follow the statutory process the Texas legislature adopted to ensure that public park lands are not converted to private or other use *unless* there is “no feasible and prudent alternative” and “all reasonable planning to minimize harm to the land, as a park,” has been done *before* a Council vote putting century old public park land in private hands for the next 4 decades is taken.

³⁷ *Id.* at § 26.001(b) (“A finding required by Subsection (a) of this Section may be made only after notice and a hearing as required by this chapter.”); *id.* at § 26.002 (notice and hearing requirements for Chapter 26).

39. One of Reverchon Park's barred owls is watching us to see who is watching out for her.³⁸ What do we say when the sports stadium, its noise, its lights, and its crowds



drive her from her Reverchon Park home?

We're sorry, we didn't do a study.

We didn't ask a wildlife expert.

That we voted to build the stadium before we knew the effects of felling the trees or laying acres of artificial turf. There may be room in

Reverchon Park for her and for a renovated ball park. But we won't know until we ask. The Council has a legal duty to determine that "all reasonable planning to minimize harm" to Reverchon Park had been performed *before* it voted to approve the Stadium Lease. The City and the Council ignored this legally mandated review and decision process.

40. The following facts demonstrate why following that process matters to the Barners, the future of Reverchon Park, and more generally, to the restoration of public trust essential to good and effective local government.

41. Over two years ago, the Park and Recreation Department (the Parks Department) noticed a public meeting to be held on September 12, 2017, "*to provide input for the planning of the proposed renovation of the Baseball Field in Reverchon Park.*" This notice did not comply with Chapter 26. The notice does not mention privatization of 6 acres of public park land, a 40-year lease to a private developer, demolition of the baseball stands and facilities,

³⁸ Charlotte Barner took the photograph of this barred owl in a tree in Reverchon Park.

construction of a **3,500**-seat private, professional multi-sports stadium and concert venue with seating capacity **5 times** that of the existing facilities, or a Council vote on a specific plan or proposal. Instead, it solicits only “input for the proposed **renovation** of the Baseball Field in Reverchon Park.” Two years ago, roughly a dozen people attended this meeting.

42. In the over two years since, the City did not notice or hold any other meetings to solicit public input on the future of Reverchon Park. Instead, City staff quietly came up with a request for proposal based on a privatization model, even though privatization was not mentioned in the only notice for the only public meeting soliciting input on “the proposed renovation of the Baseball Field in Reverchon Park.” The City did not meaningfully consult the public before heading down the privatization road.

43. Nor did the City attempt to map where the privatization road might lead. If the City or its prospective private partners did any studies of the proposed plans and programs for Reverchon Park, they did not share them with the public: **no** traffic studies; **no** parking plans; no drainage studies; **no** noise studies; **no** lighting studies or plan; **no** environmental studies; **no** studies, period, not even a study of the emergency service access needs—ambulance, fire, and police—for the new **3,500**-seat stadium with only one, narrow paved entrance. The City apparently did not perform, or require its prospective private development partners to present, the kinds of studies it routinely requires private developers to submit **before** the City approves projects on private property.

44. The City’s first request for proposal ended in failure when the developer failed to get its financing. The City—again, without soliciting public input—issued a second request for

proposal. RPSE submitted the only response. When RPSE's proposal came up for a vote on December 9, 2019, it failed. Council members, even some who supported RPSE's December proposal, openly acknowledged a deeply "*flawed process*."

45. The flaws cited are many. Some Council members specifically cited flaws of glaring omission: *no* public hearings or public input; *no* traffic studies; *no* parking plans; *no* drainage studies; *no* noise studies; *no* lighting studies or plans; *no* environmental studies; again, *no* studies. The fate of Reverchon Park had languished in City Hall's bureaucracy for over two years. But RPSE's stadium proposal came to the Council without the information these council members felt they needed to cast an informed vote affecting the future of Reverchon Park over the next 4 decades.

46. John Jenkins, the interim Park Board Director, and T.C. Broadnax, the City Manager, proved the skeptics' point in the effort to rebut it. Mr. Jenkins told the Council there had been notice for one public meeting in 2017, a notice that solicited input at a meeting on the *renovation* of the Ballfield at Reverchon Park and that said nothing about privatization, a 40-year lease, or a 3,500-seat, multi-sport stadium and concert venue. Jenkins and Broadnax urged the Council to put the cart squarely before the horse and take off down the road to privatization without knowing where it ends, telling the Council that there would be plenty of public meetings *after* the designs are completed and traffic studies conducted. City staff advised the Council to approve the proposed private stadium program *before* the facts are in hold public meetings *after* the vote to approve the Stadium Lease is taken. Then it is too late.

47. The City followed this flawed process when it voted to approve the Stadium Lease on January 8, 2020. This process is not just flawed. It is fatally flawed. And as previously explained, it is illegal.

48. Section 13 of the Dallas City Charter makes a promise on behalf of the Mayor and the Council to the inhabitants of Dallas:

In the performance of the powers of government, it is the duty of the mayor and the city council to make suitable provision for the assurance of adequate and appropriate prior review and consideration of official actions to be taken by the city council, and to assure that a high performance level of services to the citizens is maintained, responsiveness to the people is provided, and accountability in municipal government is assured.

Respectfully, the Mayor and the Council broke the Charter's promise to assure appropriate prior review and consideration of their official actions with respect to the Stadium Lease or their stewardship of Reverchon Park. Respectfully, City staff did not provide the information necessary for the Mayor and the Council to fulfill the Charter's promises in this regard.

49. Reverchon Park is in need of renovation. The Barners do not say otherwise. But in this lawsuit, they do say that the City and the Council must follow the legal process required under Chapter 26 before the Council decides the fate of Reverchon Park for the next 4 decades. Chapter 26 requires the Council to determine—*before* voting to turn over to a private developer ultimate control of 6 acres of public park land for the next 4 decades—that “no feasible and prudent alternative” to the proposed project or program exists and that the proposed project includes “all reasonable planning to minimize harm to the land, as a park.” No one, even the project's proponents, can say that the Council made these findings or that that Council had the

facts before it that are necessary to make them. The Barners pray that the Court require the City to comply with Chapter 26 in the sincere hope that, with proper notice, public hearings and input, and the facts necessary for the Council to make the factual determinations required by Section 26.001(a), that a suitable project or program can be crafted and approved by the Council in compliance with applicable law.

**THE BARNERS ARE ENTITLED TO A DECLARATORY JUDGMENT
AND SUPPLEMENTAL RELIEF**

50. “The [UDJA] is a remedial statute designed ‘to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations.’”³⁹ It provides:

A person ... whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may have determined any question of construction or validity arising under the ... statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.⁴⁰

The Barners are entitled to declaratory relief against the City under the UDJA to end the insecurity created by the probable development of a private stadium on public park land under the auspices of the invalid Stadium Lease.

51. Chapter 26 of the Parks Code applies to the proposed use of roughly 6 acres of City of Dallas park land for the professional sports stadium project and concert venue project authorized in the Stadium Lease. Section 26.001(a) provides:

³⁹ *Heinrich*, 284 S.W.3d at 370.

⁴⁰ TEX. CIV. PRAC. & REM. CODE § 37.004(a).

A ... municipality of this state ***may not approve*** any program or project that requires the use ... of any public land designated and used prior to the arrangement of the program or project as a park, recreation area, scientific area, wildlife refuge, or historic site, ***unless*** the ... municipality, acting through its duly authorized governing body or officer, determines that:

(1) there is no feasible and prudent alternative to the use or taking of such land; and

(2) the program or project includes all reasonable planning to minimize harm to the land, as a park, recreation area, scientific area, wildlife refuge, or historic site, resulting from the use or taking.⁴¹

52. These statutory requirements are satisfied —without regard to the form or legal structure of the proposed arrangement—whenever (a) a proposed program or project; (b) requires the use of public land; (3) that was designated and used as a park before arrangement of the proposed program or project. The substance of the program or project, not is form, determines whether Chapter 26 applies.

53. Section 26.001, by its express terms, applies to the program or project authorized in the Stadium Lease. The Stadium Lease undoubtedly requires the ***use*** of roughly **6** acres of public land within Reverchon Park. That land has been designated by the City as public park land and used as such by the citizenry of Dallas for over a century. The proposed project to be memorialized in the Stadium Lease converts open public park land into a private, commercial professional sports stadium and entertainment venue for the next **40** years. This arrangement fits squarely within the unambiguous terms of Section 26.001(a). Chapter 26 applies to the Stadium Lease.

⁴¹ TEX. PARKS & WILDLIFE CODE § 26.001(a).

54. The City and the Council violated Chapter 26. As a result of these violations, the Stadium Lease, which the Council voted to approve on January 8, 2020, is invalid under Chapter 26 of the Parks Code. Subsection 26.001(b) and Section 26.002 of the Parks Code establish specific procedures requiring the City to publish detailed public notices and to hold public hearings *before* the Council votes to approve any proposed “program or project,” such as the Stadium Lease,⁴² “that requires the use or taking of any public land designated and used prior to the arrangement of the program or project as a park...”⁴³ The City did not publish the required notices or hold the required public hearings described in Section 26.002 of the Parks Code. This failure alone is sufficient to invalidate the Stadium Lease.

55. Even if the City has published the required notice and held the required hearings, Section 26.001(a) requires the Council to make certain substantive factual determinations *before* voting to approve a proposed project or program, such as the Stadium Lease. The Council must specifically determine that that (i) “*there is no feasible and prudent alternative*” to the proposed program or project, and (ii) that the program or project “*includes all reasonable planning to minimize harm to the land, as a park, recreation area, scientific area, wildlife refuge, or historic site, resulting from the use*” of the park land for the proposed

⁴² *Id.* at § 26.001(b) (“A finding required by Subsection (a) of this Section may be made only after notice and a hearing as required by this chapter.”); see TEX. PARKS & WILDLIFE CODE § 26.002 (a)—(d) (establishing notice, publication, and hearing requirements under Chapter 26).

⁴³ *Id.* at § 26.001(a) (requiring that governing body of municipality make substantive factual determination (a) that there are “no feasible and prudent” alternatives to the use of public land for the proposed program or project and (2) that “all reasonable planning” to minimize harm to the public land from its use for any approved program or project has been undertaken).

project or program.⁴⁴ The Council failed to make these predicate factual determinations necessary to validate any vote to approve the Stadium Lease.

56. Even if the Council claims that it made these predicate factual determinations, the determinations themselves would be invalid because the City failed to comply with the applicable notice and hearing requirements. To ensure compliance with the notice and hearing requirements in Subsection 26.001(a), Subsection 26.001(b) prohibits the Council from making the substantive determinations under Subsection 26.001(a), *until after* the City has published the required notices and held the required public hearings required under Chapter 26.⁴⁵ In addition, Section 26.001(c) mandates that the Council “shall consider clearly enunciated local preferences.”⁴⁶ The City not only failed to publish the required notices and to hold the required hearings, but the Council voted to approve the Stadium Lease without any notice or hearing required under Chapter 26 and without making the substantive factual determinations required under Section 26.001(a) of the Parks Code.

57. The Stadium Lease is invalid under Chapter 26 of the Parks Code. The Council did not make the predicate factual determinations required under Section 26.001(a) before the Council voted to approve the Stadium Lease. Even if the City claims the Council silently or implicitly made these factual determinations, the City did not publish the notices or hold the

⁴⁴ *Id.* at § 26.001(a).

⁴⁵ *Id.* at § 26.001(b).

⁴⁶ *Id.* at § 26.001(c) (“[t]he governing body or officer shall consider clearly enunciated local preferences, *and* the provisions of this chapter do not constitute a mandatory prohibition against the use of the area *if* the findings are made that justify the approval of a program or project.”).

hearings required under Chapter 26 before the Council's vote to approve the Stadium Lease. As a result of the City's failure to comply with then notice and hearing requirements in Section 26.003, Subsection 26.001(b) deprives the Council of any lawful power to make the predicate factual determinations necessary to any legally valid Council vote to approve the Stadium Lease. In sum, the City and the Council failed in every possible way to comply with Chapter 26 of the Parks Code. The Court should declare the Stadium Lease to be void.

CONDITIONS PRECEDENT

58. All conditions precedent to the Barners' claims have occurred, have been performed, or have been waived.

PRAYER

The Barners pray that the Court grant the Barners a judgment against the City:

1. declaring that the City legislatively waived any right to sovereign or governmental immunity to their declaratory judgment claims, including immunity from the Barners' claim against the City for costs and attorneys' fees;⁴⁷
2. declaring that the City failed to give and publish notice and to hold a hearing as required by Chapter 26 of the Parks Code;
3. declaring that the Council voted to approve the Stadium Lease without making the determinations required in Section 26.001(a) of the Parks Code;

⁴⁷ TEX. CIV. PRAC. & REM. CODE § 37.001-.004

4. declaring that the Stadium Lease unlawfully cedes ultimate and exclusive control over public park lands for an excessive period of time;

5. declaring that the Stadium lease is void and of no force and effect because the City failed to comply with Chapter 26 of the Parks Code;

6. awarding the Barners their costs and reasonable and necessary attorney's fees under Section 37.009 of the UDJA in amounts that the Court finds are equitable and just;

The Barners also pray that the Court grant them declaratory relief, supplemental relief, and any other relief to which they may be entitled.

Respectfully submitted,

/s/ Thomas M. Whelan [2020.02.06]

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