

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

MARY MISS,)	CASE NO. 4:24-CV-00123
Plaintiff,)	
v.)	
EDMUNDSON ART FOUNDATION, INC.,)	DECLARATION OF DR. KELLY
d/b/a DES MOINES ART CENTER,)	BAUM IN SUPPORT OF MOTION
Defendant.)	TO DISSOLVE OR OTHERWISE
)	MODIFY PRELIMINARY
)	INJUNCTION


I, Kelly Baum, pursuant to 28 U.S.C. § 1746(2), declare under the penalty of perjury, the following:

1. I am over the age of 21 and have personal knowledge of the information contained herein. I am competent to testify about the matters set forth herein.

2. I am the John and Mary Pappajohn Director of the Des Moines Art Center. The Des Moines Art Center is a museum of Modern and Contemporary Art located primarily at 4700 Grand Avenue, Des Moines, Iowa, 50312. The Art Center also includes the John and Mary Pappajohn Sculpture Park, a school for studio art education, and a museum gift shop.

3. On July 17, 2024, I received a letter from Des Moines City Manager Scott Sanders via email. A true and accurate copy of the letter from the City of Des Moines is attached hereto as **Exhibit A**.

I declare under penalty of perjury that the foregoing is true and correct.



Kelly Baum



July 17, 2024

Dr. Kelly Baum, John and Mary Pappajohn Director
Edmundson Art Foundation, Inc., d/b/a Des Moines Art Center
4700 Grand Avenue
Des Moines, Iowa 50312
By Email and U.S. Mail: kbaum@desmoinesartcenter.org

RE: Greenwood Park – Mary Miss Double Site

Dear Dr. Baum,

The City, through its Development Services Department and Parks and Recreation Department, inspected the Mary Miss Double Site in Greenwood Park in May 2024. A copy of the resulting inspection report is attached for reference. As you are aware, the Mary Miss Double Site is located on City property and within a publicly accessible City park pursuant to the Greenwood Park Sculpture Park Des Moines Art Center Operating Agreement, as recorded on December 7, 1990, in Book 6316, Page 489 of the Polk County Recorder’s Office (“Operating Agreement”).

Said inspection determined that the Mary Miss Double Site boardwalk is an unsafe structure, and unsafe for public use, due to dilapidation, decay, and structural instability. The inspection found that the boardwalk cannot support designed structural loads due to decay and deterioration; the guardrails and boardwalk are missing spindles and floorboards; and the structure’s wooden railings, beams, and surface are experiencing severe decay. The current condition of said structural elements of the Mary Miss Double Site violates the City’s Building Code as well as the Operating Agreement.

In accordance with Section III.A of the Operating Agreement, the Art Center is solely responsible, at its expense, to “perform necessary maintenance to assure that the designated portion of the sculptures for which it is responsible shall not become damaged, deteriorated or unsafe.” The structural integrity of elements of the Mary Miss Double Site, as detailed in the attached report of the City Building Official and Plans Examiner, is compromised and said elements are unsafe, therefore, as provided in said Section III.A of the Operating Agreement, the City is requiring the Art Center to repair or remove the unsafe structural elements of the Mary Miss Double Site in a timely fashion and in a manner and to the extent consistent with the requirements of the Order Granting Motion for Preliminary Injunction, Case No. 4:24-cv-00123-SHL-SBJ.




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In addition, certain key design elements of the Mary Miss Double Site including the retaining walls (also known as terraces) exhibit deterioration, separation, and missing stonework. The warming huts, which the Art Center has informed the City are not structurally sound, have been closed off to the public by the Art Center. The water trough (concrete channel built into Greenwood Pond), is missing boards, is often filled with mud and debris, and has a largely nonfunctional pump required to prevent pondwater and rainwater infiltration, leaving this feature inaccessible to the public and appears to be unsafe for the public use intended by the artist's design. In accordance with Section III.A of the Operating Agreement, the Art Center is responsible for the maintenance of these design elements and the City expects them to be remedied as well.

The City expects the structural and design elements of the Mary Miss Double Site to remain safe or, if not safe, remain inaccessible to the public.

Sincerely,



Scott E. Sanders
City Manager

Attachment

cc: Michael S. Boal
Belin & McCormick
666 Walnut Street, Suite 2000
Des Moines, Iowa 50309-3989
By Email and U.S. Mail: msboal@belinmccormick.com

Greenwood Park Inspection Report

Date of Inspection 5/24/2024 at 10:00 AM



On Friday May 24, 2024, Building Official Brian Bishop and Plans Examiner Jay Mattas inspected the Greenwood Park boardwalk with Parks staff Daniel Calvert and Mike Gaul. The following unsafe items were observed during the inspection.

Inspection Observations

1. General dilapidation
 - a. The boardwalk construction consists of pressure treated preservative lumber walkway and railings constructed over a steel and concrete framing system.
 - b. The wood structure is failing due to decay and deterioration and can no longer support its intended design capacity
 - c. Areas of the guardrails and boardwalk are missing spindles and floor boards due the deterioration of the wood components
2. Severe wood decay
 - a. The pressure treated preservative lumber on the boardwalk surface and the railing are suffering from severe wood decay.
 - b. The wood beams spanning the boardwalk are saturated with moisture from decay and can no longer support the required design loads for a boardwalk.
 - c. The decay is also affecting the strength of the wood railing system. The decay is so severe that wood can no longer receive screw fasteners to maintain the required structural loading of 50 lbs/foot required in the International Building Code.

3. Structural instability

- a. Due to the severe wood decay the boardwalk floor framing is missing boards and the wood framing system that holding up the boardwalk has lost its design strength and appears to not be able to handle the weight of people walking on top of it.
- b. The wood decay has also caused obvious signs of heaving and buckling in the framing system making the system structurally unstable.



Per Chapter 26-101 & 26-157 of City Code of Ordinances, the building official can deem a structure unsafe due to dilapidation, decay and/ or structural instability. The boardwalk at Greenwood Park meets all of these criteria and is unsafe to be used. The south portion of the boardwalk is fenced off from public use. This mitigation strategy is keeping the structure from being used by the public. If the structure is wished to be used again, the structure will need to be replaced or repaired by removing all of the decaying wood structure and railing.

Brian Bishop

Building Official

City of Des Moines