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COPY VIA FACSIMILE TO (507) 635-6271
(ORIGINAL TO FOLLOW BY MAIL)

Judge Casey J. Christian
Steele County District Court
111 E. Main Street
Owatonna, MN 55060

Re: *State by Kasson Alliance for Restoration v. City of Kasson*
Dodge County Court File No. 20-CV-07-516

Dear Judge Christian:

At the conclusion of the hearing yesterday, you indicated that you thought no further submissions from the parties were necessary. I would nonetheless ask your indulgence, and request that you also consider the comments in this letter. Given that defendant's responsive materials were served only the day before the hearing, there really hadn't been time for plaintiff to fully digest them.

Because the city plans to demolish the Kasson school, and because it is clear from the city's submissions that it has no urgent need for the site on which the school stands, the principal remaining issue for purposes of plaintiff's MERA action is therefore whether the school is a protected resource. In its response to plaintiff's motion for a temporary injunction, the city tries very hard to distract attention from this issue, and then to blur the standard by which it is to be assessed for purposes of the temporary injunction motion.

Contrary to what defendant claims, the affidavits submitted in support of the motion provide ample basis for concluding that plaintiff will be able to sustain its burden of proving that the school is an historic resource. Two of the affiants are among the leading experts in the state on historic preservation and the criteria used by the National Register of Historic Places; they offer their opinions as experts; and they do summarize the factual grounds on which their opinions are based. More fundamentally, though, defendant seeks

to take improper advantage of the fact that no thorough historical assessment of the school property has yet been performed. Only when this occurs can anyone—expert or not—furnish a detailed factual description of why the building is (or is not) historic.

Plaintiff's request for a temporary injunction is not simply for the purpose of protecting the school against demolition until a hearing on the merits can occur; it would *also* allow time for a credible evaluation of its historic significance. Until quite recently, there was no apparent sense of urgency with respect to obtaining such an assessment, because city officials and the members of the community seeking to preserve the school were engaged in negotiations about its status. Furthermore, citizens' groups do not spring into existence full-blown, thoroughly organized, and with access to funding. Some time was needed for the members to accomplish these steps and to educate themselves about legal options. And of course buildings cannot nominate themselves for the National Register, nor is there any government agency that comprehensively does this, particularly in areas outside the Twin Cities. Typically, the process is initiated by the owner of the building; but in the present case, the owner obviously had a disincentive against pursuing an independent historic evaluation or nominating the school to the National Register.

While Mr. Vogel—the city's paid consultant—has suggested the building is not an historic resource, his conclusions must be subject to considerable skepticism, both because of the lack of independence and because his own review of the school's history appears to have been superficial and perfunctory.¹ Moreover, his credentials are certainly weaker than those of Ms. Roth or Mr. Hoisington. Officials of the Minnesota Historical Society have assured me that a National Register nomination review of the Kasson school can be expedited if a temporary injunction is obtained, and would not delay these proceedings even if the trial date was advanced. That nomination, the research supporting it, and the review of the MHS are all then proper subjects of scrutiny and rebuttal at a trial on the merits.

But again, for purposes of the temporary injunction request, I respectfully submit that the sworn opinions of experts stating that there is a distinct likelihood that the Kasson public school is qualified for the National Register of Historic Places is more than sufficient to tip the third *Dahlberg* factor (likelihood of prevailing on the merits) in plaintiff's favor. This, combined with the fact that failing to grant the temporary injunction would cause

¹I would note in addition that although the city's materials cite Robert Frame's field survey, Frame's own report stated, "This multiple resource area nomination should not be construed as representing all properties in Dodge County eligible for nomination" to the National Register.

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irreparable harm, while denying it would have virtually no significant impact in the short term on defendant, and the fact that the other *Dahlberg* factors are at the very least neutral, strongly suggests that the motion should be granted.

While the Court may never have had the opportunity to view the Kasson school, it is no hulking derelict that has stood long past its time. Rather, it continues to be a sturdy and beautiful member of the community, as it has been for the past 90 years. The city's own architectural consultants found in 2004 that it is an excellent candidate for re-use, most of the opportunities for which the city has never sought to explore, particularly with respect to private development.

In short, we simply ask that the legal process established under MERA be permitted to work before this wonderful building is consigned to oblivion. Again, I much appreciate your time and indulgence.

Yours truly,

/s/

Mark R. Anfinson

copies:

George Hoff, Esq.
Kasson Alliance for Restoration