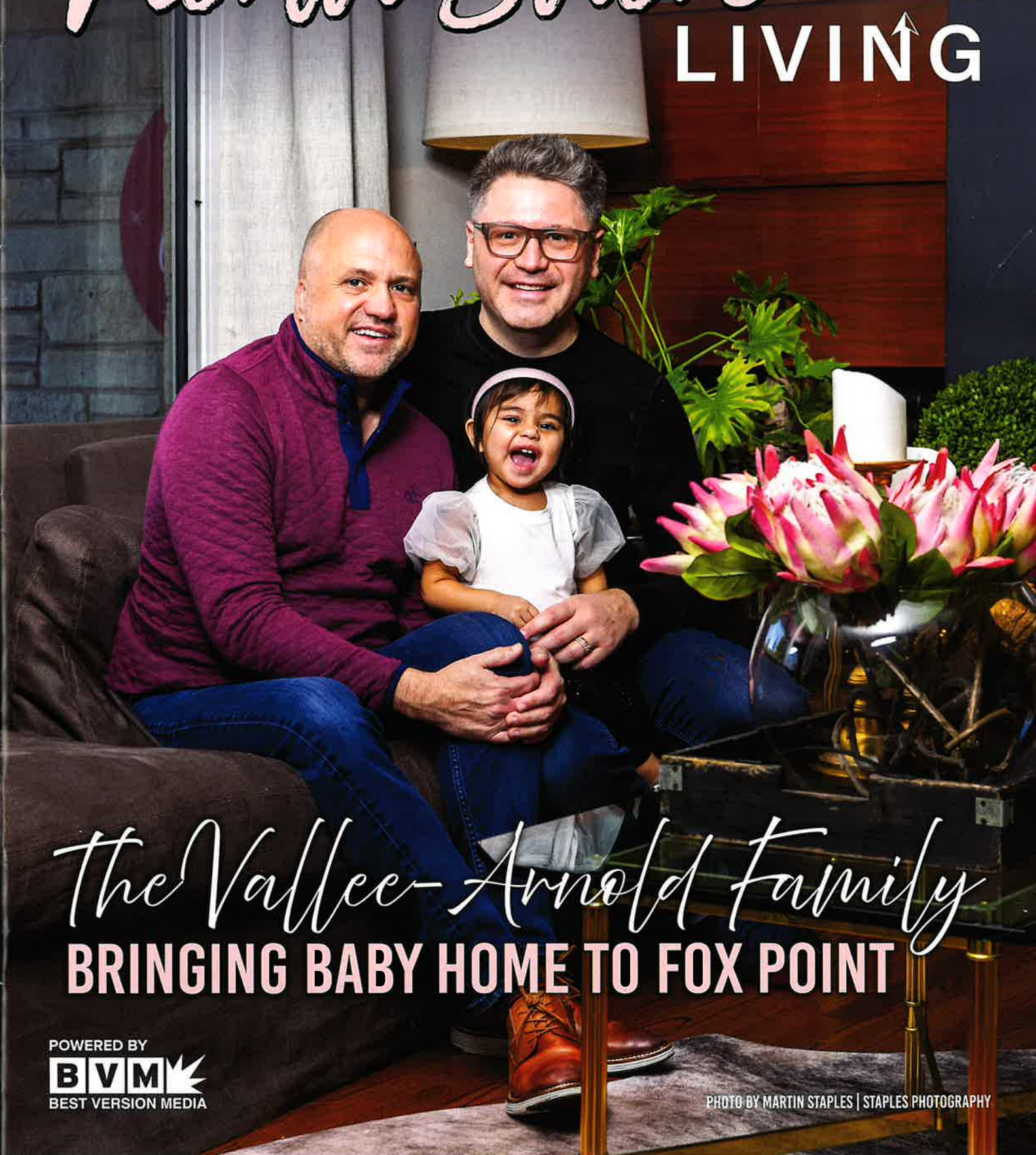


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Eminent Domain and the Claim to the Pedagogical "High Ground":



NICOLET H.S. V. CARDINAL STRITCH

● By Douglas H. Frazer

The North Shore population was growing fast. The City of Glendale was incorporated in 1950, followed by the Village of Bayside in 1953.

High school students living north or west of Whitefish Bay had mostly attended Shorewood High School, with a smaller number matriculating to Whitefish Bay, Riverside, and Rufus King. Because of their own population increases, these schools were unable to continue accepting students from neighboring communities.

Given these developments, Fox Point, Glendale, Bayside, and River Hills needed their own high school.

Victor M. Harding of River Hills led the effort. On August 25, 1952, residents organized a joint union free high school district.

The district needed property for a campus. The school board identified 10 potential sites central to the 4 communities. The board's

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first choice was the south 40 acres of the property owned by Cardinal Stritch College—which the sisters of St. Francis of Assisi had bought for \$150,000 in 1949 for a permanent location for its school. Stritch had devoted considerable financial resources to architectural designs and engineering plans. Stritch was unwilling to sell. Harding, an imaginative Harvard educated litigator, hit upon a legal strategy. The district would petition to condemn the Stritch property through its powers of eminent domain.

Eminent domain is the power of units of government—including school districts—to take private property for public use provided the property owner receives just compensation. U.S. Const. Amend. V. The law required the determination of “necessity.” Wis. Stat. § 32.07 (1953). While a school district might make an advisory finding of necessity, the ultimate decision would rest with the Milwaukee County circuit court.

On June 29, 1953, the board brought the matter before a regular annual meeting of the school district, with 145 persons voting for condemnation and 95 opposed. The district filed its condemnation petition shortly thereafter. *Joint High School District v. Cardinal Stritch College*, No. 245 214 (Wis. Cir. Ct. Milwaukee County July 8, 1953).

The effort was precedent setting: the first time in Wisconsin a public-school body had attempted to condemn private school land.

The suit was controversial. Over one thousand residents of Glendale and Fox Point signed a petition opposing the proceeding.

The district emphasized that a modern high school campus needed at least 30—and preferably 40—acres. The district also pointed out the centrality of the site and the desirable “soil conditions” (i.e., the site was on high ground.)

Stritch defended vigorously. It underscored the financial resources it had devoted to developing the site. It also suggested that the district intended to sell off portions of the 40-acre parcel at a profit—and for nonpublic purposes to boot.

The case turned on which institution had the better claim, literally and figuratively, to the high ground when it came to competing public use.

On September 30, 1953, circuit court judge Gustave G. Gehrz issued his decision. The court found that the district had not shown a necessity for a tract as large as 40 acres. Moreover, the court noted, Stritch was ready to start its construction and had no present prospect of acquiring another site of sufficient size, suitable location, and topography. The court concluded the district had not developed facts sufficient to support the exercise of the power of condemnation and that in this instance such condemnation would be “unreasonable and oppressive.” If the condemnation went forward, Stritch would suffer an “irreparable injury.”

The district moved on to its second choice—the Read site also known as the Otto Trostel Farm. This was a 44-acre parcel expected to be reduced to about 30 acres after a reconfiguration of Port Washington Road. This site became the location of Nicolet High School.

The historical record suggests that the district’s claim to the high ground was— from its point of view—justifiable. In Nicolet’s first 54 years, flooding damaged the school on four separate occasions. Then, on July 22, 2010, a severe weather event dumped seven to eight inches of rain in a few hours causing extensive flooding and severe damage to the campus. The school canceled summer programs and postponed the start of the school year by two weeks. The flooding resulted in 14 million dollars in damage and required modification to stormwater control systems that cost 1.2 million dollars more.

Up the hill, Cardinal Stritch and the sisters of St. Francis of Assisi stayed dry.

**Douglas H. Frazer is a resident of Fox Point. The writer thanks Victor C. Harding, Professor Amanda Seligman from UWM, Archivist Steve Schaffer from the Milwaukee County Historical Society, and Bryce Grunwaldt from the Wisconsin Legislative Reference Bureau for their research contributions.*



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