

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF CHARLOTTESVILLE

COALITION TO PRESERVE MCINTIRE PARK

and

NORTH DOWNTOWN RESIDENTS ASSOCIATION

and

JOHN CRUICKSHANK
PETER KLEEMAN
STRATTON SALIDAS
RICHARD COLLINS
ROBERT FENWICK

Plaintiffs

v.

CASE NO. 09000084-00

CITY OF CHARLOTTESVILLE

and

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION

Defendants.

AMENDED COMPLAINT

Pursuant to Virginia Code §§ 8.01-184 and 8.01-620, Plaintiffs, the Coalition to Preserve McIntire Park, the North Downtown Residents Association, John Cruickshank, Peter Kleeman, Richard Collins, Stratton Salidas, and Robert Fenwick, by counsel, respectfully request that this Court declare defendant City of Charlottesville's enactment of an ordinance purportedly authorizing it to transfer real property rights to the defendant Virginia Department of Transportation ("VDOT") and its subsequent transfer of real property rights to VDOT pursuant to the ordinance to be unconstitutional and to permanently enjoin: (1) defendant VDOT from

performing any further work on the parcel of real estate at issue, and (2) defendant City of Charlottesville from transferring to defendant VDOT pursuant to the ordinance any of its real property rights in the parcel. In support of said action, plaintiffs respectfully state as follows:

1. The Coalition to Preserve McIntire Park (“Coalition”) is an unincorporated association. The Coalition is comprised of individuals and entities, including the local Piedmont Group of the Virginia Chapter of the Sierra Club, McIntire Preservation Committee, and STAMP (Sensible Alternatives to the Meadow Creek Parkway), who seek to preserve the historic, aesthetic, recreational, educational and natural attributes of open space in Charlottesville and surrounding area.
2. John Cruickshank is the director of the local Piedmont Group of the Virginia Chapter of the Sierra Club and a member of the Coalition to Preserve McIntire Park.
3. Cruickshank owns two properties in Charlottesville.
4. Dr. Peter Kleeman received his doctoral degree from Harvard in environmental science and engineering.
5. Kleeman is a transportation expert.
6. Kleeman regularly raises questions during public comment periods and public hearings at meetings of the Charlottesville City Council and School Board.
7. Kleeman is a member of the Coalition to Preserve McIntire Park.
8. Stratton Salidas is an advocate for alternative methods of transportation, a member of the Coalition to Preserve McIntire Park and a Charlottesville resident.
9. The North Downtown Residents Association (“NDRA”) is an incorporated association formed in 1973. NDRA’s mission is to represent the interests of North Downtown residents, a neighborhood wholly located in the City of Charlottesville.

10. NDRA meets about ten times a year, is governed by bylaws, its members pay dues and minutes are taken at its meetings.
11. Dr. Richard Collins is a University of Virginia professor in the School of Architecture and the director of the Institute for Environmental Negotiation.
12. Collins is a founding member of Sensible Transportation Alternatives to the Meadow Creek Parkway (STAMP) and a member of the Coalition to Preserve McIntire Park.
13. Robert Fenwick is a founder of the McIntire Preservation Committee and operates the Save McIntire website.
14. With the McIntire Preservation Committee and website, Fenwick seeks to preserve softball fields throughout the area since the number of softball fields does not currently meet the needs of the community.
15. Fenwick owns property in Charlottesville and is a member of the Coalition to Preserve McIntire Park as is the McIntire Preservation Committee.
16. The defendant, the city of Charlottesville is an independent city in the Commonwealth of Virginia (“City”).
17. The City Council is the elected board that meets regularly to approve ordinances, resolutions and otherwise govern the City.
18. The defendant, the Commonwealth of Virginia through its Department of Transportation (“VDOT”) is the agency charged with building and maintaining roads and receiving easements for rights of way for the Commonwealth of Virginia.
19. Cruickshank, Kleeman, Collins, Fenwick and Salidas are aggrieved parties in part because their recreational, natural, and educational use of the affected land has been permanently altered for the worse as a result of the increase in traffic, pollution and

- noise as well as the migration of animals away from the site due to construction activities and the placement of a road in the formerly recreational and natural setting.
20. NRDA is an aggrieved party in part because of the increase in pollution, noise, traffic (including cut thru traffic), and an expected decrease in property values resulting from the construction and completion of the Meadow Creek Parkway, McIntire Road Extended and the interchange.
 21. Collins and Fenwick are aggrieved parties in part because a softball field has been removed from the community's softball fields and no alternative site for a softball field has been determined or discussed.
 22. In June, 2008, the Charlottesville City Council was presented with an ordinance authorizing permanent and temporary easements across city owned property in the County of Albemarle to the Commonwealth of Virginia for the construction of the Meadow Creek Parkway.
 23. The City Council voted 3-2 in support of the ordinance at its June 2, 2008 meeting.
 24. Pursuant to the ordinance, the City conveyed temporary and permanent easements to defendant VDOT in a deed dated December 5, 2008 and recorded on January 14, 2009 at Deed Book 3678 Page 309-316 in the Circuit Court of Albemarle (hereinafter referred to as "the deed").
 25. The deed conveyed public land adjacent to the Rivanna River Trail.
 26. The conveyed land was used as a ball field for the City's high school among other aesthetic, recreational, educational and natural uses.
 27. The deed conveys the "perpetual right and easement to construct, reconstruct, alter, operate and maintain a public street or highway, including any necessary

- appurtenances thereto, drainage and/or utilities, over, upon and across the lands and property of the grantor” for a sum of forty three thousand one hundred twenty dollars (\$43,120.00).
28. The deed further authorizes “all easements of access, light or air, incident to the lands of the grantor abutting upon the limited access highway.”
 29. The City, through its authorizing ordinance and the subsequent deed, sold rights to its public places to the defendant VDOT.
 30. Pursuant to the deed, VDOT is clearing the land including tree cutting, erosion controls, and utility work for the eventual construction of the Meadow Creek Parkway.
 31. Upon the completion of the Parkway, the entire road, including the property conveyed to VDOT through the disputed ordinance and deed will be turned over to VDOT permanently.
 32. The Virginia Constitution, Article VII, Section 9 requires a recorded three fourths (3/4) majority (“supermajority”) vote in order for a city to sell its rights in its parks and public places.
 33. The conveyance, as evidenced by the deed, sells the city’s rights in its public places to VDOT.
 34. In passing the ordinance purportedly authorizing this sale, defendant city did not have the necessary supermajority vote.
 35. Defendant city’s permanent sale of real property rights in the December 5, 2008 deed pursuant to the ordinance is invalid.

36. The level of damage to the land and to the plaintiffs increases daily and is no longer recognizable as a field or natural area.

37. A legal remedy is inadequate to correct the unlawful conveyance of this land.

WHEREFORE, the plaintiffs respectfully request this court to declare defendant City of Charlottesville's enactment of an ordinance purportedly authorizing it to sell real property rights to the defendant Virginia Department of Transportation and its subsequent sale of real property rights to VDOT pursuant to the ordinance to be unconstitutional and to permanently enjoin: (1) defendant VDOT from performing any further work on the parcel of real estate at issue, (2) defendant City of Charlottesville from transferring to defendant VDOT pursuant to the ordinance any of its real property rights in the parcel; award attorney's fees and any other relief this court deems appropriate.

RESPECTFULLY SUBMITTED

COALITION TO PRESERVE MCINTIRE PARK

NORTH DOWNTOWN RESIDENTS ASSOCIATION

PETER KLEEMAN

STRATTON SALIDAS

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CERTIFICATE OF SERVICE

I hereby certify that on March ____, 2009, I served true copies of the above document by facsimile and first class mail, postage prepaid on S. Craig Brown, counsel for City of Charlottesville, at 605 E. Main Street, Charlottesville, VA 22902, and on Lori Pound, counsel for the Virginia Department of Transportation, at 900 E. Main Street, Richmond, Virginia 23219.

Jennifer L. McKeever