

CITY OF CHARLOTTESVILLE

"A World Class City"

Office of the City Attorney

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APR 21 2009

April 20, 2009

Hand-Delivered

Paul C. Garrett, Clerk
Charlottesville Circuit Court
315 East High Street
Charlottesville, VA 22902

Re: Coalition to Preserve McIntire Park v. City of Charlottesville
Case No. CL09000084-00

Dear Paul:

Enclosed for filing is the Defendant City of Charlottesville's Answer in the above-referenced matter. I have also enclosed for Judge Swett's consideration a proposed Order, endorsed by counsel for the three parties, denying the Plaintiff's Motion for a Preliminary Injunction. Thank you in advance for your assistance.

Sincerely,

S. Craig Brown
City Attorney

Enclosure

cc: Jennifer L. McKeever (with enclosure)
Jo Anne P. Maxwell (with enclosure)

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

COALITION TO PRESERVE MCINTIRE PARK, *et al*,

Plaintiffs,

v.

Case No. CL090000-84

CITY OF CHARLOTTESVILLE

and

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION

Defendants.

ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANT
CITY OF CHARLOTTESVILLE TO PLAINTIFF'S AMENDED COMPLAINT

ANSWER

NOW COMES the Defendant City of Charlottesville, Virginia, by counsel, and for its Answer to the Amended Complaint filed herein states as follows:

1. Defendant City denies the allegation of paragraph 1 of the Amended Complaint that the Coalition to Preserve McIntire Park is an unincorporated association. Defendant City alleges that it has no knowledge of the remainder of the allegations of paragraph 1, and therefore denies said allegations.
2. Defendant City admits the allegations of paragraph 2 of the Amended Complaint.
3. Defendant City admits the allegations of paragraph 3 of the Amended Complaint.
4. Defendant City alleges that it has no knowledge regarding the allegations of paragraph 4 of the Amended Complaint, and therefore denies said allegations.

5. Defendant City alleges that it has no knowledge regarding the allegation of paragraph 5 of the Amended Complaint, and therefore denies said allegation.

6. Defendant City admits that that plaintiff Kleeman regularly raises questions at meetings of the Charlottesville City Council as alleged in paragraph 6 of the Amended Complaint, but is without knowledge regarding the allegation that plaintiff Kleeman regularly raises questions during meetings of the Charlottesville City School Board, and therefore denies said allegation.

7. Defendant City admits the allegation of paragraph 7 of the Amended Complaint.

8. Defendant City admits the allegations of paragraph 8 of the Amended Complaint.

9. Defendant City is without knowledge regarding the allegations of paragraph 9 of the Amended Complaint, and therefore denies said allegations.

10. Defendant City is without knowledge regarding the allegations of paragraph 10 of the Amended Complaint, and therefore denies said allegations.

11. Defendant City admits the allegation of paragraph 11 of the Amended Complaint that Dr. Richard Collins is a University of Virginia professor in the School of Architecture, but is without knowledge regarding the remainder of the allegations of paragraph 11, and therefore denies the same.

12. Defendant City admits the allegations of paragraph 12 of the Amended Complaint.

13. Defendant City is without knowledge regarding the allegations of paragraph 13 of the Amended Complaint, and therefore denies said allegations.

14. Defendant City denies the allegations of paragraph 14 of the Amended Complaint.

15. Defendant City is without knowledge regarding the allegations of paragraph 15 of the Amended Complaint, and therefore denies the same.

16. Defendant City admits the allegation of paragraph 16 of the Amended Complaint.

17. Defendant City admits the allegation of paragraph 17 of the Amended Complaint.

18. Defendant City admits the allegation of paragraph 18 of the Amended Complaint.

19. Defendant City denies the allegations of paragraph 19 of the Amended Complaint.

20. Defendant City denies the allegations of paragraph 20 of the Amended Complaint.

21. Defendant City denies the allegations of paragraph 21 of the Amended Complaint.

22. Defendant City admits the allegations of paragraph 22 of the Amended Complaint, to the extent that the allegation of "city owned property" refers to legal title being vested in the City. To the extent that the allegations of paragraph 22 allege that the City had absolute unencumbered ownership of the property in question, said allegation is denied.

23. Defendant City admits the allegation of paragraph 23 of the Amended Complaint.

24. In response to the allegations of paragraph 24 of the Amended Complaint, Defendant City admits that a deed to the Virginia Department of Transportation for temporary and permanent easements dated December 5, 2008 was executed by a representative of the City and subsequently recorded in the Clerk's Office for the Circuit Court of the County of Albemarle, but denies any implication from the allegations that the Defendant City had the unilateral authority to convey an interest in the property in question to the Department of Transportation.

25. Defendant City is without knowledge to respond to the allegations of paragraph 25 of the Amended Complaint, in that the terms “public land”, “adjacent to” and “Rivanna River Trail” are unclear and ambiguous, and therefore denies said allegations.

26. Defendant City denies the allegations of paragraph 26 of the Amended Complaint.

27. Defendant City admits the allegation of paragraph 27 of the Amended Complaint.

28. Defendant City admits the allegation of paragraph 28 of the Amended Complaint.

29. Defendant City denies the allegations of paragraph 29 of the Amended Complaint.

30. Defendant City admits the allegations of paragraph 30 of the Amended Complaint.

31. In response to paragraph 31 of the Amended Complaint, Defendant City is without knowledge regarding the meaning of the allegation that upon the completion of the Parkway the entire road will be “turned over to VDOT”, and therefore denies the same.

32. Defendant City admits the allegations of paragraph 32 of the Amended Complaint, but affirmatively denies that the cited provision of the Virginia Constitution has any application in this case.

33. Defendant City denies the allegation of paragraph 33 of the Amended Complaint.

34. Defendant City denies the allegations of paragraph 34 of the Amended Complaint, in that the allegation is based on the erroneous premise that a supermajority vote was necessary.

35. Defendant City denies the allegations of paragraph 35 of the Amended Complaint.

36. Defendant City denies the allegations of paragraph 36 of the Amended Complaint.

37. Defendant City denies the allegations of paragraph 37 of the Amended Complaint.

AFFIRMATIVE DEFENSES

1. The individual and organizational Plaintiffs lack standing to seek judicial relief for the Charlottesville City Council's alleged violation of the Virginia Constitution.

2. A 3/4ths supermajority vote by the Charlottesville City Council was not required to convey a permanent easement to the Commonwealth of Virginia, by and through its Department of Transportation, for construction of a public road.

3. A 3/4ths supermajority vote by the Charlottesville City Council was not required to convey a permanent easement on property controlled by and under the jurisdiction of the Charlottesville City School Board.

4. The Plaintiffs are not entitled to injunctive relief prohibiting the Virginia Department of Transportation from performing work on the property at issue, in that said work is being performed pursuant to a temporary construction easement which was lawfully approved by the City Council of the City of Charlottesville and the Charlottesville City School Board.

WHEREFORE, Defendant City of Charlottesville denies that the Plaintiffs are entitled to the relief prayed for in the Amended Complaint; denies that the Plaintiffs are entitled to injunctive relief; and having fully answered the allegations against it, the Defendant City of Charlottesville prays that this action be dismissed and that it recover of Plaintiffs its costs expended in this action.

Respectfully submitted,

CITY OF CHARLOTTESVILLE

By Counsel

S. Craig Brown
S. Craig Brown, VSB # 19286
City Attorney
Francesca Fornari, VSB # 70989
Assistant City Attorney
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Certificate of Service

I certify that a true and correct copy of the Answer of Defendant City of Charlottesville was sent by facsimile and mailed first class postage prepaid to Jennifer L. McKeever, Jones & Green, LLP, 917 East Jefferson Street, Charlottesville, VA 22902, counsel for Plaintiffs, and to Lori L. Pound, Assistant Attorney General and counsel to the Defendant Virginia Department of Transportation, 900 East Main Street, Richmond, VA 23219 on the 20th day of April, 2009.

S. Craig Brown
S. Craig Brown
City Attorney

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

COALITION TO PRESERVE McINTIRE PARK)

v.)

CITY OF CHARLOTTESVILLE)

and)

COMMONWEALTH OF VIRGINIA,)
DEPARTMENT OF TRANSPORTATION)

Case No.: CL09000084-00

ORDER

The parties appeared on March 18, 2009, for consideration of Plaintiff's Motion for Preliminary Injunction, in which Plaintiff asked this Court to enforce immediately Article VII, § 9 of the *Virginia Constitution* and to halt all construction-related activities on certain property (the "Subject Property") upon which the Council of the City of Charlottesville (the "Council") granted the Virginia Department of Transportation (the "Department") a permanent easement.

For purposes of rendering an order in this matter, I have assumed that Plaintiff has met the requirements necessary to establish standing and legal capacity, but will allow the parties to provide additional evidence and argument regarding the issue of Plaintiff's standing at the trial on the merits.

Based on the evidence presented during the hearing and the arguments made:

I find that the primary issue in this matter, whether the conveyance of the Subject Property to the Department by the Council violated Article VII, § 9 of the *Virginia Constitution*,

remains unclear and accordingly, Plaintiff has failed to show that there is a substantial likelihood that it will prevail on the merits in this case.

Further, I find that Plaintiff will not be irreparably harmed if a preliminary injunction is not granted in this matter, as the activity that Plaintiff alleges will cause it irreparable harm has already taken place on the Subject Property. Any harm that Plaintiff may have incurred as a result of activity that has taken place on the Subject Property is attributable, in large part, to Plaintiff's delay in filing this action, approximately eight months after the Council voted to convey a permanent easement on the Subject Property to the Department.

Further, if the Department is enjoined from continuing construction-related activities on the Subject Property, I find that the monetary harms to be incurred by the Department would be substantial and would outweigh any harms that may be incurred by Plaintiff, if a preliminary injunction is not granted.

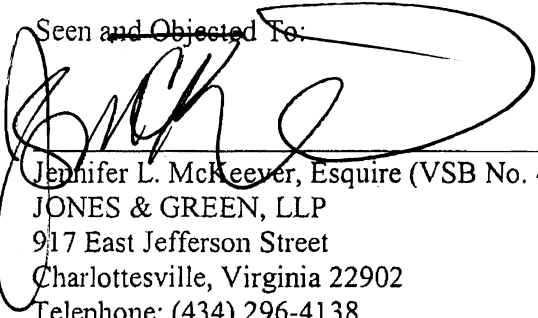
It is, therefore, ORDERED that the request for the issuance of a preliminary injunction in this matter is DENIED.

Copies of this order are mailed this day to counsel of record.

ENTER: _____/_____/_____

Jay T. Swett, Judge Designate

Seen and Objected To:



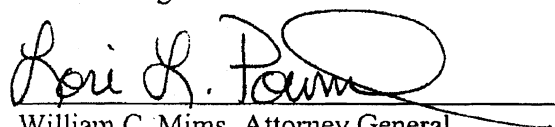
Jennifer L. McKeever, Esquire (VSB No. 47162)
JONES & GREEN, LLP
917 East Jefferson Street
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Telephone: (434) 296-4138
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Counsel for Coalition to Preserve McIntire Park

Seen and Agreed To:



The Honorable S. Craig Brown, City Attorney (VSB No. 19286)
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Counsel for Defendant City of Charlottesville

Seen and Agreed To:



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*Counsel for Defendant Commonwealth of Virginia,
Department of Transportation*