

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF CHARLOTTESVILLE

COALITION TO PRESERVE MCINTIRE PARK

v.

CASE NO. \_\_\_\_\_

CITY OF CHARLOTTESVILLE

SERVE: S. Craig Brown  
Charlottesville City Attorney  
605 E. Main Street  
Charlottesville, VA 22902

and

COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF TRANSPORTATION

SERVE: Donald S. Ekern, Commissioner  
Virginia Department of Transportation  
1401 E. Broad Street  
Richmond, VA 23219

#### MOTION FOR PRELIMINARY INJUNCTION

Pursuant to Virginia Code ' 8.01-620 and §8.01-628 et seq., Plaintiff, the Coalition to Preserve McIntire Park, by counsel, respectfully requests that this Court halt all construction-related activities on land the City of Charlottesville unlawfully conveyed to the Commonwealth of Virginia's Department of Transportation and to immediately enforce the Virginia Constitution Article VII Section Nine (9) which prohibits the conveyance of public lands with a simple majority vote of the elected governing body. In support of its Motion for Preliminary Injunction, Plaintiff relies upon their Declaratory Judgment filed contemporaneously herewith, and the following:

#### ARGUMENT

Under Virginia law, a preliminary injunction is appropriate when the court is "satisfied of the plaintiff's equity." Va Code § 8.01-628. State courts have stated that plaintiffs have to demonstrate "irreparable harm and lack of an adequate remedy at law before a request for

injunctive relief will be sustained” *Levisa Coal Co. v. Consolidation Coal Co.*, 276 Va. 44, 46, 662 S.E.2d 44, \_\_\_ (2008). In addition, the court “will give due weight to the adverse effect of the injunction being granted on the defendant.” *Levisa Coal Co. v. Consolidation Coal Co.*, 276 Va. 44, 46, 662 S.E.2d 44, \_\_\_ (2008). Finally, the likelihood of success on the merits of the claim must be considered in deciding to award an injunction. All factors strongly support the plaintiff’s request for a preliminary injunction.

#### IRREPARABLE HARM

Irreparable harm does not mean that “there must be no physical possibility of repairing the injury. All that is meant is that the injury would be a grievous one, or at least a material one, and not adequately reparable in damages.” *Callaway v. Webster*, 98 Va. 790 (1990).

In the present case, VDOT is in the midst of constructing the Meadow Creek Parkway on property granted to it by Albemarle County and private entities. VDOT has inspected the newly acquired land for utilities, stripped the land, cutting trees and using the land to access other areas of construction. VDOT will continue to use the land for construction related activities irreparably harming the land and making it impossible to restore it for its original natural, recreational, educational and aesthetic purposes.

#### INADEQUATE REMEDY AT LAW

Plaintiff seeks an injunction pending the outcome of the underlying Complaint against VDOT from continuing use of the land. The plaintiff is not seeking monetary damages, nor will monetary relief make the plaintiff whole. If VDOT is permitted to continue the damage to the property will continue to worsen. The damage thus far is dramatic, and virtually no amount of compensation will bring the land to its state prior to the conveyance. No legal remedy is appropriate.

## ADVERSE IMPACT ON DEFENDANT

While the damage to the plaintiff is imminent and clear, any potential harm to VDOT or the City of Charlottesville from the injunction is minimal. The injunction is of relatively short duration, that is until the resolution of the underlying case. The injunction will prevent VDOT from entering its construction site at Melbourne Road. However, the property lawfully gained by VDOT is substantial and the construction activities on that part of the Meadow Creek Parkway could continue without interruption. Further, if the City believes the damage to be overly burdensome during the pendency of the litigation, the City has the alternative of passing an ordinance with the constitutionally required number of votes.

## LIKELIHOOD OF SUCCESS ON THE MERITS OF THE CLAIMS

The City passed an ordinance to convey public land without the constitutionally required number of votes in favor of it. The conveyance should have never taken place without the required vote. Construction activities on this land should never have had the opportunity to begin because of the failure to obtain the required number of votes to convey the land. The continued construction activities on the land will prolong the injustice of the unlawful conveyance and irreparably harm the tangible and intangible qualities of the land. The Commonwealth's Constitution could not be clearer about permanent the conveyance of a City's public land.

## CONCLUSION

For the foregoing reasons, plaintiff, by counsel, respectfully requests that this court grant plaintiff's Motion for Preliminary Injunction and enjoin VDOT from further construction activities and other actions reflecting ownership of the land pending the outcome of the underlying case filed with this motion.

RESPECTFULLY SUBMITTED

COALITION TO PRESERVE MEADOWCREEK PARKWAY

By Counsel

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Jennifer L. McKeever  
VSB#47162  
Jones & Green LLP  
917 E. Jefferson Street  
Charlottesville, VA 22902  
O: (434) 979-1142  
F: (434) 296-1209