

Judge Swett: Supermajority of votes not required for Meadowcreek Parkway easement  
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Judge Jay Swett

of the Charlottesville Circuit Court has denied a claim made by the

Coalition to Preserve McIntire Park

that

a City Council vote to convey property

to the Virginia Department of Transportation (VDOT) was unconstitutional. In an opinion dated June 26, 2009, Swett ruled the Virginia Constitution does not require four out of five Councilors to have approved the granting of temporary and permanent easements to VDOT in June 2008. At that time, Council voted 3-2 to grant nearly 8.6 acres of land the City owns in Albemarle County to VDOT for construction, equipment storage and utility and drainage easements.



Download Judge Swett's ruling

Judge Swett's ruling also denied an injunction requested by the Coalition to stop work on the Parkway, and also denied a request for the City to pay its legal fees. His ruling first gives a basic overview of Article VII, Section 9 of the 1971 Revised Virginia Constitution. The section contains two paragraphs, the first of which reads:

"No rights of a city or town in and to its waterfronts, wharf property, public landings, wharves, docks, streets, avenues, parks, bridges or other public places... shall be sold except by an ordinance or resolution passed by an affirmed vote of three-fourths of all members elected to the governing body."

The Virginia Supreme Court has only addressed this issue once, in *Standing Development Corp. v Danville* (1974). Swett writes in his opinion that that case is not helpful in shedding light in whether or not Council's conveyance of land to VDOT is constitutional. Consequently, he says he is required to carefully examine the language used in the state Constitution.

"The framers' choice of the term 'sold' should be given deference and the assumption is that the framers used this term for a specific purpose," Swett writes. He then refers to the second part of Article VII, Section 9, which is a much longer paragraph which deals with special rights municipalities have to lease public property to other groups. For example, when Council

granted a ground lease to the Piedmont Family YMCA in December 2007

, this section restricted the terms of the lease to only 40 years. Something to note is that Swett's interpretation is that this second paragraph does not require a supermajority for such actions. Swett also writes that these two paragraphs must be taken together to interpret the intent of the Constitution's framers:

"If the framers meant that any sale also included any lease, easement, or other encumbrance, then the framers would presumably would have chosen to add those words in addition to the reference of a sale," Swett wrote in his opinion.



City Council voted 3-2 to grant the easement on June 2, 2008. Councilors Holly Edwards and Dave Norris voted against

The plaintiffs in the case had argued that transfer of land should be considered a sale because a sum of \$43,120 was recorded as changing hands when the deed for the property was signed over to VDOT. At the May 2009 trial for the case, a representative from VDOT as well as Charlottesville Mayor Dave Norris testified that figure was to reimburse the City and the Charlottesville School Board for landscape-screening and other related damages.

The plaintiffs had also argued that Article VII, Section 9 was designed to protect the public from having property it owns from being transferred for the benefit of private interests. Swett's ruling details two competing interpretations of Section 9, and its precursor in the 1902 version of the Virginia Constitution. He then relates the work of constitutional scholar A.E. Dick Howard, who wrote in his Commentaries on the Constitution that the framers intended for Section 9 to protect the public from elected officials who sold public land to private interests at lower than market value.

However, Swett said that interpretation did not fit in this case. He said that the City first turned consideration of the matter to a second elected body when it asked the

Charlottesville School Board to vote on the easement in May 2008

. That body voted 4-1 to grant the easements. Swett also noted that the City will benefit by having a public road built and paid for by the Commonwealth of Virginia.

"It is difficult to see how this conveyance to VDOT by the City is within the category of evils which the framers of the Virginia Constitution had in mind when Section 9 of Article VII was considered," Swett wrote.

Swett did rule that at least some of the plaintiffs in the case had legal standing to bring the case to trial in the first place. His ruling cited a Virginia Supreme Court decision to grant standing to the Chesapeake Bay Foundation in a suit against tobacco manufacturer Philip Morris. Swett's ruling states he could grant standing to those members of the Coalition to Preserve McIntire Park who claimed that the Meadowcreek Parkway would cause them injury by damaging the park. Specifically, that granted Stratton Salidis,

Peter Kleeman

, City Council candidate

Bob Fenwick

, John Cruickshank standing in the case. That means they can likely appeal the decision. However, Swett found that the

North Downtown Residents Association

and Richard Collins did not allege “a sufficiently particularized injury” and thus cannot play a role in an appeal.