

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 DECLARATORY JUDGMENT

Pursuant to Virginia Code § 8.01-184, Plaintiff, the Coalition to Preserve McIntire

Park, by counsel, respectfully requests that this Court declare the conveyance of land by the City of Charlottesville to the Commonwealth of Virginia's Department of Transportation unconstitutional and enforce the Virginia Constitution's Article VII Section 9 which prohibits the conveyance of public lands with a simple majority vote of the elected governing body. In support of said action, plaintiff respectfully states as follows:

1. Plaintiff is a loosely organized coalition of City of Charlottesville and County of Albemarle representing citizens who enjoy McIntire Park and the surrounding City owned land for its historic, aesthetic, recreational, educational and natural attributes.
2. The City of Charlottesville is an independent City in the Commonwealth of Virginia ("City").

3. 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.
4. On June 2, 2008 the City approved an Ordinance granting 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. (EXHIBIT A).
5. The elected governing body for the City voted 3-2 in support of the Ordinance at its June 2, 2008 public meeting to convey the land.
6. The City conveyed the property in a Deed on December 5, 2008 and recorded on January 14, 2009 at Deed Book 3678 Page 309-316 in the Circuit Court of Charlottesville.
7. The land conveyed was public land, used as a field for the City’s high school among the other aesthetic, recreational, educational and natural uses.
8. The City conveyed General Warranty and English Convents of Title to the land described in the deed for the sum of forty three thousand one hundred twenty dollars (\$43,120.00). (EXHIBIT B).
9. VDOT has cleared the land and is using it to support the ongoing construction activities, including tree cutting and utility work for the Meadow Creek Parkway.
10. The level of damage to the land as a result of the unlawful conveyance increases every day.

11. Since the ordinance did not have the state constitutionally mandated three fourths votes (3/4) of the elected governing body, Plaintiff states the ordinance as applied is unconstitutional.

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

The plaintiff requests this court to exercise its equitable powers and invalidate the deed that transferred the land from the City to VDOT; enjoin VDOT from its ongoing construction activities related to the Meadow Creek Parkway on said land, including tree cutting and utility work; award attorney's fees and any other relief this court deems appropriate.

RESPECTFULLY SUBMITTED

COALITION TO PRESERVE MEADOWCREEK PARKWAY

By Counsel

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