

**IN THE DISTRICT COURT OF TULSA COUNTY
STATE OF OKLAHOMA COURT**

TULSA PUBLIC FACILITIES)
AUTHORITY)
 Plaintiff,)
))
vs.)
))
CRAIG IMMEL,)
 Defendant.)

F I L E D
Nov 25 2015

Case No. CV-2015-01320

PLAINTIFF’S PETITION FOR DECLARATORY JUDGMENT

Plaintiff, Tulsa Public Facilities Authority, an Oklahoma Public Trust petitions this Court pursuant to 12 O.S. § 1651 *et seq* for declaratory relief. In support, TPFA alleges as follows:

JURISDICTION AND VENUE

1. TPFA is a public trust established under the Oklahoma Public Trust Act, 60 O.S. § 176 *et seq*, with its principal office and place of business in Tulsa County, Oklahoma. The City of Tulsa is its sole beneficiary.

2. Based on information and belief, Defendant is a resident of Tulsa County.

3. As a citizen of the City of Tulsa who may use the subject property, Defendant is an appropriate representative in this action for the potentially numerous citizens of the City of Tulsa similarly situated.

4. The events giving rise to this dispute occurred in Tulsa County, Oklahoma. The subject property is located in Tulsa County, Oklahoma. The Court has jurisdiction over the parties pursuant to 12 O.S. § 2400(F) and venue is proper pursuant to 12 O.S. § 133.

STATEMENT OF FACTS

5. Among the purposes of TPFA are to provide, assist and encourage development of real, personal and mixed properties as necessary and/or convenient to the performance of any governmental or proprietary purposes of the City of Tulsa, including the express purpose to dispose of properties no longer needful for trust purposes owned by the Trust. *See* Title 39, Tulsa Revised Ordinances, Chapter 16, Appendix II – Amendment No. One to the Trust Indenture Creating the Tulsa Civic Authority Changing Name to Tulsa Public Facilities Authority and Amending the Purposes of the Trust (Sections 1603, 1604, 1605, and 1606), Article III, Purposes of the Trust, including subparts (4) and (7). (A certified copy is attached hereto as Exhibit 1 to aid the Court).

6. Public trusts are authorized and administered according to § 176 *et seq* of Title 60 of the Oklahoma statutes. As such, TPFA is presumed to be a separate legal entity from its sole beneficiary, the City of Tulsa and its affairs are separate and independent from the City of Tulsa

7. In 1991, TPFA acquired a vacant tract of land, approximately 67.3 acres in size, along the east bank of the Arkansas River, south and west of 71st Street and Riverside Drive in Tulsa, Oklahoma (the “Property”).

8. Current improvements on the Property are volleyball courts, a playground, a restroom building, picnic tables, trash cans and grills. The remainder is undeveloped. The Property is included on City of Tulsa park maps as Helmerich Park. The Property includes Tulsa Parks signage. No portion of the Property has been dedicated as a park in any written instrument.

9. In July of 2013, TPFA approved the issuance of a Request for Proposals seeking development proposals on the Property. No viable proposals were received.

10. In 2014, a viable development proposal was received for a small portion of the northern part of the Property located on the southwest corner of 71st Street and Riverside Drive.

11. On July 16, 2015, the Tulsa City Council approved an amendment to the Tulsa Comprehensive Plan changing the Land Use designation of 12.31 acres at the southwest corner of 71st Street and Riverside Drive (including Tract A described below) from "Park and Open Space" to "Mixed-Use Corridor" and changing the Areas of Stability and Growth designation from "Area of Stability" to "Area of Growth." The Council has not formally adopted a Resolution declaring that Tract A is no longer needed for public use. (A certified copy of the Comprehensive Plan Amendment is attached hereto as Exhibit 2 to aid the court).

12. On August 11, 2015 in a Special Meeting, TPFA approved a Purchase and Sale Contract to sell and convey a portion of the Property approximately 8.8 acres in size at the southwest corner of 71st Street and Riverside Drive known as Tract A to a private developer. (See Exhibit 3, Amended Notice and Agenda of the Special Meeting of the Board of Trustees for August 11, 2015 and see Exhibit 4, TPFA, Special Meeting: August 11, 2015, Minutes).

13. On the same day of August 11, 2015 meeting, Defendant filed a Petition in Tulsa County District Court requesting a temporary injunction. In his Petition, Defendant requests a temporary injunction to “attempt to delay a final decision by Tulsa Public Facilities Authority” from proceeding to further negotiate or approve “a Lease Agreement or Purchase and Sale Agreement to convey interest in publicly owned park land at the intersection of 71st Street and Riverside Drive in Tulsa, Oklahoma.” Defendant’s Petition questions legal right to convey public property, currently used for a public purpose, to a private developer. (See Exhibit 5, Petition, I. Introduction and II. Statement of Facts (A)). Plaintiff has not presently served the lawsuit upon TPFA. (See Exhibit 6, OSCN Docket Sheet for Craig Immel v. Tulsa Public Facilities Authority, Case No. CV-2015-00902, Tulsa County District Court).

STATEMENT OF CONTROVERSY

14. A controversy exists between the parties as follows:

- (a) TPFA contends that it possesses the legal right and power pursuant to 60 O.S. § 176 *et seq* and the Trust Indenture to sell and convey Tract A to a private developer without the necessity of a City Council Resolution declaring that Tract A is no longer needed for public use.
- (b) Defendant questions whether TPFA legally possesses the right to sell and convey Tract A to a private developer.

15. The TPFA Trust Indenture in pertinent part states: “To accomplish the Purposes of the Trust, . . . the Trustees shall have, . . . the following rights, powers, duties, authority, discretion and privileges: (4) . . . to enter into and execute

contracts . . . and (5) . . . to lease, improve, exchange or sell, at public or private sale, upon such terms as they deem proper, and to resell, at any time and as often as they deem advisable, any or all property in the Trust . . .”. *See* Title 39, Tulsa Revised Ordinances, Chapter 16, Appendix I Trust Indenture Tulsa Civic Center Authority, Art. VII, Powers and Duties of Trustees, including subparts (4) and (5). (Exhibit 1).

16. The TPFA Trust Indenture in pertinent part also states: “The purposes of this Trust are: (4) . . . to dispose of, rent or otherwise make provisions for properties owned by the Trust but no longer needful for Trust purposes and (7) [t]o enter into contracts with the City of Tulsa and other parties to carry out the purposes of this Trust.” *See* Title 39, Tulsa Revised Ordinances, Chapter 16, Appendix II Amendment No. One to the Trust Indenture Creating the Tulsa Civic Authority Changing Name to Tulsa Public Facilities Authority and Amending the Purposes of the Trust (Sections 1603, 1604, 1605, and 1606), Article Purposes of the Trust, including subparts (4) and (7). (Exhibit 1).

REQUEST FOR RELIEF

17. TPFA will suffer immediate damage and harm if it cannot exercise its legal right and power to sell and convey Tract A to a private developer.

18. Because of this controversy, a declaratory judgment is necessary and proper to determine the rights of TPFA with regard to conveyance of Tract A.

19. Accordingly, TPFA seeks judgment as follows:

- (a) Declaring that TPFA possesses the legal right and power to sell and convey Tract A to a private developer without the necessity of a formal resolution by the City Council that the property is no longer needed for public use.
- (b) Awarding costs and other relief to TPFA as the Court deems just and proper.

Respectfully Submitted,

CITY OF TULSA, OKLAHOMA
a municipal corporation

DAVID E. O'MELIA
City Attorney

By:

Steven A. Wangsgard, #13312

Assistant City Attorney

Gerald M. Bender, OBA #14471

Litigation Division Manager

City Hall @ One Technology Center

175 E. Second Street, Suite 685

Tulsa, Oklahoma 74103

Telephone (918) 596-7717

Facsimile (918) 596-9700

ATTORNEYS FOR DEFENDANT TULSA

PUBLIC FACILITIES AUTHORITY