

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

**CRAIG IMMEL, TERRY YOUNG,)
HERB BEATTIE, CLAYDA STEAD and)
RAY PEARCEY)**

Plaintiffs,)

vs.)

No. CV-2015-00902

Judge Jefferson D. Sellers

**TULSA PUBLIC FACILITIES)
AUTHORITY, a Public Trust)**

Defendant,)

and the)

**CITY OF TULSA, OKLAHOMA, an)
Oklahoma Municipal Corporation,)**

Defendant.)

**DISTRICT COURT
FILED**

JAN - 7 2016

SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

PLAINTIFFS' AMENDED PETITION

Come now the plaintiffs, Craig Immel, Terry Young, Herb Beattie, Clayda Stead and Ray Pearcey and for their amended petition allege and state as follows:

PRELIMINARY STATEMENT

1. This is an action principally for declaratory relief, pursuant to 12 O.S. §§ 1651 *et seq.* and for related claims. Plaintiffs Immel, Young, Beattie, Stead and Pearcey bring this action as taxpayers and residents of the City of Tulsa, Oklahoma. They seek to recover park land for the City of Tulsa which they claim holds the land in trust for the public's benefit and not in a proprietary capacity under the common law of Oklahoma, pursuant to *Green v. City of Norman*, 455 P.2d 58, 1969 OK 88 and *State Ex Rel. Remy v. Agar*, 559 P.2d 1235, 1977 OK 6. This action primarily relates to claims by said plaintiffs that defendant Tulsa Public Facilities Authority (TPFA) has committed official wrongs and is attempting to misappropriate taxpayer funds and other funds of the City of

Tulsa by attempting to sell, for private commercial development, 8.8 acres of park land (hereafter the park land), that is part of what is the City of Tulsa's Helmerich Park, near the intersection of 71st Street and Riverside Drive in the City of Tulsa, Tulsa County, Oklahoma. These plaintiffs contend that defendant TPFA does not own this land and that it was purchased for the TPFA with restricted park purpose dedicated sale tax funds and other restricted park purpose funds of the City of Tulsa that were transferred to the TPFA for no consideration. Plaintiffs assert that the park land is owned by the City of Tulsa by virtue of a resulting trust created pursuant to the provisions of 60 O.S. § 137 and the facts and circumstance related to its purchase and the subsequent course of conduct of the defendant TPFA and the City of Tulsa. Title 60 O.S. § 137 states: "When a transfer of real property is made to one person, and the consideration therefor is paid by or for another, a trust is presumed to result in favor of the person by or for whom such payment is made." *See also Boatright v. Perkins*, 1995 OK 34, 894 P.2d 1091.

2. In the alternative, these plaintiffs also seek a declaration that defendant TPFA has violated the provisions of its trust indenture established in Title 39, §§ 1600 *et seq.*, Appendix II, Art. III § 4, of the City of Tulsa Revised Ordinances (TRO), attached as Ex. A, by attempting to sell the park land for commercial development without first finding that the land is not needed for "trust purposes," purposes that are solely limited to facilities involving the governmental and proprietary functions of the City of Tulsa. In relation thereto, these plaintiffs seek a declaration that before the park land can be sold defendant TPFA must seek City of Tulsa City Council approval and a determination that the park land is not needed for any "governmental or proprietary functions of the City of Tulsa" and is also "not necessary for [any other] public use or purposes," as required by

TPFA's trust indenture (Ex. A) and the provisions of Art. VIII, § 14 of the Amended Charter of the City of Tulsa, attached as Ex. B.

3. In the alternative, these plaintiffs also seek a declaration, based on the Common law of Oklahoma, that the park land is held in trust for the public and cannot be sold by either the defendant TPFA or the City of Tulsa, regardless of the provisions of Art. VIII, § 14 of the Tulsa Amended Charter, unless there is a clear factual record supporting a determination that the public use of the land has been abandoned or the property has become unsuited for continued public use as a park, pursuant to the holdings in *Green v. City of Norman*, 455 P.2d 58, 1969 OK 88 and *State Ex Rel. Remy v. Agar*, 559 P.2d 1235, 1977 OK 6. These plaintiffs seek a declaration extending this principal to defendant TPFA, as it relates to the attempt to sell the park land. These plaintiffs contend it may not exceed the "authorized and proper" public functions of its municipal beneficiary, the City of Tulsa, pursuant to 60 O.S. § 176(A) and Question Submitted by: The Honorable Danny Morgan, State Representative, District 32, 2004 OK AG 20 and 60 O.S. § 176.1(3) which requires the "function or enterprise in which the public trust is engaged is or could be authorized by state law to be performed by the beneficiary." Since the TPFA and its trustees are "an agency of the state and the regularly constituted authority of the beneficiary for the performance of the functions for which the trust shall have been created," pursuant to 60 O.S. § 179, these plaintiffs contend that neither TPFA nor its beneficiary, the City of Tulsa, may sell the park land unless the Common law conditions stated above are satisfied. These plaintiffs contend that the attempt by the TPFA to sell the park land is an attempt to exceed the "authorized and proper" functions of its municipal beneficiary and is a "function or enterprise" which state law does not

authorize its beneficiary, the City of Tulsa, to perform, to wit: selling public park land. Since, these plaintiffs contend that the park land has not been abandoned nor has it become unsuited for continued public use as a park they seek a determination it cannot be sold.

4. In the alternative, these plaintiffs also seek a declaration that the defendant TPFA has violated the provisions of its trust indenture established in TRO, Title 39, §§ 1600 *et seq.*, Appendix II, Art. III § 4, Ex. A and 60 O.S. § 177.1, by attempting to sell the park land to a private party for commercial development. 60 O.S. § 177.1 states: “. . . no public trust shall engage in any activity or transaction that is not expressly authorized in the instruments or articles prescribing its creation except by express consent of the governmental agency or governmental entity that created said public trust.” These plaintiffs contend the purposes of the TPFA are limited to developing facilities for the governmental or proprietary purposes or activities of the City of Tulsa and do not include selling park land for economic development to a private party. For this activity to be authorized it must be expressly consented to by the governing body that created the trust, in this case the Tulsa City Council. These plaintiffs contend that this has not occurred. These plaintiffs contend that since selling land for private economic development is not expressly authorized in the trust indenture the park land cannot be sold, except as provided by the statute.

5. These plaintiffs also seek a declaration that the defendant TPFA, as it relates to the attempt to sell this park land, has been directed and controlled by executive officials of the City of Tulsa, in violation of its indenture (TRO, Title 39 §§ 1600 *et seq.*, Appendix I, Article VIII, Ex. A) and because of this and a course of conduct and other

related facts is the alter ego of the City of Tulsa, in relation to the attempt to sell the park land. These plaintiffs seek a declaration that TPFA's separate legal status should be disregarded as a distinct legal entity from that of the City of Tulsa with respect to the attempt to sell the park land.

6. In the alternative, these plaintiffs also seek a declaration that the attempt to sell the park land to a private party by defendant TPFA is on such favorable terms, recovers such *de minimums* benefits to the TPFA or the City of Tulsa and is for such a fraction of the park lands value that it cannot be sold because it amounts to a gift and a failure of consideration that violates Article 10, § 17 of the Oklahoma Constitution.

7. These plaintiffs also seek a declaration that, with respect to the attempt to sell the park land, TPFA has willfully violated the Oklahoma Open Meeting Act by failing to adequately describe matters on its meeting agendas thereby depriving the public of actual notice; canceling announced regular meetings and replacing them with special meetings set on short notice thereby making the schedule of meetings incomprehensible to the public; conducting executive sessions for an unauthorized purpose and with incomplete information posted as to the specific nature of any impairment that would be caused by holding open sessions; inadequately describing the results of these executive sessions as it reported back into public meetings; and has improperly obtained consensus among a majority of its trustees with respect to selling the park land through informal discussions. On this basis these plaintiffs seek a declaration that the actions of the TPFA with respect to attempting to sell the park land are invalid and that the executive session minutes be disclosed to the public, pursuant to the provisions of the Oklahoma Open Meeting Act, 25 O.S. §§ 307(F)(2), 313 and 314.

8. The plaintiffs also seek a declaration that all records and documents related to the sale of the park land, including but not limited to records of any closed and executive sessions of the TPFA trustees or any other record that otherwise might lawfully be withheld to the public under the Oklahoma Open Records and/or the Open Meeting Act, are nevertheless open for public inspection based on the TPFA's trust indenture, TRO, Title 39 §§ 1600 et seq. App. I, Art. IX which requires "records and minutes of the [TPFA] Trustees . . . be considered as public records and available for inspection at all times by any interested party."

PARTIES

9. Plaintiff Craig Immel is a taxpayer and resident of the City of Tulsa. He has over 15 years experience in real estate investment, development consulting and construction management. He holds a Master of Science degree in Real Estate and Construction Management from the University of Denver's Daniels College of Business, and a Bachelor of Science in Geography from Oklahoma State University. He is a Leadership in Energy and Environmental Design (LEED) Accredited Professional, with specialized experience in sustainable land development, green building and renewable energy. Immel has been recognized as an outstanding young business leader by Oklahoma Magazine and The Journal Record, and received the OSU Environmental Science 2011 Green Award for Sustainability and the 2015 President's Volunteer Service Award.

10. Plaintiff Terry Young is also a taxpayer and resident of the City of Tulsa. From 1977 to 1984 he served as Tulsa County Commissioner for District 2. In that position, he personally negotiated the acquisition of the first 150 acres of what is now

Turkey Mountain Urban Wilderness Park. From 1984 to 1986 Young was Mayor of Tulsa. Following the 1984 Memorial Day flood, Young led numerous flash flood-control efforts, including the creation of Tulsa's internationally recognized storm water management program. He negotiated with the Federal government for the site of Oklahoma State University-Tulsa and helped fund \$15 million for its first classroom buildings. As mayor, Young led the successful effort to secure voter approval of the 1985 City of Tulsa sale tax initiative and the enactment of an ordinance that restricted funding to categories such as "Park Facilities Improvements" and specific projects within the categories and which obligated city officials to spend the tax proceeds only for those purposes. Since leaving office, Young has served in leadership positions for the Tulsa Economic Development Corp, the Oklahoma Legislature's Ad Valorem Task Force and the Oklahoma Turnpike Authority. He is a former independent consultant on zoning and land use matters and from 1998 to 2010 was executive vice president of Cinnabar Service Co. in Tulsa, a national land and right of way acquisition firm.

11. Plaintiff Herb Beattie is also a taxpayer and resident of the City of Tulsa. He has worked to enhance, extend, improve and protect the public parks and open space in the Arkansas River corridor in Tulsa County since 1977 when he raised the private funds needed to create the River Parks trail from Crow Creek to 56th Street. In 1978, he chaired the committee which created the Tulsa Run (15K) which was the first road race in Tulsa which used public streets. From 1980 to 1985 he was a member of the River Parks Authority (RPA) and was a founder of the Tulsa Rowing Club. Beginning in 1987 Beattie led the efforts which prevented the construction of a six lane expressway in and adjacent to River Parks. In 1987 he accepted the gift of a perpetual easement on behalf of

the RPA which created the trail extension through Helmerich Park and further south to Joe Creek. In 1979 he led the effort to obtain the private funds which created a preserve which protects a bald eagle nocturnal roost on Keystone Lake. He was the first Executive Director of the Oklahoma Chapter of The Nature Conservancy (TNC), serving from 1986 to 1992. In that capacity he negotiated the purchase of the Chapman-Barnard ranch which has become the largest and most significant tall grass prairie preserve in North America. In 1989 Beattie also secured for the City of Tulsa the gift of the Redbud Valley Nature Preserve and its headquarters. In 1988 he negotiated the purchase of the railroad right-of-way, rails, ties and bridges which extended the River Parks trail system from Tulsa to Sand Springs. In 1989 he accepted the gift of critical least tern habitat which is adjacent to Helmerich Park to TNC. In 1990 he negotiated funding from the Oklahoma Turnpike Authority to TNC to create an endowment to monitor and protect least tern and bald eagle habitat in the Arkansas River corridor in Tulsa County, including the area adjacent to Helmerich Park. As a consultant to the Trust for Public Land, Beattie negotiated the gift of a railway right-of-way which connects a trail from Tulsa to the City of Skiatook. From 2007 to the present Beattie served as founding chair of the City of Tulsa's "Bark Park Task Force" which has established two very successful and heavily used off leash parks for people and their dogs in the City of Tulsa. At the request of Tulsa County Parks, he in 1984 obtained funding necessary to create 3-mile recreational trail around LaFortune Park. Beattie was a member of the board of Park Friends, Inc. from 1987 to 1993, serving as its chair from 1988 to 1990. In this capacity Beattie participated in the decision by Park Friends, Inc. to provide a \$1 million bridge loan that allowed the City of Tulsa to purchase Helmerich

Park. Beattie is life member and former president of Tulsa Running Club and member of the National Audubon Society and Sierra Club. He is a life member of Trout Unlimited (TU) and served as founder and chair of its first chapter in Georgia and on the TU national board and as chair of its research and projects Committee. Beattie is a life member, former president and current government relations chair of the Brookside Neighborhood Association.

12. Plaintiff Clayda Stead is a taxpayer and resident of the City of Tulsa. She was formerly employed by Tulsa based oil and gas companies Sun Ray DX and Amerada Hess as a division order analyst authorizing payment of oil royalties based on legal documents of title. She was also the office manager for W. W. Wheeler Engineering Company and supervised its general office functions and payroll. In that role she also helped write many specifications and engineering contracts with the City of Tulsa's water, sewer and streets departments. She is a long-time adult leader with Girl Scouts of Eastern Oklahoma, former treasurer and board member of the Tulsa Girls Softball Federation and is currently treasurer of Tulsa Will Rogers High School Alumni Foundation, Inc. She served from 1990 to 1996 as either Chair or Vice-chair of City of Tulsa Sales Tax Overview Committee and from 2006 to 2013 as a member of the City of Tulsa Board of Adjustment.

13. Plaintiff Ray Pearcey is a 1975 graduate of the University of Tulsa with a Bachelor of Arts in Political Science. He is a management/technology consultant, a non-fiction writer and a lifelong Tulsan. As a business strategist, a chief technology officer and a digital design pro his consulting engagements have included an array of private firms, public agencies and non-profits, including the Tulsa Development Authority, the

Community Service Council and the Tulsa Public Schools. He was employed by the City of Tulsa from 1975 to 1985 as a city planner, leaving as the Chief of Policy Planning for the Development Planning Department. He is currently managing editor of The Oklahoma Eagle and a regular contributor to Tulsa's alternative bi-weekly, The Tulsa Voice.

14. Plaintiffs Immel, Young, Beattie, Stead and Pearcey are persons who have used and may use Helmerich Park and are appropriate representatives of taxpayers and the potentially numerous citizens of the City of Tulsa who are similarly situated.

15. Defendant Tulsa Public Facilities Authority (TPFA) is a public trust created in 1981 pursuant to 60 O.S. §§ 176 *et seq.* as per City of Tulsa ordinance, Title 39 § 1600 *et seq.*, Ex. A. The City of Tulsa is its sole beneficiary. The trustees of the TPFA are the Mayor of Tulsa and four other individuals nominated by the Mayor and confirmed by the Tulsa City Council. The TPFA and its trustees are an agency of the the state and the the City of Tulsa, its beneficiary, for the performance of the functions for which the trust shall have been created, pursuant to 60 O.S. § 179. The purposes of the TPFA are to promote, secure and encourage the development, redevelopment, renovation and rehabilitation of such properties, real, personal and mixed, and facilities as are necessary and/or convenient to the performance of any governmental or proprietary purposes or activities of the City of Tulsa. Selling public property for private economic development is not listed as a purpose of the trust. Only may the defendant TPFA dispose of property owned by the trust if it determines that the the property is no longer needful for trust purposes. Ex. A, App. II, Art. III (4).

16. The City of Tulsa, Oklahoma (City) is an Oklahoma municipal corporation. It is the sole beneficiary of defendant TPFA. In 1991 the City provided “park purpose” restricted sales tax funds and other “park purpose” restricted funds that were donated to the City to purchase approximately 70 acres of land for a public park near and south of the intersection of 71st and Riverside Drive in the City of Tulsa, Oklahoma. The 8.8 acres of the park land defendant TPFA is attempting to sell is part of the 70 acres of park land. This land was named by the City of Tulsa Park Board as Helmerich Park in 1991. The City is a necessary party to this action and should be joined because in its absence complete relief cannot be accorded among those already parties. As asserted by these plaintiffs, the City claims an interest relating to the subject of the action and is so situated that the disposition of this action in the absence of the City may as a practical matter, impair or impede its ability to protect and defend its interest in the park land. Without the City being a party in this action it may leave the other parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the asserted interest of the City in the park land. These plaintiffs assert that the City should be designated as a plaintiff because they believe the City owns and controls the land in question and should defend this interest. If the City refuses to join as a plaintiff it should be designated as an involuntary plaintiff or in the alternative as a defendant, pursuant to 12 O.S. § 2019 (A).

STATEMENT OF FACTS

17. In 1988 the approximately 70 acres of land that now make up Helmerich Park adjacent to 71st and Riverside Drive and that includes the 8.8 acres that has been sought to be sold by defendant TPFA was acquired by the First National Bank of Tulsa.

A developer, The Riverside Company, discontinued its desire to development the land for intense commercial, office and multi-family residential development and deeded the property to its lender. Other than an extension of Tulsa's River Parks trail, the site was undeveloped and no structures or other improvements were on the land. Except for the trail along the edge of the property, the land was a scenic wildlife habitat and wetland that was adjacent to the east bank of Arkansas River.

18. In early 1991 Walter Helmerich, CEO of the Tulsa oil and gas drilling contractor Helmerich & Payne, Inc. and a member of the board of directors of First National Bank of Tulsa contacted then Mayor of Tulsa, Roger Randle about the property. Helmerich had learned that another developer was in discussions with the bank to commercially develop the 70-acre tract. In order to prevent this development, he proposed that the City of Tulsa purchase the property from the bank for a public park that would provide an extension of park land from 71st street to approximately 78th Street and between the Arkansas River and Riverside Drive. The City-County Agency, the River Parks Authority, already operated a public park along the east bank of the river along Riverside Drive from 11th Street to 71st Street.

19. Walter Helmerich proposed that the City provide \$2.25 million and offered to secure donations to the City by private parties to provide another \$2.25 million so that the City could meet the bank's asking price of \$4.5 million.

20. Mayor Randle agreed with this proposal and in March of 1991 announced that the City of Tulsa will add the about 70 acres that now make up Helmerich Park to its parks inventory thanks to a group of local businessmen donating half the cost of the land. Randle announced a gift of \$2.25 million and said it represents the largest private land

donation to the city in Tulsa's history. Randle said he envisions an "active" park with fields for soccer and softball and other recreational facilities, but that funds to develop it must come from other sources. Randle said he will call for the City Council to approve a change to the 1985 sales tax ordinance to allocate surplus money to acquire the land. Randle said the tract had been considered for inclusion in the 1991 sales tax extension package but was omitted because \$19 million in other park projects were included, which made an additional \$4 million to \$5 million project impractical.

21. In April of 1991 Mayor Randle instructed City of Tulsa Finance Director, Ron Payne, to initiate a process to enact legislation before the Tulsa City Council to amend the 1985 sales tax ordinance to appropriate \$2.25 million in surplus tax collections for a "new project, Park Land Acquisition- to acquire 72 acres between 71st and 81st Street on Riverside Drive." See Ron Payne Request for Authorization to City Council and related documents, attached as Exhibit D.

22. In May of 1991, then City of Tulsa Park Director Hugh McKnight told the City Council, prior to its decision to appropriate the funds, with respect to the park land that: "We have the opportunity here to look at some special facilities, possibly financed through revenue bonds, for a citywide facility..." McKnight indicated that possibilities included a "super center" recreational facility that would include year-round swimming and water sports complex, and a community theater complex. McKnight stated: "We're talking community wide development, a master plan that could be financed in a tremendous number of ways."

23. After two public hearings that were required by the sales tax ordinance the Tulsa City Council on May 30, 1991 acted favorably on the request, amended the sale tax

ordinance and appropriated the \$2.25 million surplus sales tax funds, together with another \$2.25 million that had been raised from private donors and transferred to the City's Park Acquisition Fund "to be used for park acquisition." See Tulsa City Ordinance # 17509 and Tulsa City Ordinance # 17510, attached as Exhibits E & F.

24. At the request of then City Finance Director Payne the funds were transferred from the City's "park acquisitions" accounts to the defendant TPFA's "trust account" for payment to the bank in exchange for the land. Payne advised the Council that legal title would be placed in the name of the TPFA in anticipation of bond financing for future park development and improvements. Assurances were given to the Council that the TPFA could not sell or transfer the property without the consent of the Council prior to the City Council appropriating the funds to purchase the park land. The Council would not have appropriated the funds for the purchase of the park land if it thought the park land could be sold by defendant TPFA without the Council's consent.

25. Any sale or transfer of real property owned by the City of Tulsa can only be made after the City Council approves it and determines that the property is "not necessary for public use or purposes." See Tulsa Amended Charter, Art. VIII, § 14, attached as Ex. B. Even then, public park land cannot be sold or transferred by a municipality unless the public use has been abandoned or the property has become unsuited for continued use. *Green v. City of Norman*, 455 P.2d 58, 1969 OK 88 and *State Ex Rel. Remy v. Agar*, 559 P.2d 1235, 1977 OK 6. The park land sought to be sold by the defendant TPFA has not been abandoned nor has it become unsuited for continued use as a park.

26. The 1985 sales tax ordinance from which \$2.25 million was appropriated for the purchase of the park land is codified as TRO, Title 43-B, §§ 100 *et seq.* It is still in effect. It provides in pertinent part: “The City of Tulsa hereby officially and solemnly pledges to the citizens of Tulsa: 1. That ALL funds received by the City . . . will be spent ONLY for those projects and purposes set forth herein; 2. That NONE of such funds shall ever be spent for any other purpose; . . . 4. That any attempt to divert any of such funds to other purposes or projects . . . shall constitute a breach of the official City policy herein established, shall be a violation of the terms, spirit and purpose of this chapter, and shall constitute sufficient grounds for the removal of such officer or employee from his office or position. . .” TRO, Title 43-B §§ 100 *et seq.*, attached as Exhibit G.

27. The TPFA took legal title to the park land from the bank on June 4, 1991 with funds provided by the City of Tulsa. All these funds were from the restricted park acquisition accounts of the City of Tulsa and \$2.25 million of the funds were also from the 1985 voter approved sale tax proceeds for a specific project to acquire this park land.

28. In June of 1991 the trustees of the TPFA knew or should have known that legal title to the park land was being placed with them at the request of the City of Tulsa, as the beneficial owner of the property and as an accommodation related to anticipated future bond financing by the City of Tulsa to further develop the land for use as public park controlled by the City. The TPFA trustees knew or should have known that the park land could not be sold without the consent and approval of the City Council of the City of Tulsa.

29. On June 27, 1991 the Park and Recreation Board of the City of Tulsa met and noted that the City of Tulsa had recently acquired property along 71st Street and

Riverside Drive for a new park. It passed a resolution naming the park for Walter Helmerich. See Minutes of special meeting of the Tulsa Park and Recreation Board, June 27, 1991, attached as Exhibit G.

30. The City of Tulsa Park and Recreation Board is an agency of the City of Tulsa that, *inter alia*, advises the Mayor and the City Council on the establishment, control, management, operation, improvement, and maintenance of the City's public parks. See Amended Charter at Art. V, §§ 3.1-3.7, attached as Exhibit H.

31. In conjunction with this City of Tulsa Park Board meeting, then Tulsa Mayor Roger Randle, at a public breakfast reception, called the newly acquired park land "the centerpiece of Tulsa's park system." Randle said "converting the wild, undeveloped land into sports fields and park facilities will require a bond issue." Randle stated that city workers will soon start mowing and maintaining the park. The mayor said he envisions a classic approach to development, transforming the vacant tract into south Tulsa's version of Mohawk Park on the north side. Mohawk is characterized by mature trees, stone picnic shelters and also includes the Tulsa Zoo and a nature center. The City of Tulsa paid for half the costs of this breakfast while private donors paid the balance. Defendant TPFA did not pay any of the costs.

32. From June of 1991 when the Helmerich Park land was purchased with funds provided by the City to the present, the City of Tulsa park department has maintained and utilized the land as a public park. Public funds have been annually appropriated by the City of Tulsa for this purpose. The defendant TPFA has spent no funds to maintain or improve the park land. The City has placed signs on the the property designating the land as "City of Tulsa, Helmerich Park." Official City of Tulsa park

maps include Helmerich Park. The City's park department did the layout for the park and has constructed ten sand volley ball courts, parking lots, a restroom facility, a playground, a picnic shelter with picnic tables, grills, trash cans and a splash pad on the park land. Use of the volley ball courts and picnic shelter must be scheduled through the City's park department. The City of Tulsa has paid all these costs. The TPFA has paid nothing. The City's park department indicated in 2015 that it is making plans to construct park improvements at Helmerich Park for restrooms and a new playground at a projected cost of \$1,175,000. City of Tulsa ordinances define Helmerich Park as a park of the City of Tulsa. See TRO, Title 26, § 100(A)- "Park areas and facilities shall mean any park, playground, recreation area, sports field, garden, land, building, museum or other structure designated by legal instrument, formal acceptance or custom under the jurisdiction of the Park and Recreation Board of the City of Tulsa...", attached as Exhibit I.

33. In January of 1999 an initial concept plan for the continued development of Helmerich Park was prepared for the City of Tulsa park department. Attached as Exhibit J is a copy of the plan.

34. Between August 2004 and February 2009, the Arkansas River Corridor Master Plan was completed in three phases. Each phase was officially adopted by the Indian Nations Council of Governments (INCOG). The Mayor of Tulsa and at least five members of the Tulsa City Council served as members of the INCOG Board of Directors at the time votes were cast to adopt the three phases of the plan. The total cost of the plan was \$1,487,286.94. All money was taxpayer money allocated by federal and county governments and INCOG. The City of Tulsa is the largest financial participant in

INCOG, appropriating to it annually thousands of tax dollars. The Corridor Plan includes specific treatment of the “71st Street Riverfront.” The concept for this riverfront was developed for and presented in Phase II of the plan in October of 2005 and reflects a predominant park and recreation function for Helmerich Park. This plan is fundamentally different than that which has been authorized by TPFA with the proposed sale of the 8.8 acres of park land for commercial development, which is a big box style retail shopping center with an anchor tenant and other retail stores with over 580 parking space on an asphalt parking lot.

35. In 2010, the Arkansas River Corridor Master Plan was incorporated, without amendment, in the update of the City of Tulsa Comprehensive Plan. The Corridor Plan is presently being used by the City of Tulsa Arkansas River Task Force as a basis for seeking public funding for river corridor park improvements. The Corridor Plan remains the official and only plan for development along the banks of the Arkansas River that is recognized by Tulsa County and the City of Tulsa.

36. The sale of the park land will permanently and adversely affect the plaintiffs, the public and the City of Tulsa in the use of the park land, now and in the future by allowing the construction of a grossly incompatible commercial project (a big-box type store with an asphalt parking lot for over 580 automobiles) that will cause degradation of the City of Tulsa’s adopted 71st Street riverfront plan; destroy existing relief from the over-built commercial environment at and east of the intersection of 71st Street and Riverside Parkway; eliminate an attractive backdrop to living and working areas where Tulsans would otherwise congregate, escape the urban environment, appreciate nature and engage in active recreation; establish a negative precedent that will

have cumulative impacts, including fragmentation of the park area beyond the footprint of the proposed development resulting in the loss of distinctive settings for events and social interactions; foreclose future opportunities to complete the planned park development in the existing Arkansas River Corridor Master Plan; destroy over 40 mature trees; temporarily and perhaps permanently displace 10 sand volley ball courts; and disturb sensitive wetlands that support challenged wildlife habitat for the American Bald Eagle and Least Terns.

37. The sale of the park land will permanently and adversely affect the plaintiffs, the public and the City of Tulsa in the use of the park land, now and in the future because the contemplated commercial development will contribute negatively to urban flooding and storm water runoff management. The sale will violate the adopted Arkansas River Corridor Master Plan which specifies no development along the river below the level of the 1986 flood. Portions of Helmerich Park were flooded in 1986 including a significant part of the park land sought to be sold by defendant TPFA. If structures are built on the park land sought to be sold they will likely be flooded.

38. The sale of the park land will permanently and adversely affect the plaintiffs, the public and the City of Tulsa in the use of the park land, now and in the future, because its sale for commercial development would prevent any facilities built thereon from getting LEED Green Building Certification from the US Green Building Council since no development of buildings, hardscape, roads, or parking areas on portions of sites that meet any of the following criteria can be approved: previously undeveloped land whose elevation is lower than 5 feet above the elevation of the 100-year flood; land specifically identified as habitat for any species on federal or state

threatened or endangered lists; land within 100 feet of any wetlands; previously undeveloped land that is within 50 feet of rivers, streams, and tributaries that support or could support fish, recreation, or industrial use; and, land that prior to acquisition for the project was public parkland, unless land of equal or greater value as parkland is accepted in trade by the public landowner.

39. The sale of the park land will permanently and adversely affect the plaintiffs, the public and the City of Tulsa in the use of the park land, now and in the future, because its sale for commercial development will undermine the confidence voters have placed in the commitment by the City and its officials to only spend voter approved sales taxes for approved projects and will likely negatively affect the favorable consideration by the voters of future tax proposals.

40. The sale of the park land will permanently and adversely affect the plaintiffs, the public and the City of Tulsa in the use of the park land, now and in the future, because its sale for commercial development will undermine the confidence of charitable givers as they can no longer count on the full faith and credit of the City of Tulsa and its officials to use their donations for the purposes intended.

41. The sale of the park land will permanently and adversely affect the plaintiffs, the public and the City of Tulsa in the use of the park land, now and in the future, because its sale for commercial development will undermine the confidence of the citizens who participated in the public process and in expending millions of dollars in tax payer funds to develop the Arkansas River Corridor Master Plan and the 2010 Update of the City of Tulsa Comprehensive Plan, both of which are being ignored.

42. In 2013 City of Tulsa Chief Economic Development Officer Clay Bird discovered that legal title to Helmerich Park was held by the TPFA. Bird and officials in the office of the Mayor of Tulsa developed a plan for large portions of the park to be leased on a long term basis for emphasis on retail/recreation venues that would increase sales taxes for the City of Tulsa.

43. In 2013 the TPFA and the City of Tulsa jointly issued a “request for proposal” (RFP) regarding Helmerich Park. See RFP attached as Exhibit K. The RFP was wholly prepared and administered by employees of the City of Tulsa at no cost to the defendant TPFA. Unlike other Title 60 Public Trusts and other authorities that have the City of Tulsa as their exclusive beneficiary, the TPFA does not have any employees, other than the TPFA trustees, and is wholly dependent on staff supplied by the City of Tulsa who are authorized and permitted to work for the TPFA at no cost. For example, other than a specialized bond attorney who serves as an independent contactor, TPFA receives free legal, accounting, auditing, records preparation and retention and other staff services from employees of the City of Tulsa at no cost, despite having more than \$15 million dollars in its unrestricted accounts according to its last financial statement.

44. The RFP has several indications that the TPFA and the City of Tulsa know and understand that the City is the beneficial owner of the park land and that with respect to this park land the TPFA is not truly independent from the City. The RFP required the Mayor of Tulsa to approve the RFP and to approve any lessee. The RFP notes that “[t]he successful respondent shall become a Lessee of City of Tulsa and the TPFA.” RFP, Ex. K at p. 4. The PFP required any potential lessee to protect or relocate the existing City of Tulsa constructed volley ball courts and playground, as well as the publically maintained

river trail. The insurance policy a successful lessee was required to obtain must name the City of Tulsa as an additional insured. The RFP notes that the ground lease will be awarded by the City. The RFP establishes that two of the four members of the review committee for the proposal are City of Tulsa officials, the City of Tulsa Chief Economic Development Officer and the City of Tulsa Director of Planning and Economic Development. The RFP was advertised on the City of Tulsa's web site along with other RFPs sponsored by the City at no cost to TPFA. See COT/RFP Screen Shot, attached as Exhibit L. The TPFA does not have its own web page and is totally dependent on the City of Tulsa for any presence on the internet which it receives at no charge.

45. City of Tulsa Chief Economic Development Officer Clay Bird has stated that no viable responses to the RFP were received by the TPFA and the City. Bird states that TPFA and the City did receive a viable proposal in 2014 for the 8.8 acres of park land that is the subject of this controversy. Bird has informed the public that the proposal was not under the RFP but was for the sale of the park land rather than for its long-term lease. Bird and the TPFA first informed the public that a sale rather than a lease was being considered on July 23, 2015.

46. Beginning on March 28, 2013 and continuing to the present, posted and published TPFA meeting agendas and the officially approved minutes of its meetings have contained intentionally vague language to properly describe the park land it owns at 71st and Riverside failing to provide adequate notice to the public of matters to be discussed and/or acted upon.

47. Beginning following its regular meeting of July 24, 2014 and continuing to the present, TPFA has cancelled eight scheduled regular meetings, all

of which regular meetings were announced in the published schedule required by law, which a reasonable person would have been expected to include discussion and possible action regarding the matter of land owned by TPFA at 71st and Riverside.

48. Between March and the end of December 2015 the posted agendas and official minutes for numerous regular meetings were misleading to the public by noting when the next meeting would be held when such meetings were then canceled or rescheduled, often with short-notice special meetings in a manner that would mislead and confuse the public regarding possible action related to the park land.

49. Beginning on March 5, 2015 and then on March 24, July 29, August 11, and December 11, 2015, TPFA conducted special meetings with notice to the public required to be posted and published with as little as 48 hours prior to such meetings, excluding weekend days and holidays, at which meetings executive session discussion and possible action was scheduled on the matter of land owned by TPFA at 71st and Riverside.

50. On Oct 12, 2015, TPFA conducted a special meeting with notice to the public posted only 26 hours prior to the beginning of the meeting, excluding weekend days and holidays, at which was scheduled an executive session, discussion and possible action on the matter of land owned by TPFA at 71st and Riverside.

51. Beginning on July 24, 2014 and then on August 28, October 23 and December 18, 2014 and on January 22, March 5, March 24, May 28, July 23, July 29 and August 11, 2015, TPFA conducted executive sessions on the matter of land

owned by TPFA for at 71st and Riverside for an unauthorized purpose without notice of the specific nature of any impairment to TPFA or the public for holding said executive sessions.

52. Defendant TPFA from its regular meeting on July 24, 2014 through its special meeting on August 11, 2015 has conducted business in executive session that upon reconvening in public session was presented in terms that were so convoluted and vague as to be misleading to the public in its presentation during such meetings and in its official meeting minutes thereby preventing the public from comprehending its actions and to act accordingly.

53. On December 18, 2014, TPFA made a decision in executive session to hire a “broker.” The broker was not properly named on the posted and published agenda of the meeting.

54. Beginning on July 24, 2014 through August 11, 2015, TPFA improperly obtained consensus among a majority of its trustees outside of public meetings with respect to the park land owned by TPFA at 71st and Riverside.

55. On August 11, 2015 the TPFA trustees by a vote of 3 to 2 voted to sale the 8.8-acre track of park land to a developer. The TPFA trustees in connection with the decision to sell the park land did not make a finding that the park land was no longer needed for trust purposes nor did they ask the City of Tulsa City Council if the park land was needed for any governmental or proprietary functions of the City of Tulsa. On August 11, 2015 the park land was being used and is presently being used as a public park under the control of the City of Tulsa’s park department. Bird informed the TPFA

that the City of Tulsa would relocate the 10 volley ball courts to another part of Helmerich Park that was not affected by the 8.8 acres.

56. Also on August 11, 2015 plaintiff Immel initially filed this action questioning TPFA's right to sell the park land to a private developer.

57. In December of 2015 City of Tulsa Chief Economic Development Officer Clay Bird told the Tulsa City Council that the land was being sold at less than fair market value and not for its highest and best use. He stated that the TPFA and the City of Tulsa were not interested in making a profit off of the sale.

58. The 8.8 acres of park land is proposed to be sold for \$1,465,000 of which \$895,000 will be in cash and \$570,000 will be a credit against the purchase price for infrastructure improvements.

59. The Tulsa County Assessor has set the current fair market value for the entire 70-acre park which includes the 8.8 acres proposed to be sold at \$24,361,641.00.

60. The fair market value of the 8.8 acres of park land for its highest and best use is at least \$5 million, without any credit for infrastructure improvements.

61. Bird and the TPFA claim that jobs and retail sales will be created from the sale of the property, but this contention is speculation. Any jobs and retail sales created by the sale of the park land will likely not be a net gain, but will be transferred from existing retail establishments.

62. As of the filing of this amended petition the sale of the park land has not yet occurred. Officials of the City of Tulsa and the TPFA have indicated to the public that because of the original filing of this action by plaintiff Immel the sale of the park land cannot go forward until it is determined who owns and controls the land.

CLAIMS

First Claim for Relief (Resulting Trust, 60 O.S. § 137)

63. These plaintiffs claim that the park land cannot be sold by the defendant TPFA because the City of Tulsa owns it because of a resulting trust, as asserted in paragraph 1 above, based on the foregoing facts and circumstances, which are incorporated herein.

Second Claim for Relief (No Determination Property Not Needed)

64. In the alternative to the First Claim for Relief, these plaintiffs claim that the park land cannot be sold by the defendant TPFA, as asserted in paragraph 2 above, because it has not determined that it is not needed for trust purposes as required by its trust indenture, based on the foregoing facts and circumstances, which are incorporated herein.

Third Claim for Relief (Common Law, Title 60 §§ 176(A), 176.1(3) & 179 Trust & City Cannot Sell Park Land)

65. In the alternative to the First Claim for Relief, these plaintiffs claim that the park land cannot be sold by the defendant TPFA and the City of Tulsa, as asserted in paragraph 3 above, because they cannot sell park land unless conditions are met, based on the foregoing facts and circumstances, which are incorporated herein.

Fourth Claim for Relief (Sale Not Authorized by Trust Indenture & Title 60 O.S. § 177.1)

66. In the alternative the First Claim for Relief, these plaintiffs claim that the park land cannot be sold by the defendant TPFA, as asserted in paragraph 4 above,

because the trust indenture does not authorize the sale to private parties for economic development purposes, based on the foregoing facts and circumstances, which are incorporated herein.

**Fifth Claim for Relief
(TPFA is Alter Ego of City of Tulsa)**

67. These plaintiffs claim that the park land cannot be sold by the defendant TPFA because, it is the alter ego of the City of Tulsa, as asserted in paragraph 5 above, based on the foregoing facts and circumstances, which are incorporated herein

**Sixth Claim for Relief
(Lack of Consideration)**

68. In the alternative to the other claims, these plaintiffs claim that the park land cannot be sold by the defendant TPFA because there has been a gift and lack of consideration in connection with the proposed sale of the park land, as asserted in paragraph 6 above, based on the foregoing facts and circumstances, which are incorporated herein.

**Seventh Claim for Relief
(Open Meeting Act)**

69. These plaintiffs claim that the defendant TPFA has willfully violated the Oklahoma Open Meeting Act and because of this its decision to sell the land is invalid and executive session minutes must be disclosed, as asserted in paragraph 7 above, based on the foregoing facts and circumstances, which are incorporated herein.

**Eighth Claim for Relief
(Trust Records Must Be Open)**

70. These plaintiffs claim that all the records of the TPFA are open to inspection by the public and ask for such a determination, as asserted in paragraph 8 above, based on the forgoing facts, which are incorporated herein.

WHEREFORE, plaintiffs Immel, Young, Beattie, Stead and Pearcey request that they be granted the following relief:

1. A declaration that the park land is owned by the City of Tulsa;
2. A declaration that the TPFA and the City cannot sell the park land;
3. A declaration that the defendant TPFA has willfully violated the Open Meeting Act; a declaration that the decision to sell the park land is invalid; and that records from any executive session be produced;
4. A declaration that all the records of the defendant TPFA are open for public inspection.
5. Such other necessary relief to effectuate the Court's declarations, the costs of this action, attorneys' fees as provided by law and such other and further relief as may be just and proper.

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Attorney for Plaintiffs

Certificate of Service

I certify that a true and correct copy of the foregoing was mailed or delivered and emailed this _____ day of January 2016, to:

Stephan A. Wangsgard, Asst. City Attorney
Gerald M. Bender, Litigation Div. Mgr.
City Hall @ One Technology Center
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Tulsa, Oklahoma 74103

D. Gregory Bledsoe