

IN THE CIRCUIT COURT OF PHELPS COUNTY, MISSOURI

CITIZENS FOR THE PRESERVATION)
OF BUEHLER PARK, et al.)

)
Plaintiffs,)

v.)

Cause No.: CV305-0352CC

)
THE CITY OF ROLLA, MISSOURI,)

eta!.)

Defendants.)

DEFENDANTS' RESPONSE TO PLAINTIFFS' POST-TRIAL BRIEF

I. A.

Plaintiffs rely heavily on Minutes of Board Meetings of the Grantor, Rolla Chamber of Commerce, to argue the Chamber's intent to dedicate the property in question to public use. Plaintiffs' arguments fail in that regard because the Minutes are internally inconsistent and inconsistent with the eventual deed conveying the property. Ultimately, "it is the deed, which must unequivocally demonstrate a purpose to create a right in the public to use the land." State ex. rel. Missouri Coalition For The Environment v. Conservation Commission of the State of Missouri, 940 S.W.2d 527 (Mo. App. W. D. 1997).

Included in the exhibits, over Defendants' objection as to relevance, are the Minutes of three Chamber Board Meetings from 1957 to 1958. The first set of Minutes,

from July 10, 1957, only note discussion about whether “the Chamber of Commerce **should deed** [the property] **to the City** so that the City... can maintain and improve it.” (Emphasis added.) No formal action was taken but a representative was appointed to meet with the City and “get their opinion.”

On August 16, 1957, as the Boards’ Minutes reflect, their representative reported back. “Mr. White” offered his gratuitous comment that “maintaining the grove was a moral obligation to the memory of Chief Buehler.” This sentiment was neither approved by the Board, adopted by any other members of the Board nor incorporated into the deed eventually transferring the property. Again, formal action was deferred, this time until the City had “definite plans for improvement, and maintenance and arrangements can be made for **the transfer** of the property.” (Emphasis added.)

On January 3, 1958, the Board considered the issue at the request of the City Park Board which “would like to know whether the Chamber will deed the Buehler Park Grove **to them** so that they may spend money on improving it.” (Emphasis added.) While a motion was made, seconded and passed that the property “be deeded (sic) **to the City** to be used from now on as a park in memory of Chief Buehler,” clearly, this was not the final word since a committee was appointed “to handle the negotiations” of the transfer. (Emphasis added.) Appointing a negotiating committee is inconsistent with, even contrary to, an intent to dedicate the property to public use.

Ultimately, the property was not dedicated to public use but “bargain[ed] and [sold] **to the City**,” “in consideration often dollars.” (Emphasis added.) Selling property is directly contrary to dedicating the property to public use. State ex. rel. Missouri Coalition For The Environment, id., noting similar language at 528.

Furthermore, the property was not conveyed for “purpose of a park” but for “park purposes.” As previously argued both at trial and in Defendants’ Suggestions, any use of the property ancillary to the functions of the City’s Park Department, but not a park, would have complied with this restricted use. The phrase “for park purposes” does not, in and of itself, bespeak an intent for the public to use the property was a park. See State ex. rel. Missouri Coalition For The Environment, id.

Plaintiffs rely on Coffey v. State ex. rel. County of Stone, 893 S.W.2d 843, 844 (Mo. App. S.D. 1995) and Hand v. City of St. Louis, 59 S.W. 92 (Mo. 1900) to argue the language of the deed itself is sufficient to create a dedication. Defendants, in their Suggestions in Opposition to Plaintiffs’ Petition, point out the Coffey Decision is essentially an anomaly. In Coffey, the Court used common law dedication to keep a road open for the benefit of adjoining landowners when the road did not meet the statutory requirements for continued public use. The court utilized a reference in the deed that the road was to be maintained suitable for a school bus stop, and also noted a member of the County Commission, which had tried to deed the road back to the original grantor, testified the commission’s deed had been a mistake.

Similarly, the Hand Decision provides little support for Plaintiffs' position. In that case a descendant of the original grantor sought to divest the City of St. Louis of property deeded to it "for the purpose of a public market, to be called 'Shepherd's Free Market,' in which all persons having wholesale provisions for sale should be licensed to use and occupy stands free or at nominal rent". The defendant, City of St. Louis, demurred to the allegations of plaintiffs' petition, including that the City had abandoned the use of the property as a market house and, instead, constructed a firehouse thereon. By its demurrer, the City acknowledged plaintiffs' allegation of a dedication to public use but, ultimately the court ruled against plaintiff, holding that violation of such a dedication does not result in reverter to the grantor or his descendants and, in any case, too much time had passed (25 years) to interfere with the City's violative use of the property.

Plaintiffs' argument fails in the end because they have not met their burden on the first element of common law dedication, unequivocal action by the grantor evidencing an intent to dedicate the land to public use. Whittom v. Alexander-Richardson Partnership, 851 S.W.2d 504, 507-08 (Mo. banc 1993).

II.

In the end Plaintiffs have no standing to bring this suit. Plaintiffs claim standing on three grounds, as taxpayers, users of the park and inhabitants and property-holders of the City. Their standing as users of the park and inhabitants and property-holders of the

City was conclusively determined in Ours v. City of Rolla, 965 S.W.2d at 343 (Mo. App. S.D. 1998). Nothing Plaintiffs have alleged or to which the parties have stipulated herein would change this holding in Ours.

As taxpayers Plaintiffs claim they need only show their “taxes went or will go to public funds that have been or will be expended due to the challenged action.” (Citations omitted). However, they must show more than that. Indeed, they must show the challenged action rises to an “illegal expenditure of public funds.” Ours. id. at 346. Were that not the case, every taxpayer would have standing to file suit against any local government action which involves the expenditure of money, which indeed, nearly every government action does. However, as pointed out in this case there is no expenditure of public funds other than for staff time, etc. which, as the Court in Ours pointed out, is not the type of expenditure which confers standing (id. at 364) and there is no expenditure of taxpayer money in this case since any expenditure is to be reimbursed to the City by the developer. (Exhibit 14).

In any case, Plaintiffs fail to have standing in this case ultimately because they fail to show the City’s action is “illegal” in that there is no dedication to public use. Without such an “illegal” act on the part of the City, there is no improper “expenditure” for Plaintiffs to challenge.

¹ Paragraph references in this response correspond to similarly numbered sections of Plaintiffs’ Post-Trial Brief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of this document was served on August 28, 2006, by U.S. mail, postage prepaid, to attorney for Plaintiffs Brace A. Morrison and Kathleen G. Henry, Great Rivers Environmental Law Center, 705 Olive Street, Suite 614, St. Louis, Missouri 63101-2208.