

**IN THE CIRCUIT COURT OF BOONE COUNTY
COLUMBIA, MISSOURI**

KENNETH R. MIDKIFF,)
)
SANDRA KAY MCCANN,)
)
and)
)
FRIENDS OF ROCK BRIDGE)
MEMORIAL STATE PARK,)
)
)
Plaintiffs,)
)
v.)
)
CITY OF COLUMBIA, MISSOURI,)
Serve: Nancy Thompson,)
701 E. Broadway,)
Columbia, MO 65201,)
)
SOUTHSIDE TRAIL ESTATES, LLC,)
Serve: Daniel J. Simon)
2101 Corona Rd., Suite 203)
Columbia, MO 65203)
)
and)
)
EMERY, SAPP & SONS, INC.,)
Serve: Bill G. Sapp)
2301 I-70 Drive NW)
Columbia, MO 65202)
)
Defendants.)

Case Number:

Division Number:

PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF

COME NOW Plaintiffs and for their cause of action state as follows:

1. This suit is brought pursuant to Chapter 527, RSMo, to seek a declaratory judgment against a municipality for the passage of an illegal ordinance, and pursuant to Chapter 526, to seek an injunction against Defendants City of Columbia (“City”) Emery, Sapp & Sons,

Inc. (“ESS”), and Southside Trail Estates, LLC (“STE”), enjoining it from proceeding with the Parkside Estates Development that is being constructed in Columbia, Missouri (“Columbia”).

2. Plaintiff Kenneth R. Midkiff is a taxpayer of Columbia, and resides at 1005 Belleview Court in Columbia. He will be adversely impacted by the sights, sounds and stormwater that will be discharged from STE’s Parkside Estates development in Columbia, Missouri.

3. Mr. Midkiff attends most City Council meetings and frequently participates in public hearings on items of interest. Mr. Midkiff attended both the September 3, 2013 and April 21, 2014, council meetings. Mr. Midkiff raised the issue of Bill 229-13A containing more than one subject at the April, 2014 meeting. He is a frequent user of Rockbridge Memorial State Park (“Park”), and, in particular, the Deer Run Trail which has been negatively impacted by activities at the Parkside Estates Development. He has observed the muddied conditions in the Park and reported the violations to the City of Columbia government staff.

4. Plaintiff Sandra Kay McCann is a resident and taxpayer of Columbia, Missouri. She will be adversely impacted by the sights, sounds and stormwater that will be discharged from the Parkside Development.

5. Ms. McCann lives in the subdivision right next to the proposed development, at 500 East Lake Forest Drive, Columbia, MO 65201. She uses the park all the time. She views the park daily from her house and the area where the proposed development will be built. She is concerned that the developers are disturbing the karst area with the rock crushing that has been occurring since construction started. She can see that the Park is a horrible mess now, with mud in the Park caused by the run-off from the construction. She can see that the creek in the Park is muddy now, and was not so before the construction began.

6. Plaintiff Friends of Rock Bridge Memorial State Park (“FoRB”) is a Missouri nonprofit corporation in good standing formed and incorporated in 1992. It is a membership-supported organization with over 60 members, including more than 40 living inside the Columbia City limits. It is open to anyone who cares about the park. For the last seven years FoRB has organized and supported summer programs for low-income youth and for pre-schoolers and their care-givers. It provided funds to add solar power to a park shelter and recently raised funds to restore an historic cabin in the park. It also organizes semi-annual park work-days to remove old-fencing, invasive plants and pick up trash.

7. FoRB is opposed to the land clearing actions of the Parkside developer because those actions have begun to alter a stream that runs from the development through the Park.

8. Due to runoff from the cleared land upstream on the development property, the bank along the stream has been undercut on the west side, making it potentially unstable. The gravel and rock on the stream bottom and plants on the opposite bank have been covered with a layer of mud. The mud has also covered the Deer Run Trail where it crosses the stream.

9. If the developer’s actions continue, they could substantially alter the depth, width and materials covering the bottom of the stream. These changes can affect the stability of the Deer Run Trail where it crosses the channel and the habitats of the plants and animals that live in and around the stream.

10. Both of these changes will harm FoRB members’ use and enjoyment of the Deer Run Trail in the park and undermine their purpose of preserving the park’s natural resources.

11. Defendant City of Columbia, Missouri, is a municipal corporation, a Charter City, and is located in Boone County, Missouri.

12. STE is a limited liability company that is recognized to be in good standing by the Missouri Secretary of State. Its address is 5796 South Route K, Columbia, MO 65203.

13. Emery, Sapp & Sons, Inc. (“ESS”), is a Missouri corporation that is recognized to be in good standing by the Missouri Secretary of State. It has an office and registered agent at 2301 I-70 Drive NW, Columbia, MO 65202.

14. The principal place of business of each of the defendants is in Boone County, Missouri.

15. This Court has jurisdiction and venue pursuant to §§ 526.010 and 527.010, RSMo.

16. On September 3, 2013, the City of Columbia City Council (“Council”) passed Council Bill No. B 229-13A, which became Ordinance No. 21788 in the Columbia City Ordinances. See Exhibit 1 hereto.

17. In Ordinance No. 21788, the City Council purported to approve the Preliminary Plat and PUD Plan of Parkside Estates, a “major subdivision containing approximately 35.84 acres,” which is a project of STE.

18. Ordinance 21788 purports to annex the land owned by STE, which had been outside of the territorial boundaries of the City of Columbia (“Annexed Land”).

19. Ordinance 21788 purported to zone the Annexed Land “District PUD 2.0.”

20. Ordinance 21788 purports to require the subdivider, prior to the Council's granting final plat approval, to complete the improvements required by the Subdivision regulations, or to present security to the Council providing for and securing the actual construction and installation of the improvements and utilities.

21. Ordinance 21788 purports to provide the subdivider a variance from the requirements of the City's subdivision regulations so that sidewalks would not be required along internal streets in the subdivision.

22. Ordinance 21788 purports to require the developer to incorporate the impervious surface restrictions into the development.

23. Ordinance 21788 purports to require the developer to incorporate best management practices to exceed the minimum standards established by the City Code, the Bonne Femme Watershed Plan, and the Stormwater Manual by at least one point.

24. On April 21, 2014, the City Council of Columbia voted 4-3 to DENY the final plat approval at its regularly scheduled council meeting when voting on Council Bill No. B65-14. See Exhibit 2 hereto.

25. On December 31, 2013, the City of Columbia Public Works Department purported to grant a Land Disturbance Permit to STE, allowing ESS to perform land disturbance activities on Parkside Estates, Plat 1 ("Permit"). See Exhibit 3 hereto.

26. On or about April 22, 2014, ESS began construction of Parkside Estates.

27. The land had not been annexed when the City purported to grant the Permit.

28. Construction pursuant to the Permit continues to the present.

29. The construction activities have caused mud to fill Gans Creek in Rock Bridge Memorial State Park, a beautiful park located minutes from Columbia which contains some of the most popular hiking trails in the state and also offers solitude in the Gans Creek Wild Area. Visitors can also see a large cave system with its rock bridge, sinkholes, a spring and underground stream at the Devil's Icebox.

30. STE and ESS are proceeding without final plat approval and without a valid land disturbance permit and must be enjoined before further damage occurs to Rock Bridge Memorial State Park.

**Count I - Declaratory Judgment
Violation of Columbia City Ordinance and Missouri State Law**

31. Plaintiffs incorporate by reference ¶¶ 1-25 above.

32. Ordinance No. 21788 violates Article II, Section 15 of the Columbia City Charter, see Exhibit 3 hereto, which prohibits ordinances from containing more than one subject.

33. Ordinance No. 21788 also violates Missouri Constitution Article III, Section 23, which prohibits a bill from containing more than one subject, which subject must be clearly expressed in its title.

34. Since Ordinance No. 21788 is invalid, the City lacked jurisdiction to grant the Permit because the land was not lawfully annexed and never has become part of the City of Columbia.

35. Therefore, STE and ESS lack a valid Permit and must be enjoined from proceeding.

36. Unless immediately enjoined, the Defendants' actions will cause substantial and irreparable harm to Plaintiffs including but not limited to unlawful and irreparable disturbance to and destruction of the Park under circumstances in which neither the City, ESS, nor STE has any authority to proceed with any physical work or other efforts to continue development in accordance with the Parkside Estates project.

37. Plaintiffs are without an adequate remedy at law and are entitled to injunctive relief.

WHEREFORE, Plaintiffs pray that this Court make and enter its order:

1. declaring that Ordinance No. 21788 was enacted in violation of the Missouri Constitution, Art. III, § 23, and Columbia City Charter, Art. II, § 15, which prohibit ordinances from containing more than one subject in each ordinance;
2. preliminary and permanently enjoining Defendants, their successors, and all persons in active concert or participation with them, from proceeding with the development of the Parkside Estates subdivision; and
3. awarding Plaintiffs their attorney fees and costs and such other relief as the Court deems just.

s/s Kathleen G. Henry

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