

December 2, 2015

The Honorable Phil Lakin
Chairman
Tulsa City Council
175 East 2nd Street
Tulsa, Oklahoma 74103

Dear Chairman Lakin and Council Members:

We write to you regarding a matter of mounting public concern, prompted by the actions of the Tulsa Public Facilities Authority (TPFA), an Oklahoma public trust, created by the City of Tulsa with the City as beneficiary.

TPFA recently acted to approve a direct sale of over 12 acres of Helmerich Park. We are deeply concerned by the methodology used in initiating and completing this sale. In particular, it appears city administrative staff identified the buyer without informing the council, advertising the property for sale, or initiating a public competitive bidding process

Presumably, these actions were taken on behalf of the Tulsa Public Facilities Authority, which appears to be strictly forbidden by City ordinance. Specifically, the Tulsa Code of Ordinances, Title 39, Chapter 16, Tulsa Public Facilities Authority, Appendix I, Article VIII, Beneficiary of Trust states:

- “1. The Beneficiary of this Trust shall be the City of Tulsa...
2. ...Neither shall the Beneficiary have any authority, power or right whatsoever, to do or transact any business for, or on behalf of, or binding upon the Trustees or upon the Trust Estate, nor the right to control or direct the actions of the Trustees pertaining to the Trust Estate, or any part thereof.....”

The same ordinance Appendix II, Article III, Purpose of Trust states it has the authority:

- “4. To acquire by lease, purchase or otherwise, and to plan, establish, develop, construct, enlarge, improve, maintain, equip, operate and regulate any and all physical properties designated or needful for utilization in the furnishing and providing of services in connection with the above referenced utilities, facilities and public improvements and to dispose of, rent or otherwise make provisions for properties owned by the Trust but no longer needful for Trust purposes.”

We find no evidence that there has been any determination by TPFA that the park land is “no longer needful for Trust purposes.” These purposes are laid out in great detail in the TPFA Trust Indenture, as codified, which relate to building, maintaining and operating public facilities – “facilities as are necessary and/or convenient to the performance of any governmental or proprietary purposes or activities of the City of Tulsa, Oklahoma.” Under the City Charter, Art. VIII, Sec. 14, only the City Council can authorize the transfer of real property after it “shall first determine that [the property] is not necessary for public use or purposes.”

We maintain the action taken by TPFA to enter into a sales contract for 12-plus acres in Helmerich Park, without a finding that the park land is no longer needed by the City, i.e. for Trust purposes, ostensibly violates the Trust Indenture. Only the City Council can inform the Trust that the property is no longer needed by the City. Indeed, under Oklahoma common law, the City Charter cannot authorize the City Council to transfer property, such as park land, if it is being used by the public (*See 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*). When TPFA authorized the sales contract on August 11, 2015, the entire 12-plus acre tract was being used for park purposes.

That action is also contrary to the expressed intent of the Tulsa City Council by official actions in at least three City Council meetings. On May 30, 1991, following public hearings on May 7 and May 16, the Council approved the transfer to TPFA \$2.25 million in 1985 third penny sales tax collections from the restricted category of Park Facilities Improvements that was designated for “Park Land Acquisition – to acquire approximately 72 acres between 71st and 81st Street on Riverside Drive.” On that same date, the Council also transferred to TPFA \$2.25 million from the City’s Park Acquisition Fund (which had been received from private donors) “to be used for park acquisition.” This money – a total of \$4.5 million – was transferred to TPFA to purchase the land at 71st and Riverside. The purpose of the acquisition – to establish City park land – was not ambiguous. One only has to view [the video of the Council’s May 7, 1991 meeting](#) to understand the clear intent of those Council actions.

It seems clear to us that title was placed with the TPFA, as was explained by then-City Finance Director Ron Payne during the May 7, 1991 Council meeting, solely to accommodate some future general obligation bond financing arrangement that would have actually resulted in the City taking full title to the land. Although that transaction has not yet materialized, the intent of a City “super center” that was contemplated by Tulsa Parks Director Hugh McKnight in the May 16, 1991 public hearing (see attached *Tulsa World* article), is still applicable.

The ordinance governing the source of the money used to buy the park and the specific authority for its expenditure – Tulsa Code of Ordinances, Title 43-B - 1985 Sales Tax Expenditure Policy – requires that any proposed re-categorization or redirection of its use be brought before the City Council for consideration in two mandatory public hearings. This logically, if not legally, includes the substituted asset: the land acquired with that money. We maintain these public hearings must be properly advertised and the citizens of Tulsa must be allowed to voice their opinions on any such change in use of the asset. It is the City Council that must then make the final determination on the status of the property.

There is a compelling companion issue that bears your review and consideration.

It is our understanding that title to One Technology Center is held in the name of the TPFA. If this be the case, a very serious precedent could be established by the unapproved sale of this Helmerich Park land by the TPFA. Surely the Council is not willing to permit City Hall to be sold without its consent.

By the actions and practices of the City of Tulsa over nearly a quarter century, and indeed, the complete deference of TPFA, the City of Tulsa ostensibly is the beneficial owner of Helmerich Park. This established legal status – a resulting trust – holds that legal title may be with TPFA, but beneficial ownership lies with the City. This being so, the logical conclusion is that the Tulsa City Council is the only body that can make a determination with regard to the disposition of the park land because of the legal limitations for selling land that is being used for City purposes (*See GREEN v. CITY OF NORMAN and STATE EX REL. REMY v. AGAR, cited above*).

The City Charter invests the Tulsa City Council with specific investigative authority. That is authority given exclusively to the City Council and in our view requires no opinion by or approval of the executive branch or its attorney.

If a majority of the Tulsa City Council concludes the Tulsa Public Facilities Authority or the office of the Mayor, or both, have engaged in activity that violates Tulsa City ordinances, the Council has the power to use its discretion to initiate an investigation into such matters. We are not necessarily suggesting a formal investigation be conducted by the City Council, although such an action may be warranted. However, the Council must recognize the exigent need to faithfully exercise sound, reasonable and legal decision-making to rectify these apparent breaches.

Invested with the responsibility to enforce the Tulsa City Charter and the Tulsa Code of Ordinances, and with the active and alert participation of its members, the Tulsa City Council can act to reverse what many believe as a profoundly misguided, shortsighted and arguably unlawful sale of park land held in trust for citizens.

Time is of the essence and we encourage the Council to initiate the following actions post haste.

1. Prepare and present at a City Council meeting a formal resolution that:
 - a. Advises the Tulsa Public Facilities Authority to immediately cancel its plan to sell the land in Helmerich Park. (The sale was approved by a narrow 3-2 vote of the authority.)
 - b. Directs TPFA to immediately quit claim deed the land comprising Helmerich Park to the City of Tulsa.

2. Upon receiving and filing the quit claim deed, direct the Tulsa Metropolitan Planning Commission to swiftly initiate a rezoning – not a study – to return all of the acreage to Agricultural zoning. In addition, add the subject 12 acres of Helmerich Park to the Council’s moratorium on riverfront development.

In the event the TPFA chooses not to agree to the Council’s requests, the Council should convene as an investigative body under its Charter authority to conduct an investigation of the Tulsa Public Facilities Authority, as its beneficiary, to determine whether all City ordinances and state laws have been followed in the acquisition, operation, management, maintenance and pending disposition of Helmerich Park.

Such an investigation should also include review of the relationship between the City of Tulsa and TPFA with regard to the operation, management and maintenance of Helmerich Park. Specifically, the Council should determine whether, by the City’s dominant role in the overall management of Helmerich Park and TPFA’s acquiescence, the City is the beneficial owner of the land.

A finding by the Council that the City is the beneficial owner of Helmerich Park should result in the immediate invalidation of the existing contract for sale because City-owned land cannot be sold by direct negotiated sale.

Also, the Council should take such action necessary to obtain and file of record a deed, complete with specific land use restrictions, showing the City of Tulsa as owner of the Helmerich Park land.

Finally, the members of the Tulsa City Council have as supportive resources a number of community members who were directly involved or otherwise active in the acquisition of the Helmerich Park land. Notably, Mr. David James, who served as Chairman of the Tulsa Parks and Recreation Board in 1991 and was actively engaged with Park Friends in facilitating the private sector share of the purchase price. Mr. James recently wrote as he added his name to [the on-line petition opposing the land sale](#):

“As chairman of the Park Board when the land was given to the City of Tulsa, I attended the ceremonies dedicating the park to the City. Numerous dignitaries extolled the generosity of those who stepped forward and provided the funds to acquire the land. I believe it would be a breach of trust, a reneging on a promise if the land were allowed to be used for other than a park.”

With confidence that our City Council will continue to see and understand its inviolable fiduciary role and responsibility to the citizens of Tulsa, we respectfully encourage you to use the independence of the legislative branch of our City government and to act swiftly on this pivotal community matter.

Time is of the essence.

Respectfully (with permission),

David James

Former Chairman, Tulsa Park Board
Former Member, Park Friends, Inc.

Leonard Eaton

Founding Chairman and Trustee,
River Parks Authority

Herb Beattie

Former Chairman, Park Friends, Inc.
Former Trustee, River Parks Authority

Bill Leighty

Former Chairman, Tulsa Metropolitan
Area Planning Commission

Bob Haring

Former Trustee,
River Parks Authority

Sandra Langenkamp

Former Chairman, Tulsa Metropolitan
Area Planning Commission

Rudy Herrmann

Former Chairman, Oklahoma
Water Resources Board

Former Chairman,
Oklahoma Chapter, The Nature
Conservancy

Patty Eaton

Former Oklahoma Secretary of
Environment
Former Executive Director,
Oklahoma Water Resources Board
Former Tulsa City Commissioner

Dobie Langenkamp

Chairman, Past Committee
on Parks Consolidation
Former Board Member,
Oklahoma Chapter, The Nature
Conservancy

Hugh McKnight

Former Director,
Tulsa Park Department

Nancy Atwater

Former Director,
Tulsa Park Department

Barbara VanHanken

Chair, Oklahoma Chapter
Sierra Club

Terry Young

Former Tulsa Mayor
Former Tulsa County Commissioner

Gary Watts

Former Tulsa City Councilor
Former Tulsa City Commissioner

Darrell Gilbert

Former Tulsa City Councilor
Former State Representative

Craig Immel

Clayda Stead

Carlos Moreno

Katie Plohocky

Ray Pearcey

Judy Wyatt Trickey

Greg Bledsoe

Janet G. Curth

Peter Childs

Barbara Bannon

Bob Jackman

Kim Gore

Larry and Terry Bridges

Cherie Cook

Joe Schulte

Kay Witt

Sheila Swearingen

Michael Kneafsey

Jamie Jamieson

Andrew Shead

Laura Collins

Robert and Linda Reis

Jim Beach

Patty Southmayd

Sherrill Womeldorff

Marcia Schaefer

Stephen Lassiter

Marci Hawkins

John and Sandra Barnett

Gary Parker

Adriana Rivers

Roger L. Ames

Karen Hardy Cárdenas

Jonathan Belzley

Anita Ward

Steve Woodall

Jean R. Lemmon

David Ruffin

Edwin and Judy Anderson

Rebecca Anderson

Fred Pottorf

Sharon Terry

Dick Sherry

Mary Beth Hudson

Clint and Paula Haight

Caroline Zink-Hott Abbott

Richard and Ruth Jackson

Emily Warner

Dave Been

Enclosures:

Tulsa World Article, May 17, 1991

City Ordinance 17509, May 30, 1991

City Ordinance 17510, May 30, 1991

Council to Consider Plan for River Bank

Mike Kimbrell | Posted: Friday, May 17, 1991 12:00 am

An ordinance that will allow the city of Tulsa to buy 67 acres of the Arkansas River bank south of 71st Street is scheduled to be presented to the City Council Tuesday. Councilors agreed to consider the ordinance after a public hearing Thursday.

The ordinance amends the 1985 third-penny sales tax extension to include \$2.25 million to buy the land.

City officials have said there is enough money left over from the extension to buy the land.

The \$2.25 million is the city's share of a \$4.5 million purchase price. The other half has been guaranteed by the Walter M. Helmerich Foundation.

The 67 acres is between Riverside Drive and the Arkansas River and extends from 71st Street to the mouth of Joe Creek, near 78th Street.

It excludes a 16-acre tract near Joe Creek that city officials said will be bought separately, for the same price per square foot.

"This opportunity to purchase a large tract of undeveloped land is without precedent in the city's recent history," said Susan Savage, chief of staff for Mayor Rodger Randle. The First National Bank of Tulsa has owned the property since 1988. The bank, together with Tulsa businessman Joe

Westervelt, owns the 16-acre tract that juts into the 67-acre parcel.

A group of California investors offered to buy the land last March, apparently to develop it for recreational purposes.

Helmerich, a First National Bank director, said he asked Randle if the city would be interested in acquiring the land. Helmerich said he wanted the city to have a chance to buy it to extend the River Parks trail, which crosses the property on the edge of the Arkansas River bank.

Helmerich said he would head a drive to raise half the purchase price through private donations, and guaranteed the money through the foundation that bears his name.

City Parks Director Hugh McKnight told city councilors Thursday that it's too soon to predict exactly how the land would be developed if the purchase becomes reality.

Randle has said he'd like to mix athletic fields with open space to make the land a cornerstone for the park system in south Tulsa. He said development might require a partnership with private enterprise.

But McKnight said speculation on how that might come about is premature.

"We have the opportunity here to look at some special facilities, possibly financed through revenue bonds, for a citywide facility, not just something for (Council) District 8," McKnight said.

Among the possibilities are a so-called "super center" park recreational facility, a year-round swimming and water

sports complex, and a community theater complex.

"We're not just talking ball fields and active sports fields," said McKnight. "We're talking communitywide development, a master plan that could be financed in a tremendous number of ways."

Councilor Robert Nelson said it would be irresponsible to allow private development of the land on the Arkansas River bank.

(Published in the Tulsa Daily
Commerce and Legal News)

June 11

ORDINANCE NO. 17509, 1991)

AN ORDINANCE AMENDING TITLE 43-B, SECTION 100, SUBSECTION B, OF THE TULSA REVISED ORDINANCES BY ADDING A NEW PROJECT TO "PARK FACILITY IMPROVEMENTS" TO ACQUIRE APPROXIMATELY 72 ACRES BETWEEN 71ST AND 81ST STREETS ON RIVERSIDE DRIVE FOR AN ESTIMATED COST OF \$2,250,000.00; BY AMENDING THE ESTIMATED COST OF TOTAL PARK FACILITY IMPROVEMENTS TO \$13,447,000.00; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE CITY OF TULSA:

Section 1. That Title 43-B, Section 100, Subsection B of the Tulsa Revised Ordinances be and the same is hereby amended by adding a new project to "PARK FACILITY IMPROVEMENTS" and amending cost estimates as follows:

"PARK FACILITY IMPROVEMENTS"

<u>Project</u>	<u>Estimated Cost</u>
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Add:

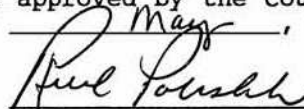
Park Land Acquisition - to acquire approximately 72 acres between 71st and 81st Street on Riverside Drive	\$ 2,250,000.00
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Amend Cost Estimate:

Estimated Total for Park Facility Improvements	\$13,447,000.00"
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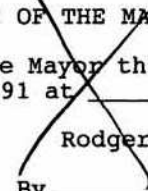
Section 2. That an emergency is hereby declared to exist for the preservation of the public peace, health and safety, by reason whereof this Ordinance shall take effect immediately from and after its passage, approval and publication.

PASSED, and the emergency clause ruled upon separately and approved by the Council, this 30th day of May, 1991.


Chairman of the Council

~~OFFICE OF THE MAYOR~~

Received by the Mayor this _____ day of _____, 1991 at _____ o'clock ____ m.


Rodger Randle, Mayor

By _____
Secretary

NA

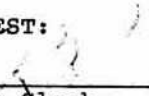
APPROVED by the Mayor of the City of
Tulsa, Oklahoma, this 4 day of
June, 1991 at ___ o'clock __.m.



Mayor

(Seal)

ATTEST:



City Clerk

APPROVED:



City Attorney

(Published in the Tulsa Daily Commerce
and Legal News
June 11, 1991)

ORDINANCE NO. 17510

AN ORDINANCE AMENDING THE FISCAL YEAR 1990-91 BUDGET OF THE CITY OF TULSA, OKLAHOMA, MAKING A SUPPLEMENTAL APPROPRIATION OF TWO MILLION TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$2,250,000) IN THE PARK ACQUISITION FUND (FUND 2200) FROM ADDITIONAL REVENUES TO BE RECEIVED FROM PRIVATE DONATIONS, WHICH PROVIDES FUNDING TO BE TRANSFERRED TO TULSA PUBLIC FACILITIES AUTHORITY FOR PARK ACQUISITION.

BE IT ORDAINED BY THE CITY OF TULSA:

Section 1. That the Fiscal Year 1990-91 Budget of the City of Tulsa, Oklahoma, be and the same is hereby amended to make supplemental appropriations in the Park Acquisition Fund from additional revenue to be received from private donations to provide a transfer to Tulsa Public Facilities Authority (TPFA) to be used for park acquisition as follows:

Park Acquisition Fund

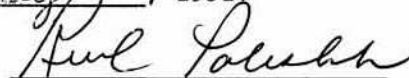
TRANSFERS


Transfer to TPFA \$2,250,000

Total Increase \$2,250,000

Section 2. That this ordinance shall take effect immediately from and after its passage, approval and publication.

PASSED and APPROVED by the Council, this
30th day of May, 1991.


Chairman of the Council

~~OFFICE OF THE MAYOR~~ 

~~Received by the Mayor this _____ day of _____, 1991, at _____ o'clock, _____m.~~

~~Rodger Randle, Mayor~~

~~By: _____
Secretary~~

APPROVED by the Mayor of the City of Tulsa, Oklahoma, this 11 day of June, 1991, at 9:45 o'clock a.m.


Rodger Randle, Mayor

(Seal)

ATTEST,

[Signature]
City Clerk

APPROVED:

Reed E. McGinnis
City Attorney