

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date:	May 16, 2022
Action Required:	Public Hearing
Presenter:	Chris Gensic, Dept. of Parks and Recreation
Staff Contacts:	Chris Gensic, Dept. of Parks and Recreation
Title:	Land Acquisition for Park and Trail Use with Virginia Outdoors Foundation Grant Funding

Background:

For several months, the City and the owners of a parcel of land at the west end of McIntire Park have discussed the sale of their land for the purpose of a City trail. The Department of Parks and Recreation seeks to acquire land for a trail extension enabling a continuous link through this portion of the City. The City secured a grant through the Virginia Outdoors Foundation (VOF) to pay for the property acquisition at the west end of McIntire Park. The funding from VOF does come with conditions.

A. **Virginia Outdoors Foundation Grants**

Use of the VOF funds will require that:

- 1) the purchase of this parcel with VOF funds must subsequently be combined with an additional five acres of McIntire Park land and be placed under an open space conservation easement for the benefit of VOF.
- 2) the City's acceptance of this grant funding will require the City of Charlottesville Circuit Court to start charging and collecting a three (3) dollar fee with the recording of every deed, deed of trust, contract, or other such instrument. The fee shall be collected by the Circuit Court and remitted to the Commonwealth for the benefit of VOF.

"Virginia Recordation Tax Act" authorizes such contribution by the Circuit Court to the VOF. Specifically, Va. Code Ann. § 58.1-817 states:

In addition to all other taxes and fees imposed by this chapter, beginning July 1, 2020, there is hereby imposed a \$3 fee on every deed, deed of trust, contract, or other instrument admitted to record in those jurisdictions in which open-space easements are held by the Virginia Outdoors Foundation. See Va. Code Ann. § 58.1-800 et. seq.

The Virginia Outdoors Foundation, in administering the Open-Space Lands Preservation Trust Fund, is authorized to receive funds for open-space preservation. See Va. Code Ann. § 10.1-1800 et. seq. Citizens recording land instruments in jurisdictions with a VOF easement are then charged for every deed, deed of trust, contract, or other instrument admitted to record in that jurisdiction for the benefit

of VOF. See opinion of Attorney General to Ms. Brett C. Glymph, E.D., Virginia Outdoors Foundation, 15-081, (9/1/16). There are already VOF easements on City land located in Albemarle County and the fee is already applied to filing land transactions in the Albemarle Circuit Clerk's Office. Currently there are no VOF easements within the City of Charlottesville.

Consent by the City to accept VOF's grant money for this parcel will constitute consent for the additional three dollar recording fee in the City. It is important to note that this is a one-time charge per parcel and transaction. If the fee has been paid at the time of recordation of the original deed, no additional recordation fee is required for deeds of confirmation; correction; transfer deeds between husband and wife; and notices of assignment of a deed of trust or mortgage. Further, colleges, religious organizations, the federal government, the state, and/or localities, are not subject to the fee. The benefit of this VOF grant program is that it provides an ongoing source of funding which will be separately maintained as designated solely for the purpose of providing grants **to localities acquiring fee simple title or other rights, interests, or privileges in property**. See Va. Code Ann. § 10.1-1801.1.

The City has the authority to acquire this land and enter into a VOF easements based on Va. Code Ann. § 10.1-1701. The statute states: "To carry out the purposes of this chapter, any public body may (i) acquire by purchase..., grant or otherwise title to or any interests or rights of not less than five years' duration in real property that will provide a means for the preservation or provision of open-space land..." See Va. Code Ann. § 10.1-1701. The definition of public body includes a municipality. See Va. Code Ann. § 10.1-1700. Further, the Virginia legislature has made it clear that, "(i)nsofar as the provisions of this chapter are inconsistent with the provisions of any other law, the provisions of this chapter shall be controlling. The powers conferred by this chapter shall be in addition and supplemental to the powers conferred by any other law." See Va. Code Ann. § 10.1-1705.

B. **Public Hearing Requirement**

To purchase this land with VOF funds, the City will also need to hold a public hearing before approving an open space easement. This easement constitutes a disposition of property rights over park land. A city's grant of a conservation easement to a conservation organization effectively results in a permanent dedication of public property to its current public use and is thus a form of sale of municipal property. See opinion of Attorney General to The Honorable Viola O. Baskerville, Member, House of Delegates, 00-062 (11/3/00). The City may sell easement rights..., provided that no such real property, whether improved or unimproved, shall be disposed of until the governing body has held a public hearing concerning such disposal. See Va. Code Ann. § 15.2-1800B.

C. **Required Recorded Vote by Three Fourths Majority**

Va. Code Ann. § 15.2-1800 clearly establishes that the City may acquire title to, or any interests in, any real property, whether improved or unimproved, within its jurisdiction, for any public use. See Va. Code Ann. § 15.2-1800A. However as stated above, a conservation easement over park land is a form of land disposition subject to Article VII, Section 9 of the Constitution. This section states in relevant part: "(n)o rights of a city...in and to its...parks...**shall be sold except by an ordinance or resolution passed by a recorded affirmative vote of three fourths of all members elected** to the governing body." See Va. Const. Art. VII, § 9. Therefore, the City Council after a public hearing may by resolution of a three fourths majority accept this grant funding from VOF and approve placement of an open space easement for the benefit of VOF over five acres of land on the west side McIntire Park. Approval of this Resolution can only be passed after a public hearing and an affirmative vote of four of the five City Councilors in favor of such Resolution.

Whereupon, If City Council votes for the attached resolution, City staff would: (1) use VOF funds to acquire this trail land at the west end of McIntire Park; (2) enter into the VOF easement over five acres on the west side of McIntire Park and (3) record such easement triggering the Charlottesville Circuit Court's ongoing collection of three dollar recording fees in the City of Charlottesville for the benefit of VOF.

Discussion:

The parcel to be acquired is at the west end of McIntire Park and will allow construction of the 250-bypass shared use path which shall connect to Meadowbrook Heights Road and the existing section of trail from that point west to Hydraulic Road. The grant will cover the full cost of acquisition. Survey and title work has already been completed on the parcel.

The Clerk of Court is aware of and supports the three dollar per deed and/or instrument fee. The City of Charlottesville is one of only a handful of localities that does not yet participate in this program state-wide.

Alignment with City Council's Vision and Strategic Plan:

The project supports City Council's "America's Healthy City" vision by providing outstanding recreational areas and walking trails, as well as the vision of being a "Connected Community". It contributes to Goal 3 of the Strategic Plan, for a beautiful and sustainable natural and built environment, and specifically objective 3.3, to provide a variety of transportation and mobility options.

Community Engagement:

The Bicycle and Pedestrian Plan and Comprehensive Plan were both developed with multiple public meetings and opportunities for input, including public hearings, and was approved by City Council.

Budgetary Impact:

This grant has already been appropriated into the Trail and Land Acquisition fund of the Trail CIP fund.

Recommendation:

Public Hearing only

Alternatives:

Use local funds to purchase the property

Attachments:

Proposed Resolution for future consideration
Draft Easement
Letter from Charlottesville Clerk of Court

RESOLUTION

Approving the Acquisition of Land near Grove Road and the Western Portion of McIntire Park and Placement of Open Space Conservation Easement on such Park Land

WHEREAS Susan R. Hoover and Angus Arrington (the “Owner”) are the owners of land designated on City Real Estate Tax Map 41A as Parcel 94, and have indicated a willingness to convey a portion of the subject land to the City of Charlottesville for creation of parkland; and

WHEREAS the land to be conveyed, hereinafter the “Property”, is described as follows:

All that lot or parcel of land designated as City Real Estate Tax Map Parcel 41A094000, less and except a ten-foot (10’) wide strip of land at the northern boundary of Parcel 94, to be retained by Owner and combined with City Tax Map Parcel 41A093000, as shown on a plat dated [REDACTED], 2022, made by Draper Aden Associates (the “Plat”); and

WHEREAS Owner has agreed to convey to the City the Property for the purchase price of \$42,000; and

WHEREAS funds are available for the purchase and development of the Property through a Virginia Outdoors Foundation grant managed by the Parks and Recreation Department (Account PR-001); and

WHEREAS the Department of Parks and Recreation seeks approval from City Council to proceed with the purchase of the above-described Property at a purchase price of \$42,000, with funding supplied by use of funds from the Virginia Outdoors Foundation through the Parks and Recreation trails and parkland fund; and

WHEREAS use of such funding shall require the recording of an open space conservation easement on the combined parcels referenced herein to the benefit of Virginia Outdoors Foundation; and

WHEREAS the resulting open space easement shall trigger the collection of a three-dollar recording fee for all property conveyances from the date of the easement filed in Charlottesville Circuit Court to the benefit of Virginia Outdoors Foundation upon recording; and

WHEREAS an Agreement for the conveyance of said land has been reviewed and approved by the City Attorney’s Office; now, therefore,

BE IT RESOLVED, by the Council of the City of Charlottesville, that it hereby authorizes the purchase of the above-described Property for creation of parkland and the placement of an open space easement over the Property. The City Manager is hereby authorized to execute the above-referenced Agreement, and the Mayor is hereby authorized to sign a deed of conveyance, both in form approved by the City Attorney or their designee. The City Attorney’s Office shall take whatever actions are necessary to effect the acquisition of the above-described Property and recording of an open space easement, pursuant to the terms and conditions set forth in the agreement and Deed of Easement.