

**CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA**



Agenda Date:	August 5, 2024
Action Required:	Approve Resolution
Presenter:	Chris Gensic, Park and Trail Planner, Riaan Anthony, Director of Parks & Recreation
Staff Contacts:	Chris Gensic, Park and Trail Planner Brenda Kelley, Redevelopment Manager Riaan Anthony, Director of Parks & Recreation
Title:	Resolution approving the acquisition of land near Grove Road and the western portion of McIntire Park and placement of an open space conservation easement of such park land - 0 Grove Road

Background

For several years, the City and the owners of a parcel of land at the west end of McIntire Park (0 Grove Road – see attached full description of the property acquisition transaction and Location Map) have discussed the sale of their land to the City for the purpose of a City trail. The Department of Parks and Recreation seeks to acquire land for this trail extension enabling a continuous link through this portion of the City.

Discussion of this property acquisition has been in front of City Council on the following previous occasions:

December 2, 2019 – City Council approved the appropriation of \$50,000 in grant funds from the Virginia Outdoors Foundation (VOF) for property acquisition; and discussed the triggering of a \$1 Circuit Court deed recording fee upon use of the VOF grant funds/recording of an open space conservation easement.

May 16, 2022 – City Council held a public hearing in advance of a future agenda item to receive required public input for the approval of the grant and for the land purchase which would then trigger a \$3 per real estate deed Circuit Court transaction, which is the current fee up from the \$1 fee in 2019. Upon recording of the open space conservation easement, following the purchase of the property, this fee will be collected by the Circuit Court and remitted to the State for the benefit of VOF. At this meeting, the Department of Parks and Recreation advised that this item would be coming back to the City Council for further action. City Council requested additional information regarding: (1) where the \$3 fee goes; and (2) does the Charlottesville recording fee transaction specifically benefit the City or does it go into VOF general coffers? Staff responds that the \$3 per deed fee is collected by the Circuit Court and goes to the Virginia Outdoors Foundation, a division of the state Department of Conservation and Recreation. The money is collected from all localities to

fund grants to buy land, so Charlottesville will now be joining the pool of localities that contribute to the VOF fund.

A. Virginia Outdoors Foundation Grants

The City secured a grant through the VOF to pay for the property acquisition at the west end of McIntire Park. The funding from VOF does come with the following conditions.

- 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 dollar (\$3.00) 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. The VOF will use these collected funds for continued grant funding for property acquisition for open space conservation throughout the Commonwealth.

"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 is required 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. A public hearing was held on May 16, 2022.

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; and (2) enter into the VOF easement over approximately five acres on the west side of McIntire Park, in addition to the property to be acquired; 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 Seller’s asking price is \$55,000. The grant will cover \$50,000 of the acquisition cost and an

additional \$5,000 will come from the existing Parks & Recreation Capital Improvement Plan (CIP) trails and land acquisition fund. 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

Approval of this property acquisition aligns with City Council's Strategic Outcome Areas of Climate Action; and Recreation, Arts, Culture. This action will support providing for urban trail and open space opportunities.

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

No additional funds are required with this action at this time. \$50,000 in VOF grant funds and \$5,000 in Parks & Recreation existing CIP funds will be used for the property acquisition. Approval for appropriation of grant funds to the CIP budget, Trails – Parks and Recreation, has already been approved.

Recommendation

Staff recommends approval of the Resolution. Approval of this Resolution will:

- approve acquisition of the property and authorize staff to prepare and execute necessary documents to finalize the transaction
- approve the placement of an open space conservation easement over the property to be acquired plus a portion of the western area of McIntire Park to total approximately five acres
- 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

Approval of the Resolution requires an “affirmative vote of three fourths of all members elected to the governing body”.

Alternatives

Use all local funds to purchase the property, or do not acquire the property.

Attachments

1. 0 Grove Rd final Checklist July2024
2. 0 Grove Road Prop Acq Presentation 080524
3. RESOLUTION 0 Grove Rd acquisition 080524