

MEMORANDUM

To: Lexington City Council, Mayor Friedman, Jim Halasz
From: Jared R. Jenkins, City Attorney
Date: April 15, 2021
Subject: Title to Spotswood Drive property

Background

Lexington has owned Oak Grove Cemetery since 1949. In 1969, the Cemetery's Trustees, acting on behalf of the City, purchased two tracts of land adjacent to the Cemetery from the estate of M.S. McCoy. Together the two tracts totaled over 5.8 acres. A "small portion" of this property was added to the Cemetery.

In October 1986, the City petitioned the Circuit Court to allow the transfer of the property from the Trustees to the City. Petitioners included City Council member and Cemetery Trustee Larry Mann. The Court approved the transfer and the City acquired title by deed dated October 10, 1986.

In 1988 the City extended Spotswood Drive to Houston Street, bisecting the larger tract and going directly through the smaller tract. After the extension, the remainder of the 5.8 acres included the site of the Piavano building and adjacent vacant land totaling approximately 3.25 acres. The site is zoned as RLC and has been RLC or its equivalent since at least 2007.

Question

Are there any restrictions on the City's use of the remaining 3.25 acres of land?

Legal Analysis

The Cemetery's Trustees acquired title to the property from the estate of M.S. McCoy on November 5, 1969. The deed of conveyance from McCoy to the Trustees contained no restrictions on the use of the property.

In October 1986, the City petitioned the Circuit Court to allow the transfer of the property from the Trustees to the City. The City stated "[i]t now is deemed expedient and necessary that the title to the said real estate be in the name of the City to facilitate future development of this land." The City also stated that the 1969 conveyance was actually paid by the City. "The City, not the Trustees, paid full, fair market value for the subject real estate, and though it was the intention of the City Council at the time of purchase to incorporate a small portion of the land into an addition to the existing Cemetery, which has been done, there were plans for other development of the said tract."

The Circuit Court ordered the transfer, which was accomplished by the deed dated October 10, 1986. The deed places no restrictions on the use of the property.

A copy of the City's Petition, the Court Order, and the deed are included with this memo.

If the City sells this property with no further action, any use allowed in a RLC zone would be allowed on this property.

Conclusion

There are no restrictions on the City's use of the property. There was apparently never any intention to use the parcels under consideration for anything other than the City's continued development.

VIRGINIA

IN THE CIRCUIT COURT OF ROCKBRIDGE COUNTY:

IN RE:

STONEWALL JACKSON MEMORIAL CEMETERY
Lexington, Virginia

PETITION

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TO THE HONORABLE GEORGE E. HONT, III, JUDGE:

This day come the Mayor and Council of the City of Lexington, Virginia, by Counsel, and represent unto Your Honor the following:

1. For some 150 years prior to 1949, the Trustees of the Lexington Presbyterian Church also operated what then was known as the Lexington Presbyterian Cemetery, now known as the Stonewall Jackson Memorial Cemetery.

2. Finding it increasingly difficult to finance the continued operation of the said Cemetery, the Trustees of the Lexington Presbyterian Church, by Deed dated April 1, 1949, and of record in this Clerk's Office in Deed Book 203 at page 265, conveyed the real estate and all of the assets of the Lexington Presbyterian Cemetery to the Town of Lexington, Virginia (hereinafter called City). The said deed purported to impose a "trust" on the City for the continued operation and maintenance of the Cemetery, provided that the governing body of the City could appoint and operate the Cemetery through a Board

of Trustees, but the instrument also provided that the governing body of the City "shall at all times retain final authority." The City accepted the responsibility.

3. Shortly thereafter, the City acquired another small parcel of land to be incorporated into the Cemetery, the title of which also was taken in the then Town of Lexington.

4. The governing body of the City from time to time did appoint Trustees empowered to oversee the day-to-day operation of the Cemetery. The records in this Clerk's Office do not indicate that Trustees ever were appointed by this Court, however.

5. By Deed dated November 5, 1969, and of record in this Clerk's Office in Deed Book 312 at page 14, Ada F. McCoy, etc., Co-executors of the Estate of M. S. McCoy, conveyed to the Trustees of Stonewall Jackson Cemetery rather than to the City of Lexington a 50 foot lot fronting on the north side of Houston Street and 5.80 additional acres at the rear of the said lot, a portion of which adjoins the Cemetery. In fact, the City, not the Trustees, paid full, fair market value for the subject real estate and though it was the intention of the City Council at the time of purchase to incorporate a small portion of the land into an addition to the existing Cemetery, which has been done, there were plans for other development of the said tract, including a through street connecting Spotswood Drive (entrance to Stonewall Jackson Hospital) with Taylor Street,

which would divert some local traffic away from Main and Jefferson Streets (see attached copy of diagram of City).

6. In 1971, the Mayor and Council of the City incorporated Chapter 6, Cemeteries, into the Lexington City Code, provided for the establishment of an Advisory Board for the cemeteries, but placed direct supervision and control of the cemeteries in the City Council. However, nothing was done at that time to change the status of the title to the real estate described in Paragraph 5 above.

7. It now is deemed expedient and necessary that the title to the said real estate be in the name of the City to facilitate future development of this land.

WHEREFORE, the petitioners pray that:

A. Charles F. Phillips, Jr., Mayor, and Susan A. LaRue, Thomas C. Imeson, Andrew C. Jordan, Laurence A. Mann, James E. Mays and Boyd Stuart, the six current members of Council of the City, be appointed Trustees of the Stonewall Jackson Memorial Cemetery, such appointment to be for the sole purpose of making a conveyance of the real estate described in Paragraph 5 above to the City of Lexington, Virginia.

B. That such conveyance be authorized by this Court.

MAYOR AND COUNCIL of the
CITY OF LEXINGTON, Virginia

By:

William O. Roberts, Jr.
City Attorney

William O. Roberts, Jr.
18 W. Washington Street
Lexington, Virginia 24450

Filed in the Clerk's Office this 10 day of Oct. 1986
Write Tox \$ 10.00
Fee 10.00
Deposit
Total Paid \$ 10.00
Barbara Ann Roberts
Clerk

VIRGINIA

IN THE CIRCUIT COURT OF ROCKBRIDGE COUNTY:

IN RE:

STONEWALL JACKSON MEMORIAL CEMETERY
Lexington, Virginia

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O R D E R

This day came the Mayor and Council of the City of Lexington, Virginia, by Counsel, and filed its Petition for the appointment of Trustees of the Stonewall Jackson Memorial Cemetery, also known as the Stonewall Jackson Cemetery, and the authority of such Trustees to convey certain real estate out of the name of Trustees of the Cemetery so appointed and into the name of the City, and it appearing to the Court that the Petition is well-taken and the real estate which is the subject matter therein actually is the property of the City of Lexington, Virginia, and should be so titled,

It, therefore, is ORDERED that Charles F. Phillips, Jr., Susan A. LaRue, Thomas C. Imeson, Andrew C. Jordan, Laurence A. Mann, James E. Mays and Boyd Stuart are appointed as Trustees of the Stonewall Jackson Memorial Cemetery, also known as the Stonewall Jackson Cemetery.

It further is ORDERED that the said Trustees pursuant to the petition of the Mayor and Council of the City of Lexington are authorized to convey unto the City of Lexington, Virginia, title to the real estate heretofore deeded to the

Trustees of the Stonewall Jackson Cemetery from the Co-executors of the Estate of M. S. McCoy and recorded in this Clerk's Office in Deed Book 312 at page 14.

This cause being final, it is ORDERED filed as ended.


JUDGE


DATE

SEEN AND ASKED FOR:


City Attorney

54-415



D E E D

2141-86

THIS DEED, made this 10th day of October, 1986, by and between CHARLES F. PHILLIPS, JR., SUSAN A. LARUE, THOMAS C. IMESON, ANDREW C. JORDAN, LAURENCE A. MANN, JAMES E. MAYS and BOYD STUART, TRUSTEES of the STONEWALL JACKSON MEMORIAL CEMETERY, parties of the first part; and the CITY OF LEXINGTON, Virginia, party of the second part.

** W I T N E S S E T H **

That for and in consideration of the sum of One Dollar (\$1) cash in hand paid by the party of the second part unto the parties of the first part and in further consideration of the premises, the parties of the first part do hereby Grant and Convey unto the party of the second part, with SPECIAL WARRANTY of title, the following described real estate:

All of those two certain lots or parcels of land with rights of way incident thereto and appurtenances appertaining, situate in the CITY OF LEXINGTON, Virginia, and designated as Lot #2 fronting 50 feet on the north side of Houston Street and a tract of 5.80 acres at the rear of the said Lot #2 as the same are designated on a plat of survey of James E. Dorsey, C.L.S., dated July 28, 1969, and of record in the Office of the Clerk of the Circuit Court of Rockbridge County, Virginia, in Plat Cabinet B-572.

The above-described real estate is the same as that conveyed to the Trustees of Stonewall Jackson Cemetery (now Stonewall

Jackson Memorial Cemetery) by Deed dated November 5, 1959, from the Co-executors of the Estate of M. S. McCoy and of record in the said Clerk's Office in Deed Book 312 at page 14.

Conveyance of the said real estate was approved by Order of the Circuit Court of Rockbridge County, Virginia, entered on October 10, 1986, and recorded in Chancery Order Book ___ at page ___.

WITNESS the following signatures and seals:

TRUSTEES of the
STONEWALL JACKSON CEMETERY
also known as
STONEWALL JACKSON MEMORIAL CEMETERY

By: Charles H. Phillips, Jr.
Trustee

James E. Isaacs
Trustee

Walter E. Thomas
Trustee

Andrew C. Lockair
Trustee

Lawrence G. Moore
Trustee

Susan A. LaRue
Trustee

Carol Stewart
Trustee

STATE OF VIRGINIA AT LARGE
CITY OF LEXINGTON, to-wit:

The foregoing instrument was acknowledged before me this
23rd day of October, 1986, by Charles F. Phillips, Jr., Susan A.
LaRue, Thomas C. Imeson, Andrew C. Jordan, Laurence A. Mann,
James E. Mays and Boyd Stuart, Trustees of the Stonewall Jackson
Memorial Cemetery.

My commission expires April 21, 1990.

Neil M. Clark
Notary Public

VIRGINIA: IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF
ROCKBRIDGE COUNTY

The foregoing instrument of writing was presented in this office,
and with the certificate(s) of acknowledgment(s) thereto annexed,
is admitted to record at 10:45 o'clock (AM-PM)
on the 24th day of October, 1986

State Tax \$..... County Tax \$..... City Tax \$.....

I certify that taxes imposed by Section 58-54.1 of the Code of
Virginia, when applicable, have been paid in the amount of
\$.....

ATTEST: Barbara L. Hester CLERK