

RLS's
Copy



Alton Area Landmarks Association, Inc.

COPY

February 19, 1987

P. O. Box 232

Alton, Illinois 62002

Case 80 CH223
Case 73MR26

Dear Friends and Members,

Attached is the court order signed by Judge Paul Riley on January 29, 1987 in Edwardsville, Illinois.

This case was commonly known as the "Berm Highway Case", and is the culmination of 13 years of continuous legal battles.

Our Association and members played a vital role in the litigation, and to its solution.

The attached is the final court order that is the result of that 13 years of costly litigation, both in terms of time, energy and money. Many legal experts, including our own attorney David L. Ader, spent many long hours perfecting the governing document in its final form. The document as signed by Judge Paul Riley, now insures the protection and proper development of the Easton/Hunter/Russell commons as parkland and in keeping within the intention of the original dedicators.

The City of Alton has trust over these lands, but not ownership. It is now the duty of the City of Alton, and the citizens to guard the contents and stipulations of this document, and to insure that they are carried out properly. Vigilance is the key to success.

The people and the court have spoken, their voices must continually be heard, otherwise, all that was won will be lost.

Sincerely,

Robert E. St. Peters,
President

FILED

CIRCUIT COURT

JAN 29 1987

THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

DEPARTMENT OF TRANSPORTATION OF)
THE STATE OF ILLINOIS (IDOT),)

Plaintiff and Counter-)
Defendant,)

vs.)

CITY OF ALTON, ILLINOIS, a)
Municipal Corporation, and)
Trustee of land dedicated to)
the People of the State of)
Illinois,)

Defendant and Counter-)
Plaintiff,)

vs.)

NEIL F. HARTIGAN, Attorney)
General of the State of)
Illinois for and on behalf of)
the People of the State of)
Illinois; UNKNOWN HEIRS OR)
DEVISEES OF RUFUS EASTON,)
Deceased, A Dedicator of Lands)
to the People of the State of)
Illinois; UNKNOWN HEIRS OR)
DEVISEES OF WILLIAM RUSSELL,)
Deceased, a Dedicator of Lands)
to the People of the State of)
Illinois; and UNKNOWN OWNERS,)

Defendants & Counter-)
Defendants,)

and)

ROBERT CARROLL, SAM THAMES,)
CHINO BOB DESHERLIA and CARL)
MADDOCK, Intervenor and owners)
of land adjacent to lands dedi-)
cated to the People of the)
State of Illinois,)

Intervening Defendants)
and Counter-Defendants)

and)
)
)
ALTON BROOKS EASTON, As heir of)
RUFUS EASTON, Deceased,)
Dedicator of land to the People)
of the State of Illinois,)
)
Defendant and Counter-)
Defendant.)

O R D E R

This matter comes on for hearing on all pending matters pursuant to notice. Present in open court are The Department of Transportation of the State of Illinois represented by Joe Hill, Special Assistant Attorney General, and Roy Frazier, Assistant Attorney General, Neil F. Hartigan, Attorney General of the State of Illinois, represented by George P. Wittman, Special Assistant Attorney General (Charitable Trust Division), Robert Carroll, Sam Thames, Chino Bob DeSherlia, Carl Maddock and Alton Brooks Easton represented by David Lincoln Ader and the City of Alton, Illinois, represented by Steven N. Mottaz.

Mr. Ader reported to the Court that Carl Maddock is deceased and that Chino Bob DeSherlia moves to be dismissed as a party. Motion is allowed. Carl Maddock and Chino Bob DeSherlia are hereby dismissed as Intervening Defendants and Counter-Defendants.

The Court, after hearing the evidence and reviewing the various stipulations of the parties finds that all pending motions are rendered moot. The Court further finds as follows:

1. The Department of Transportation of the State of Illinois, for and on behalf of the People of the State of Illinois, needs a place at the City of Alton, Illinois, to build a bridge over the Mississippi River between Missouri and Illinois and access roads to the bridge, in order to replace the deteriorated and obsolete Clark Bridge.

2. The construction of this replacement bridge will make possible an alternative alignment for Illinois Route 3 (FAP 2) (commonly referred to as the "Berm Highway" along Front Street), and the abandonment of that previously-planned alignment that would cut directly through those parcels of land hereinafter referred to as the Easton Commons and the Russell Commons, which gave rise to this lawsuit.

3. The land designated as "common or promenade to be used in common," "reserved," and "ground for use of landing" on that plat for the original town of Alton, Illinois, filed by Rufus Easton, and platted of record in Plat Book C, page 395, and thereafter recopied in Plat Book 7, page 64, in the Recorder's Office of Madison County, Illinois, (attached hereto and made a part hereof as Exhibit "A") (hereinafter referred to collectively as the "Easton Commons"), has been construed to be the object of a common law dedication, in vesting the City of Alton, Illinois, with the property so designated solely as trustee to be used according to the dedicators' original intention which was for park and park-like purposes.

4. The land designated as "public city commons" on that plat for William Russell's addition to Alton, Illinois, platted of record in Record Book J, page 209, of the Recorder's Office of Madison County, Illinois, (attached hereto and made a part hereof as Exhibit "B") (hereinafter referred to as the "Russell Commons"), has been construed to be the object of a common law dedication, investing the City of Alton, Illinois, with the property so designated solely as trustee to be used according to the original dedication which was for park and park-like purposes.

5. The Easton Commons and the Russell Commons, as dedicated lands, are in the public trust, and the uses made of the said lands are therefore subject to the orders and directions of the Court in the exercise of its equitable jurisdiction, and in the fulfillment of the Court's responsibility to ensure that the dedicated lands are used in conformity with their dedicators' intentions, and the Court's approval must therefore be obtained.

6. Over the years, portions of the Easton Commons and the Russell Commons may have been diverted to uses foreign to and not in keeping with the dedicators' intentions as construed and declared by the Courts (see, e.g., City of Alton v. Unknown Heirs, etc., et al, 73 MR 26, aff'd, 95 Ill. App. 3d 107, 424 N.E. 2d 1155, 1160, 1161 (5th Dist. 1981)).

7. The stepped plan contained in this Order will, over time, bring about the total return of the dedicated lands to their aforesaid purposes, and, therefore, the plan contained in

this Order is consistent with the obligations of the Court to preserve and protect the corpus of the public trust established by the dedications.

8. An issue in the present litigation is the constitutionality of certain legislation attempting to control the disposition of the lands and constrain the jurisdiction of the Circuit Court in regard to said lands. The parties have expressed through their stipulations a desire to resolve this issue and the other issues pending in this suit, and the Illinois Department of Transportation and the City of Alton wish to construct the Oak Street Bridge (replacement for the Clark Bridge) and Illinois Route 3 (FAP 2), and the Charitable Trust Division of the Illinois Attorney General's Office, Defendant Alton Brooks Easton, and the intervening defendants wish to have the Russell Commons and the Easton Commons returned to the original dedicated purpose of park and park-like uses (including wetlands) as construed in City of Alton vs. Unknown Heirs, etc., et al.

9. The engineering location drawing(s) for the relocation of the said Clark Bridge (the Oak Street Bridge) spanning the Mississippi River, and the designation specified as "Replacement Alternate 6" are attached hereto as Exhibit "C" and made a part hereof.

10. The engineering location drawing(s) for the completion of Illinois Route 3 (FAP 2), Front Street Alignment are attached hereto as Exhibit "D" and made a part hereof. While

the exact location has not been finally determined, Illinois Route 3 will not extend on the Easton Commons any closer to the Mississippi River than the present railroad tracks, which will not have to be relocated any closer to the Mississippi River. Illinois Department of Transportation and the City of Alton, Illinois, will and are ordered to exercise their best efforts to further minimize to the fullest extent possible the amount of land from the Russell Commons and the Easton Commons.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. The following described property, to the extent that it is required for the construction of the Clark Bridge and Illinois Route 3 (FAP 2), shall be held by the Department of Transportation of the State of Illinois for and in behalf of the People of the State of Illinois, so long as it is used for said bridge and highway. Upon the cessation of the said uses, the said described property will revert to the City of Alton, as per the original dedication, for the uses and purpose for which it was originally dedicated.

Description attached as Exhibit E.

2. The present Clark Bridge will be removed immediately upon completion of the above-referenced bridge and Illinois Route 3, (FAP 2), or in the event Route 3 is not constructed within five (5) years of the completion of the Oak Street Bridge, the present Clark Bridge will be promptly removed, and the property upon which it was located will continue to be

subject to the original dedication by Rufus Easton, and shall be returned to the jurisdiction of the City of Alton as Trustee for the public under said dedication and devoted to park and park-like uses in accordance with the dedication.

3. Any portion of Illinois Route 3 (FAP 2) (formerly known as the Berm Highway) construction, lying on the Russell and Easton Commons, and along the river, which was laid prior to the date of this Order and which will not be incorporated into and used as part of Illinois Route 3 (FAP 2). A reasonable and limited portion of said unused Illinois Route 3 (FAP 2) (formerly known as the Berm Highway) construction may be used for the limited purpose of access to the Russell Commons and/or Easton Commons and parking for those using those Commons for park use. The rest shall be prepared for and returned to park and park-like uses not later than three (3) years from the completion of the Oak Street Bridge and Illinois Route 3 (FAP 2). These properties will continue to be subject to the original dedications and will be returned to the jurisdiction of the City of Alton as trustee for the public under said dedications and devoted to park and park-like uses in accordance with the dedications. If there is a material modification in the location of the bridge and/or Route 3, then this Order shall be modified by the parties in accord with the general principles for settlement evidenced by previous correspondence and court report of proceedings. Notwithstanding the foregoing, in no event shall common land be applied to a discontinued or unused project nor shall the bridge or highway be

changed significantly in such a manner as to occupy a greater amount of common land or in a manner which causes greater severance or disruption to the common land unless mutually agreed to by all of the parties hereto or their successors in interest.

The duties of the City of Alton with regard to this property shall be identical to that specified in paragraph 5 hereof with regard to the other property.

4. The City of Alton will use its best efforts to obtain the present surrender by the railroads of any unnecessary trackage located on the Russell Commons and Easton Commons, and will continue to exercise its best efforts to have the existing railroad uses of the Russell Commons and Easton Commons terminated at the earliest practicable time.

5. The City of Alton shall limit and devote the Russell Commons and Easton Commons to park and park-like purposes (including wet lands). The City of Alton shall recover and use for said purposes all property in the Russell Commons not occupied by the Oak Street Bridge, Route 3, or other structure or use permitted to temporarily remain under this Order.

6. All uses presently existing on the Russell Commons and Easton Commons which are not consistent with the original dedication shall be removed from the Russell Commons and Easton Commons, and those areas from which they are removed shall be returned to said uses commencing on the date that the construction of the Oak Street Bridge and Illinois Route 3 (FAP 2) Front Street alignment segment is completed, except as

otherwise provided in this Order, unless there is a delay in construction exceeding five (5) years, a material change in the present plans, or an abandonment of the planned construction in which case, this Order shall become subject to modification on the same terms and conditions as expressed in Paragraph 3 hereof. The only uses not in conformity with the park and park-like uses that will be allowed temporarily to remain on the Russell Commons and Easton Commons shall be the City's sewage maintenance garage, necessary railroad tracks, and any utility lines. The railroad tracks shall be phased out in accordance with Paragraph 4 hereof. The sewage maintenance garage shall be allowed to continue in existence so long as it is needed by the City of Alton and the structure remains safe to be used, but the City shall not undertake any major renovation of or build any addition to the said building or otherwise prolong its useful life, so that the use of the building will be subject to attrition and termination through deterioration or obsolescence at the earliest time.

The duties of the City of Alton with regard to this property shall be identical to that specified in paragraph 5 hereof with regard to the other property.

7. The City of Alton shall have the continuing obligation to promote the use of the lands dedicated for park and park-like purposes (including wetlands), and the City of Alton, Illinois, will pass such necessary ordinances or resolutions as may be required to effectuate the purposes of the dedicators of the said properties as declared in City of Alton v. Unknown

Heirs, etc., et al, 73 MR 26, aff'd 95 Ill. App. 3d 107, 424 N.E. 2d 1155, 1160, 1161 (5th Dist. 1981). The copies of said duly enacted ordinances or resolutions will be filed with the Court immediately upon their passage and enactment into law.

8. The City of Alton and the individual intervening defendants who are presently parties to this lawsuit at the time of this Order will exercise their best efforts to see that both P.A. 83-477 and P.A. 83-478 are repealed as soon as possible and will cooperate fully in all endeavors to effect said repeal.

9. The City of Alton, Illinois, shall repeal Alton City Ordinances Nos. 4821, 4822, 4823, 4824, 4825, 4830, and all other of its ordinances which were enacted and adopted in reliance upon, or to effectuate, P.A. 83-477 and P.A. 83-478, or which are inconsistent with this Order.

10. All sums of money paid by the Illinois Department of Transportation or any other governmental agency for the land for the construction of the Oak Street Bridge (i.e., Clark Bridge replacement) access roads in the completion of Illinois Route 3 (FAP 2) shall be deposited with the Treasurer of Madison County, Illinois, and withdrawn by appropriate Order by the City of Alton. Any funds so received by the Treasurer of the City of Alton shall be segregated from other City funds and invested until needed, and the principal and all interest shall constitute part of the Russell and Easton Commons trust corpus. Any funds so received shall be held, both principal and interest, to be expended upon the Russell and Easton Commons in a manner

consistent with their dedication and this Order. Before the City of Alton can expend any of these funds, principal or interest, the City of Alton shall seek and obtain appropriate court orders approving the expenditures.

11. The Court shall retain jurisdiction to determine, after hearing, the amount of money to be paid to the Treasurer of Madison County and withdrawn by the City of Alton by the Illinois Department of Transportation, State of Illinois, or any other governmental agency for the said land used, occupied and/or disturbed by the construction of the Oak Street Bridge (i.e., the Clark Bridge replacement), access roads, and the completion of Illinois Route 3 (FAP 2).

12. The City of Alton will not permit any uses on the Russell Commons or Easton Commons not consistent with the original dedication and will not enact any ordinances, approve any leases, or in any other way deal with the premises as either corporate City property or at variance with the said declared dedicators' purposes of park and park-like purposes.

13. This Order shall be enforceable by any heir or devisee of the dedicators, any owner of property adjoining or adjacent to the dedicated lands, as well as the Attorney General and any other party to this litigation.

14. Modifications of this Order shall be only upon application to the Court, and only by agreement of the parties hereto or on clear, cogent and convincing proof of absolute necessity.

15. The Court shall retain full jurisdiction to enforce the provisions of this Order. All parties to this Order shall be notified of all court filings required under this Order, and all actions and proceedings in Court concerning or affecting the subject matter of this Order.

16. The Court finds that there is no just reason for delaying enforcement or appeal of this Order.

ENTERED this 29 day of Jan, 1988.

Paul R. Kelly
JUDGE

Paul R. Kelly