

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

CITIZENS FOR THE PRESERVATION)
OF SHELL TOOMER PARKWAY,)
)
Plaintiffs,)
)
v.)
)
M. BARNETT LAWLEY, COMMISSIONER,)
ALABAMA DEPARTMENT OF)
CONSERVATION AND NATURAL)
RESOURCES,)
)
Defendant.)

Civil Action No.: _____

COMPLAINT

1. Plaintiff Citizens for the Preservation of the Shell Toomer Parkway (CPSTP) is non-profit corporation organized in Lee County, Alabama.
2. Defendant M. Barnett Lawley, Commissioner of Alabama Department of Conservation and Natural Resources (DCNR), is the Commissioner of an agency of the State of Alabama with its principal offices in Montgomery County, Alabama.

FACTS

3. Shell Toomer Parkway is a road in Lee County that leads to the entrance of Chewacla State Park.
4. Shell Toomer Parkway was established in the early 1940's when this property was conveyed to the State of Alabama Department of Conservation for specific use as a public parkway. See Deeds attached hereto as Exhibit "A".

5. Code of Alabama § 9-14-1 defines a parkway as follows: “Any elongated strip of land suitable for recreation and a pleasure vehicle road to which the owners or lessees of abutting property shall have no right of direct access.”
6. Recently, various commercial interests have petitioned the Auburn City Planning Commission and/or the City of Auburn to develop property adjacent to Shell Toomer Parkway into a high-density, multi-family subdivision to include a large hotel or bed-and-breakfast with dozens of units. The proposed access for this development is Shell Toomer Parkway. Pursuant to the plans of the developers as shown on the official Auburn City website, Shell Toomer Parkway will be destroyed and restructured for access to and from the proposed subdivision.
7. On or about December 5, 2006, M. Barnett Lawley, as Commission of the DCNR purported to grant an easement for access roads connecting the subdivision to Shell Toomer Parkway. See copy of “Driveway Easement” attached hereto as Exhibit “B”.
8. In granting this easement, the DCNR did not follow any established department regulation, rules or practices, nor did it have any public hearings or otherwise solicit public comment as to whether this easement should be granted.
9. Furthermore, the driveway easement does not contain any specific property descriptions, and it appears to allow for a random expansion of Shell Toomer Parkway rather than just driveway access to the parkway.
10. The subdivision being developed has more than adequate access via other public roads, namely Mill Creek Road, and does not need any additional access through

Shell Toomer Parkway. The development as proposed will destroy the character of Shell Toomer Parkway as a State Park System Parkway.

11. The driveway easement access will dramatically increase the volume of traffic on Shell Toomer Parkway, and will forever destroy its recreational use for the enjoyment and benefit of the public.

COUNT I

Declaratory Judgment and Injunctive Relief

12. Plaintiffs adopt by reference the allegations of paragraphs 1 through 11 above.
13. Shell Toomer Parkway has existed as a public parkway since the property was transferred to the State of Alabama in the early 1940's and Shell Toomer Parkway was later constructed in approximately 1946.
14. Code of Alabama § 9-14-1 defines a parkway as follows: "Any elongated strip of land suitable for recreation and a pleasure vehicle road to which the owners or lessees of abutting property shall have no right of direct access."
15. The Supreme Court has stated that "... whatever distinctions there may be between public "parks" and "parkways," by definition, both must be "for the benefit of the public" at large, and open for the use and enjoyment of everyone, rather than for the use of those few individuals who own the adjoining property. *Trustees of Howard College v. McNabb*, 263 So. 2d 664, 672 (Ala. 1972).

16. The clearly stated purpose for establishing a parkway under Alabama law is for the public's use and enjoyment with no access from adjacent property owners.
17. The DCNR shall not grant private citizens the right to ingress and egress from the parkway simply for these private citizens' convenience.
18. Furthermore, the DCNR, in granting this driveway easement, is allowing access to Shell Toomer Parkway for hundreds of private property owners in this proposed subdivision, which will forever destroy the public use and recreational nature of the parkway as intended by the statute.
19. Alabama Code § 6-6-222 and Alabama Rule of Civil Procedure 57 authorize this Court to hear controversies and "to declare rights, status and other legal relations whether or not further relief is or could be claimed."
20. Because the DCNR has arbitrarily granted the driveway easement which forms the basis of this lawsuit, the Plaintiffs are seeking a declaratory judgment declaring this action illegal and invalid.
21. Furthermore, the Plaintiffs seek a permanent injunction against the DCNR prohibiting them from further allowing any other easements or other agreements which would allow ingress or egress from Shell Toomer Parkway for private citizens.

WHEREFORE, Plaintiffs hereby respectfully request this Honorable Court to enter a declaratory judgment that the actions of the DCNR in granting this driveway easement are illegal and invalid, and further requests this Court enter an injunction prohibiting the

DCNR from allowing any private access or easements to Shell Toomer Parkway, and for such other and different relief, including attorney's fees and costs, to which the Plaintiffs may be entitled.

COUNT II

Violation of the Alabama Administrative Procedure Act

22. Plaintiffs adopt by reference the allegations of paragraphs 1 through 21 above.
23. As previously shown, the DCNR is not empowered to grant the private driveway easement as it was without authority to do so, and therefore, this action should be declared illegal and invalid.
24. However, even if the DCNR had the power and authority to grant a driveway easement, its actions would nevertheless still be invalid because of its failure to properly adopt regulations and/or procedures for the grant of easements on State Park property pursuant to the Alabama Administrative Procedure Act, Ala. Code 1975 § 41-22-1, et seq. (AAPA).
25. State agencies must adopt regulations to implement legislation by following the rule making procedures of the Alabama Administrative Procedure Act before applying new policies, *Ex parte Legal Environment Assistance Foundation, Inc.*, 832 So.2d 61, 66 Ala.2002, and the DCNR has not adopted any regulations and/or procedures related to the granting of easements to private property adjacent to Parkways and other State Park property.

26. The grant of an easement to a public parkway would be a matter of general applicability to anyone requesting such access on any state parkway, and therefore, the Department is legally unable to grant such access until such time as it has properly adopted regulations which provide the procedures for the grant of such an easement.
27. To adopt such regulations, the DCNR must follow the AAPA rule making procedures with full public notice and opportunity for comment, and the DCNR has not complied with these procedures.
28. The DCNR has arbitrarily granted this easement without following any of the prescribed procedures of the AAPA and without holding any public hearings or soliciting any public comment regarding this decision.
29. Since the DCNR did not have any regulations or procedures in effect prior to the issuance of this private easement, and did not comply with the AAPA, such action should be declared invalid by this Court.

WHEREFORE, Plaintiffs hereby respectfully request this Honorable Court to enter a declaratory judgment that the actions of the DCNR in granting this driveway easement are illegal and invalid, and further requests this Court enter an injunction prohibiting the DCNR from allowing any private access or easements to Shell Toomer Parkway until such time as the DCNR adopts rules and procedures for making such policy decisions in accordance with the AAPA, and for such other and different relief including attorney's fees and costs, to which the Plaintiffs may be entitled.

Respectfully submitted this the 2nd day of February, 2007.

CHARLES E. VERCELLI, JR. (VER003)
TODD E. HUGHES (HUG040)

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**PLEASE SERVE DEFENDANT ALABAMA DEPARTMENT OF CONSERVATION
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