

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

**Orlando Coryell**

**Plaintiff**

**vs**

**The Park District of La Grange; The  
Board of Commissioners of The Park  
District of La Grange; Timothy  
Kelpsas, President and  
Commissioner; Robert Ashby, Vice  
President and Commissioner ;Robert  
Metzger, Commissioner; Mary Ellen  
Penicook, Commissioner; Christopher  
Walsh, Commissioner; and Dean  
Bissias, Secretary and Executive  
Director; and Atlantic Realty  
Partners**

**Defendants.**

**Case Number: 08 CH 44981**

**FIRST AMENDED COMPLAINT FOR DECLARATORY**

**JUDGEMENT AND INJUNCTION**

Now comes the Plaintiff, Orlando Coryell, by and through his attorneys, Thomas Paul Beyer and mark Wohlberg, and for his Complaint against The Park District of La Grange; The Board of Commissioners of The Park District of La Grange; Timothy Kelpsas, President and Commissioner; Robert Ashby, Vice President and Commissioner ;Robert Metzger, Commissioner; Mary Ellen Penicook, Commissioner; Christopher Walsh, Commissioner; and Dean Bissias, Secretary and Executive Director of the Park District of La Grange; and Atlantic Realty Partners states as follows:

## **The Parties**

1. The Park District of La Grange is an Illinois Park District, a body politic and corporate organized under the Laws of the State of Illinois located in Cook County, mostly but not entirely within the borders of the Village of La Grange, IL. (Hereinafter the “Park District”).
2. Robert Metzger, Timothy Kelsas, Mary Ellen Penicook, and Christopher Walsh, and Robert Ashby are the Elected officers and Commissioners of the Board of the Park District. (Hereinafter the “Park Board”).
3. Dean Bissias is the Executive Director of the Park District and Secretary of the Board of the Park District.
4. Atlantic Realty Partners is a partnership with its principle place of business in Atlanta, Georgia.
5. Orlando Coryell is a citizen born in the United States of America who since 1972 has resided in and owns residential property within the Park District’s boundaries located at 115 S. Spring Avenue, La Grange, Illinois 50525.

6. Mr. Coryell paid Park District real estate taxes of \$528.93 for tax year 2005, \$546.01 for tax year 2006 and \$430.54 for tax year 2007.
7. Since 1972, Mr. Coryell has had continuous use of the space and facilities of the Northwest portion of Gordon Park as described in Exhibit A including during the summer and fall of 2008.

### **The Proposed Transaction**

8. Approximately two years ago the Park District began negotiations with Atlantic Realty Partners to sell two parcels of Park Land totaling 2.8 acres of Park Land located in the Northwest area of the park commonly known as Gordon Park and legally described as shown in Exhibit A to Atlantic Realty Partners. (Hereinafter the "Park Land").
9. In addition, the Park District would make available a .7 acre parcel of land described as the vacated Shawmut Avenue right-of-way which runs along the southern boundary of the Park Land (See diagram attached as Exhibit B.) (Hereinafter the "Shawmut Parcel") to the Village of La Grange to be used as a public street for the benefit of a development which Atlantic Realty Partners intends to build on the Park Land and property now owned by the Greater La Grange Area YMCA at no additional expense to Atlantic Realty Partners.

10. The total amount of park Land being transferred for the benefit of Atlantic Realty partners is 3.5 acres.
11. The Park District through the Park Board has entered into a contract with Atlantic Realty Partners for the purchase and sale of the Park Land, which the Board refuses to make public.
12. The details of the overall proposed transaction involving the Park District, the Village of La Grange, The Greater La Grange Area YMCA (hereinafter the “YMCA”) and Atlantic Realty Partners to the extent that they have been made public are as follows.
  - a. The YMCA which holds the real property to the south and west of the Park Land would sell its property to Atlantic Realty Partners. See diagram attached as Exhibit B. (Hereinafter the “YMCA-Parcel”)
  - b. The Park District would sell the Park Land to Atlantic Realty Partners. See diagram attached as Exhibit B.
  - c. The Park District would swap the Shawmut Parcel with the Village of La Grange for a parking lot which borders the Southern boundary of Gordon Park.
  - d. The Village of La Grange would re-dedicate the Shawmut Parcel as a public street

at no cost for that real estate to Atlantic Realty Partners.

- e. Atlantic Realty Partners would then build town homes on the Park Land and on the YMCA-parcel build a mix of retail units, a parking garage and 284 residential units.
  - f. On information and belief, the consideration to be paid to the YMCA is dependent on how many residential units may be built on its property. If the Park District's Park Land and the Shawmut-Parcel are not included in the transaction Atlantic Realty Partners will not be able to build the proposed 284 units because the number would exceed the density limit and the consideration to the YMCA will be reduced.
  - g. The consideration to the Park District for the Park Land is \$4,555,000.00 plus services which the Park District asserts are worth \$2,000,000.00.
13. Park districts can only exercise those powers expressly granted to them by statute or necessarily implied from such grant. Charlton v. Champaign Park District, 110 Ill.App.3d 554, 556 (4<sup>th</sup> Dist. 1982).

#### **Chronology of Events**

14. On October 5, 2006 the Park District declared that it has surplus land in an amount less

than 3 acres.

15. The October 5, 2006 ordinance stated that the land was surplus because there on it are maintenance buildings that are not in use.
16. The October 5, 2006 ordinance did not describe the land declared to be surplus but directed the President of the Board to attach a legal description at a later date.
17. On or about December 9, 2006 President Metzger told the La Grange Citizen Council that the Park Board intended to work with the YMCA, which owns land adjacent to Gordon Park, to sell the land they declared to be surplus to a common buyer.
18. In July 2007 the Park District held a public hearing and voted to enter into a contract to sell the Park Land to Atlantic Realty Partners.
19. On or about July 2007 it became public knowledge that the YMCA was also selling its adjacent property to Atlantic Realty Partners.
20. In or about July 2007 the Park District of La Grange and Atlantic Realty Partners jointly prepared a Special Use Application proposing a Planned Unit Development that would require re-zoning of the Park Land from open space to mixed commercial and residential, and necessary amendments to the Village's zoning ordinances and master plan.

21. On August 17, 2009 Atlantic filed the Special Use Application solely in its own name, together with a site plan.
22. On September 11, 2007 the La Grange Plan Commission convened Hearing No. 186 to consider Atlantic Realty Partners' Special Use Application, which was continued from time to time, concluding on January 8, 2008.
23. Concurrently, on September 6, 2007, the Park District filed a petition pursuant to 70 ILCS 1235/1 requesting the Court to approve the sale to Atlantic Realty Partners.
24. Objections were filed by William Dobias and Orlando Coryell.
25. On or about February 5, 2008 William Dobias agreed to drop his objection when Atlantic Realty Partners, who was not a party to the proceeding, agreed to retain a small open space area adjacent to the condominium building in which he resides and to pay all of his attorneys' fees.
26. Orlando Coryell went onto file a Motion for Summary Judgement arguing that the land being sold to Atlantic Realty Partners was actually 3.5 acres, which is in excess of what can be approved for sale by the Court under 70 ILCS 1235/1.
27. On June 27, 2008 the Court found that the property to be sold under the contract with

Atlantic Realty Partners was more than 3 acres and entered an order denying the petition.

28. On July 21, 2008 the Court denied the Park District's Motion to Reconsider.
29. Shortly thereafter the Park Board issued a press release stating their intention to appeal.
30. On or about August 21, 2008 when a citizen encouraged the Park Board to consider a voter referendum the President, Metzger, stated that they had considered all the options and decided to appeal.
31. On August 28, 2008 the Park District initiated a meeting with Orlando Coryell at which there were Robert Metzger, President; and Dean Bissias, Executive Director of the Park District; Richard Aaronson, President of Atlantic Realty Partners; two representatives of the YMCA; and Elizabeth Asperger, President of the Village of La Grange.
32. The sole purpose of the meeting was to determine what it would take to get Mr. Coryell to drop his opposition to the direct sale of the Park Land.
33. Mr. Coryell stated that, reluctantly, he would find it acceptable to sell only the .78 acres which is now occupied by unused maintenance buildings.
34. The other participants in the meeting did not find this acceptable.

35. In furtherance of their plan to sell the Park Land to Atlantic, the Park Board convened an emergency meeting on August 30, 2008 for the stated reason that Atlantic Realty Partners and the YMCA threatened to abandon the transaction, and pursue a transaction that did not include the Park Land.
  
36. At the August 30, 2008 emergency meeting, the Park Board, in an attempt to save its private sale to Atlantic Realty Partners, decided to proceed under Park District Code Sections 10-7 et seq., and 10-7a et seq. (Hereinafter collectively referred to as the “Statute”). See Resolution 08-08 (Exhibit C).
  
37. The process for selling Park Land set out in Park District Codes Sections 10-7a, 10-7b, 10-7c, and 10-7d requires the following steps:
  - a. That the Park Board by a 4/5 majority shall adopt a resolution in which the Park District finds and declares that the property to be sold is no longer needed or useful for park purposes and that the District intends to sell it. 70 ILCS 1205/10-7a.
  
  - b. That the resolution shall be published not less than 3 times over a period of not less than 10 days. 70 ILCS 1205-10/7a.
  
  - c. The statutory scheme provides that the resolution shall not become effective until

10 days after the completion of the publication. 70 ILCS 1205/10-7a.

- d. Upon completion of the publication the Park District Board shall either abandon the sale or transfer, or certify the referendum question to the proper election officials. 70 ILCS 1205/10-7c.
  - e. If a majority of the voters in the Park District vote in favor of selling the property, the Park District may hold a public auction after setting the terms of the auction which shall include that not less than 1/3 of the price in cash shall be paid at the sale, the balance to be paid in two equal payments due not more than 6 months and the 12 months from the date of sale. 70 ILCS 1205/10-7b and 70 ILCS 1205/10-7d.
  - f. The Park District shall publish a notice of the auction stating the time, place and terms of the auction on two successive weeks with the first publication being not less than 15 days prior to the sale.
38. After Resolution 08-08 was passed on August 30, 2008 it was published September 6, 2008, September 10, 2008, and September 17, 2008. See Exhibit D.
39. Under the 70 ILCS 1205/10-7a and under Section 6 of Resolution 08-08, it became effective 10 days after the last publication or on September 27, 2008.

40. On January 8, 2009 the Park District held its auction of the Park Land.
41. At the acution, which took 6 minutes, the only bidder was Atlantic Realty Partners.
42. On January 15, 2009 the Park Board approved the bid of Atlantic Realty Partners to purchase the Park Land.
43. Atlantic Realty partners has a contractual interest in the Park Land which will be affected by the Court's decision in this case.

**COUNT I**  
**(Failure to Comply With Statutory Requirements)**

44. The Allegations contained in paragraph 1-41 are restated and re-alleged as if fully set forth herein.
45. The Park District has failed to comply with the requirements of section 10-7a through 10-7d in the following ways:
  - a.
    - i. The Park Board's Resolution 08-08 directed the secretary of the Park District to certify the question (whether or not to sell the Park Land) to the Cook County Clerk to be placed on the November 4, 2008 ballot. See Section 4 of Resolution 08-08, Exhibit C.

- ii. This required the Secretary to certify the question on September 2, 2008 because the statutory deadline is 61 days prior to the election. 10 ILCS 5/28-5.
  - iii. Certification on September 2, 2008 violated the statutory process in that the resolutions did not become effective both under 70 ILCS 1205/10-7a and by its own terms (See Section 6 of Exhibit C) until 10 days after publication which was September 27, 2008.
- b.
- i. On information and belief the Secretary certified the referendum question to the Cook County Clerk on September 2, 2008 by electronic means and thereafter filed a copy of Resolution 08-08 with the Cook County Clerk on September 9, 2008. A true and correct copy of Resolution 08-08 bearing the Received stamp of the Cook County Clerk is attached as Exhibit C.
  - ii. This violated the statutory process in that the certification occurred prior to Resolution 08-08 becoming effective and without the Park Board taking the action to either abandon the sale, or transfer or certify the referendum question to the proper election officials as required by Section 1205/10-7c.
- c.
- i. The process requires that after the resolution became effective that the Park Board "...shall either abandon said sale or transfer or certify the

- question to the proper election officials...” 70 ILCS 1205/10-7c.
- ii. The Park Board did not take action after the completion of the publication of the resolution as required by section 10-7a to “either abandon said sale or transfer, or certify the question to the proper elected officials.”
  - iii. In violation of statute, 10 ILCS 5/9-25.1, Defendant Park District, et al. actively promoted the sale to Defendant ARP by publishing a brochure distributed to the public that favored the sale to Defendant ARP.
- d.
- i. On November 20, 2008 the Park Board met to discuss the terms of sale and in that regard passed resolution 08-12, a true and correct copy of which is attached as Exhibit E.
  - ii. On information and belief, because of the contract between Defendant Park District and the Defendant ARP, which had terms differing from the statutory scheme for a public sale by referendum, this resolution violates the statutory process as the terms of the sale do not specify that not less than 1/3 of the price in cash shall be paid at the sale, with the balance to be paid in two equal payments due not more than 6 months and 12 months from the date of sale as required by 70 ILCS 1205/10-7d.
  - iii. Instead of complying with the requirements of 70 ILCS 1205/10-7d Resolution of 08-12 only requires a 20 percent escrow and additional money upon some unspecified closing date, which, on information and belief, conforms to the terms of the contract between Defendant Park

District and Defendant ARP.

- iv. The terms provide for in kind services rather than cash which is not provided for under the statutory process.
  - e. When the Park Board met on November 20, 2008 to set the terms of the sale and a sale date, the November 4, 2008 vote had not yet been certified. See Official Certification of Results dated November 25, 2008 which is attached as Exhibit F.
46. As a result of the Park District's Secretary certifying the resolution question to the Cook County Clerk without valid statutory authority, the question was erroneously placed on the November 4, 2008 ballot.
47. The Park Board has published notice setting the sale of the Park Land on December 8, 2008. See Exhibit K.
48. The Plaintiff has a clearly ascertainable right in need of protection in that the Park Board is attempting to sell property in violation of the Laws of the State of Illinois, and the Plaintiff is a taxpayer and resident of the Park District.
49. Irreparable injury will result as all real property is presumed to be unique and within the Park District's boundaries there is no open space of any kind to replace it.
50. Irreparable injury is presumed when a legislative body operates in violation of state law.

51. There is no adequate remedy at law as monetary damages cannot compensate for injury resulting from public officials failing to follow the law or the loss of Park Land.

**WHEREFORE** the Plaintiff, Orlando Coryell, prays this Court for an order:

**FINDING:** That the Park District of La Grange and the Board of Commissioners of the Park District of La Grange through its Elected Officers and Commissioners Robert Metzger, Timothy Kelsas, Mary Ellen Penicook, and Christopher Walsh, and Robert Ashby failed to meet the requirements sections 10-7 et seq. and 10-7a through 10-7d of the Park District Code with respect to its effort to obtain authority to sell the property described in Exhibit A.

**DECLARING** That as a result of failing to comply with statutory requirements for the sale of Park Land the Park District of La Grange, The Board of Commissioners of The Park District of La Grange and its Elected Officers and Commissioners Robert Metzger, Timothy Kelsas, Mary Ellen Penicook, and Christopher Walsh, Robert Ashby, and its Executive Director and Secretary Dean Bissias do not have authority to sell the property described in Exhibit A, and therefore the contract

**between the Park District and Atlantic Realty Partners is void.**

**ENJOINING**

**The Park District of La Grange, The Board of Commissioners of The Park District of La Grange and its Elected Officers and Commissioners Robert Metzger, Timothy Kelpsas, Mary Ellen Penicook, and Christopher Walsh, Robert Ashby, and its Executive Director and Secretary Dean Bissias from Selling the real property described in Exhibit A unless and until they properly obtain authority to do so under the Statutes of the State of Illinois.**

**GRANTING**

**To the Plaintiff court costs and such other relief as the Court deems appropriate.**

## **COUNT II**

### **No Basis for Required Finding of Fact**

52. The allegations continued in paragraph 1-49 are restated and re-alleged as if fully set forth herein.
53. The threshold requirement for a sale under 70 ILCS 1205/10-7a is for the Park Board to adopt a resolution finding that the land to be sold is either no longer needed or not useful as Park Land.

54. Neither the resolution nor the discussions at the August 30, 2008 meeting made any mention of whether or not the Park Land is needed or useful for park purposes providing no basis for a finding that the Park Land is no longer needed or useful for park purposes.
55. The Park District purports to have made a finding that the Park Land is not useful because there are 2 now unused maintenance buildings upon it.
56. The maintenance buildings are only on a small portion of the Park Land, a parcel of just .78 acres which is described in Exhibit A as parcel 2.
57. The maintenance buildings do not render the remaining property unusable.
58. By the Park Districts' own admission the maintenance building could be removed and the land under them returned to open park land.
59. On June 20, 2000 the Park District adopted an "Open Space Master Plan" (hereinafter "Master Plan").
60. The Park District in its Master Plan states in part:
  - a. That the Park District is providing 3.9 acres per 1,000 persons.
  - b. That the Park District should be providing 10 acres per 1,000 persons.

- c. That due to the shortage of available land it is neither financially feasible nor possible to meet the goal of providing 10 acres per 1,000 persons. See Exhibit M.
61. Currently on the Park Land is a soccer field, a playground, a picnic area with pavilion and tennis courts.
62. Organized soccer games were played on the Park Land in October 2008.
63. The Park Land is needed because the amount of Park Land in the Park District is at already less than half of what the Park District admits it should be providing.
64. The Park Land is useful as Park Land as it is currently in use for park purposes.
65. The Park Board has not identified any meaningful basis for a finding that the Park Land is not needed or useful as Park Land.

**WHEREFORE the Plaintiff, Orlando Coryell, prays this Court for an order:**

**FINDING: That the Park District of La Grange through its Elected Officers and Commissioners Robert Metzger, Timothy Kelpsas, Mary Ellen Penicook, and Christopher Walsh, and Robert Ashby failed to meet the requirements sections 10-7 et seq. and 10-7a through 10-7d of the**

**Park District Code with respect to its effort to obtain authority to sell the property described in Exhibit A in that they failed to identify any rational basis for their finding that the Park Land is not needed or useful as Park Land.**

**DECLARING**           **That as a result of failing to comply with statutory requirements for the sale of Park Land the Park District of La Grange and its Elected Officers and Commissioners Robert Metzger, Timothy Kelsas, Mary Ellen Penicook, and Christopher Walsh, Robert Ashby, and its Executive Director and Secretary Dean Bissias do not have authority to sell the property described in Exhibit A, and therefore the contract between the Park District and Atlantic Realty Partners is void.**

**ENJOINING**           **The Park District of La Grange and its Elected Officers and Commissioners Robert Metzger, Timothy Kelsas, Mary Ellen Penicook, and Christopher Walsh, Robert Ashby, and its Executive Director and Secretary Dean Bissias from Selling the real property described in Exhibit A unless and until they properly obtain authority to do so under the Statutes of the State of Illinois.**

**GRANTING**           **To the Plaintiff court costs and such other relief as the Court deems**

**appropriate.**

**COUNT III  
A Private Sale  
Under Park District Code 70 ILCS 1205/10-7a-d  
Violates the Provisions of the Code**

66. The allegations continued in paragraphs 1-634 are restated and re-alleged as if fully set forth herein.
67. The Park District of La Grange entered into a contract to sell the Property to Atlantic Realty Partners in or about July 2007.
68. On the basis that Atlantic Realty Partners had a contract to purchase the property from the Defendant Park District, Defendant Atlantic Realty Partners filed its Special Use Application and site plan.
69. The original Special Use Application stated that both Defendant Atlantic Realty Partners and the Park District of La Grange were the Applicants. See Exhibit O.
70. When the Special Use Application was filed on August 17, 2007 it was filed only in Defendant Atlantic Realty Partners' name. See Exhibit P.

71. Hearings were held by the La Grange Plan Commission on the Special Use Application on September 11, 2007, October 9, 2007, October 27, 2007, November 13, 2007, and on January 8, 2008.
  
72. The La Grange Plan Commission's understanding was that as a result of the contract between Atlantic Realty Partners and the Park District of La Grange, Defendant Atlantic Realty Partners controlled the property. At the October 9, 2007 hearing, Bill Holden, Chairman Pro-Temp of the Commission stated, "We're here to evaluate a particular application on a property that is now controlled by these guys, by Atlantic Realty."
  
73. At the October 23, 2007 hearing on the Special Use Application, Tim Kelsas, then Vice-President of the Park Board, appeared in his official capacity to support to Atlantic Special Use Application, and in part stated as follows:
  - a. "Thank you for the opportunity to include comments from the Park District of La Grange. For those of you whom I may not have yet met, my name is Tim Kelsas. I'm acting today as vice president of the Park District of La Grange. I'm here to make a statement on behalf of the Park District Board."
  
  - b. "After years of deliberation about the future of Gordon Park, the unanimous decision to enter into a contract with Atlantic Realty Partners clearly indicated that all five board members believe that this transaction is in the best interests of the

Park District and the entire La Grange community.”

- c. “Our deal with ARP is extremely important to us. Our real estate advisors tell us that the value of the land is directly related to what can be built upon it. Our ability to act on our plan to redevelop and improve Gordon Park is contingent upon your approval of the proposal as presented by ARP.
- d. “The Park District is pleased that ARP is including the concept of a pedestrian bridge. We like it. It will improve safe pedestrian access over Ogden Ave into the park. We also appreciate ARP’s offer to help identify the entrance to the park.”

74. At the November 13, 2007 hearing on Atlantic’s Special Use Application, Rob Metzger, the then President of the Park District, appeared in his official capacity to support Atlantic’s Special Use Application, and stated in part as follows:

“So in conclusion the board [Park Board] believes this is a very prudent and necessary move [the sale to Atlantic], and as a result we would ask that the Planning Commission agree that the [Atlantic’s] re-zoning request be granted.”

75. The Park Board originally tried to obtain authority to sell the Park Land to Atlantic Realty Partners under 70 ILCS 1235/1.

76. Section 70 ILCS 1235/1 applies only to the sale of 3 acres or less.
77. The procedure under Section 70 ILCS 1235/1 involves filing a petition in the circuit court for approval of the sale.
78. Section 70 ILCS 1235/1 allows for a private sale of 3 acres or less on terms set by the Court.
79. The Court determined that the actual amount of land being sold was 3.5 acres as it found that the Shawmut Parcel was part of the sale as described in the sales contract and title policy. See June 27, 2008 Order which is attached hereto as Exhibit L.
80. Having failed to obtain approval of the sale to Atlantic Realty Partners under 70 ILCS 1235/1 the Park Board held an emergency meeting on August 30, 2008. In order to preserve the sale to Atlantic Realty, it decided to attempt to obtain authority to sell the property under 70 ILCS 1205/10-7 and 10-7a through 10-7b which among other requirements, requires a referendum followed by a public action.
81. At the August 30, 2008 emergency meeting Commissioner, Christopher Walsh, advised that the reason for the meeting was that during the preceding week the YMCA threatened to break off their agreement with Atlantic Realty Partners if the Park District did not put the sale of Gordon Park Land to a referendum vote on November 4, 2008, and that they

would not make any future sale of their land contingent on the sale of the Park Land.

82. At the August 30, 2008 emergency meeting, Mr. Metzger, then President of the Park District Board, stated that Defendant Atlantic Realty Partners was only willing to wait 5 or 6 months.
83. During the period leading up to the November 4, 2008 ballot the Park Board sent a brochure to every resident of the Park District promoting the sale of the Park Land to Defendant Atlantic Realty Partners in violation of statute 10 ILCS 5/9-25.1, touting the benefits of the sale to Defendant Atlantic Realty Partners, and clearly implying that a vote in favor of the referendum would be an approval of the sale to Atlantic Realty Partners, but did not mention the statutory requirement of a public auction. A true and correct copy of this brochure is attached as Exhibit G.
84. During the period leading up to the November 4, 2008 ballot, Defendant Atlantic Realty Partners donated the sum of \$30,000.00 to Citizens for a Great Gordon Park for the purpose of promoting a yes vote on the referendum. See Illinois State Board of Elections Report attached as Exhibit H.
85. On information and belief there were no other contributors to the Citizens for a Great Gordon Park other than Atlantic Realty Partners. See Exhibit H.

86. Prior to the November 20, 2008 meeting the Park Board met on November 19, 2008 to discuss the terms of sale. At that time the Park Board took under consideration the original draft of Resolution 08-12, a true and correct copy of which is attached as Exhibit I. (Hereinafter "Original Resolution 08-12")
87. The Original Resolution 08-12 states that the Park District has negotiated a sale of the Park Land (referred to in the Resolution and Lot 2 and Parcel 3) to Atlantic Realty Partners and that the sale to Atlantic Realty Partners was approved by the voters. See Exhibit I
88. The Park Board only tabled consideration of the Original Resolution 08-12 because a reporter at the meeting pointed out that the voters had not approved a sale to Atlantic Realty Partners and could not have done so under the Statute.
89. Atlantic Realty Partners with the knowledge, consent and approval of the Park Board applied to the Village of La Grange for a re-zoning of the Park Land so that it could, if it obtained title to the property, develop it as outlined in paragraph 10 of this Complaint, which the Village approved on April 14, 2008. See Exhibit I.
90. The Special Use Permit and related zoning changes as applied for by Atlantic Realty Partners and approved by the Village of La Grange are only for the benefit of Atlantic Realty Partners as by its terms effectively only if Atlantic Realty Partners obtains title to

the property. See exhibit J.

91. Under the guise of a public auction under 70 ILCS 1205/10-7a through 10-7d the Park Board is attempting to carry out a private sale to Atlantic Realty Partners in violation of the very statute the Park Board invokes for authority to make the sale.

**WHEREFORE the Plaintiff, Orlando Coryell, prays this Court for an order:**

**FINDING:** That the Park District of La Grange through its Elected Officers and Commissioners Robert Metzger, Timothy Kelsas, Mary Ellen Penicook, and Christopher Walsh, and Robert Ashby are attempting to conduct a private sale of the property described on Exhibit A under the guise of a public auction under sections 10-7 et seq. and 10-7a through 10-7d of the Park District Code violates the requirement of a public auction under the Code.

**DECLARING** That as a result of failing to comply with statutory requirements for the sale of Park Land the Park District of La Grange and its Elected Officers and Commissioners Robert Metzger, Timothy Kelsas, Mary Ellen Penicook, and Christopher Walsh, Robert Ashby, and its Executive Director and Secretary Dean Bissias do not have authority to sell the property described in Exhibit A, and therefore the contract

**between the Park District and Atlantic Realty Partners is void.**

**ENJOINING            The Park District of La Grange and its Elected Officers and Commissioners Robert Metzger, Timothy Kelpsas, Mary Ellen Penicook, and Christopher Walsh, Robert Ashby, and its Executive Director and Secretary Dean Bissias from Selling the real property described in Exhibit A unless and until they properly obtain authority to do so under the Statutes of the State of Illinois.**

**GRANTING            To the Plaintiff court costs and such other relief as the Court deems appropriate.**

**COUNT IV  
Public Trust Doctrine**

92. The allegations continued in paragraph 1-8950 are restated and re-alleged as if fully set forth herein.
  
93. On November 26, 1929, one of the first acts of the newly organized La Grange Park District (name changed years later to Park District of La Grange) authorized the purchase of what became known as Shawmut Park (later re-named Bert E. Gordon Park on October 16, 1973) (Exhibit N).

94. Gordon Park, including the Park Land has been continuously used as a park since that time.
95. The Park District holds its lands in trust for the Public, the “Public Trust,” which includes not only the small number of voters who actually cast ballots on this issue, but also all current Illinois citizens and for all future generations of Illinois citizens, both within the Park District and throughout the State of Illinois, all of whom have an interest in this piece of Park Land (see Lincoln Park Traps v. Chicago Park District, Ill.App. 107, 114 (1944)).
96. Three basic principles of the Public Trust Doctrine are:
- a. Courts should be critical of attempts by the State to surrender valuable public resources to a private entity. People ex rel. Scott v. Chicago Park Dist., 4 Ill.Dec. 660, 667, 360 N.E.2d 773, 780; People ex rel. Moloney v. Kirk, 45 N.E. 830, 833; Paepcke v. Public Building Comm. of Chicago, 263 N.E.2d 11, 16.
  - b. The Public Trust is violated when the primary purpose of a legislative grant is the benefit of private interest. Illinois Central Railroad v. Illinois, 146 U.S. 387, 453, 13 S.Ct.2d 110, 118; People ex rel. Scott v. Chicago Park District, 4 Ill.Dec. 660, 668, 360 N.E.2d 773, 781; Illinois Cent. R. Co. v. City of Chicago, 50 N.E. 1104, 1108.
  - c. Any attempt by the State to relinquish its power over public resources shall be

invalidated under the Doctrine. Illinois Central Railroad v. Illinois, 146 U.S. 387, 453, 13 S.Ct. 110, 118; People ex rel. Scott v. Chicago park Dist., 360 N.E.2d at 779; People ex rel. Maloney v. Kirk, 45 N.E. 830, 835.

97. Defendants are attempting to surrender a public resource to Atlantic Realty Partners.
98. Under the facts in this case there is effectively a legislative grant by the Park District of La Grange to a private entity, Atlantic Realty Partners.
99. The Park District of La Grange, a sub-division of the State of Illinois, is attempting to relinquish its power over a public resource.
100. Under the Public Trust Doctrine, Public Trust Land may not be used for non-public purposes
101. The Illinois Supreme Court has provided a 5 part test for proposed transactions involving public trust land. They are whether after the transaction:
  - a. Public bodies will control the use of the area.
  - b. The area will be devoted to public purposes and open to public use.
  - c. The diminution of the area of original use will be small compared with the entire

area.

- d. None of the public uses of the original area would be destroyed or greatly impaired.
- e. That the disappointment of those wanting to use the area for its former purposes is negligible when compared to the greater convenience to be afforded those members of the public using the new facility.

Paepke v. Public Building Commission, 46 Ill.2d 330, 343-344 (1970)

- 102. The Park Land after the sale will be entirely in private hands.
- 103. The Park Land after the sale will not be devoted to any public purpose and will not be available for public use.
- 104. More than 20% of the original park will be no longer available.
- 105. A soccer field, a picnic area, a playground, and tennis courts will be completely lost.
- 106. The disappointment of those Illinois citizens now and in the future wanting to use the area as it currently is used will be very high compared to members of the public using the new facility as there will be no public use at all.
- 107. That Plaintiff, Orlando Coryell, is entitled to attorneys' fees pursuant to 740 ILCS 23/5 (c) (2).

**WHEREFORE the Plaintiff, Orlando Coryell, prays this Court for an order:**

**FINDING: That the Park District of La Grange, The Board of Commissioners of the Park District of La Grange and its Elected Officers and Commissioners Robert Metzger, Timothy Kelpsas, Mary Ellen Penicook, and Christopher Walsh, and Robert Ashby are violating the Public Trust Doctrine in attempting to sell the Park Land described in Exhibit A.**

**DECLARING The Park District of La Grange, The Board of Commissioners of the Park District of La Grange and its Elected Officers and Commissioners Robert Metzger, Timothy Kelpsas, Mary Ellen Penicook, and Christopher Walsh, Robert Ashby, and its Executive Director and Secretary Dean Bissias may not sell the property described in Exhibit A, and therefore the contract between the Park District and Atlantic Realty Partners is void.**

**ENJOINING The Park District of La Grange and its Elected Officers and Commissioners Robert Metzger, Timothy Kelpsas, Mary Ellen Penicook, and Christopher Walsh, Robert Ashby, and its Executive Director and Secretary Dean Bissias from Selling the real property described in Exhibit A.**

**GRANTING**            **To the Plaintiff court costs, attorneys' fees pursuant to 740 ILCS 23/5**  
**( c) (2) and such other relief as the Court deems appropriate.**

**COUNT V**

**The sale of the Gordon Park property in unconstitutional as it violates Article VIII, Section 1a of the Illinois Constitution, which holds that "Public...property...shall only be used for public purpose."  
(The Public Purpose Doctrine)**

108. The allegations contained in paragraphs 1-105 are restated and re-alleged as if fully set forth herein.
109. Article VIII, Section 1a of the Illinois Constitution, 1970, states that...  
"Public...property...shall be used only for public purposes."
110. The Constitutional Commentary of Article VIII sets forth that units of local government (like the Defendant, Park District herein) are not prohibited from entering into financial arrangements with...non-governmental entities (Atlantic Realty Partners herein) so long as a public purpose is served.
111. The sale of the Park Land at Gordon Park to private entities, be it Atlantic Realty Partners or others, for purely private development; both residential and commercial - without any corresponding public benefit (in fact, the loss of a large segment of one of the Defendant's Park District's largest parks, which now contains tennis courts, a public playground, a

soccer field, and a picnic pavilion), is unconstitutional as it violates Article VIII, Section 1a of the Illinois Constitution, 1970.

112. That Plaintiff, Orlando Coryell, is entitled to attorneys' fees pursuant to 740 ILCS 23/5 (c) (2).

**WHEREFORE**, The Plaintiff, Orlando Coryell, prays this Court for an order:

**FINDING:**                   **That The Park District of La Grange, The Board of Commissioners of the Park District of La Grange and its Elected Officers and Commissioners Robert Metzger, Timothy Kelsas, Mary Ellen Penicook, and Christopher Walsh, Robert Ashby, and its Executive Director and Secretary Dean Bissias are violating the Public Purpose Doctrine, as set out in the Illinois Constitution, 1970, Article VIII, Section 1a, in attempting to sell the park land described in Exhibit A.**

**DECLARING**                   **The Park District of La Grange, The Board of Commissioners of the Park District of La Grange and its Elected Officers and Commissioners Robert Metzger, Timothy Kelsas, Mary Ellen Penicook, and Christopher Walsh, Robert Ashby, and its Executive Director and Secretary Dean Bissias may not sell the property**

**described in Exhibit A, and therefore the contract between the Park District and Atlantic Realty Partners is void.**

**ENJOINING            The Park District of La Grange and its Elected Officers and Commissioners Robert Metzger, Timothy Kelpsas, Mary Ellen Penicook, and Christopher Walsh, Robert Ashby, and its Executive Director and Secretary Dean Bissias from Selling the real property described in Exhibit A.**

**GRANTING            To the Plaintiff court costs, attorneys' fees pursuant to 740 ILCS 23/5 (c) (2), and such other relief as the Court deems appropriate.**

#### **COUNT VI**

**The Statutory Scheme which the Defendants are Attempting to Utilize in Selling a Portion of Gordon Park, 70 ILCS 1205/10-7a, is unconstitutional as it violates Article VIII, Section 1a of the Illinois Constitution**

113. The allegations contained in paragraphs 1-110 are restated and re-alleged as if fully set forth herein.

114. The statutory scheme found at 70 ILCS 1205/10-7a through 7d contains absolutely no language that would evidence compliance with the "public purpose" dictates of Article VIII, Section 1a of the Illinois Constitution, 1970.

115. In contrast to this scheme, the statute by which the Defendants have previously attempted to sell the Gordon Park land to Atlantic Realty Partners, 70 ILCS 1235/1, actually gives the circuit court the power to determine if the “public interest” is served by the sale, and only then can the Court direct the sale of said property (the circuit court has previously ruled against the Park District. See Exhibit L which is attached hereto.
116. No such corresponding “public interest” language is contained in 70 ILCS 1205/10-7a to 10-7d, and this statutory scheme is in violation of Article VIII, Section 1a of the Illinois Constitution, 1970, and should be struck down, and the result of the referendum held on November 4, 2008 should be quashed.
117. That Plaintiff, Orlando Coryell, is entitled to attorneys’ fees pursuant to 740 ILCS 23/5 (c) (2).

**WHEREFORE**, the Plaintiff, Orlando Coryell, prays this Court for an Order:

**FINDING:**                   **That the statutory scheme by which The Park District of La Grange, The Board of Commissioners of the Park District of La Grange and its Elected Officers and Commissioners Robert Metzger, Timothy Kelpas, Mary Ellen Penicook, and Christopher Walsh, Robert Ashby, and its Executive Director and Secretary Dean Bissias are**

**attempting to sell the Park Land described in Exhibit A is unconstitutional as being violative of Article VIII, Section 1a of the Illinois Constitution, 1970.**

**DECLARING**      **The Park District of La Grange, The Board of Commissioners of the Park District of La Grange and its Elected Officers and Commissioners Robert Metzger, Timothy Kelpsas, Mary Ellen Penicook, and Christopher Walsh, Robert Ashby, and its Executive Director and Secretary Dean Bissias may not sell the property described in Exhibit A, and further declaring that the referendum held on November 4, 2008, be quashed and held for naught, and therefore the contract between the Park District and Atlantic Realty Partners is void.**

**ENJOINING**      **The Park District of La Grange and its Elected Officers and Commissioners Robert Metzger, Timothy Kelpsas, Mary Ellen Penicook, and Christopher Walsh, Robert Ashby, and its Executive Director and Secretary Dean Bissias from Selling the real property described in Exhibit A.**

**GRANTING**      **To the Plaintiff court costs, attorneys' fees pursuant to 740 ILCS 23/5 (c) (2), and such other relief as the Court deems appropriate.**

Respectfully Submitted;

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Thomas Paul Beyer, One of the  
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