

VIRGINIA:

FILED
CLERK OF COURTS
CITY OF ALEXANDRIA

IN THE CIRCUIT COURT FOR THE CITY OF ALEXANDRIA

2019 MAY -6 P 3:58

 KY LEWIS, et al.)
)
 Plaintiffs,)
)
 v.)
)
 CITY OF ALEXANDRIA, et al.)
)
 Defendants.)
)

EDWARD DEMONIAN, CLERK

BY _____
DEPUTY CLERK

Case No. 18002864

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs Ky Lewis, Andrea Mackey, Phylus Burks, Lillian S. Patterson, Frances Terrell, Calvin Terrell, Carter Flemming, Steve Harkness, and Kathy Harkness ("Plaintiffs or "Residents"), by and through undersigned counsel, hereby move the Court for a preliminary injunction. In support of the motion, the Residents show the Court the following:

1. On December 17, 2018, The Residents filed a three-count Amended Complaint in this Court. The Amended Complaint seeks declaratory and injunctive relief in connection with the no-lights Agreement at T.C. Williams High School Stadium.
2. On January 22, 2019, each Defendant filed a Demurrer to the Amended Complaint asserting eleven separate grounds in opposition to the Residents' claims.
3. After extensive briefing, the Court held a hearing on the City and School Board's Demurrer's on March 7, 2019.
4. The Court overruled each ground in support of the Demurrers in a Memorandum Opinion issued on April 17, 2019.

5. The parties are engaged in discovery. A trial date has not been scheduled at this time.
The Residents have expressed a desire to schedule a trial in late 2019. The City has taken the position that it cannot schedule a trial until after February 1, 2020.
6. Notwithstanding the pendency of this suit, and the Court's overruling of the Defendants' Demurrers, the Defendants continue to take affirmative actions in furtherance of the Stadium modernization plan approved by the City Council. On October 31, 2018, the Alexandria City Council approved a T.C. Williams High School modernization plan which included the installation of permanent Stadium lights on 87-foot light towers. *See* Amended Complaint at ¶ 84.
7. Legal counsel for the Alexandria City School Board has represented to Residents' legal counsel that construction activities directly related to the installation of the 87-foot permanent light towers will commence on or around June 15, 2019. The Defendants plan to have the permanent lights completed and operational for the beginning of the T.C. Williams High School football season in the Fall of 2019.
8. Pursuant to Virginia Code §§ 8.01-620 and 628, this Court has the authority to issue injunctive relief in the event the Court is satisfied of the Residents' equity.
9. The Residents are entitled to a preliminary injunction for the following reasons:
 - a. The Residents will suffer irreparable harm if a preliminary injunction is not granted. The Residents have not asserted a claim for monetary damages in the Amended Complaint at this time; they seek specific performance of the no-lights Agreement. If an injunction is not entered, intensified night-time use of the Stadium, including lighted night-time football and other activities, will occur as early as August 2019. If an injunction is not entered, these activities will occur

well before any trial will occur in this matter and the Residents will be deprived of a remedy or recourse;

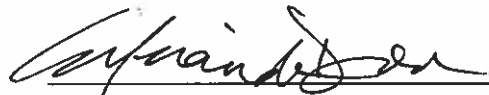
- b. The Defendants will not suffer harm if a preliminary injunction is entered. The Stadium has not been equipped with permanent lights since the time it was built in 1965. For 54 years T.C. Williams High School has conducted its activities with no permanent lights. There is no impairment of functions or activities at the School, or in the City of Alexandria, in the absence of permanent lights, and thus there can be no harm, irreparable or otherwise;
- c. The Residents are likely to succeed on the merits. The Court overruled the Defendants' Demurrers. Multiple City and School officials have acknowledged the existence of the no-lights Agreement in writing and in City Council meetings. The parties have performed under the no-lights Agreement and have conducted themselves since 1965 in full conformance with the existence, validity, and enforceability of the no-lights Agreement;
- d. The public interest is protected by the issuance of a preliminary injunction. In the absence of an injunction, substantial public monies will be expended for the installation of the wiring, conduit, foundations and support pillars, light towers, and light fixtures during the period June, July and August 2019. In the likely event that the Residents prevail at trial in this matter later in 2019 or in 2020, the light towers will be removed at substantial additional public cost. The public school budget funds expended to install the lights, and subsequently remove them, will be entirely lost.

10. The duration of the preliminary injunction should extend up to and include the date of this Court's final resolution of the Residents' claims set forth in the Amended Complaint. At that time, the Court should enter a permanent injunction in favor of the Residents barring the installation of permanent lights at the Stadium. No bond should be required.
11. The Residents request an ore tenus hearing on this Motion for Preliminary Injunction on or before June 7, 2019.
12. The Residents will file a memorandum of law in support of the foregoing Motion for Preliminary Injunction on or before May 24, 2019.
13. A proposed order is attached hereto.

Dated: May 6, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2019, I caused the foregoing Plaintiffs' Motion for Preliminary Injunction to be served by e-mail to the following:

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