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Clerk of the Court

SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION

KALORAMA CITIZENS ASSOCIATION, *et al.*,	)	
	)	**Civil Action No. 2017 CA 004182 B**
	)	
Plaintiffs,	)	**Hon. Todd E. Edelman**
	)	
v.	)	**Next Event: Proponents' Rule**
	)	**26(a)(2)(B) Report Due**
SUNTRUST BANK COMPANY, *et al.*,	)	**October 2, 2017**
	)	
Defendants.		

DEFENDANTS' JOINT MOTION TO DISSOLVE INJUNCTION AND DISMISS CASE

Defendants SunTrust Bank Company ("SunTrust"), Potomac Investment Properties, Inc., 1800 Columbia Potomac Investment Properties, LLC, 1800 Columbia Road, LLC, and P.N. Hoffman & Associates, Inc. ("Developer Defendants") (referred collectively hereafter with SunTrust as the "Defendants"), by counsel, and pursuant to SCR-Civil 12-I, file this Joint Motion to Dissolve Injunction and Dismiss the Case on the grounds that: (1) Plaintiffs lack constitutional and prudential standing to assert a claim that an easement by public dedication exists on the SunTrust Plaza, and (2) Plaintiffs claims are barred by the District of Columbia's Uniform Conservation Easement Act and the D.C. statute of frauds. In support if this Joint Motion, Defendants submit the accompanying Memorandum of Points and Authorities in support of their Motion to Dissolve Injunction and Dismiss the Case.

WHEREFORE, Defendants SunTrust Bank Company, Potomac Investment Properties, Inc., 1800 Columbia Potomac Investment Properties, LLC, 1800 Columbia Road, LLC, and P.N. Hoffman & Associates, Inc. respectfully request that this Court issue an Order granting the Joint Motion to Dissolve Injunction and Dismiss the Case, dissolving the preliminary injunction

granted on August 4, 2017, dismissing the Complaint with prejudice, and for any further just and equitable relief the Court deems fit and proper.

Dated: September 27, 2017

Respectfully submitted,

SUNTRUST BANK COMPANY

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RULE 12-I CERTIFICATE

Pursuant to Rule 12-I(a) of the *District of Columbia Superior Court Rules of Civil Procedure*, the undersigned hereby provides counsel for Plaintiffs was contacted via telephone call on September 25, 2017, to obtain consent to the instant motion. Counsel for Plaintiff did not consent to the relief requested.

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REQUEST FOR HEARING

Pursuant to SCR-Civil Rule 12-I(f), Defendants respectfully request a hearing in open court on their Motion to Dissolve Injunction and Dismiss the Case.

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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of September, 2017, I filed the foregoing with CasefileXpress, which will send a notice of electronic filing to the counsel listed below:

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DEFENDANTS' MEMORANDUM IN SUPPORT OF JOINT MOTION TO DISSOLVE INJUNCTION AND DISMISS CASE

Defendants SunTrust Bank Company ("SunTrust"), Potomac Investment Properties, Inc., 1800 Columbia Potomac Investment Properties, LLC, 1800 Columbia Road, LLC, and P.N. Hoffman & Associates, Inc. ("Developer Defendants") (referred collectively hereafter with SunTrust as the "Defendants"), by counsel, submit their Memorandum in Support of Joint Motion to Dissolve Injunction and Dismiss Case. The injunction should be dissolved and the case dismissed because (i) Plaintiffs lack constitutional and prudential standing to assert the claim that an easement by public dedication exists on the SunTrust plaza; and (ii) under applicable District of Columbia statutes, including the Uniform Conservation Easement Act and the statute of frauds, the purported easement is invalid, not assignable, and not enforceable by Plaintiffs. *See* D.C. Code § 42-201, *et seq.*; *id.* § 28-3502.

INTRODUCTION

This action was initiated by Plaintiffs Kalorama Citizens Association ("KCA") and Adams Morgan for Reasonable Development ("AMRD") (collectively, "Plaintiffs"), who seek a declaratory judgment recognizing a purported easement created in 1976 by alleged public dedication over an open space plaza (the "SunTrust Plaza") in front of the SunTrust bank branch located at 1800 Columbia Road, NW, Washington, D.C. (the "Property"). The Property is

privately owned by SunTrust; a bank branch has operated at the location since the 1970s, when it was built by Perpetual Federal Savings Bank ("Perpetual"). SunTrust has a contract to sell the Property to the Developer Defendants, who have spent over two years obtaining the necessary regulatory and administrative permits and approvals from the District of Columbia to develop a mixed use condominium project at the Property. The "easement by public dedication" claim was never asserted by any party participating in the administrative process; instead, Plaintiffs waited until that process was complete and initiated this lawsuit only after all of the required agency approvals for design and construction had been obtained.

In support of their "easement by public dedication" claim, Plaintiffs rely almost exclusively on a 1976 letter from the President of Perpetual, the prior owner of the Property, alluding to an agreement reached with various community organizations to construct and develop the Property and bank branch "in such a way as to preserve its open quality, attractiveness and accessibility to the vendors that presently use it." (Compl. ¶ 23). Title to the Property was subsequently transferred by Perpetual to the Resolution Trust Corporation, which thereafter sold the Property by quitclaim deed to Crestar Bank N.A. ("Crestar Bank"), a predecessor in interest to SunTrust. Nevertheless, this 1976 letter, Plaintiffs allege, establishes that Perpetual dedicated the plaza to public use ***in perpetuity***, "creating an easement by public dedication on the Plaza portion of the 1800 Columbia Road parcel." Plaintiffs seek a declaratory judgment and injunction that "an easement for the benefit of the public exists" and seek to enjoin the defendants "from destroying the Plaza by constructing their proposed luxury condominium in the space now occupied by the Plaza, and/or limiting the public's use or access to the Plaza." (Compl. at 13).

Upon filing the Complaint, Plaintiffs moved for a preliminary injunction to enjoin Defendants from proceeding with the sale and redevelopment of the Property. Over the course of two hearings in July 2017, this Court heard testimony and argument on whether Perpetual created an easement by public dedication. Plaintiffs' witnesses all testified generally as to the cultural, social, and architectural significance that the open-air SunTrust Plaza has to the Adams Morgan community, but did not testify to any injury specific to them. Similarly, none of the witnesses testified that they were parties to the purported easement agreement or held any possessory, non-possessory, or other ownership interest in the plaza.

On August 4, 2017, this Court ruled that Plaintiffs had established a likelihood of success on the merits and entered an order enjoining the Defendants "from demolishing the Plaza at 1800 Columbia Road Northwest, known as the SunTrust Plaza, or otherwise interfering with the public's use or enjoyment of said Plaza." (*See* August 4, 2017 Order Granting Preliminary Injunction). The parties never raised and the Court never addressed issues of standing.

Defendants seek to dissolve the preliminary injunction ordered on August 4, 2017, and request dismissal of the Complaint based on arguments not previously considered by the Court. Specifically, Plaintiffs cannot satisfy constitutional or prudential standing requirements. Plaintiffs claim only alleged generalized grievances; their complaints about being unable to obtain fresh fruit and vegetables at the weekly farmer's market or to socialize on the plaza do not constitute particularized injury sufficient to satisfy standing requirements. Additionally, this Court is not capable of providing redress to these Plaintiffs, as they are not the proper parties to hold a public easement. Further, Plaintiffs' claims are barred by the Uniform Conservation Easement Act enacted by the District of Columbia in 1986 with retroactive application, setting forth specific prerequisites for easements for the benefit of the public, including that they be in

writing and recorded. Such statutory requirements displace the common law, including case law from Maryland and Georgia relied upon by Plaintiffs at the injunction hearing. The statute of frauds in the District of Columbia also bars the claim. There is no written agreement establishing the interests which Plaintiffs seek to enforce and they are not proper parties to enforce such an easement.

For these reasons, the injunction should be dissolved, and this case dismissed with prejudice.

FACTUAL AND PROCEDURAL BACKGROUND

On June 15, 2017, Plaintiffs initiated this action by filing a Complaint for Declaratory and Injunctive Relief ("Complaint"). Plaintiff KCA states that it is an "organization founded in 1919 to address issues of importance to residents of the Adams Morgan neighborhood" and that it "boundaries encompass in their entirety two of the four historic districts that are either totally or partially within Adams Morgan." (Compl. ¶ 2). Plaintiff AMRD states that it is a "citizens association" whose "purposes include protecting and preserving the personal and property interests of residents and families, including those living, working, and playing in the historic and unique Adams Morgan neighborhood." (*Id.* ¶ 4).

The real property at issue in this action is an open space plaza area located in front of the SunTrust bank branch at 1800 Columbia Road, N.W., Washington, D.C. 20009. (*Id.* ¶ 5). Plaintiffs allege that for the past 38 years, the SunTrust Plaza has been continually open for public use, "has hosted hundreds of civil, cultural, athletic, spiritual, [] musical events, . . . political and social activities, and is the heart of the Adams Morgan neighborhood." (*Id.* ¶ 6). Plaintiffs state that the SunTrust Plaza "is home to the Adams Morgan farmers market" which has provided "nutritional, educational, social, and civic benefits to the Adams Morgan neighborhood." (*Id.* ¶ 7).

Plaintiffs set forth the ownership history of the Property and admit that SunTrust has owned the SunTrust Plaza since 2000 when it acquired Crestar Bank. (*Id.* ¶ 8). Crestar Bank, in turn, acquired the Property in 1992 by quitclaim deed from the RTC. (*Id.* ¶ 9). The RTC acquired the Property by virtue of the dissolution of Perpetual. (*Id.* ¶ 10). Plaintiffs also allege that the Developer Defendants have interests in the SunTrust Plaza and the larger parcel to which the SunTrust Plaza belongs. (*Id.* ¶¶ 11-14). The Developer Defendants obtained approval through the District of Columbia regulatory review process to construct a condominium containing retail and residential units at the Property, with a design that includes an open-air area at the corner of the Property. (*Id.* ¶¶ 30-35).

The Complaint alleges that Perpetual "established an easement by dedication in favor of the public for the Plaza" in the 1970s. (*Id.* ¶ 1). Plaintiffs allege that, upon learning of Perpetual's intention to open a bank branch at the Property, "[l]eading Adams Morgan civic associations, including the Adams Morgan Organization ("AMO") and the Adams Morgan Advisory Neighborhood Commission ("ANC"), opposed allowing Perpetual to open a branch at 18th and Columbia Road, unless it agreed to end redlining and preserve a portion of the Columbia Road property for continued public use." (*Id.* ¶ 21). "Adams Morgan community groups filed a formal protest in 1976 against Perpetual's application for an Adams Morgan branch with the [Federal Home Loan Bank Board]" and even flew to Atlanta to "testify in November 1976 before the FHLBB against Perpetual application for the proposed Adams Morgan Branch." (*Id.* ¶ 22).

The Complaint alleges that on November 2, 1976, the then-president of Perpetual, Thomas J. Owen, sent a letter to the "entire Adams Morgan community" purportedly "affirm[ing] Perpetual proposed dedication of a portion of the parcel for public use." (*Id.* ¶ 23).

A copy of the November 2, 1976, Letter from Thomas J. Owen to the Adams Morgan community is attached hereto as **Exhibit A**. Plaintiffs allege that after the issuance of the November 2, 1976, Letter, Perpetual and community organizations negotiated and agreed to "a set of detailed policies designed to end redlining and dedicate the Plaza for public use." (Compl. ¶ 24). Plaintiffs allege that "[i]n exchange for the creation of the Plaza and the end of redlining, the community groups withdrew their protest before the FHLBB." (*Id.* ¶ 25). The Complaint alleges that Perpetual "design[ed] the Adams Morgan branch in accordance with the terms of its agreement to preserve space for public use and establish the Plaza." (*Id.* ¶ 26).

Plaintiffs filed concurrently with the Complaint a Motion for Preliminary Injunction seeking to enjoin Defendants from demolishing the SunTrust Plaza "or otherwise interfering with the public's use and enjoyment of the Plaza" because "the Plaza enjoys a common law easement by public dedication prohibiting the defendants' proposed development." (Motion for Preliminary Injunction [Mot.] at 1). In their Motion, Plaintiffs argue that Perpetual's intent to create an easement was evidenced by the November 2, 1976 Letter "proposing the public dedication" and "the bank's 'affirmative act' of building the Plaza in 1978 in conformity with the dedicated use." (Mot. at 4). Plaintiffs then argue that "[e]vidence of acceptance of the easement by public dedication includes a 1977 agreement by community organizations to withdraw a protest against Perpetual's application to build a branch on the site. . . and 38 years of continuous public use of the space." (*Id.* at 4-5). Plaintiffs rely on multiple Washington Post articles from the late 1970s to support their assertion that an easement by dedication of the SunTrust Plaza was part of an agreement with the community organizations to withdraw their protests of Perpetual's application to the FHLBB. (*Id.* Exs. 6-8).

On July 19, 2017, and July 27, 2017, this Court heard argument and testimony from the parties on Plaintiffs' Motion for Preliminary Injunction. Ms. Mary Belcher testified that she is a member of KCA. *See* **Exhibit B** – Transcript of July 19, 2017 Hearing ["July 19 Tr."], Testimony of Mary Belcher ["Belcher Test."] at 8:10-12. Ms. Belcher testified that KCA passed a resolution opposing the Developer Defendants' plan to build on the SunTrust Plaza and that such resolution "doesn't use the word easement but it asks P.N. Hoffman and SunTrust to confirm the agreement that was made with Perpetual Bank." *See* Ex. B – July 19 Tr., Belcher Test. at 11:11-23. The remainder of Ms. Belcher's testimony consisted of describing the SunTrust Plaza and the role it plays in the Adams Morgan community. Ms. Marie Mahikian testified that she was the executive director of the Adams Morgan Organization ("AMO") in the 1970s and took part in the negotiations between the community organizations like AMO and Perpetual regarding the design and construction of the Adams Morgan bank branch. *See* Ex. B – July 19 Trans., Testimony of Marie Mahikian ["Mahikian Test."] at 25:13-14; 33:1-16. Ms. Mahikian further testified she does not remember whether she had ever seen a written agreement between Perpetual Bank and AMO reflecting Perpetual Bank's agreement to dedicate the SunTrust Plaza to public. *See id.* at 41:8-42:3. Ms. Mary Gomez testified for Plaintiffs as to the role the farmers market plays in the community. *See* Ex. B – July 19 Trans., Testimony of Mary Gomez at 46:23 – 53:4. Defendants offered the testimony of Mr. Dan Simons, Group Vice President of SunTrust. Mr. Simons testified that when Crestar Bank, predecessor in interest to SunTrust Bank, purchased the Property from Perpetual Bank's receivership estate, Crestar Bank undertook a title search of the Property in 1992 which revealed that there were no easements recorded in the land records. *See* Ex. B – July 19 Tr., Testimony of Dan Simons ["Simons Test."] at 68:16-22. Mr. Simons further testified as to SunTrust's ownership of the property and

process it used to issue temporary use agreements and licenses authorizing use of the property by groups other than SunTrust, including the vendors at the farmers market. *Id.* at 71:17 – 74:9.

At closing arguments on July 27, 2017, counsel for Plaintiffs argued that the November 2, 1976 Letter from Perpetual Bank to the Adams Morgan community was the key document to establish Perpetual Bank's intent to provide the public an easement by dedication. *See* **Exhibit C** – Transcript of July 27, 2017 Hearing ["July 27 Tr."] at 106:25 – 107:5. Plaintiffs further argued that the public's use of the space was clear evidence of acceptance of the offer of easement by dedication. *Id.* at 105:18-20, 106:17-18. Plaintiffs also concede that the Property, including the SunTrust Plaza is private property owned in fee simple by SunTrust. *Id.* at 116:16-17, 122:14-16.

On August 4, 2017, this Court granted Plaintiffs' Motion for Preliminary Injunction. This Court reasoned that under the case law presented in briefing and at the hearings, most of which came from jurisdictions other than the District of Columbia, Plaintiffs had established a likelihood of success on the merits. The Court stated that the November 2, 1976 Letter evidenced an intent by Perpetual Bank to develop the Property, including the SunTrust Plaza, in a certain manner. *See* **Exhibit D** – Transcript of August 4, 2017, Ruling of Court at 15:6-10. This Court also found that acceptance by the public was established by the public's history of use of the SunTrust Plaza. *See id.* at 17:14-18.

I. LEGAL STANDARD

A. DISSOLUTION OF INJUNCTIONS.

In the District of Columbia, a party requesting injunctive relief must demonstrate:

> (1) whether there is a substantial likelihood that the movants will prevail on the merits; (2) whether they are in danger of suffering irreparable harm during the pendency of the action if the injunction is not granted; (3) whether the balance of the equities is in their favor; and (4) whether the public interest would be disserved by the issuance of an injunction.

District of Columbia v. Reid, 104 A.3d 859, 865 (D.C. 2014) (citing *Wieck v. Sterenbuch*, 350 A.2d 384, 387 (D.C. 1976)). "A preliminary injunction is an extraordinary remedy, and the trial court's power to issue it should be exercised only after careful deliberation has persuaded it of the necessity of the relief." *Wieck*, 350 A.2d at 387

"[W]here an injunction [is] not 'transparently invalid or had only a frivolous pretense to validity,' (*i.e.*, was voidable but not void), the proper procedure [is] to seek to modify or dissolve the injunction in a timely fashion." *In re Scott*, 517 A.2d 310, 312-13 (D.C. 1986) (quoting *Walker v. City of Birmingham*, 388 U.S. 307, 315-318 (1967)). "A party moving to dissolve an existing injunction has the burden to demonstrate an unforeseen change of circumstances which would render it unjust to keep the court's order in effect." *Cruz-Foster v. Foster*, 597 A.2d 927, 930 (D.C. 1991) (citing *United States v. Swift & Co.*, 286 U.S. 106, 119 (1932)).

B. JURISDICTION AND STANDING.

Standing is a *threshold* jurisdictional question which must be addressed prior to and independent of the merits of a party's claim. *Welsh v. McNeil,* 162 A.3d 135 (D.C. 2017). A party's standing does not depend on the merits of the case but is a legal threshold a plaintiff must surmount before a court will decide the merits. *Grayson v. AT&T Corp.*, 15 A.3d 219 (D.C. 2011). The requirement of standing ensures that "the legal questions presented to the court will be resolved, not in the *rarified atmosphere of a debating society*, but in a concrete factual context conducive to a realistic appreciation of the consequences of judicial action." *Valley Forge Christian College v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 472 (1982) (emphasis added).

Because standing is jurisdictional, lack of standing may be raised at any time in a proceeding. *Speyer v. Barry*, 588 A.2d 1147, 1159 n.24 (D.C. 1991). The party invoking the jurisdiction of the court bears the burden to establish standing. *UMC Dev. v. District of*

Columbia, 120 A.3d 37, 43 (D.C. 2015). Here, each Plaintiff bears the burden of establishing standing. *See Grayson,* 15 A.3d at 246. "[W]hen a plaintiff's standing is called into question, the facts in the complaint must be accepted as true and must be 'construe[d] . . . in favor of the complaining party.'" *UMC Dev., LLC*, 120 A.3d at 43 (quoting *Grayson*, 15 A.3d at 232). But "it has been long accepted that the judiciary may make 'appropriate inquiry' beyond the pleadings to 'satisfy itself on authority to entertain the case.'" *Hasse v. Sessions*, 835 F.2d 902, 906 (D.C. Cir. 1987) (quoting *Gordon v. Nat'l Youth Work Alliance*, 675 F.2d 356, 362-63 (D.C. Cir. 1982)). "Thus, when a defendant makes a 'factual' (as opposed to a 'facial') attack" on the plaintiff's standing "the trial court may 'conduct an independent review of the evidence submitted by the parties, including affidavits, to resolve factual disputes concerning whether subject-matter jurisdiction exists." *UMC Dev., LLC*, 120 A.3d at 43 (quoting *Matthews v. Automated Bus. Sys. & Servs., Inc.*, 58 A.2d 1175, 1179 (D.C. 1989)). "Such is the scope of a trial court's review, and '[i]f . . . the plaintiff's standing does not adequately appear from all material of record, the complaint must be dismissed." *Id.* at 43-44 (quoting *Grayson*, 15 A.3d at 232).

II. ARGUMENT

A. PLAINTIFFS LACK STANDING TO BRING THIS CASE.

Plaintiffs have not demonstrated standing to bring this case. The Complaint lacks facts establishing standing and the record in the case establishes conclusively that Plaintiffs lack particularized injury sufficient to confer standing. Moreover, the relief Plaintiffs seek to recover is not capable of redress—the Court cannot award the plaintiffs a declaratory judgment or a permanent injunction as they do not represent the public or the District of Columbia.

1. The Requirements of Constitutional and Prudential Standing.

The District of Columbia Court of Appeals has held that courts should "apply in every case 'the "constitutional" requirement of a "case or controversy" and the "prudential" prerequisites of standing.'" *Friends of Tilden Park, Inc. v. District of Columbia*, 806 A.2d 1201, 1206 (D.C. 2002) (quoting *Speyer*, 588 A.2d at 1160). District of Columbia courts "look to 'federal standing jurisprudence, [both] constitutional and prudential." *Id.* (quoting *Speyer*, 588 A.2d at 1160). "The *sine qua non* of constitutional standing to sue is an actual or imminently threatened injury that is attributable to the defendant and capable of redress by the court." *York Apts. Tenants Ass'n v. D.C. Zoning Comm'n*, 856 A.2d 1079, 1084 (D.C. 2004) ("*YATA*"). "To establish constitutional standing, [plaintiffs] must show: (1) an injury in fact; (2) a causal connection between the injury and the conduct of which the party complains; and (3) redressability." *Padou v. D.C. Alcoholic Bev. Control Bd.*, 70 A.3d 208, 211 (D.C. 2013) (citing *Brentwood Liquors, Inc. v. D.C. Alcoholic Bev. Control Bd.*, 661 A.2d 652, 654-55 (D.C. 1995)). A plaintiff's "injury in fact" must be "an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." *Miller v. D.C. Bd. of Zoning Adjustment*, 948 A.2d 571, 574 (D.C. 2008) (citing *Friends of Tilden Park*, 806 A.2d at 1207). If a plaintiff cannot meet all prongs of the test, the Court should dismiss the case for lack of standing.

Prudential standing addresses a party's legal rights. "A mere interest in a problem, no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to render the organization adversely affected or aggrieved for standing purposes." *YATA*, 856 A.2d at 1084; *see also Equal Rights Ctr. v. Props. Int'l*, 110 A.3d 599, 604 (D.C. 2015) ("[A]n organization's mere interest in a problem or its opposition to an unlawful practice is not sufficient to demonstrate injury in fact, nor is a simple

setback to an organization's abstract social interests.") (citations omitted). "[T]he question of standing turns on whether the organization's activities in pursuit of that mission have been affected in a sufficiently specific manner as to warrant judicial intervention." *D.C. Appleseed Ctr. for Law & Justice, Inc. v. D.C. Dep't of Ins.*, 54 A.3d 1188, 1206 (D.C. 2012). "Similarly, 'the mere fact that an organization redirects some of its resources to litigation and legal counseling in response to actions or inactions of another party is insufficient to impart standing upon the organization.'" *Friends of Tilden Park, Inc.*, 806 A.2d at 1207 (quoting *Nat'l Taxpayers Union, Inc. v. United States*, 68 F.3d 1428, 1434 (1995)). "Furthermore, under the so-called prudential principles of standing, a plaintiff may only assert its legal rights, [and] may not attempt to litigate generalized grievances." *Padou*, 70 A.3d at 211 (citations omitted).

2. Plaintiffs Do Not Have Particularized Injury and Assert Mere Generalized Grievances.

Plaintiffs cannot establish that they will suffer any "concrete and particularized" injury that is "actual or imminent." Under settled District of Columbia law, a plaintiff may not demonstrate an injury in fact merely by relying upon harms to the public at large. Under principles of constitutional and prudential standing, "when the asserted harm is a 'generalized grievance' shared in substantially equal measure by all or a large class of citizens, that harm alone normally does not warrant exercise of jurisdiction." *Warth v. Seldin*, 422 U.S. 490, 499 (1975); *see also YATA,* 856 A.2d at 1084.

In *YATA,* a tenant association sought review of the Zoning Commission's grant of permit to The George Washington University ("GWU") to modify a previously approved Planned Unit Development ("PUD"), across the street from an apartment building. *Id.* at 1085. Plaintiff argued that the Zoning Commission's grant of permit was in error and that the Zoning Commission failed to weigh sufficiently the recommendations and testimony of the Advisory

Neighborhood Commission. *Id.* at 1084. Specifically, the plaintiff alleged that the "Zoning Commission's decision to grant GWU's request to modify the original PUD will result in the loss of new property tax revenue, new jobs, and new and essential housing in the Downtown area." *Id.* Additionally, plaintiff alleged that its members, who live across the street from the planned classroom/dormitory building, would be injured because the approved revised PUD would be "injurious to their rights as permanent residents interested in the quiet enjoyment of their homes" including "what its residents see and hear out their windows, as well as the livability of their neighborhood." *Id.* at 1085. The court held that plaintiff "failed to allege any actual injuries suffered by its members that are not generalized grievances" and that the alleged injuries were "not personal to YATA, but generalized grievances affecting the Downtown area at large." *Id.* at 1084. Further, the court found that "the alleged threat to YATA's members' quiet enjoyment of their homes is merely conjectural and hypothetical; YATA fails to articulate a concrete and specific threat or injury." *Id.* at 1085.

Plaintiffs here cannot demonstrate a particularized injury in fact. At the injunction hearing, Plaintiffs' witnesses testified:

- The plaza contains a raised porch which is used as a bandstand on Adams Morgan Day. (Ex. B, July 19 Tr. at 17).
- The farmers market on Saturdays is "an asset to the neighborhood" and "a joyful place." (*Id.* at 19, 48).
- Families can use WIC vouchers from the District of Columbia government at the farm market to obtain fresh vegetables. (*Id.* at 49).
- The plaza is "a place where people can gather and socialize on Saturdays." (*Id.* at 52).

- Various running races have used the plaza as a gathering space before runs and other public events have been sponsored at the plaza. (*Id.* at 58-59).

Like the plaintiffs in *YATA*, the Plaintiffs cannot show a concrete and specific injury that they or their members will sustain. Complaints about inability to buy fresh fruit from a farmer's market and loss of "a joyful place" are generalized and do not constitute cognizable constitutional harm sufficient to confer standing. *See YATA*, 856 A.2d at 1084 (organization's argument that administrative board violated law in rejecting the organization's position was a "generalized grievance" and "not personal to petitioner."). Also, the harm that Plaintiffs allege, *i.e.* loss of the "use and enjoyment of the Plaza and the vital civic, cultural, artistic, and nutritional benefits provided to these members by the Plaza," (Compl. ¶ 40), is identical to the alleged harm the plaintiffs in *YATA* relied upon, and the Court of Appeals rejected such argument as a basis on which to establish standing. Specifically, any loss of use or enjoyment of the Plaza, whether for socializing or the farmer's market, are not personal to the Plaintiffs but generalized grievances affecting the Adams Morgan area at large.

3. The Injury is Not Redressable by the Court.

Even assuming Plaintiffs can show injury, the Court cannot redress the alleged harm and thus prudential standing is lacking. Prudential standing requires that a party must assert his own legal rights and interests and cannot base a claim of standing on the legal rights or interests of other parties. *See Welsh,* 162 A.3d at 147; *Speyer*, 588 A.2d at 1160 (prudential standing requirements are in place to provide a concrete factual context and "insure that the legal questions presented to the court will be resolved" and not present abstract debates). Plaintiffs do not possess any rights to the easement and cannot enforce the alleged easement described in the Complaint. They are simply not the appropriate parties to hold an easement, receive a declaratory judgment, or obtain an injunction and for these reasons Plaintiffs lack standing.

Plaintiffs rely upon a 1976 letter sent to residents of the Adams Morgan area by the President of Perpetual as the documentary evidence of the establishment of an easement by dedication. *See* Ex. A. But nothing in the letter establishes that any agreement was made with these specific Plaintiffs to confer upon them rights with respect to the purported easement on the SunTrust Plaza.[1] Also, nothing in the Complaint establishes how these plaintiffs can enforce an easement purportedly provided to the public, *i.e.* the District of Columbia. These plaintiffs admittedly represent only a fraction of the residents of the District of Columbia.[2] (*See* Compl. ¶ 2 ("Plaintiff Kalorama Citizens Association [] is an all-volunteer organization founded in 1919 to address issues of importance to residents of the Adams Morgan neighborhood."); *id.* ¶ 4 ("[AMRD]'s purposes include protecting and preserving the personal and property interests of residents and families, including those living, working, and playing in the historic and unique Adams Morgan neighborhood.")). Plaintiffs offer no explanation as to how they are able to act on behalf of and purportedly represent the entire population of the District of Columbia in seeking a declaration of a public easement. Indeed, the attorney general of the District of Columbia is responsible for enforcing legal interests of the District and protecting the public interest. *See* D.C. Code § 1-301.81 ("The Attorney General for the District of Columbia . . . shall have charge and conduct all law business of the said District . . . and shall be responsible for upholding the public interest.")

Though the Complaint alleges that Perpetual agreed with community organizations "to a set of detailed policies designed to end redlining and dedicate the Plaza for public use," (Compl.

[1] Defendants note that the Complaint admits that Plaintiff AMRD was organized pursuant to the District of Columbia's Uniform Unincorporated Non-Profit Association Act of 2010. As such, AMRD could not have been a party to any agreement entered into by Perpetual Bank in 1976.

[2] Defendants note that the Complaint admits that Plaintiff KCA's membership boundaries encompass only two of the four historic districts within Adams Morgan. (Compl. ¶ 2). As such, KCA does not even represent the whole of the Adams Morgan community.

¶ 24), no such agreement is provided in the Complaint and no such testimony establishing that that such written agreement exists was provided by Plaintiffs' witnesses at the hearing on preliminary injunction. *See* **Exhibit B** – July 19 Trans., Mahikian Test. at 41:5 – 42:3 (Q: And the only question that I have is, have you seen an agreement that lays out all the issues that you just discussed that have signatures by each parties [sic]? A: In the last number of years no. Absolutely. Q: And ever in your whole life? A: I do not remember.).

There simply is no justiciable controversy between the Plaintiffs and the Defendants. For all these reasons, Plaintiffs do not have standing, constitutional or prudential, to bring this action. Accordingly, this Court should dissolve the preliminary injunction entered on August 4, 2017, and the Complaint should be dismissed.

B. THE D.C. UNIFORM CONSERVATION EASEMENT ACT BARS THIS ACTION.

Even if the Court were to find that Plaintiffs have standing, District of Columbia law bars this action. Within the briefing and at the arguments on Plaintiffs' Motion for Preliminary Injunction, the parties did not raise and the Court did not consider the applicable requirements of the D.C. Code in assessing the "likelihood of success on the merits" element of the injunction standard. In finding that Plaintiffs had shown a likelihood of success on the merits, this Court relied extensively upon *Smith v. Smith*, 282 S.E.2d 76, 82 (Ga. 1981) wherein the Georgia Supreme Court stated that acceptance by the public for public use is sufficient to complete a dedication without acceptance by the appropriate public authorities. *See* **Exhibit D** – Transcript of August 4, 2017 Ruling of Court at 16:15-23. The Court then references two Maryland cases to conclude that the public's long use of the SunTrust Plaza established acceptance of the easement by dedication. *Id.* at 16:24 – 17:18. The cases relied upon by the Court do not address applicable statutory law, namely the enactment of the Uniform Conservation Easement Act of

1986 by the District of Columbia.

The Court's determination that an unwritten, unrecorded "public easement by dedication" may exist contravenes the Uniform Conservation Easement Act of 1986 ("DC UCEA"). *See* D.C. Code § 42-201, *et seq.* A conservation easement is a restriction that bars the owner of real property from altering the ecological, natural, open, or scenic features of the property. 12 UNIFORM LAWS ANNOTATED 166 (2008). Conservation easements are a means of protecting important land and open space for the benefit of the public. *Id.* In 1981, the National Conference of Commissioners on Uniform State Laws approved and recommended for enactment by states the Uniform Conservation Easement Act ("UCEA"). *Id* at 165. The drafters of the UCEA recognized the benefits of preservation of land for public use and the need for uniformity among various states. The common law in most jurisdictions barred conservation easements or placed legality in doubt given that restrictions on alienability of private property were disfavored. *Id.* at 167-68 ("The Act has the relatively narrow purpose of sweeping away certain common law impediments which might otherwise undermine the easements' validity, particularly those held in gross.") The UCEA allows for the creation, enforcement, and alienability of conservation easements for tax and other purposes, provided that the statutory prerequisites are met. *Id* at 168.

Consistent with the national movement, the District of Columbia enacted the DC UCEA in 1986. The DC Council, in passing the DC UCEA, stated expressly the purpose of the enactment: "To permit the creation of durable restrictions and affirmative obligations to be attached to real property to protect natural and historic resources in the public interest." *See* **Exhibit E** "District of Columbia Uniform Conservation Easement Act of 1986," D.C. Law 6-113, 33 D.C. Reg. 1996 (May 16, 1986) previously codified at D.C. Code 45-2401, *et. seq.*, now

codified at D.C. Code § 42-201, *et seq*. As Plaintiffs concede in their Motion for Preliminary Injunction, the District of Columbia follows the common law of Maryland unless such common law is superseded by statute. (Mot. at 3); *see also* D.C. Code § 45-401(a) ("The common law, all British statutes in force in Maryland on February 27, 1801 . . . in force in the District of Columbia on March 3, 1901, shall remain in force except insofar as the same are inconsistent with, or are replaced by, some provision of the [D.C.] Code."); *Sigmund v. Progressive Northern Ins. Co.*, 374 F. Supp. 2d 33, 36 (D.D.C. 2005) ("If there is no D.C. law on point, 'the District of Columbia courts should look to the law of Maryland for guidance.") (quoting *Conesco Indus., Ltd. v. Conforti & Eisele, Inc.*, 627 F.2d 312, 316 (D.C. Cir. 1980); *Pederson v. Wirth*, Case No. 4347-03, 2003 D.C. Super. LEXIS 33, at *11 (D.C. Super. Ct. May 21, 2003) ("Of course, both national and local governments have the power to change, alter, amend or dispense with Common Law principles."). As shown below, the DC UCEA expressly governs the circumstances here without the need to turn to any law outside of the District of Columbia.

The DC UCEA governs the type of easement Plaintiffs are trying to assert in this action. The DC UCEA defines "conservation easement" as a:

> [N]onpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or *open-space values of real property*, ensuring its availability for agricultural, forestal, recreational, or *open-space use*, protecting natural resources, maintaining or enhancing air or water quality, or *preserving the historical, architectural*, archaeological, *or cultural aspects of real property*.

D.C. Code § 42-201(1) (emphasis added). The "holder" of a conservation easement is defined as a governmental body or a charitable corporation, charitable association, or charitable trust "the purpose or powers of which include retaining or protecting . . . *open-space values of real property*, ensuring the availability . . . for . . . recreational, or *open-space use*, . . . or *preserving the historical, architectural*, . . . *or cultural aspects of real property*. D.C. Code § 42-201(2)(A)-

(B) (emphasis added).

Plaintiffs rely on the exact terms utilized in the DC UCEA to justify the purported easement. The Complaint relies heavily on the 1976 Letter from Perpetual that states that the SunTrust Plaza was to be developed to "preserve its open quality." *See* Ex. A; *see also* Compl. ¶ 6 ("Throughout the years, the Plaza has hosted hundreds of civil, cultural, athletic, spiritual, and musical events, as well as political and social activities, as is the heart of the Adams Morgan neighborhood."); *id.* ¶ 40 ("Destruction of the easement would cause plaintiffs' members to lose the use and enjoyment of the Plaza and the vital civic, cultural, artistic, and nutritional benefits provided to these members by the Plaza."). The relief requested by Plaintiffs is encompassed in the definition of "conservation easement," specifically a non-possessory interest in real property imposing limitations or affirmative obligations on the owner of the property. The DC UCEA addresses the exact situation here - when a purported holder of a non-possessory interest seeks to enforce such interest against the property owner's attempt to infringe upon the conservation easement:

> Whenever a recorded conversation easement has been registered with the Mayor, written consent of the holder of the *registered and recorded conservation easement* shall be required prior to . . . the issuance of a permit for construction, demolition, alteration or repair, except solely for interior work.

D.C. Code § 42-202.01 (emphasis added). Here, there is no dispute that a recorded easement of the SunTrust Plaza is not contained in the Land Records of the District of Columbia or registered with the Mayor's office. Plaintiffs lack a written, recorded easement held by the District of Columbia or other appropriate entity. For these reasons alone, Plaintiffs' Complaint is barred.

The DC UCEA similarly bars Plaintiffs from seeking to enforce the purported easement. To the extent that Plaintiffs allege some sort of third-party interest in an alleged easement by dedication, the UCEA precludes such interest as well. A "third-party right of enforcement" is

defined as "a right provided in a conservation easement to enforce any of its terms granted to a governmental body, charitable corporation, charitable association, or charitable trust, which, although eligible to be a holder, is not a holder." D.C. Code § 42-201(3). Under D.C. Code § 42-202(b), Plaintiffs cannot seek to enforce the purported easement because "[n]o right or duty in favor of or against a person having a third-party right of enforcement arises under a conservation easement before its acceptance by the holder and a recordation of the acceptance." Here, Plaintiffs do not allege that they have specifically been provided with an easement to the SunTrust Plaza. They do allege that the rights provided by the purported easement were made to and accepted by the public. (*See* Compl. at ¶ 38) ("The public accepted the easement offered by Perpetual, both through the agreement by community organizations to withdraw their FHLBB protest in 1977 and the long and uninterrupted use of the Plaza by members of the public."). Yet, Plaintiffs do not argue that they are holders of the purported easement or that the purported easement confers upon them any third-party right of enforcement. Further, it is undisputed that there is no recordation of the purported easement or any acceptance by a holder of such purported easement in the Land Records of the District of Columbia. As such, the DC UCEA prevents any right of third-party enforcement of the purported easement.

Should Plaintiffs argue that an easement by dedication is somehow distinct from a conservation easement, the DC UCEA specifically rejects such argument. The DC UCEA "applies to any interest created before May 16, 1986, if it would have been enforceable had it been created after May 16, 1986, unless retroactive application contravenes the laws of the District of Columbia or the United States." D.C. Code § 42-204(b). Regarding conservation easements created after the enactment of the statute, the DC UCEA provides that "[t]his chapter applies to any interest created after May 16, 1986, which complies with this chapter, *whether*

designated as a conservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise." D.C. Code § 42-204(a) (emphasis added).[3]

Retroactive application of the DC UCEA does not contravene the laws of the District of Columbia. Plaintiffs are seeking to enforce an unrecorded alleged easement created in 1976 and deem it binding on subsequent purchasers of the property. District of Columbia law does not allow of this type of negative restriction to run with the land unless it is a written, recorded interest. *See Mays v. Burgess,* 147 F.2d 869, 872 (D.C. Cir. 1945) (a covenant is only binding on a purchaser who takes with notice of the covenant). Similarly, as discussed below, an unwritten, unrecorded easement violates the District of Columbia statute of frauds.

Lastly, the DC UCEA provide a right of action to four (4) specifically enumerated persons:

> An action affecting a conservation easement may be brought by 1 of the following: (1) An owner of an interest in the real property burdened by the easement; (2) A holder of the easement; (3) A person having a third-party right of enforcement; or (4) A person authorized by other law.

D.C. Code § 42-203(a). Assuming, *arguendo*, that it could be established that an easement encumbered the SunTrust Plaza, because such easement would be governed by the DC UCEA, Plaintiffs would have to establish that they have authority to bring this action as one of the four enumerated persons provided a right of action under the statute. Plaintiffs cannot accomplish this. Plaintiffs admit that SunTrust is the owner of the SunTrust Plaza. (*See* Compl. ¶ 8) ("Upon information and belief, SunTrust has owned the Plaza since its 2000 acquisition of Crestar Bank and all its assets."). Further, Plaintiffs have not alleged that they are specifically the intended

[3] In *Martin v. Bicknell*, 99 A.3d 705, 708 (D.C. 2014), the D.C. Court of Appeals addressed the different types of easements recognized by D.C. common law, including express easements, implied grants of an easement, implied reservations of easement, and prescriptive easements. The *Martin* court does not mention easements by public dedication presumably because such easements, if they exist at all, are subsumed by the DC UCEA.

recipients of the purported easement or that the easement explicitly provides each Plaintiff with a third-party right of enforcement. Also, Plaintiffs have not alleged that they are authorized under an applicable law to enforce the purported easement. As such, Plaintiffs ability to bring this action is foreclosed upon by the specific provisions of the DC UCEA.

C. PLAINTIFFS' CLAIMS ARE BARRED BY THE STATUTE OF FRAUDS.

Because this action is one involving an agreement concerning land and which cannot be performed within one year, the District of Columbia Statute of Frauds is applicable. Pursuant to D.C. Code § 28-3502, any agreement regarding interest in real estate or that cannot be performed within one year of the making of the agreement must be in writing to be enforceable. *See Stancil v. First Mt. Vernon Indus. Loan Ass'n*, 131 A.3d 867, 872-73 (D.C. 2014) (stating that the statute of frauds requires "that certain agreements, including those concerning real estate, must be in writing to guard against perjury and protect against unfounded and fraudulent claims.") (quoting *Railan v. Katyal*, 766 A.2d 998, 1007 (D.C. 2001)).

Here, the only document upon which the Plaintiffs base their claim for the purported easement by dedication is the November 2, 1976 letter from Perpetual Bank to the Adams Morgan community. To the extent that this letter can be interpreted as addressing a purported agreement regarding the design of the SunTrust Plaza, such letter clearly references an agreement made prior to November 2, 1976, and which is not attached to the letter. *See* Ex. A ("Following these meetings Perpetual agreed to develop the property in such a way as to preserve its open quality, attractiveness and accessibility to the vendors that presently use it. . . After these preliminary decisions were made, meetings continued with the Adams-Morgan Organization, their Board of Directors and the community at large."). The genesis of Plaintiffs' claims is that Perpetual Bank dedicated an easement to the general public encumbering the SunTrust Plaza, and that such easement was to continue in perpetuity. Because the Complaint's

sole cause of action seeks enforcement of an agreement affecting land and which cannot be completed within one year of its making, the D.C. Statute of Frauds requires that such agreement be in writing. The only document provided in this action that addresses the purported easement is the 1976 letter, which only referenced an agreement. Nothing provided by Plaintiffs has established that the purported agreement they seek to enforce complies with the requirements of the D.C. Statute of Frauds.

III. CONCLUSION.

For the reasons stated above, Plaintiffs Kalorama Citizen Association and Adams Morgan For Reasonable Development have no constitutional or prudential standing to bring this action and their claims are barred by the D.C. Uniform Conservation Easement Act and the D.C. Statute of Frauds. Accordingly, Defendants respectfully request that this Court dissolve the preliminary injunction granted to Plaintiffs on August 4, 2017 and order that this action is dismissed for Plaintiffs lack of standing and failure to state a claim.

Dated: September 27, 2017

Respectfully submitted,

SUNTRUST BANK COMPANY

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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of September, 2017, I filed the foregoing with CasefileXpress, which will send a notice of electronic filing to the counsel listed below:

Paul Zuckerberg, Esq.
Counsel for Plaintiffs

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EXHIBIT A

APPENDIX 3

Perpetual
Federal Savings

November 2, 1976

Dear Customers and Friends in Adams-Morgan:

Over the past several years many residents of the Adams-Morgan area have suggested that we establish a branch in their neighborhood. To this end our Association purchased the old "B-P" site at the corner of 18th and Columbia Road several months ago, having previously met with members of the Adams-Morgan organization, as well as other representatives of the business community, the Spanish-speaking community, and other civic groups.

Following these meetings Perpetual agreed to develop the property in such a way as to preserve its open quality, attractiveness and accessibility to the vendors that presently use it. Present plans call for a bilingual branch housed in a modest three-story building placed as far back as possible in order to allow ample room for vendors and other open-air activities.

After these preliminary decisions were made, meetings continued with the Adams-Morgan Organization, their Board of Directors and the community at large. As might be expected there were some residents of Adams-Morgan who were uncertain as to what might be the impact of a Perpetual branch location in the community. In order to allay these fears, Perpetual has emphasized its record of preferential loan treatment for owner-occupants. In addition, Perpetual has indicated not only its willingness, but its strong desire, to work with neighborhood groups in providing home ownership opportunities for existing residents. It has been, and is, Perpetual's desire to be a constructive, socially-aware member of the Adams-Morgan community.

Nevertheless, to our disappointment, attorneys for the Public Interest Research Group, representing the Adams-Morgan Organization, filed a petition with the Federal Home Loan Bank Board in Atlanta asking that our request for a branch office be denied. This, we assume, was based on a poll which showed 28% in favor of the branch, 42% opposed and the remaining 30% a qualified "in favor". Perpetual feels that a poll showing at least 58% as favorable, or favorable under certain conditions, in no way indicates opposition to our proposed branch on the part of the overall Adams-Morgan community.

This is the reason that we are asking our customers and friends in the Adams-Morgan area to indicate their feelings on the enclosed card and return it to us. It is our conviction that our branch office proposal is supported by the great majority of Adams-Morgan residents. In order to prove this, we need your vote of confidence, not only on the enclosed card, but in your talks with your friends and neighbors.

The hearings in Atlanta are scheduled for Nov. 9. Please let us know by means of the enclosed card whether or not you wish to have a Perpetual branch in Adams-Morgan.

We thank you in advance for your thoughts, and we hope, for your support.

Sincerely,

Thomas J. Owen

Thomas J. Owen
President

Main Office Eleventh and E Streets, Northwest • Washington, D.C. 20004 • Telephone 783-7700

APPENDIX 4

To determine our customers' attitude towards the proposed new branch, we would appreciate you answering the following question.

QUESTION: Do you favor Perpetual establishing a new branch office at Columbia Road & 18th St. N.W., Washington, D.C.?

YES ☐ NO ☐

Comments: _____

_____

_____

This card is prepaid for your convenience.

Thank you for your cooperation.

FIRST CLASS
Permit No. 461-R
Washington, D.C.

PERPETUAL FEDERAL SAVINGS
Eleventh and E Streets, N.W.
Washington, D.C. 20004

EXHIBIT B

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

KALORAMA CITIZENS ASSOCIATION, et al.,	:	
Plaintiffs,	:	
v.	:	Civil Action No. 2017 CAB 4182
SUNTRUST BANK COMPANY, et al.,	:	
Defendants.	:	

Washington, D.C.
Wednesday, July 19, 2017

The above-entitled action came on for a Preliminary Injunction Motion Hearing before the Honorable TODD EDELMAN, Associate Judge, in Courtroom Number 212, commencing at approximately 3:00 p.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS THE TESTIMONY AND RECORDS OF TESTIMONY AND PROCEEDINGS IN THE CASE AS RECORDED.

APPEARANCES:

On behalf of the Plaintiffs:
PAUL ZUKERBERG, Esquire
Washington, D.C.

On behalf of the Defendants:
JONATHAN JACOBS, Esquire
MICHAEL ROSS, Esquire
Washington, D.C.

JACQUELINE L. WOOD,
Official Court Reporter Telephone: 879-1795

TABLE OF CONTENTS

On behalf of Plaintiffs:	Direct	Cross	Redirect
Mary Belcher	7	--	--
Marie Mahikian	24	37	44
Mary Gomez	47	--	--
Nancy Shia	55	--	--
On behalf of Defendants:			
Dan Simons	65	85	--

EXHIBITS

On behalf of Plaintiffs:	Admitted
6	64
On behalf of Defendants:	Admitted
1	38,98
2	42,98

B E L C H E R. And my address is 1869 Mintwood Place, Northwest, Apartment 44, Washington, D.C., 20009.

Q. And is that in the Kalorama triangle historic district?

A. Yes.

Q. And how long have you lived in Kalorama?

A. I've lived there on and off between the 70s and the 80s and continuously since 1990.

Q. All right. And are you a member of the Kalorama Citizens Association?

A. Yes.

Q. And how long have you been a member of KCA?

A. My best guess is 18 to 19 years.

Q. All right. And that is an all volunteer organization founded in 1919; is that correct?

A. The yes.

Q. And one of its goals is to represent the community in issues that are important to the Adams Morgan neighborhood; is that true?

A. Yes.

Q. And that can range from maintaining active attractive streets, parks, communities and broader issues like zoning, land use planning, economic

Citizens Association?

A. I'm sorry. Is that a separate exhibit?

Q. I'm sorry. 3A is the constitution of the Kalorama Citizens Association. It might be on the back of 3.

A. Could you point it out to me?

Q. Yes. Let me draw your attention to 3A. Is this the constitution of the Kalorama Citizens Association?

A. Yes, it is.

Q. And let me draw your attention to a document following 3A. Is that a resolution passed by the Kalorama Citizens Association opposing P.N. Hoffman's plan to build on the SunTrust Plaza?

A. Yes. The members passed this resolution.

Q. Let me ask you to turn to page 3, paragraph 4 of that resolution. Does the resolution specifically address the issue of an easement on the property of Perpetual Bank on the SunTrust Plaza?

A. Yes. It addresses the Plaza. It doesn't use the word easement but it asks P.N. Hoffman and SunTrust to confirm the agreement that was made with Perpetual Bank.

Q. Are you personally familiar with the SunTrust Plaza?

Q. I understand that from 1970 to 1982 you lived in Adams Morgan on Mintwood Place; is that correct?

A. Yes.

Q. And then subsequently you moved to another address on Columbia Road in Adams Morgan?

A. Yes.

Q. Before moving. Now you live in Philadelphia; is that correct?

A. That's correct.

Q. Turning your attention to 1972 were you hired for a position at that time?

A. Yes. I was hired as the first executive director of the Adams Morgan Organization. I had worked in a volunteer capacity.

Q. Can you tell the Court what the Adams Morgan Association is?

A. The Adams Morgan Organization was a nonprofit 501C-3 but modeled on a bit of a unique structure for community and neighborhood government where there were single member districts where neighbor residents were elected to represent them. There were five districts. And there was a based on a town hall meeting.

So even though there were elected

Q. And you did reach an agreement with Perpetual?

A. We reached an agreement which was actually pretty detailed.

Q. I know there's a lot of different parts to the agreement. But the agreement that you reached with Perpetual did anything concern the Plaza itself, the physical uses of the Plaza?

A. Yes. They agreed to design a building that would allow for continued as we said perpetual use of the public space as the kind of heart of the community.

And in fact, I think the discussions with Perpetual reflected the fact that they were kind of proud to be Perpetual at the heart of the community at that location.

Q. Did Perpetual present the design to you for your?

A. Not me personally.

Q. But to AMO before it was built? Is that yes?

A. Yes.

Q. And did the agreement with Perpetual that you reached at that time say anything about the continued use of it as a farmers market?

not memorialized in the signed writing between AMO and Perpetual?

A. It's certainly not memorialized in this letter.

Q. Not in the letter. Just generally in the signed writing?

A. I don't know if that's the case or not.

Q. Okay. Do you see any signed writing where it lays out all the issues that you just said and then had signatures?

A. I've seen it in various places from reports in the media and the press.

Q. And I want to be very clear just so we understand each other. I'm talking about an agreement that says the parties agree to this and it has signatures here and signatures there. And it has signatures of AMO and signatures of Perpetual?

A. I think to my knowledge there was an agreement. Where the Adams Morgan Organization files are at this point I do not know.

Q. And the only question that I have is, have you seen an agreement that lays out all the issues that you just discussed that have signatures by each parties?

A. In the last number of years no.

Absolutely.

Q. And ever in your whole life?

A. I do not remember.

Q. Don't remember whether you saw it. Okay. I want to show you this loan policy agreement. Okay? I'm going to turn to that really quickly.

Do you see where it says here at the top of the page it's a loan policy agreement?

A. Yes.

Q. Does this look like the agreement that's referenced in the previous letter?

A. As far as I can tell, yes. I don't really know since I can't see it all.

THE COURT: This will be Defendant's 2, Mr. Jacobs.

(Defendant's Exhibit No. 2 was admitted into evidence.)

MR. JACOBS: This will be Defendant's 2. Thank you, Your Honor.

BY MR. JACOBS:

Q. We'll call this loan policy agreement Defendant's 2. And I'm going to point you down to the bottom.

Do you see here the signature blocks for this agreement?

the design was discussed and there had never been actually very much controversy about it other than people really wanted it and Perpetual agreed.

BY MR. ZUKERBERG:

Q. And the agreement to develop the Plaza in a certain way architecturally was reached it looks like 7 months before the loan policy agreement?

A. The loan policy was much harder. Much hard.

MR. ZUKERBERG: Okay. Thank you.

THE COURT: All right, ma'am. You're excused. Thank you very much.

THE WITNESS: Thank you.

THE COURT: Any need to recall?

MR. ZUKERBERG: No.

THE COURT: You can remain in the courtroom once you're done. You can have a seat. Thank you. Mr. Zukerberg, any further witnesses?

MR. ZUKERBERG: Yes. Is Mary Gomez available?

THE COURT: Good afternoon, ma'am. Come up and be sworn when you get here.

Thereupon,

MARY GOMEZ,

having been called as a witness for and on behalf of the Plaintiffs, and having been first duly sworn by the Deputy

Clerk, was examined and testified as follows.

DIRECT EXAMINATION

BY MR. ZUKERBERG:

Q. Ms. Gomez, would you please state your full name and give us your business address for the record.

A. Mary Gomez. Business is Mary Center, 2333 Ontario Road, Northwest, Washington, D.C. 20009.

THE COURT: I'm sorry. It's called the what center?

THE WITNESS: Mary Center.

THE COURT: Mary Center. Thank you.

BY MR. ZUKERBERG:

Q. And how long have you been the executive director?

A. I was the founder and we founded it in October of 1988.

Q. Can you tell us what services Mary Center performs?

A. In summary we provide primary care, social services for the entire family. And then the dual generational education for both the parents and the children.

Q. And is this an Adams Morgan neighborhood?

A. Adams Morgan, Petworth, Fort Totten and also Maryland.

Q. Okay. Are you familiar with the Adams Morgan farmers market?

A. Very much so.

Q. How are you familiar with it?

A. Well, one, I use it is a lot personally myself. It's a joyful place. I do my marketing there on Saturdays. I have grown up in that neighborhood both Adams Morgan and Mount pleasant. So personally it's very dear to me.

In addition to the fact that because we are a medical clinic we prescribe vouchers for families to go and actually get their food at the farmers market. This is something that the community is very used to when they used to live in that community obviously.

But they also now come to that community because that's a place where they still go to play. They still come to the clinic there. Many of them work in that neighborhood. So it's very much used all the time.

And our providers count on people actually talking to some of the farmers about how to encourage the families to make it easy for them. To

use the vouchers and all that.

Q. You mentioned these vouches. Are these vouchers from the D.C. government?

A. Yes. The WIC program.

Q. WIC program, W I C?

A. Yes. The women and infant children's program.

Q. So the women and infant children's program. And does that program provide free farmers market produce to certain people?

A. Yes. Fresh food. And I think one of the things that is important for us is because not only is it fresh food because we all want fresh food, it's also because of many of our families. Because housing is such a luxury in the city they also, many of our folks don't have refrigeration.

So for them they buy for that day, for that week fresh vegetables that they know how to cook that they use very wisely. So it's a really important educational piece for our families.

It's also a social place where people can gather and they talk to each other. They learn from each other. It's not only a place where they buy food they also tend to socialize around jobs, around child care. We also use that area to bring together

families to talk about issues of prevention of domestic violence. So because it's a place where people know and come to and have seen and live there. Many years ago they used to live there. So it's very geared to the family.

Q. Approximately how many clients have you sent over over the years through this WIC program or other comparable programs?

A. Well, just in Adams Morgan clinic we see about, in all of Mary Centers about 40,000 patients. But at the Adams Morgan clinic we have approximately about 25 to 30,000 of those patients are there.

So throughout the 30 years you can imagine how many people we've seen. I do not have actually the, we don't have the data to really give you that exact number.

But we know that we started as a prenatal program and the WIC program is a facility for pregnant women and children. We also have a lot of people on food stamps. We also use that program. So in the beginning we saw a lot of pregnant women and children. That was a source where we sent them.

Q. The WIC program provides farmers market food to pregnant women, post partum women and children up to 5; is that correct?

A. Up to 5 years of age. And it's one of those programs that actually allows our families to work who are working families who make above the medicaid rate they can actually, theres a threshold higher than medicaid. So it's just additional food source especially for pregnant women.

Q. Have any of your staff every used the farmers market or the WIC program?

A. Very much so. We have a very, a lot of our staff that work at that specific clinic actually live in the neighborhood around there and they actually use that neighborhood. Like I said, a lot of the staff talk to a lot of the farmers and go see what's available. So that when they talk to their clients they can actually, are talking from experience. Yes.

Q. I know you've had thousands of clients. What percentage of the thousands of clients that you've had in the Adams Morgan location participated in the WIC program?

A. Because the maternity health is one of our biggest I would say probably more than 60 to 70 percent of our clients.

Q. So what role in concluding would you say the Adams Morgan farmers market plays and the health

and nutrition of your clients, your employees and the Adams Morgan community?

A. Well, first of all, it's a place where people can gather and socialize on Saturdays. It's a place where because there's been so much gentrification it is also a place where people from all walks of economic, sort of economic life styles can come together and socialize. And come together on an issue that is the same for everybody whether you're 100,000 dollars or 10,000 dollars a year. So I think that that's an important piece.

On the health side I think it's just important to emphasize that we have McDonald's across the street. But then we have the farmers market across the street. And to make that comparison we make that comparison all the time how important it is to make sure that in a crunch you can use McDonald's if you have to, but we would encourage you to use the farmers market.

It's something that a lot of the clients are used to from places where they come from. So it's easy. It's comfortable for them to go there. Like I said, we have a relationship with a lot of the farmers, so they understand our clients.

MR. ZUKERBERG: Thank you. I have no

further questions.

MR. ROSS: No questions, Your Honor.

THE COURT: All right, ma'am. You're excused. Thank you very much.

THE WITNESS: Thank you.

THE COURT: Any need to recall this witness in your case?

MR. ZUKERBERG: No.

THE COURT: You can remain in the courtroom if you wish. Thank you. Mr. Zukerberg?

MR. ZUKERBERG: Nancy Shia. Ms. Shia, please have a seat in the witness stand.

THE COURT: Ma'am, before you take the witness stand can you just stand by the flag. I need to speak with counsel at the bench. Counsel?

(Conference at the bench.)

THE COURT: I don't think this is a significant issue but I'll disclose it out of an abundance of caution. Before I took this job I was a supervisor at a Georgetown criminal justice clinic. And I am fairly certain that Ms. Shia was a client of one of my students in the clinic. And had a trial in which she was charged with and acquitted of assault on a police officer.

It was an incident where she was as I recall it, I don't recall every case I worked on so

A. That was 1992.

Q. Do you know how much Crestar paid for the branch?

A. Yes. Approximately 1 point 2 million dollars.

Q. And before it purchased it did Crestar hire an appraiser to appraise the property?

A. Yes.

Q. And what did the branch appraise for in '92?

A. Slightly higher than 1 point 2. I think approximately 1 point 275 million.

Q. So it sold for roughly the same amount it appraised for?

A. That's correct.

Q. Did Crestar hire a title company to do a search in 1992?

A. Yes.

Q. Do you know what the results of the title search were?

A. There were no easements recorded on the title.

Q. Did Crestar have a survey done on the branch?

A. Yes.

A. SunTrust.

Q. How often?

A. Annually.

Q. And how about insurance for the Plaza?

A. Yes. SunTrust pays for the insurance covering the Plaza.

Q. What kind insurance does it have?

A. It would be property casualty general liability insurance.

Q. So if somebody slipped and fell on the Plaza SunTrust would cover it?

A. Correct.

Q. Or the insurance would?

A. That's correct.

Q. Has that happened?

A. Yes.

Q. Does SunTrust allow the public to use the Plaza for events?

A. Yes.

Q. Why does it do that?

A. It's in SunTrust's best interest. As a company we want to be good corporate citizens and good members of the community.

Q. Does this use for events does it create extra work for SunTrust?

A. It does. Either the work would involve the execution of a temporary occupancy agreement. It may sometimes require that Lincoln Harris goes in after the fact to do some clean up.

Q. Do you review. Before you say somebody can come and use the Plaza do you review the event?

A. Certainly. We're also interested in the type of use.

Q. Has SunTrust ever blocked somebody from wanting to use the Plaza from doing so?

A. Yes. It has happened on a few occasions.

Q. On what grounds might that happen if SunTrust says no, you can't use the Plaza?

A. If the use that we see is politically charged or not congruous with our brand or image then we would not allow the use.

THE COURT: Like what?

THE WITNESS: An example I can give you I think the planned parenthood was an example where we didn't allow the use.

BY MR. JACOBS:

Q. And then you mentioned the license agreements?

A. Yes.

Q. Does SunTrust have a policy about using

license agreements for events?

A. Yes. Our policy is to have license agreements in place for all group activities on the Plaza.

Q. Do you aware of anybody using the Plaza without a license agreement for an event?

A. I am not.

Q. Did SunTrust do these license agreements even for a short event, something like one time less a few hours?

A. Yes.

Q. Does the review and the insurance and everything else?

A. Yes. The insurance indemnification agreement, the use, hours of operation, that type of stuff.

Q. Do you know whether Crestar before it was acquired by SunTrust also allowed public events on the Plaza?

A. They did.

Q. And did Crestar allow license agreements?

MR. ZUKERBERG: I'm going to object on the basis of knowledge.

THE COURT: How do you know this whole history?

THE WITNESS: Review of the file.

THE COURT: Again, I take the rule of evidence to be looser at a hearing like this. So I will allow it with that understanding.

BY MR. JACOBS:

Q. So yes, Crestar used license agreements?

A. Yes.

Q. And you've seen some of theses license agreements?

A. I have.

Q. Did Crestar have any problems with the farmers market on the Plaza?

A. There was an issue in 1996 where the D.C. police notified SunTrust that the farmers were operating on the market without an appropriate permit.

Q. Did the police say that would have any consequences for SunTrust?

A. Yes. The consequences would be.

Q. I'm sorry. For Crestar. Excuse me.

MR. ZUKERBERG: Objection. This is 1996. The witness first came on board in 2002.

THE COURT: I'm taking this all as he said as what he learned from reviewing the file whatever that means. You can probe that on cross-examination.

MR. ZUKERBERG: All right.

Injunction Motion Hearing recessed, to reconvene at 9:30 a.m., Thursday, July 27, 2017.)

**** *****

C E R T I F I C A T E

I, JACQUELINE L. WOOD, an Official Court Reporter for the Superior Court of the District of Columbia, do hereby certify that I reported by machine shorthand, in my official capacity, the proceedings had and testimony adduced, upon the Preliminary Injunction Motion Hearing, in the case of KALORAMA CITIZENS ASSOCIATION, et al., v. SUNTRUST BANK COMPANY, et al., Civil Action No. 2017 CAB 4182, in said Court on the 19th day of August 2017.

I further certify that the foregoing 102 pages constitute the official transcript of said proceedings, as taken from said shorthand notes, my computer realtime display, together with the audio tape recording of said proceedings.

In witness whereof, I have hereto subscribed my name, this 21st day of August 2017.

Jacqueline L. Wood
OFFICIAL COURT REPORTER

EXHIBIT C

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

KALORAMA CITIZENS ASSOCIATION, et al.,	:	
Plaintiffs,	:	
v.	:	Civil Action No. 2017 CAB 4182
SUNTRUST BANK COMPANY, et al.,	:	
Defendants.	:	

Washington, D.C.
Thursday, July 27, 2017

The above-entitled action came on for a Preliminary Injunction Motion Hearing before the Honorable TODD EDELMAN, Associate Judge, in Courtroom Number 212, commencing at approximately 10:15 a.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS THE TESTIMONY AND RECORDS OF TESTIMONY AND PROCEEDINGS IN THE CASE AS RECORDED.

APPEARANCES:

On behalf of the Plaintiffs:
PAUL ZUKERBERG, Esquire
Washington, D.C.

On behalf of the Defendants:
MICHAEL ROSS, Esquire
Washington, D.C.

JACQUELINE L. WOOD,
Official Court Reporter Telephone: 879-1795

MR. ZUKERBERG: Thank you very much, Judge. The witnesses, Judge, who we have called, the four witnesses establish along with the other evidence, the documents, photographs and other evidence our right to a preliminary injunction to prevent the destruction of this very important Plaza.

The evidence is that it serves as the heart of the Adams Morgan community. That it is located in one historic district. And it's across the way from another historic district. And it has served as a town square and public space for at least 50 years even before the present Plaza was constructed in 1979.

The issue with regard to a public easement is we have the burden of showing that there was an offer to dedicate by the owner of the bank, owner of property and that that offer was accepted by the public. There is little controversy on the issue of acceptance because clearly it's one of the most widely used public spaces in the city.

It's used for cultural, civic, artistic uses. It's a meeting place for people casually or for organized meetings such as the walking tours. It has an important role in nutrition. We heard from the director of Mary Center about how it

participates in the WIC program and provides nutrition for mothers and young children. And that the farmers market is a place where people can meet. And the plaza is a place where people can meet and serve some important social functions.

It's the site of various parades and festivals including the Latino festival, the Adams Morgan festival. And it is completely open to the public 24 hours a day. That's been admitted by the defendants in their answer.

There are no signs, guards, lines of demarcation. There's nothing which says it's private property or no trespassing or that you need permission. Anyone can go on there. In fact, it's impossible to even tell where the sidewalk ends and the public space begins.

And it's been used that way by the public. It has been accepted as a public space. And the article in Exhibit 8 which is our Plaintiffs' Exhibit Number 8 there's a quote from the architect Sey Auerbach who said that it's probably the most used public space in the city. And it certainly has been used and accepted by the public as a public space.

The intent to dedicate, the offer to

dedicate and the intent to dedicate is established by Thomas Owen's letter of November 2, 1976 and the long course of dealing between the community and the land owner. Obviously the October, the November 2, 1976 letter is a key letter.

Intent as the Court knows is sometimes not provable by direct evidence. The old maxim that you can't see inside someone's head. In this case we do have direct evidence of intent. In fact, we have the overwhelming evidence of intent.

First, Thomas Owen the bank president stated his intent to Marie Mahikian, to Frank Smith, to other community leaders in the course of negotiations. And in the November 2 letter Mr. Owen says we have previously met and I'm quoting.

We have previously met with members of the Adams Morgan organization. And we had the executive director testify as well as representatives of other business, community and Spanish speaking community and other civic groups.

The letter continues. Following this meeting Perpetual agreed to develop the property in such a way as to preserve its open quality, attractiveness and accessibility to the vendors who presently use it. And to build a building as far

practice if one were to look just at the current practice, if you look at it now if all you had was current practice or even a history of practice without the letter or the testimony you got about the way this came about it looks like a lot more like a private property owner who's permissive or encouraging of public use of its own property than it does like an easement. So I just don't know if any of this is necessarily helpful to you.

MR. ZUKERBERG: I agree completely with the Judge. What was created if it was created as we anticipate was created in the late 1970s. And if it was an easement by public dedication then its irrevocable from that time forward.

However, I would note that the present practice does not conflict. Because we concur that the bank continues to own the property in fee simple. In other words, there's an easement on the property. But the bank still has an obligation to shovel the snow, rake the leaves, pay the taxes. They still own it subject to this easement just as the farmer that.

THE COURT: That doesn't, I guess that's what you were about to say and I just interrupted you. If I have an easement on my property not an easement for my neighbor to

Amendment Act that occurred in more or less the same time period in 1981 that dedicated the space or designated the space I guess is the language as a street market but also required prior written consent of the fee simple owner of the property in order to vend on the property?

MR. ZUKERBERG: I think that's entirely consistent with our position. And we pointed out some evidence of the publicly owned Eastern Market where you also need to have licensing agreement and consent of the city to operate. You just can't go and open your.

THE COURT: This requires the consent not of a public entity but consent of a private entity.

MR. ZUKERBERG: It's privately owned. Again, we concedes and agree it's privately owned property. It's always been privately owned property. So the person that you would seek consent for or sign your licensing agreement for or present your credentials to would be the private land owner.

I'd also point out two things about that statute. They focus on one phase of that. But the broader intent of the statute is one, to regulate this farmers market in the same way that the other public farmers markets are going to be regulated. In other words, they're including this market along

C E R T I F I C A T E

I, JACQUELINE L. WOOD, an Official Court Reporter for the Superior Court of the District of Columbia, do hereby certify that I reported by machine shorthand, in my official capacity, the proceedings had and testimony adduced, upon the Preliminary Injunction Motion Hearing, in the case of KALORAMA CITIZENS ASSOCIATION, et al., v. SUNTRUST BANK COMPANY, et al., Civil Action No. 2017 CAB 4182, in said Court on the 27th day of August 2017.

I further certify that the foregoing 47 pages constitute the official transcript of said proceedings, as taken from said shorthand notes, my computer realtime display, together with the audio tape recording of said proceedings.

In witness whereof, I have hereto subscribed my name, this 21st day of August 2017.

Jacqueline L. Wood
OFFICIAL COURT REPORTER

EXHIBIT D

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

KALORAMA CITIZENS ASSOCIATION, et al, Plaintiff	Civil Action No. 2017 CAB 4182
v.	
SUNTRUST BANK, et al, Defendant	

Washington, D.C.

Friday, August 4, 2017

The above-entitled matter came on for HEARING before the Honorable Todd Edelman, associate judge, in Courtroom Number 212, commencing at 2:00 p.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS HER NOTES AND RECORDS OF TESTIMONY AND PROCEEDINGS IN THE CASE AS RECORDED.

APPEARANCES:

On behalf of the Plaintiff:

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On behalf of the Defendant:

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Mahalia M. Davis, RPR
Official Court Reporter (202) 879-1029

entire context of the letter, which is describing an agreement reached following these meetings, that's how the sentence began, which were not meetings with the vendors, but meetings with a variety of community groups representing the general public.

So I think the most logical reading of this letter is that it constituted a promise to develop a property to continue it's usage by the public at large in an explicit effort to gain the public's support for the development based, at least in part, on that promise. While it's not as explicit it could be, I think this letter can be seen as at least some direct evidence as the intent to dedicate for public use or as an offer to do so. But more importantly, at the very least, I think this letter serves as circumstantial evidence supporting the testimony of Ms. Nahikian and the affidavit of Mr. Smith regarding the nature of the intent or offer expressed at that time.

In addition, I'll point to Plaintiff's Exhibit 2, the August 18th 1977 resolution of the Federal Home Loan Bank Board as also providing some corroboration of the accounts of Ms. Nahikian and Mr. Smith, at least to the extent that it references in a general way the objections made by various objections and the agreement that was reached to withdraw the objections.

So the testimony of Ms. Nahikian and the

declaration of Mr. Smith and the interpretation of Mr. Owens' letter, that I believe to be supported by their accounts, is also bolstered by what I find to be other circumstantial evidence of intent, that is the way in which the plaza it's itself was constructed. It is a substantial open space with no fence or other lines demarcation separating the plaza from the public sidewalk or street.

There are permanent structures that were created on the plaza for public use, the raised brick platform the vendors use and raised porch or bandshell for public events. These pieces of evidence taken together constitute at least some amount of proof of an intent by Perpetual to dedicate the plaza for public use. Or to put it in another way, to offer the plaza to the public for its use.

As I stated earlier, for the dedication to be perfected, the public must manifest an acceptance of it. Importantly, that acceptance that must occur does not involve any action or require any action by any governmental authority or entity. As the Supreme Court of Georgia stated in *Smith versus State 282 S.E. 2d 76 at 82 in 1981*, quote, acceptance by the public for public use is sufficient to complete the dedication without acceptance by the appropriate public authorities, end quote.

The Maryland cases sited earlier, *Gregg Neck Yacht Club* and *Washington Land Company* both state that the public

can accept an offer to dedicate through one of four methods: Acceptance of a deed or other record; Acts in pay, such as improvements at public expense; Long use by the public at large or Expressed statutory or official action.

Here, the plaintiffs appear to argue that the public has accepted the dedication through a long history of public use and there's really not much dispute in what's been brought before me. The plaza has been used by the public in a manner consistent with the claimed easement by public dedication. As the witnesses described, the plaza has been used for a wide variety of public purposes serving as everything from an informal meeting place to the formal situs of a farmer's market and other events.

Once a finding were to be made that Perpetual intended to make a public dedication in 1976 and made such an offer to the public, the history of the public's use of the plaza since then makes the question of acceptance of the offer fairly obvious.

Given all this, I think the plaintiffs have made a fairly strong evidentiary showing at this stage of the litigation as to the merits of their claim for a common law easement by dedication. However, this is not an uncomplicated claim and there are numerous issues and problems that have been raised, both factually and legally with respect to the plaintiffs' claim. And I want to focus

CERTIFICATE

I, Mahalia Davis, an Official Court Reporter for the District of Columbia Courts, do hereby certify that I reported, by machine shorthand, in my official capacity, the proceedings had and testimony adduced, upon the hearing in the case of Kalorama Citizens Association, et al v SunTrust Bank Company, et al, Civil Case Number 2017 CAB 4182, in said Court, on the 4th day of August, 2017.

I further certify that I have transcribed the foregoing 36 pages from said machine shorthand notes and reviewed same with the backup tapes, if any, to the best of my ability.

In witness whereof, I have hereto subscribed my name, this the 9th day of August, 2017.

Official Court Reporter

EXHIBIT E

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 6-113

"District of Columbia Uniform Conservation Easement Act of 1986".

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act, P. L. 93-198, "the Act", the Council of the District of Columbia adopted Bill No. 6-55 on first and second readings, February 25, 1986, and March 11, 1986, respectively. Following the signature of the Mayor on March 24, 1986, this legislation was assigned Act No. 6-143, published in the April 4, 1986, edition of the D.C. Register, (Vol. 33 page 1996) and transmitted to Congress on March 26, 1986 for a 30-day review, in accordance with Section 602 (c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional Review Period has expired, and therefore, cites this enactment as D.C. Law 6-113, effective May 16, 1986.

DAVID A. CLARKE
Chairman of the Council

Dates Counted During the 30-day Congressional Review Period:

March	26,27
April	8,9,10,11,14,15,16,17,18,21,22,23,24,25,28,29,30
May	1,2,5,6,7,8,9,12,13,14,15

D.C. LAW 6 - 113

EFFECTIVE DATE MAY 16 1986

AN ACT

D.C. ACT 6 - 143

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MAR 24 1986

Codification, new chapter 24 to title 45, entitled "Easements"

To permit the creation of durable restrictions and affirmative obligations to be attached to real property to protect natural and historic resources in the public interest.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "District of Columbia Uniform Conservation Easement Act of 1986".

Sec. 2. Definitions.

New, D.C. Code, sec. 45-2401 (1987 supp.)

For the purposes of this act, the term:

(1) "Conservation easement" means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or open-space values of real property, ensuring its availability for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property.

(2) "Holder" means 1 of the following:

(A) A governmental body empowered to hold an interest in real property under the laws of the District of Columbia or the United States; or

(B) A charitable corporation, charitable association, or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic, or open-space values of real property, ensuring the availability of real property for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property.

(3) "Third-party right of enforcement" means a right provided in a conservation easement to enforce any of its terms granted to a governmental body, charitable corporation, charitable association, or charitable trust, which, although eligible to be a holder, is not a holder.

New,
D.C. Code, sec. 45-2402
Note, D.C. Code secs. 5-903, 5-1001, 45-923 & 47-903 (1987 supp.)

Sec. 3.(a)(1) Except as otherwise provided in this act, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements, provided that the recordation of any conservation easement as defined in section 2, or of any assignment, release, modification, termination, or other alteration of a

conservation easement shall be exempt from the recordation tax imposed by section 303 of the District of Columbia Real Estate Deed Recordation Tax Act, approved March 2, 1962 (76 Stat. 12; D.C. Code, sec. 45-923), and from the transfer tax imposed by section 403 of the District of Columbia Revenue Act of 1980, effective September 13, 1980 (D.C. Law 3-92; D.C. Code, sec. 47-903).

(2) The exemption provided for in subsection (2) of this section shall not apply if the consideration for the conservation easement exceeds $100 in value.

(b) No right or duty in favor of or against a person having a third-party right of enforcement arises under a conservation easement before its acceptance by the holder and a recordation of the acceptance.

(c) Except as provided in section 4(b), a conservation easement is unlimited in duration unless the instrument creating it otherwise provides.

(d) An interest in real property in existence at the time a conservation easement is created is not impaired by it unless the owner of the interest is a party to the conservation easement or consents to it.

(e) A conservation easement is valid even under the following circumstances:

(1) It is not appurtenant to an interest in real property;

(2) It can be or has been assigned to another holder;

(3) It is not of a character that has been recognized traditionally at common law;

(4) It imposes a negative burden;

(5) It imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;

(6) The benefit does not touch or concern real property; or

(7) There is no privity of estate or of contract.

Sec. 4.(a) An action affecting a conservation easement may be brought by 1 of the following:

New, D.C. Code, sec. 45-2403 (1987 supp.)

(1) An owner of an interest in the real property burdened by the easement;

(2) A holder of the easement;

(3) A person having a third-party right of enforcement; or

(4) A person authorized by other law.

(b) This act does not affect the power of a court to modify or terminate a conservation easement in accordance with the principles of law and equity.

Sec. 5.(a) This act applies to any interest created after the effective date of this act which complies with this act, whether designated as a conservation easement or

New, D.C. Code, sec. 45-2404 (1987 supp.)

as a covenant, equitable servitude, restriction, easement, or otherwise.

(b) This act applies to any interest created before the effective date of this act if it would have been enforceable had it been created after its effective date unless retroactive application contravenes the laws of the District of Columbia or the United States.

(c) This act does not invalidate any interest, whether designated as a conservation or preservation easement, a covenant, equitable servitude, restriction, easement, or otherwise, that is enforceable under other law of the District of Columbia.

Sec. 6. This act shall be applied and construed to effectuate its general purpose to make uniform the laws with respect to the subject of the act among states enacting it.

New, D.C. Code, sec. 45-2405 (1987 supp.)

Sec. 7. This act shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act,

approved December 24, 1973 (87 Stat. 813; D.C. Code, sec. 1-233(c)(1)).

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED: March 24, 1986

COUNCIL OF THE DISTRICT OF COLUMBIA

Council Period Six - Second Session

RECORD OF OFFICIAL COUNCIL VOTE

DOCKET NO: B 6-55

☒ Item on Consent Calendar

☒ ACTION & DATE: Adopted First Reading, 2-25-86

☒ VOICE VOTE: Unanimous

Recorded vote on request

Absent: Shackleton

☐ ROLL CALL VOTE: — RESULT _____ (___/___/___/___)

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. CLARKE					RAY					SPAULDING				
CRAWFORD					ROLARK					WILSON				
JARVIS					SCHWARTZ					WINTER				
KANE					SHACKLETON									
MASON					SMITH, JR.									

X — Indicates Vote A.B. — Absent N.V. — Present, not voting

CERTIFICATION RECORD

Secretary to the Council — Date

☒ Item on Consent Calendar

☒ ACTION & DATE: Adopted Final Reading, 3-11-86

☒ VOICE VOTE: Unanimous

Recorded vote on request

Absent: Mason

☐ ROLL CALL VOTE: — RESULT _____ (___/___/___/___)

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. CLARKE					RAY					SPAULDING				
CRAWFORD					ROLARK					WILSON				
JARVIS					SCHWARTZ					WINTER				
KANE					SHACKLETON									
MASON					SMITH, JR.									

X — Indicates Vote A.B. — Absent N.V. — Present, not voting

CERTIFICATION RECORD

Secretary to the Council — Date

☐ Item on Consent Calendar

☐ ACTION & DATE: _____

☐ VOICE VOTE: _____

Recorded vote on request

Absent: _____

☐ ROLL CALL VOTE: — RESULT _____ (___/___/___/___)

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. CLARKE					RAY					SPAULDING				
CRAWFORD					ROLARK					WILSON				
JARVIS					SCHWARTZ					WINTER				
KANE					SHACKLETON									
MASON					SMITH, JR.									

X — Indicates Vote A.B. — Absent N.V. — Present, not voting

CERTIFICATION RECORD

SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION

KALORAMA CITIZENS ASSOCIATION, *et al.*,	)	
	)	**Civil Action No. 2017 CA 004182 B**
	)	
Plaintiffs,	)	**Hon. Todd E. Edelman**
	)	
v.	)	
	)	
SUNTRUST BANK COMPANY, *et al.*,	)	
	)	
Defendants.		

ORDER

UPON CONSIDERATION of Joint Motion to Dissolve Injunction and Dismiss the Case filed by Defendant SunTrust Bank Company, Potomac Investment Properties, Inc., 1800 Columbia Potomac Investment Properties, LLC, 1800 Columbia Road, LLC, and P.N. Hoffman & Associates, Inc. (collectively, "Defendants"), any opposition thereto, and for good cause shown, it is by this Court this ___ day of _____, 2017, hereby

ORDERED that the Defendants' Motion to Dissolve Injunction and Dismiss Case is **GRANTED**, and it is further

ORDERED that the Preliminary Injunction entered on August 4, 2017 is **DISSOLVED**, and it is further

ORDERED that the Complaint for Declaratory and Injunctive Relief is **DISMISSED WITH PREJUDICE**, and it is further

ORDERED that this matter is now **CLOSED**.

SO ORDERED.

_____
Hon. Todd E. Edelman
Associate Judge, D.C. Superior Court

Serve:

Counsel of Record via CaseFileXpress