

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA**

ASSOCIATION TO PRESERVE THE
EATONVILLE COMMUNITY, INC.,

Plaintiff,

v.

SCHOOL BOARD OF ORANGE
COUNTY, FL,

Defendant.

Case No.:

**COMPLAINT FOR DECLARATORY JUDGMENT
AND SUPPLEMENTAL RELIEF**

1. Founded in 1887 by newly emancipated African Americans, the Town of Eatonville, FL (“Eatonville” or “the Town”) is one of the first all-

5. The School Board now seeks to sell the property for its own profit after agreeing to pay what it contends are the successor trustees of the original trust \$1 million in exchange for the release of the 1951 deed restriction/restrictive covenant in 2022 (“the 2022 Deed Release”).

6. This is the latest in a series of actions taken by the School Board to profit off sales of the Hungerford property over the past several decades.

7. This action seeks a declaration from this Court that the 1951 deed restriction/restrictive covenant (attached as Exhibit 1) is valid and continues in effect for the remaining parcels of the Hungerford property that the School Board owns, and that the 2022 Deed Release (attached as Exhibit 2) is invalid and void ab initio.

8. This action also seeks a declaration from this Court that the School Board has failed to comply with its obligations under state law to dispose of the real property at issue only if the property is unnecessary for educational purposes and its disposal is in the best interests of the public.

9. This action seeks supplemental relief enjoining the sale until such time as the School Board complies with its legal duties under the Florida Statutes and the 1951 deed restriction/restrictive covenant that runs with the land.

JURISDICTION

10. This action seeks a declaratory judgment and supplemental relief for past and ongoing injury pursuant to Florida’s Declaratory Judgment Act, Ch. 86, Florida Statutes.

11. This Court has jurisdiction to issue a declaratory judgment and supplemental relief pursuant to Fla. Stat. § 86.011 (2022).

12. This Court has jurisdiction to construe deeds and determine any question of construction or validity pursuant to Fla. Stat. § 86.021 (2022).

13. The circuit court has exclusive jurisdiction pursuant to Fla. Stat. § 26.012(2)(g) (2022), because this action concerns title to real property, and pursuant to Fla. Stat. § 26.012(2)(c) (2022), because this is a case that lies in equity.

VENUE

14. Venue in Orange County, FL, is proper pursuant to Fla. Stat. §§ 47.011 and 47.021 (2022). Defendant resides, and the cause of action accrued in, Orange County, FL. The real property whose title is at issue in this case is in Orange County, FL.

THE PARTIES

15. Plaintiff Association to Preserve the Eatonville Community, Inc. (P.E.C.), is a Florida 501(c)(3) nonprofit organization located in the Town of Eatonville in Orange County, FL. Established in 1987, P.E.C.'s mission is to promote the Town of Eatonville's considerable heritage, historical, and cultural resources as a means for the community's revitalization and economic development.

16. Defendant School Board of Orange County, FL, is a district school board located in Orange County, FL, formed in accordance with the provisions of § 4(b), Art. IX of the state constitution, with the powers to operate, supervise, and control all free public schools in the Orange County public school district. *See* Fla. Stat. § 1001.32(2) (2022). The School Board has the capacity to sue and be sued.

17. The Florida Attorney General is not named as a party in this action

alternatively, could be joined as a party by this Court pursuant to the duties and obligations under Florida law reserved for the Florida Attorney General.

STATEMENT OF FACTS

Historical Background of the Hungerford Property

18. Shortly after the Town's incorporation in 1887, the first residents prioritized education for the Town's children and set aside a large tract of donated land ("the Hungerford Property")

26. In *Jordan v. Landis*, 175 So. 241 (Fla. 1937), the Florida Supreme Court found that the 1899 trust instrument did not support the right of trustees to convey the property, but rather to hold it in trust and continue it in a state of succession forever.

27. The *Landis* court stated that trustees who hold land conveyed to them in trust have no other rights than are given in the trust instrument.

28. The *Landis* court found that the trustees named in the deed of 1899 had no authority expressly or impliedly given to convey the property because none was given by the trust instrument or by the order of a court of chancery.

29. The *Landis* court cancelled a deed from January 1924 because the transfer of trust property was made without authority of law and was therefore void.

The School Board's Acquisition of the Hungerford Property

30. Education was long denied to African American children as part of the systematic deprivation of human dignity and fundamental liberties on the basis of race under the brutal U.S. system of slavery.

31. During Reconstruction, Black civil rights activists across the U.S. South were at the forefront of calling for public school systems to educate all children as part of their fight to dismantle a pervasive system of laws and policies that denied educational opportunity based on race or color.

32. In 1951, the School Board acquired the Hungerford School and Hungerford Property—over 300 acres—through contested court proceedings, over the objection of an heir of one of the original donors of the Hungerford Property.

33. The 1951 deed applied to the following legal description of the real property in Orange County, FL:

The SE 1/4 of the SE 1/4, the W 1/2 of the SE 1/4, the E 1/2 of the SW 1/4 and the NW 1/4 of the SW 1/4, all in Section 35, Township 21 South, Range 29 East, the NW 1/4 of the NE 1/4 of Section 2, Township 22 South, Range 29 East, and the E 1/2 of the SE 1/4 of the NE 1/4 of Section 34, Township 21 South, Range 29 East, with the exceptions and reservations hereinafter set out, together with all and singular the tenements and hereditaments thereunto belonging or in anywise appertaining.

45. When desegregation became the law of the land in 1954, OCPS resisted compliance through delay and incremental change.

46. Eight years after the Supreme Court's landmark decision in *Brown v. Board of Education*, 347 U.S. 483 (1954), the School Board had not yet desegregated its public school system.

47. In 1962, parents of Black schoolchildren brought the case *Ellis v. Orange County Board of Public Instruction*, No. 6:62-cv-1215-ACC-GJK (M.D. Fla., filed April 6, 1962).

48. *Ellis* challenged the second-rate education the county schools provided to

57. The School Board did not achieve unitary status (meaning that the school system no longer operates as a dual system based on race) until 2010, when it was released from the *Ellis* desegregation order and court supervision.

58. After an appeal of the district court order releasing the School Board from its desegregation order, the *Ellis* parties reached a settlement requiring development of a facility improvement plan for Hungerford Elementary School, among other schools, to address ongoing racial inequities in school facilities.

59. The entire time the School Board operated Hungerford High School (under any of its names) as a public high school, it was a part of a dual school system that was segregated by race.

The 1974 Decision Releasing the 1951 Deed Restriction/Restrictive Covenant from Portions of the Hungerford Property

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stated was “formerly the Robert Hungerford Industrial School of Eatonville, Orange County, Florida”). *Id.* at 1.

71. In the 2011 *Allen* complaint, Eatonville contended that the Hungerford Property would be better suited for commercial development to increase Eatonville’s “ad valorem tax base and provide health and safety services to its citizens.” *Id.* ¶¶ 7, 11.

72. Eatonville alleged that “a condition precedent to the Purchase and Sale Agreement requires the Plaintiff to obtain a release of this restri

85. Eatonville and the Hungerford Chapel Trust agreed as follows in the 2011 joint stipulation:

that the restrictive covenant/deed restriction described in the complaint filed in the above styled case shall automatically be lifted when the Town of Eatonville finds a developer to purchase all of the real property described in Exhibit 'A' that is attached to the complaint filed in the above styled cause or alternatively, the restrictive covenant shall only be lifted or released for that portion of real property described in Exhibit 'A' attached to the Complaint filed in the above styled cause, that is purchased by the town's developer.

86. In 1951, the circuit court's final decree in *Coddington v. Ervin* described the deed restriction/restrictive covenant as follows:

That upon the conveyance of said real property to the Board of Public Instruction of Orange County, Florida, said real property be used as a site for the operation of a public school thereon for negroes with emphasis on the vocational education of [N]egroes and to be known as "Robert Hungerford Industrial School" and the personal property as conveyed to said Board shall be used in connection therewith.

Coddington v. Ervin, No. 23174, at 4 ¶ 11 (Fla. 9th Jud. Cir., May 9, 1951).

87. The parties

91. Failure to join the Florida Attorney General in the 2011 litigation means that the settlement agreement resulting from that litigation was a legal nullity.

92.

106. The Hungerford Chapel Trustees only have the authority granted to them by the trust instrument.

107. The Hungerford Chapel Trustees are not acting for the benefit of the public charity as originally established and retain no authority to remove a deed restriction/restrictive covenant put on the Hungerford Property in 1951 as approved by this Court at the time.

The 2022 Deed Release

108. A Release of Hungerford Trust Restrictions was executed by Edwin C. Wright, Treasurer, and attested by Cheryl B. Thompson, Secretary, on behalf of the Robert Hungerford Chapel Trust on June 8, 2022 (2022 Deed Release).

109. The Robert Hungerford Chapel Trust also executed a quitclaim deed, conveying chapel property to the School Board, at the same time they executed the 2022 Deed Release.

110. The 2022 Deed Release removed the 1951 deed restriction/restrictive covenant that the Hungerford Property was only to be used for the education of Black children.

111. The 2022 Deed Release states that “for avoidance of doubt, this Release of the Hungerford Trust Restrictions is only intended to (and does) release and extinguish the Hungerford Trust Restrictions from the Property[.]”

112. The legal description of the property to which the 2022 Deed Release pertains is:

The SE 1/4 of the SE 1/4, the W 1/2 of the SE 1/4, the E 1/4 of the SW 1/4 and the NW 1/4 of the SW 1/4, all in Section 35, Township 21 South, Range 29 East, the NW 1/4 of the NE 1/4 of Section 2 Township 22 South, Range 29 East, and the E 1/2 of the SE 1/4 of the NE 1/4 of Section 34, Township 21 South, Range 29 East.

113.

114. There is no legal authority for the Hungerford Chapel Trustees to issue this deed release.

115. The deed restriction/restrictive covenant is a public right, not a private interest held by the Hungerford Chapel Trust.

116. The Hungerford Chapel Trustees have no authorization, either in the trust instruments or under law, to release this deed restriction/restrictive covenant.

117. Due to the lack of legal authority, the deed release is void and the 1951 deed restriction/restrictive covenant remains valid and in effect.

118. This Court retains the ability to apply cy pres to ensure that the charitable purposes of the trust continue in connection with the use of the land. Full

agreed to pay to the Hungerford Chapel Trust, the School Board's co-defendant, for the release of the deed restriction/restrictive covenant.

131. The Hungerford Property has been dedicated in law and practice for more than a century to educational and public purposes—until the 2022 release of the deed restriction/restrictive covenant by the Hungerford Chapel Trustees.

132. The developer’s proposal for the Hungerford Property, as presented to the community of Eatonville at a February 7, 2023, Eatonville Town Council meeting was for a mixed-use development with primarily residential uses and some commercial and office spaces.

133. The developer’s proposal for the Hungerford Property has minimal plans for public use, and Eatonville’s 2018 Comprehensive Plan only requires at least 5% of the land to be used for Public/Institutional purposes, including Educational, Religious, and Philanthropic purposes.

134. At the February 7 Eatonville Town Council meeting, the Council voted to reject the comprehensive plan amendments and zoning changes sought by the developer.

The School Board’s Sale of School Trust Lands

135. The School Board has failed to meet its statutory obligations for disposal of the Hungerford Property.

136. Under Fla. Stat. § 1013.28(1)(a), the School Board may not dispose of the Hungerford Property as school lands unless it has first, “by resolution of the board, determined [the property] to be unnecessary for educational purposes as recommended in an educational plant survey.”

137. The School Board is required to take “diligent measures to dispose of educational property only in the best interests of the public.” Fla. Stat. § 1013.28(1)(a).

138. A “best interests” analysis under Florida law is typically a fact-intensive inquiry.

~~139~~ On October 11, 2022, undersigned counsel requested public records, pursuant to Fla. Stat. Ch. 119, from the School Board related to the Hungerford Property. The documents

cannot be determined, proceeds of the sale shall be credited pursuant to SREF, section 2.1(4)(h) and shall be expended only on capital outlay projects. This section does not apply to the granting of easements, rights-of-way, or leases of Board property for no consideration.

146. School board policy “Disposal of District Real Property” similarly sets forth a procedure for disposing of real property, provided here in relevant part:

- (1) District real property may be disposed of only after having been recommended in an educational plant survey and being officially declared unnecessary or unsuitable for educational or ancillary purposes by resolution of the Board. (2) The Board may sell, transfer, or dispose of any district real property, regardless of value, by public sale, private sale, negotiation, donation, or any other m(y m)-2 (a (i)n-1 (e)4 (o)10

151. Public comment at multiple community meetings in Eatonville, as well as at the Eatonville Town Council meeting on February 7, regarding the current proposal to develop the property questioned why there is no effort being made to continue to use the land in a way that benefits the youth or that promotes education for the current residents of Eatonville.

152. Even if the School Board has decided it no longer needs this land for a school, there are numerous analogous or ancillary purposes to which the land could be dedicated that would promote the original purpose of the charitable trust and comply with School Board duties under the state statute, regulation, and school district policy governing the disposal of real property.

153. Eatonville is a nationally recognized destination for cultural and historical tourism.

■ The Town has a District listed on the National Register of Historic Places.

155. Because it is the birthplace of international literary icon Zora Neale Hurston, the Town is visited by cultural heritage tourists from all over the country and around the world.

156. There is a continued need for this land to be dedicated for a public purpose of education, especially education about the history of the nationally significant Hungerford Property, Hungerford School, and Town of Eatonville.

157. For example, dedicating portions of the land for a museum or civic space for purposes of hosting educational events would continue the charitable purpose of education in a way that furthers the intent of the original trust, protects the best interests of the public, and complies with the School Board's duties under law and under the 1951 deed restriction/restrictive covenant.

158. The School Board has the ability and the legal obligation to preserve the ways that will benefit the community and its children and in

ways that recognize the educational, aesthetic, emotional, and economic benefits of preserving this historic land.

159. When the School Board demolished Hungerford High School's buildings in 2020, it demolished a community space that had provided a public benefit even after the school's 2009 closure: a venue for youth recreation and sports.

160. The School Board's decision to demolish the buildings and abandon those youth recreation and sports venues left the Hungerford Property without any tangible benefit to Eatonville's children, the intended beneficiaries of the trust and the 1951 deed restriction/restrictive covenant.

161. The School Board's decision to focus on profiting from this land will erase a historic Black community and rob Eatonville's residents of their interest in seeing the land used in a way that benefits, instead of harms, the community's children.

162. If the Florida Attorney General had been a party to the 2011 lawsuit for the purpose of protecting the charitable purpose of the trust in the public interest, the cy pres doctrine could have been raised to dedicate the land to analogous educational purposes (i.e., not just for use as a3 (e)4 (s)-1il ch

171. P.E.C.'s vision is to make Eatonville an internationally recognized cultural tourism destination for the arts and culture throughout the African Diaspora, with special emphasis on the multi-disciplines as represented by the life and work of Zora Neale Hurston.

172. P.E.C. began as a grassroots movement of Eatonville and neighboring Maitland residents, and interested citizens in Orange County, who fought the expansion of Kennedy Boulevard (from the intersection of Wymore Road and East Kennedy Boulevard in Eatonville to the intersection of Lake Avenue and U.S. 17-92 in Maitland), the main thoroughfare connecting the two communities, from two lanes to five lanes.

180. P.E.C. established the annual Zora Neale Hurston Festival of the Arts and Humanities (“Zora!® Festival”) in 1990.

181. The Zora!® Festival is a multi-disciplinary, multi-generational cultural event whose goals are to celebrate: (1) the significance of Zora Neale Hurston, 20th century American writer, folklorist, and anthropologist; (2) the historic significance of Eatonville; and (3) the cultural contributions that persons of African ancestry have made to the United States and to the world.

182. Now in its 34th season, the Zora!® Festival is the country’s longest running arts and humanities festival celebrating the cultural contributions that people of African ancestry have made throughout the African diaspora.

183. During the month of January, as well as on a year-round basis, people travel to historic Eatonville from across the country, and from around the world, to visit the Hurston Museum and to attend the Zora!® Festival.

184. For over three decades, P.E.C. utilized the Hungerford school campus and facilities to present the annual Zora!® Festival and other programs, such as educational conferences.

185. In addition to festival programs, P.E.C. presented summer teacher training workshops and special public programs on education and heritage.

186. In the 2000s, P.E.C. used the Hungerford Property to store the organization’s historical archives as well as festival equipment and materials on campus. P.E.C. moved everything in the year prior to the school being demolished.

187. P.E.C. also operates the Excellence Without Excuse (E-WE) Community Arts Lab and Learning Centerl pign(p-10 (2 (c)4 34)]TJTtw -6 -2.3 Td(ad)-4 1TT1 (a)4 (r)3)4 (m)-2 (pus)]TJ0 T(ni)-2 (

with schoolwork when such help may not be available to them; to help students reach at least their appropriate grade level in reading, math, science, and writing skills; to provide them needed access to reliable technology; and, in the summer, to help students retain and build on what they have learned in school.

188. Since it began in 1997, E-WE has provided 80,000 hours of service to identify and address the learning needs of more than 3,500 students in grades pre-K through 12. Approximately 95% of the students served are African American; the additional 5% are Hispanic, Haitian, Caucasian, or mixed-race. More than 75% of the children served by E-WE are low-income. Only half of the students of E-WE have a computer in their home, and half of those children have internet access.

189. E-WE is located at the Eatonville Commercial Center, 323 E. Kennedy Blvd., Ste. D., Eatonville, FL 32751.

190. E-WE is located in very close proximity to the Hungerford Property, which can be easily seen from this location.

191. Also, from the E-WE facility, P.E.C. hosts a podcast, “An Eatonville Saga: The Story of An Historic Black Town’s Struggle to Survive and Thrive,” a definitive history of civic activism in the Town from 1988-present.

192. P.E.C. was instrumental in securing a historic district in Eatonville’s downtown, which is now listed on the National Register of Historic Places.

193. P.E.C. opposed the developer’s request for zoning changes and comprehensive plan amendments, which were voted down by the Town Council at the February 7 Eatonville Town Council meeting.

213. This series of discussions, hosted in the Winter, Spring, and Fall of 2023, is for the purpose of informing the public about the importance of preserving and developing the land in the Town of Eatonville.

214.

219. Plaintiff P.E.C. is an interested party who is in doubt about the validity and enforceability of the 1951 deed restriction/restrictive covenant on the Hungerford Property restricting the use of the property for educational purposes.

220. Plaintiff P.E.C. is an interested party who is in doubt about the validity and enforceability of the 2022 deed release by the Hungerford Chapel Trust.

221. This Court has the power to construe any question of

237. The antagonistic and adverse interests at issue are before the court by proper process.

238. The relief sought is not merely the giving of legal advice by the courts or the answer to questions propounded by curiosity.

239. This CoTc 0.b0.39999836E4 (s)-1u925 0 Td23999983 0 orwe

VI. Award such other relief as this C