

Bond Case Briefs

Municipal Finance Law Since 1971

ZONING - ALABAMA

KTK Min. of Virginia, LLC v. City of Selma, Ala.

United States District Court, S.D. Alabama, Northern Division - October 31, 2013 - Slip Copy - 2013 WL 5883836

The Confederate Memorial Circle is a one-acre tract of land located in the City's Old Live Oak Cemetery. The Circle was established in 1877 by a resolution of the Selma City Counsel granting a petition by members of the Ladies of the Confederate Memorial Association requesting a donation of one acre of ground located in that area upon which to erect a monument to the Confederate dead. In addition to hosting a Confederate memorial, the Circle serves as a burial place for 195 Confederate dead and is the site of a World War I memorial. A monument to Confederate General Nathan Bedford Forrest was added to the Circle in 2001 after the Selma City Council ordered that it be moved there from another location, where it had been erected in 2000 by an organization known as the Friends of Forrest (FOF).

On August 2, 2012, KTK Mining of Virginia, LLC (KTK) entered into a contract with Selma Chapter 53 of the United Daughters of the Confederacy (UDC), for the sum of \$1.00 and other consideration, to perform construction work on the Circle for the purpose of making improvements. The UDC, along with the City, has taken part in the maintenance of the Circle for over 100 years. KTK estimated that, when completed, the work it planned to perform for the UDC would have a value of \$163,200. KTK agreed to perform this work on a non-profit basis, with all costs and expenses to be either borne by KTK or reimbursed by private contributions. On August 6, 2012, KTK entered into a contract with FOF to make improvements to the Circle and to relocate and secure the Forrest monument within the Circle. KTK estimated that, when completed, the work it planned to perform for FOF would have a value of \$56,300. KTK also agreed to perform this work on a non-profit basis and to bear most costs and expenses, other than those which FOF members might wish to cover voluntarily.

On August 3, 2012, pursuant to City Ordinance No. 01-9091, the Selma Historic Development Commission issued UDC and FOF a Certificate of Appropriateness for the Circle refurbishing project. That same day, the required Certificate of Appropriateness having been first obtained (due to the fact that the planned work was taking place in a historic district), KTK was issued a building permit from the City's Department of the Building Inspector to proceed with the project. KTK then began its work on the Circle.

Protesters subsequently entered the construction site and caused a series of disruptions. KTK, the protestors, the City mayor, and the City Attorney agreed to cease all activity, including work and protests, in the Circle until after municipal elections were held on August 28, 2012.

The evening of August 28, 2012, after the polls had closed, KTK employees returned to the Circle to resume work but were prevented from doing so by Chief Riley, who threatened arrest if they did so.

On August 29, 2012, a meeting was held at Selma City Hall involving KTK, City officials, and a representative for the protestors, at which KTK agreed not to return to the Circle to perform work for a period of one week, to give time for the City Council to meet and resolve issues related to the

project.

The City Council held a meeting on September 25, 2012. At this meeting, protestors and other City citizens were permitted to address the City Council regarding the UDC's purported license to use the Circle, asking that the Council revoke that license. At some point, one council member made a motion to stop the Permit of building the Nathan Bedford Forrest Monument, and revoke the building permit until a court could rule on the matter.

No item regarding KTK's building permit was included on the meeting agenda, and there is no evidence that KTK was given notice that such an action might take place at the meeting. The City's building inspector never revoked the building permit or issued a stop-work order against KTK.

KTK brought a motion for summary judgment, arguing there was no genuine issue of material fact that the City violated its procedural due process rights by depriving it of a constitutionally-protected property interest when it suspended/revoked the building permit issued to KTK for the Circle refurbishing project without giving KTK a chance to be heard prior to the decision and without providing a means to challenge it

KTK's motion was granted. In order to satisfy due process, the City was required to provided KTK notice and the opportunity to be heard prior to the City Council's suspension/revocation of its permit and it was in fact provided neither.