IN THE CHANCERY COURT OF TENNESSEE

MPHIS MAR 0 1 2016

DONNA L. RUSSELL, C & M
TIME: BY:

EVERGREEN HISTORIC DISTRICT ASSOCIATION a/k/a EHDA,

Plaintiff,

v.

NO.: CH-16-0096 PART III

MEMPHIS ZOOLOGICAL SOCIETY And THE CITY OF MEMPHIS and the MEMPHIS CITY COUNCIL;

Defendants.

MOTION TO INTERVENE ON BEHALF OF EVERGREEN HISTORIC DISTRICT ASSOCIATION

Pursuant to Tennessee Rule of Civil Procedure 24.01, Evergreen Historic District Association (hereinafter "EHDA") moves for leave to intervene as a plaintiff in this action as a matter of right. EHDA has a substantial legal interest that will be impaired by the disposition of this action and the existing parties do not adequately represent this interest.

Alternatively, EHDA moves this Court for permissive intervention under TRCP 24.02 because EHDA and Overton Park Conservancy, (hereinafter "OPC") share common questions of law and fact with the claims asserted in this action. The facts and law in support of this Motion to Intervene are more fully set forth in the attached Memorandum in Support.

Pursuant to TRCP 24.03, a copy of EHDA's proposed Complaint in Intervention is attached hereto as "Exhibit A". A Memorandum of Law in Support Of EHDA's Motion to Intervene is being filed separately.

Respectfully submitted,

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By:

EUGENE A. LAURENZI BPR# 9528

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing has been served upon opposing counsel via U.S. Mail, postage prepaid this 29th day of February, 2016.

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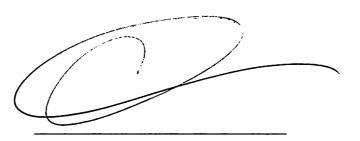
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Eugene A. Laurenzi

IN THE CHANCERY COURT OF TENNESSEE FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

EVERGREEN HISTORIC DISTRICT ASSOCIATION a/k/a EHDA,

Plaintiff,

v.

NO.: CH-16-0096

PART: III

MEMPHIS ZOOLOGICAL SOCIETY And THE CITY OF MEMPHIS and the MEMPHIS CITY COUNCIL;

Defendants.

COMPLAINT

TO THE HONORABLE CHANCELLORS OF THE CHANCERY COURT OF SHELBY COUNTY TENNESSEE FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS:

COMES NOW Plaintiff, Evergreen Historic District (hereinafter "EHDA), by and through counsel of record, and files this Complaint against Defendant, Memphis Zoological Society a/k/a Memphis Zoo, Inc. ("Memphis Zoo") and the City of Memphis and for cause of action against the Defendants states the following:

I.

INTRODUCTION

Formed in 1969 as the Mid-Memphis Improvement Association, today's Evergreen

Historic District Association, a Tennessee not-for-profit organization, represents a Historic

District in Midtown Memphis of 53 square blocks, with about 1,500 residential and commercial



buildings. EHDA is on the National Register Historic District, and a local Historic Conservation district protected by the Memphis Landmarks Commission. The neighborhood's boundaries stretch north-south from Poplar to North Parkway and east-west from East Parkway to Cleveland. All of Overton Park is included in EHDA's boundaries.

EHDA's charter specifically directs the association "To be an advocate for, preserve and protect, Overton Park and the Old Forest, within as a valuable and unique natural setting." In this vein parking in and around Overton Park has been problematic and an issue in the forefront of discussions with the City, City Council and the Zoo for more than 30 years.

Over the last few years the Memphis Zoo, which has always had EHDA's strong support, has sought to turn the Greensward in Overton Park into a parking lot (Exhibit, 1¹). Since the 1980's EHDA was directly involved in decision making with the City of Memphis regarding parking issues in and around the Zoo, including the Greensward.

Because of the serious issues regarding zoo parking and access, EHDA was directly involved in the negotiations when the 1989 Zoo Master Plan was agreed to. These decisions included maintenance of the designated zoo parking lots and parking on the Greensward. In 1989 EHDA entered into an agreement with the City of Memphis there would be no parking outside the Zoo's paved parking lots. Specifically no parking on the Greensward.

II.

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff EHDA is a Tennessee non-profit corporation with its principal place of business located at 1814 Poplar Avenue, Apt. 202, Memphis, Tennessee 38104.

¹. Photo from article Memphis Flyer, "New Group Wants parking Prohibited From Overton Park Greensward", March 25th, 2014.

- Defendant Memphis Zoological Society (hereinafter "Memphis Zoo) is a
 Tennessee non-profit corporation with its principal place of business located at 2000 Prentiss
 Place, Memphis, Tennessee 38112.
- 3. Defendant City of Memphis is a Tennessee municipality and may be served with process by serving City Attorney Bruce McMullen at 125 North Main Street, Room 336 Memphis. Tennessee 38103.
- 4. The jurisdiction of this Court is invoked pursuant to T.C.A. § 29-14-102 and T.C.A. § 16-11-101, et seq. in the exercise of its inherent general jurisdiction.
- 5. Venue in this Court is appropriate because the claims described herein concern a contract entered into within Shelby County, Tennessee, and the events described herein occurred within Memphis, Shelby County, Tennessee.

III.

FACTS

- 6. Overton Park is an urban park whose real-property is owned by the City of Memphis.
- 7. Overton Park is located in Midtown Memphis whose north-south boarders are North Parkway & Poplar Ave; east-west boarders are East Parkway & Kenilworth-Galloway & N. McLean.
- 8. Overton Park was created in 1900 when then Mayor J.J. Williams created the Memphis Park Commission. Overton Park contains a 126-acre Old Forest State Natural Area created June 8, 2011 by an act of the Tennessee General Assembly. The Links at Overton Park, a 9-hole golf course was created in 1926. The Memphis Brooks Museum of Art was founded in 1916. The Memphis Zoo which began in 1906 and the Memphis College of Art founded in

1936, becoming a resident of Overton Park in 1959. Finally, the Levitt Shell originally the Shell Theater, was built in 1936.

- 9. The Greensward is an open grassy area located in Overton Park south of the main paved Memphis zoo parking lot (Exhibit 2).
- 10. In April of 1988, Memphis approved the 1988 Overton Park Master Plan (Exhibit 3).
- 11. The Memphis Zoo participated in the discussions and negotiations that lead to the creation of the 1988 Overton Park Master Plan.
- 12. Pursuant to the 1988 Overton Park Master Plan, the Greensward is not included in the area designated as constituting the zoo.
- 13. When the 1988 Overton Park Master Plan was developed, as well as after it was approved, the Memphis Zoo met with Memphis and others to harmonize the 1986 Proposed Zoo Plan with the 1988 Overton Park Master Plan.
- 14. As part of these discussions, the Memphis Zoo agreed, among other things, to remove Rainbow Lake, the playground, the area containing Veterans Plaza, and the Greensward from area designated for future development by the zoo.
- 15. As a result of the above-referenced meetings, as well as the 1988 adoption by Memphis of the 1988 Overton Park Master Plan, a revised plan was adopted and the June "1989 Zoo Phase 1 Master Plan" was created (Exhibit 4).
- 16. EHDA was formed in 1969 as the Mid-Memphis Improvement Association.

 Today's Evergreen Historic District Association, is a Tennessee not-for-profit organization, represents a Historic District in Midtown Memphis of 53 square blocks, with about 1,500

residential and commercial buildings. EHDA is on the National Register Historic District, and a local Historic Conservation district protected by the Memphis Landmarks Commission.

- 17. The neighborhood's boundaries stretch north-south from Poplar to North Parkway and east-west from East Parkway to Cleveland. All of Overton Park is included in EHDA's boundaries.
- 18. EHDA's charter specifically directs the association "To be an advocate for, preserve and protect, Overton Park and the Old Forest, within as a valuable and unique natural setting."
- 19. Over the last number of years the Memphis Zoo has sought to aggressively expand by adding major exhibits. Scheduled for opening in 2016 is the multimillion dollar Zambezi River Hippo Camp.
 - 20. Zoo parking with the zoo expansion has been and is a serious problem.
- 21. EHDA was directly involved with the City of Memphis in the negotiations when the 1989 Zoo Master Plan was agreed upon.
- 22. In formulating the 1989 Zoo Master Plan, the City of Memphis, through Mayor Richard C. Hackett, reached an agreement with EHDA prohibiting Greensward parking (Exhibit 5, Proclamation from Mayor Richard Hackett of December 14, 1989 in conjunction with the 1989 Zoo Phase 1 Master Plan).
- 23. The City's agreement with EHDA prohibited parking on the Greensward. More specifically agreement with EHDA included an agreement by the City to specifically limit zoo parking to the main paved parking lot and stated the parking lot would be surrounded by a "wooden bumper" which would prevent parking on the Greensward (Exhibit 6, photo of wooden bumpers erected to prevent parking on the Greensward in 1989).

- 24. In 2001 the parties revised the master plan for the Zoo, creating a new master plan, which is current, operative master plan in use by the Zoo (Exhibit 7).
- 25. In 2002, the Division of Park Services for the City of Memphis created an "Illustrative Map of Overton Park," (Exhibit 8)." This map, prepared by Memphis, confirmed the respective areas and the entities responsible for the areas. This map clearly shows that the entirety of the Greensward is outside the area controlled by the Memphis Zoo.
- 26. The 1989 Zoo Phase 1 Master Plan, the 1988 Overton Park Master Plan, the Zoo's current master plan, and the 2002 map created by the Division of Park Services all show the Greensward as an open green space, and none of them suggest, in any way, that the Greensward is subject to the control and management of MZS or is available for overflow parking.
- 27. The 1989 Zoo Phase 1 Master Plan excludes the Greensward from the "Real Property" subject to MZS's control and management.
 - 28. The Memphis Zoo charges its patrons to park on the Greensward.
- 29. Many times the Memphis Zoo used the Greensward as a primary parking lot before utilizing other paved parking lots in the zoo.
- 30. To date there has not been an accounting as to what has been collected from allowing parking on the Greensward.
 - 31. The Memphis Zoo does not maintain the grass on the Greensward, OPC does.
- 32. On January 13, 2012, Memphis and OPC entered into the Overton Park Management Agreement, which is attached to MZS' Complaint as Exhibit C.
- 33. The Overton Park Management Agreement defines the portion of Overton Park to be managed by OPC ("Managed Area") by reference to Exhibit C to the Overton Park Management Agreement.

- 34. In the Overton Park Management Agreement, Memphis represented and warranted that this Exhibit is a "complete and accurate description of the matters referred to therein." (Overton Park Management Agreement, p.14.)
- 35. With regard to the Managed Area, the Overton Park Management Agreement provides that "OPC shall have the full and exclusive authority and responsibility to manage, operate, lease, maintain, rent, preserve, protect, enhance, and develop the Management Area, to promote the Park, and to carry out all of its other duties as set forth in more detail herein."

CAUSE OF ACTION - DECLARATORY JUDGMENT

- 36. EHDA repeats, re-alleges, and incorporates herein by reference the preceding paragraphs as though set forth fully herein.
 - 37. EHDA has a legal and contractual interest in the Greensward.
- 38. EHDA's legal and contractual interest in the Greensward is being impaired by The City of Memphis and the Memphis Zoo. In that the Memphis Zoo claims an exclusive right to control over the Greensward. A right it was never granted.
- 39. The Memphis Zoo has failed to address a serious parking problem in and around the zoo. A problem it has been aware of for more than 25 years.
- 40. The Memphis Zoo has acted arbitrarily and taken no steps to alleviate parking on the Greensward.
- 41. Pursuant to T.C.A. § 29-14-101, et seq., EHDA seeks a judgment declaring the agreement it reached with the City of Memphis, then Memphis Park Commission and City Council on December 14, 1989 to be in full force and effect.
- 42. Further, EHDA seeks a judgment prohibiting the Memphis Zoo from allowing parking on the Greensward.

WHEREFORE, PREMISES CONSIDERED, EHDA prays as follows:

- A. That this Court enter an Order declaring the agreement it reached with the City of Memphis, then Memphis Park Commission and City Council on December 14, 1989 to be in full force and effect.
- B. That this Court enter an Order prohibiting the Memphis Zoo from allowing any parking on the Greensward.
- C. That EHDA be awarded its costs and attorney's fees pursuant to Tenn. Code Ann. § 29-14-111;
 - D. That EHDA be granted such other and further relief to which it may be entitled.

Respectfully submitted,

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EUGENE A. LAURENZI, BPR# 9528

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing has been served upon opposing counsel via U.S. Mail, postage prepaid this 29th day of February, 2016.

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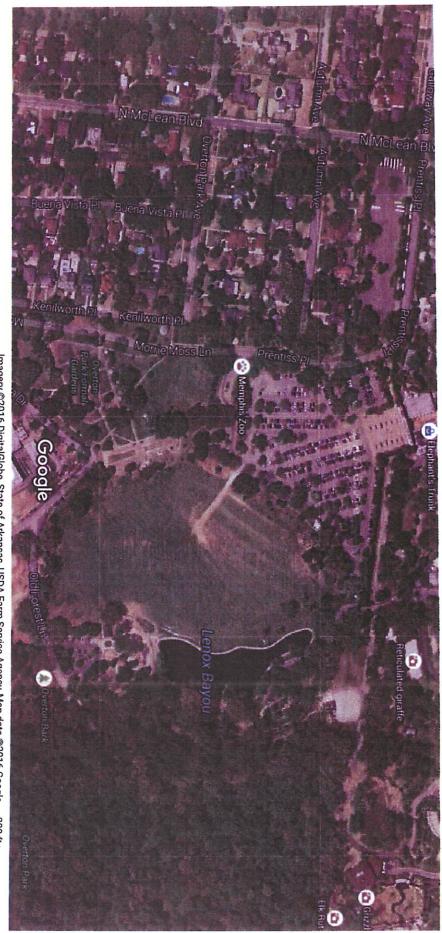
Memphis, Tennessee 38119

Eugene A. Laurenzi





Google Maps

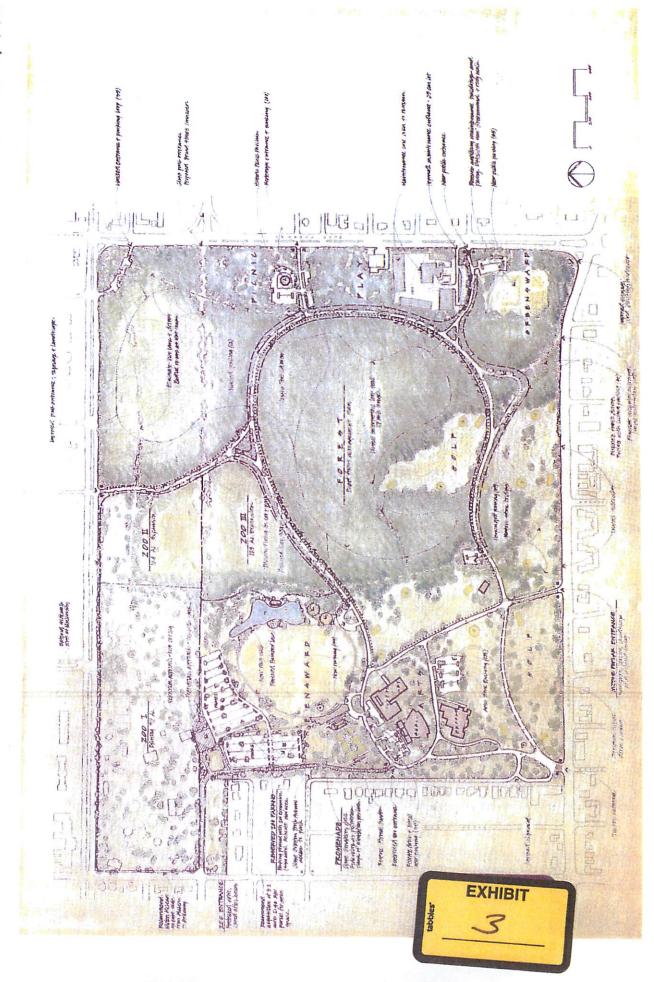


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Overton Park Master Plan
A Twenty Year Program of Improvement and Renewal



A Celebration of Life on Our Globe



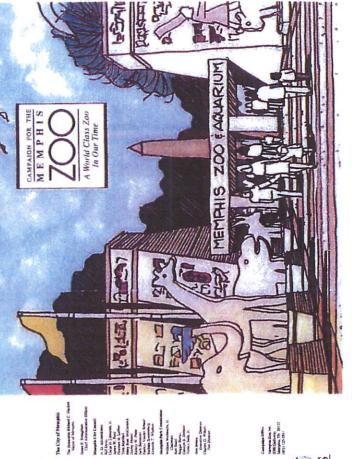


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Memphis

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2) POLICY STATEMENT - MEMPHIS ZOO PROJECT

In formulating the Master Plan for the Zoo, certain assurances were made to the Evergreen Historic District Association with regard to present and future planning. Guidelines were established to give the neighborhood a comfort zone and to ensure plans would not change after the fact. Each of the Board members has had the opportunity to review this Policy Statement and Bob Brame recommended its approval.

MOTION FOR APPROVAL WAS MADE BY COMMISSIONER BARNES, seconded by Commissioner Baird. Vote was unanimous. A copy of the Policy Statement is attached hereto and made a part of these Minutes. (Copy Attached)

There being no further business to come before the Board, the meeting was adjourned.

Wm.(Wolbrecht, Chairman

Liz Stockdale, Secretary





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RICHARD C. HACKETT - Mayor JAMES E. BROUGHTON - Chief of Staff

MEMPHIS PARK COMMISSION BOB BRAME - Director



POLICY STATEMENT IN REGARD TO PARKING FOR THE MEMPHIS ZOO IN OVERTON PARK

The City of Memphis has proposed that the current parking lot for the Memphis Zoological Gardens located in Overton Park be renovated and expanded and, subject to certain modifications which have been agreed upon, the Evergreen Historic District Association (the "Association") agrees with the plan as revised (the "Modified Parking Plan). It is understood that, in the absence of the policy views contained in this Statement, the Association would not concur in the expansion and renovation of the Zoo parking lot.

In connection with the implementation of the Modified Parking Plan, it is recognized that the vacant land between McLean Avenue and the west border of Overton Park on Galloway Avenue (the "Galloway Parking Area") will be used on an as-needed basis for overflow parking. Further, this space will not at present be paved and such paving will occur, if at all, only when actual attendance for the Zoo clearly mandates that such space be used as a paved lot. The Galloway Parking Area will at all times when used by the City of Memphis as an overflow lot or otherwise be utilized only after implementation of the things and matters previously agreed upon by the Association and the City for the protection of homeowners whose property adjoins the Galloway Parking Area.

Further, it is the policy of the City of Memphis that, with the exception of the areas encompassed in the Modified Parking Plan and the Galloway Parking Area, no additional area in Overton Park will be utilized in the future for paved parking in connection with the Memphis Zoological Gardens. In the event that paved parking in addition to the Modified Parking Plan and the Galloway Parking Area is necessary in the future, such additional parking will be located off-site.

This Statement has been approved by the Mayor and the City Council.

2500 Avery Avenue a Memnhis Tennessee 38112-4897 a (901) 434-3766

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Policy Statement Page two

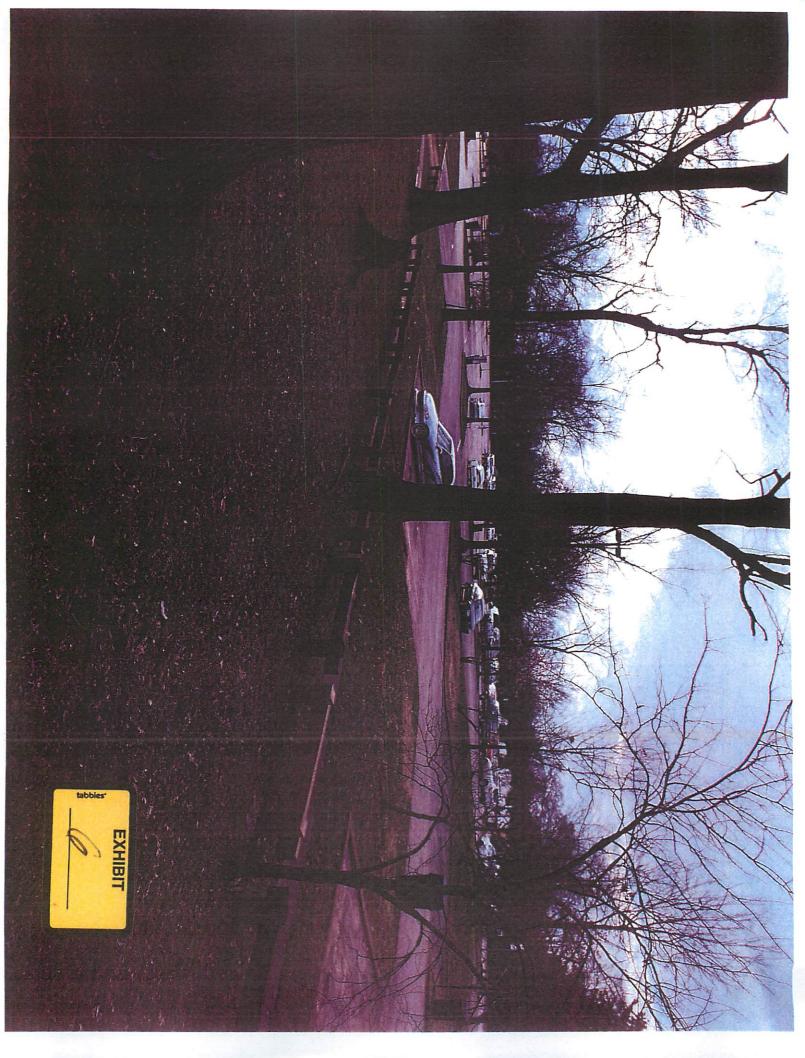
In addition to the Statement, the Association understands that the following things and matters have been agreed upon between the City and the Association with reference to the Modified Parking Plan:

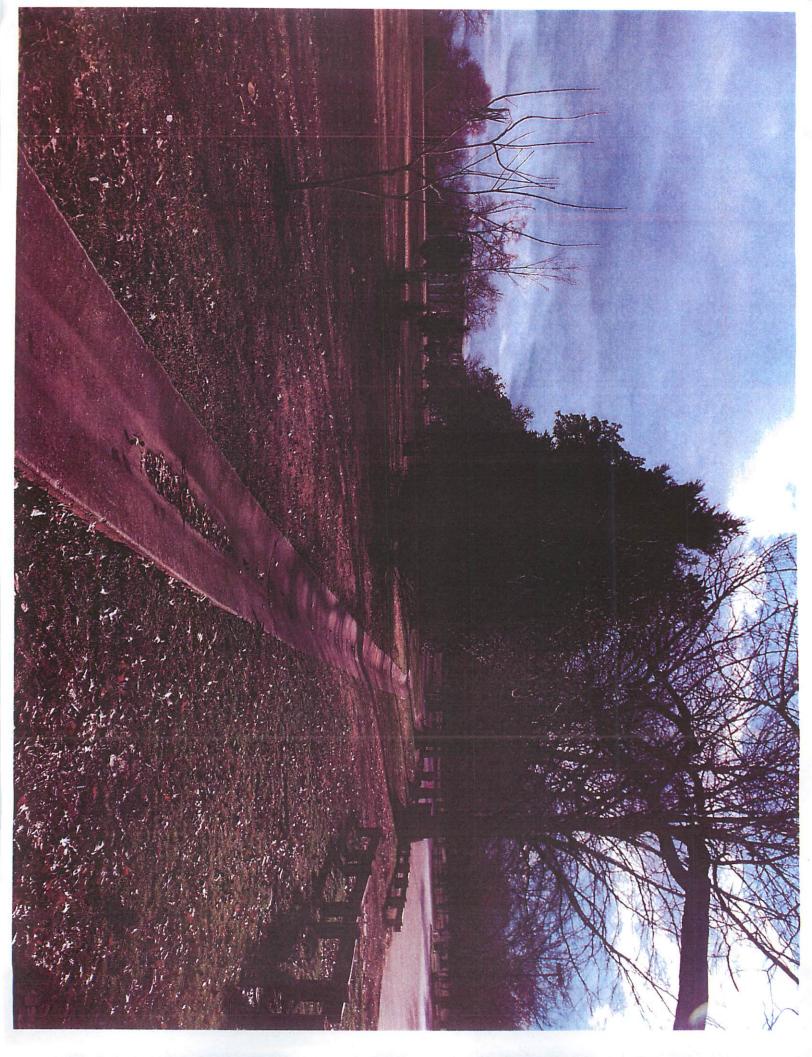
- (a) The Modified Parking Plan will be utilized in the construction of the Zoo lot, and such plans will include, in addition to modifications previously shown to the Association, features that: (i) paved parking west of the current Doughboy Road will not extend further south than a point which is approximately 240 feet north of Overton Park Avenue; (ii) parking on the east side of Doughboy Road south of the 240 foot line will consist solely of existing paved roads which will extend no farther south than the traffic diamond currently in place just north of the Doughboy Memorial; and (iii) a buffer zone of increased width will be used on the west side of the paved parking as shown on the latest plans shown the Association.
- (b) The Park Commission will furnish landscaping on the west border of the Park and the Association will be involved in the planning process to plan and implement this landscaping.
- (c) The Zoo lot will be surrounded by a short wooden bumper or other aesthetically suitable device which prevents cars from moving from the Zoo lot to the green space area immediately surrounding the Zoo lot.
- (d) Gates will be erected at three points: (i) the intersection of West Park Road and the road in front of the Brooks Museum; (ii) the intersection of the West Park Road and the Zoo lot; and (iii) the intersection of Galloway Avenue and McLean Boulevard. Upon completion of the Zoo lot construction, the gates located at (i) and (ii) will be locked promptly at the closing time of the Zoo each day of the year. Further, the gate at point (iii) will be locked after the Zoo security detail has cleared the Zoo parking lot each evening. In any event, the gate at point number (iii) will not remain open on any day after approximately 7:00 p.m., except in connection with special events at the Zoo.

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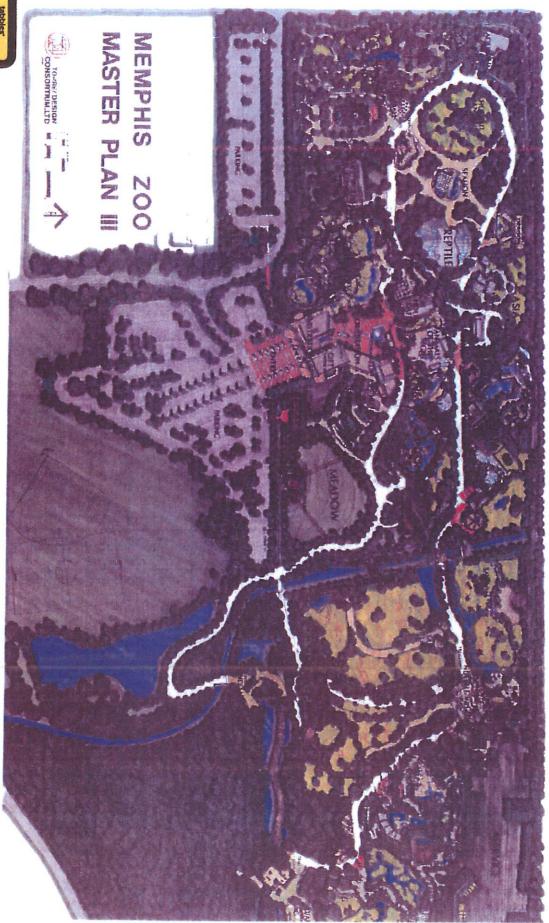
Policy Statement Page three

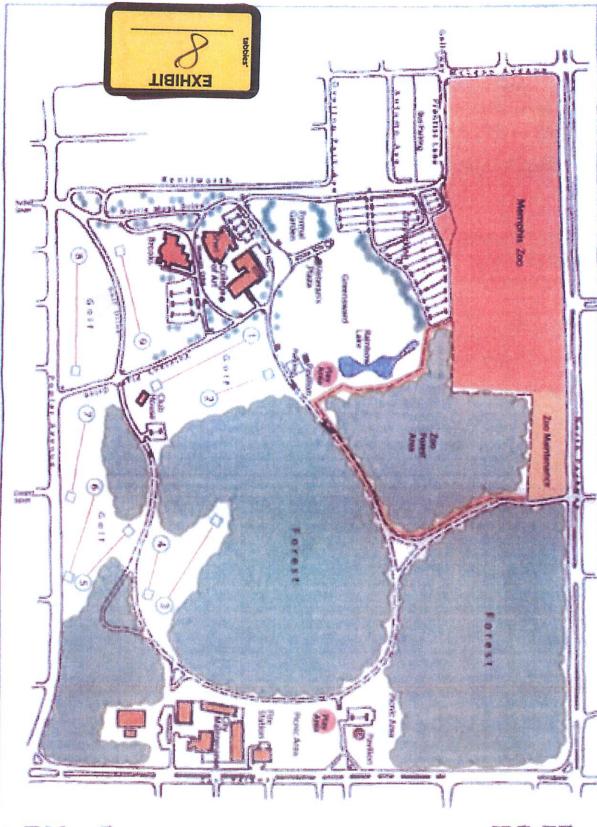
- (e) The Zoo will position guards at the gates at points (i) and (iii) referred to in subparagraph (d) above on Saturdays and Sundays and the Zoo will utilize these guards to charge a refundable sum for parking in the Zoo lot.
- (f) The City will not utilize the green space at the end of Overton Park Avenue to the south of the Zoo lot for any parking, whether temporary or otherwise, and will upon completion of construction of the Zoo lot remove any gravel, curb cuts or other things that enable patrons to use this area for parking.
- (g) The Galloway Parking Area will continue to be used for temporary overflow parking on an as-needed basis. However, the City will, in connection with the use of the Galloway property: (i) offer in accordance with Senator Cohen's Corridor Bill existing landowners on the north side of Autumn Avenue the right to buy mutilated portions of their lots at fair market value; (ii) establish and landscape in consultation with the Association an adequate buffer zone of at least twenty feet in width along the rear property lines of homeowners on the north side of Autumn Avenue; (iii) establish a landscaped buffer zone between McLean Avenue and the Galloway Parking Area so as to obstruct parked cars on the Galloway Parking Area from the view of motorists on McLean Avenue.











Memphis

Map of Overton Park