



Friends of Gwynns Falls Leakin Park 501(c)(3)

Volunteer park group sues Baltimore City for illegally allowing pipeline construction

BGE creates 2.2 mile permanent scar through city's largest park then lowballs City on the land's value

The Friends of Gwynns Falls Leakin Park (FOGFLP) filed a lawsuit on April 11, 2019 against Baltimore City for allowing BGE to construct a 2.2 mile natural gas pipeline through the Gwynns Falls/Leakin Park in violation of the City Charter. BGE is also named in the suit because it destroyed 19 acres of parkland without having the right to do so.

The Charter requires that the City first grant rights to property, in this case allowing construction of a pipeline through a park and it also requires BGE to pay for the legal right to construct and use the pipeline. The compensation for using the land is supposed to be set at "the largest amount it is able to obtain." Because the City pursued none of these requirements the entire construction project is in violation of the Charter.

The lawsuit claims that Mayor Catherine Pugh's administration grossly undervalued the worth of the parkland in Gwynns Falls/Leakin Park when it agreed to accept just \$1.4 million dollars from BGE. The city's Recreation and Parks Department has valued the land at \$14 million. The City rejected Recreation and Park's valuation, refused to hire an independent appraiser, and ignored the Charter's legal requirements that the city must bargain for the highest possible dollar amount they could obtain. The Mayor's conduct resulted in losses to the park itself and to Baltimore citizens.

FOGFLP attempted to work with the City and BGE to reach an agreement that would require BGE to provide compensation equal to the true value of the lost parkland. Instead of working with FOGFLP the City and BGE continued behind the scenes negotiations for total compensation of only \$2 million. FOGFLP believes that this amount is still far below the compensation due for the permanent loss suffered by park users.

In the lawsuit, FOGFLP has asked the Court to require the City to follow the process set forth in the Charter and refer the matter to the Board of Estimates. FOGFLP is asking the Court to require the Board of Estimates to retain an independent appraiser to perform the valuation.

FOGFLP has sent copies of the lawsuit to the City and BGE. Despite this, the City Council intends to continue violating the Charter and approve the franchise fee at an upcoming meeting, again without referral to the Board of Estimates for valuation.

The Recreation and Parks Department has said the following about the pipeline: "a decline of overall forest health should be anticipated," "the pipeline will pose an inadvertent threat to the plants and wildlife in the park," and the project is "sure to increase the cost of park maintenance."

Park lovers should know that this lawsuit is about Phase 2 of the Granite Pipeline. Phase 3 is coming. Five (5) more miles of pipeline clear-cut through Gwynns Falls/Leakin Park, Carroll Park, along the Gwynn Falls stream, under the Middle Branch ending at BGE's Spring Gardens LNG station in the Sharp-Leadenhall neighborhood downtown.

It is FOGFLP's goal to prevent BGE from using the pipeline until adequate compensation is paid for use of the parkland.

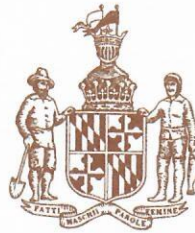
For more information please contact Jack Lattimore, FOGFLP Board Member, at 443-415-1103 or lattimore.jack@gmail.com

The mission of Friends of Gwynns Falls/Leakin Park: "Through advocacy and collaboration, Friends of Gwynns Falls/Leakin Park, Inc. assures the restoration and maintenance of the Gwynns Falls/Leakin Park as an historic area and healthy urban wilderness in Baltimore City for the experience, learning and enjoyment of all." At 1200 acres, Gwynns Falls/Leakin Park is the largest public park in Baltimore City.

<http://friendsofgwynnsfallsleakinpark.org/>

Attached: Letter of support from the Members of the 41st State Delegation

Complaint: Friends of Gwynns Falls Leakin Park v. Mayor & City Council of Baltimore and BGE



THE MARYLAND GENERAL ASSEMBLY
LEGISLATIVE DISTRICT 41
BALTIMORE CITY

March 14, 2019

Mayor Catherine Pugh
City Hall, 100 N. Holliday St, Rm 250
Baltimore, MD 21202

Dear Mayor Pugh:

We write in support of the residents of the Gwynns Falls/Leakin Park community and their petition regarding the fee that Baltimore City should set for the use of the natural gas pipeline built by BGE in Leakin Park. Community members maintain that the City is required to adopt a Franchise Ordinance that meets the fee requirements of the City Charter, which would fully compensate the City and its citizens for the loss of value and use of the 12.23 acres of parkland damaged or destroyed by the new pipeline route. They also contend that the initial compensation agreement with BGE was illegal because it did not follow the requirements set in the City Charter.

Community members are distressed that many trails and the Leakin parkland will never be returned to its original state. They are concerned that the current agreement between the City and BGE does not cover the cost of repairing the damage to the park, its trails, and other vital projects and does not follow the requirements of the City Charter regarding fees to be charged if parkland is removed from its intended use. Community members maintain that the compensation fee to be paid by BGE should be \$14 million, the one City's experts calculated for the 25-year term of the Franchise Ordinance, rather than the \$1.4 million that the City accepted.

We urge you to adopt a Franchise Ordinance written in accordance with the City Charter provisions and requires BGE to pay the fee calculated by the City's own experts. Baltimore City and its citizens deserve better than the fee initially agreed upon with BGE.

Thank you for your serious review of this matter.

Yours truly,

Handwritten signature of Jill P. Carter in blue ink.

Jill P. Carter

Handwritten signature of Dalya Attar in blue ink.

Dalya Attar

Handwritten signature of Tony Bridges in blue ink.

Tony Bridges

Handwritten signature of Samuel I. Rosenberg in blue ink.

Samuel I. Rosenberg

cc: Jack Young, City Council President

“(City or County)”

DIRECTIONS

Defendant: You must file an Information Report as required by Rule 2-323(h).

THIS INFORMATION REPORT CANNOT BE ACCEPTED AS A PLEADING

(Clerk to insert)

Plaintiff

PHONE: 410 825 2150

PARTY'S E-MAIL: michael@mmccannlaw.net

PHONE: 410 825 2150

PARTY'S ATTORNEY'S E-MAIL: michael@mmccannlaw.net

RELATED CASE PENDING? ☐ Yes ☒ No If yes, Case #(s), if known:

ANTICIPATED LENGTH OF TRIAL?:hours3 days

New Case: ☒ Original ☐ Administrative Appeal ☐ Appeal

If filing in an existing case, skip Case Category/ Subcategory section - go to Relief section.

IF NEW CASE: CASE CATEGORY/SUBCATEGORY (Check one box.)

- ☐ Constructive Trust
- ☐ Contempt
- ☐ Deposition Notice
- ☐ Dist Ct Mtn Appeal
- ☐ Financial
- ☐ Grand Jury/Petit Jury
- ☐ Miscellaneous
- ☐ Perpetuate Testimony/Evidence
- ☐ Prod. of Documents Req.
- ☐ Receivership
- ☐ Sentence Transfer
- ☐ Set Aside Deed
- ☐ Special Adm. - Atty
- ☐ Subpoena Issue/Quash
- ☐ Trust Established
- ☐ Trustee Substitution/Removal
- ☐ Witness Appearance-Compel

PEACE ORDER

- ☐ Peace Order

EQUITY

- ☒ Declaratory Judgment
- ☐ Equitable Relief
- ☒ Injunctive Relief
- ☐ Mandamus

OTHER

- ☐ Accounting
- ☐ Friendly Suit
- ☐ Grantor in Possession
- ☐ Maryland Insurance Administration
- ☐ Miscellaneous
- ☐ Specific Transaction
- ☐ Structured Settlements

IF NEW OR EXISTING CASE: RELIEF (Check All that Apply)

- | | | | |
|--|---|--|---|
| <input type="checkbox"/> Abatement | <input type="checkbox"/> Earnings Withholding | <input type="checkbox"/> Judgment-Interest | <input type="checkbox"/> Return of Property |
| <input type="checkbox"/> Administrative Action | <input type="checkbox"/> Enrollment | <input type="checkbox"/> Judgment-Summary | <input type="checkbox"/> Sale of Property |
| <input type="checkbox"/> Appointment of Receiver | <input type="checkbox"/> Expungement | <input type="checkbox"/> Liability | <input type="checkbox"/> Specific Performance |
| <input type="checkbox"/> Arbitration | <input type="checkbox"/> Findings of Fact | <input type="checkbox"/> Oral Examination | <input type="checkbox"/> Writ-Error Coram Nobis |
| <input type="checkbox"/> Asset Determination | <input type="checkbox"/> Foreclosure | <input type="checkbox"/> Order | <input type="checkbox"/> Writ-Execution |
| <input type="checkbox"/> Attachment b/f Judgment | <input checked="" type="checkbox"/> Injunction | <input type="checkbox"/> Ownership of Property | <input type="checkbox"/> Writ-Garnish Property |
| <input type="checkbox"/> Cease & Desist Order | <input type="checkbox"/> Judgment-Affidavit | <input type="checkbox"/> Partition of Property | <input type="checkbox"/> Writ-Garnish Wages |
| <input type="checkbox"/> Condemn Bldg | <input type="checkbox"/> Judgment-Attorney Fees | <input type="checkbox"/> Peace Order | <input type="checkbox"/> Writ-Habeas Corpus |
| <input type="checkbox"/> Contempt | <input type="checkbox"/> Judgment-Confessed | <input type="checkbox"/> Possession | <input checked="" type="checkbox"/> Writ-Mandamus |
| <input type="checkbox"/> Court Costs/Fees | <input type="checkbox"/> Judgment-Consent | <input type="checkbox"/> Production of Records | <input type="checkbox"/> Writ-Possession |
| <input type="checkbox"/> Damages-Compensatory | <input type="checkbox"/> Judgment-Declaratory | <input type="checkbox"/> Quarantine/Isolation Order | |
| <input type="checkbox"/> Damages-Punitive | <input type="checkbox"/> Judgment-Default | <input type="checkbox"/> Reinstatement of Employment | |

If you indicated **Liability** above, mark one of the following. This information is not an admission and may not be used for any purpose other than Track Assignment.

☐ Liability is conceded. ☐ Liability is not conceded, but is not seriously in dispute. ☐ Liability is seriously in dispute.

MONETARY DAMAGES (Do not include Attorney's Fees, Interest, or Court Costs)

- ☐ Under \$10,000 ☐ \$10,000 - \$30,000 ☐ \$30,000 - \$100,000 ☐ Over \$100,000
- ☐ Medical Bills \$ _____ ☐ Wage Loss \$ _____ ☐ Property Damages \$ _____

ALTERNATIVE DISPUTE RESOLUTION INFORMATION

Is this case appropriate for referral to an ADR process under Md. Rule 17-101? (Check all that apply)

A. Mediation	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	C. Settlement Conference	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
B. Arbitration	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	D. Neutral Evaluation	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

SPECIAL REQUIREMENTS

- ☐ If a Spoken Language Interpreter is needed, **check here and attach form CC-DC-041**
- ☐ If you require an accommodation for a disability under the Americans with Disabilities Act, **check here and attach form CC-DC-049**

ESTIMATED LENGTH OF TRIAL

*With the exception of Baltimore County and Baltimore City, please fill in the estimated **LENGTH OF TRIAL**.*
(Case will be tracked accordingly)

- | | |
|---|---|
| <input type="checkbox"/> 1/2 day of trial or less | <input type="checkbox"/> 3 days of trial time |
| <input type="checkbox"/> 1 day of trial time | <input type="checkbox"/> More than 3 days of trial time |
| <input type="checkbox"/> 2 days of trial time | |

BUSINESS AND TECHNOLOGY CASE MANAGEMENT PROGRAM

For all jurisdictions, if Business and Technology track designation under Md. Rule 16-308 is requested, attach a duplicate copy of complaint and check one of the tracks below.

- | | |
|---|---|
| <input type="checkbox"/> Expedited - Trial within 7 months of Defendant's response | <input type="checkbox"/> Standard - Trial within 18 months of Defendant's response |
|---|---|

EMERGENCY RELIEF REQUESTED

**COMPLEX SCIENCE AND/OR TECHNOLOGICAL CASE
MANAGEMENT PROGRAM (ASTAR)**

*FOR PURPOSES OF POSSIBLE SPECIAL ASSIGNMENT TO ASTAR RESOURCES JUDGES under
Md. Rule 16-302, attach a duplicate copy of complaint and check whether assignment to an ASTAR is requested.*

- ☐ **Expedited** - Trial within 7 months of Defendant's response ☐ **Standard** - Trial within 18 months of Defendant's response

**IF YOU ARE FILING YOUR COMPLAINT IN BALTIMORE CITY, OR BALTIMORE COUNTY,
PLEASE FILL OUT THE APPROPRIATE BOX BELOW.**

CIRCUIT COURT FOR BALTIMORE CITY (CHECK ONLY ONE)

- | | |
|--|---|
| <input type="checkbox"/> Expedited | Trial 60 to 120 days from notice. Non-jury matters. |
| <input type="checkbox"/> Civil-Short | Trial 210 days from first answer. |
| <input type="checkbox"/> Civil-Standard | Trial 360 days from first answer. |
| <input type="checkbox"/> Custom | Scheduling order entered by individual judge. |
| <input type="checkbox"/> Asbestos | Special scheduling order. |
| <input type="checkbox"/> Lead Paint | Fill in: Birth Date of youngest plaintiff..... |
| <input type="checkbox"/> Tax Sale Foreclosures | Special scheduling order. |
| <input type="checkbox"/> Mortgage Foreclosures | No scheduling order. |

CIRCUIT COURT FOR BALTIMORE COUNTY

- | | |
|---|--|
| <input type="checkbox"/> Expedited
(Trial Date-90 days) | Attachment Before Judgment, Declaratory Judgment (Simple),
Administrative Appeals, District Court Appeals and Jury Trial Prayers,
Guardianship, Injunction, Mandamus. |
| <input type="checkbox"/> Standard
(Trial Date-240 days) | Condemnation, Confessed Judgments (Vacated), Contract, Employment
Related Cases, Fraud and Misrepresentation, International Tort, Motor Tort,
Other Personal Injury, Workers' Compensation Cases. |
| <input type="checkbox"/> Extended Standard
(Trial Date-345 days) | Asbestos, Lender Liability, Professional Malpractice, Serious Motor Tort or
Personal Injury Cases (medical expenses and wage loss of \$100,000, expert
and out-of-state witnesses (parties), and trial of five or more days), State
Insolvency. |
| <input type="checkbox"/> Complex
(Trial Date-450 days) | Class Actions, Designated Toxic Tort, Major Construction Contracts, Major
Product Liabilities, Other Complex Cases. |

April 11, 2019

Date

118 W. Pennsylvania Avenue

Address

Towson

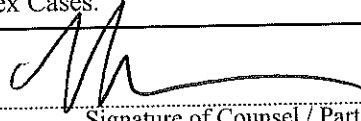
City

MD

State

21204

Zip Code



Signature of Counsel / Party

Michael R. McCann

Printed Name

**FRIENDS OF GWYNNS FALLS/
LEAKIN PARK, INC.**

1920 Eagle Drive
Baltimore, Maryland 21207

HENRY J. LATTIMORE

5408 W. North Avenue
Baltimore, Maryland 21207

GEORGE FARRANT

4613 Briarclift Road
Baltimore, Maryland 21229

and

BRIDGET McCUSKER

833 Brinkwood Road
Baltimore, Maryland 21229

Plaintiffs,

v.

MAYOR AND CITY COUNCIL OF BALTIMORE

100 N. Holliday Street,
Baltimore, Maryland 21202

CITY COUNCIL FOR BALTIMORE CITY

100 N. Holliday Street, Room 400
Baltimore, Maryland 21202

BOARD OF ESTIMATES FOR BALTIMORE CITY

100 N. Holliday Street, Room 204
Baltimore, Maryland 21202

and

BALTIMORE GAS AND ELECTRIC COMPANY

2 Center Plaza
110 West Fayette Street
Baltimore, Maryland 21201

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE CITY

* Case no. _____

Serve On:

Corporate Creations Network, Inc.
2 Wisconsin Circle, #700
Chevy Chase, Maryland 20815

Defendants.

* * * * *

**COMPLAINT FOR DECLARATORY, MANDAMUS,
AND INJUNCTIVE RELIEF**

Plaintiffs, Friends of Gwynns Falls/Leakin Park, Inc., Henry J. Lattimore, George Farrant, and Bridget McCusker file this verified complaint for declaratory, mandamus, and injunctive relief against defendants Mayor and City Council of Baltimore and Baltimore Gas and Electric Company, and for causes of action state as follows:

The Parties

1. Plaintiff, Friends of Gwynns Falls/Leakin Park, Inc. ("FOGFLP") is a 501(c)(3) non-profit corporation organized under the laws of the State of Maryland. Its principle place of business is located at 1920 Eagle Drive, Baltimore, Maryland 21207.

2. Plaintiff, Henry J. Lattimore, owns and resides at real property located in Baltimore County, Maryland.

3. Plaintiff, George Farrant, owns and resides at real property located in Baltimore City, Maryland.

4. Plaintiff, Bridget McCusker, owns and resides at real property located in Baltimore City, Maryland.

5. Defendant, Mayor and City Council of Baltimore City (the "City"), is a body corporate formed under the City Charter and the laws of the State of Maryland.

6. Defendant, City Council for Baltimore City (the “City Council”), is the legislative department of City government, established under Article III of the City Charter.

7. Defendant, Board of Estimates for Baltimore City (the “Board of Estimates”), is established under Article VI of the City Charter and empowered to formulate and execute the fiscal policy of the City.

8. Defendant, Baltimore Gas and Electric Company (“BGE”), is a corporation organized under the laws of the State of Maryland and a wholly owned subsidiary of Exelon Corporation. At all times relevant hereto, BGE was engaged in business as a utility providing gas and electricity to customers in the Baltimore metropolitan area and throughout the State of Maryland. BGE’s principal place of business is in Baltimore City, Maryland.

9. This Court has personal jurisdiction over defendants by virtue of sections 6-102, 103 of the Courts & Judicial Proceedings Article of the Annotated Code of Maryland. Venue is proper in this Court pursuant to section 6-201(a) of the Courts & Judicial Proceedings Article.

Factual Background

The Park

10. Gwynns Falls/Leakin Park (the “Park”) is a 1216-acre public park that extends from the western edge of Baltimore City through the valley of the Gwynns Falls and its tributaries all the way to Wilkens Avenue. The Park was first envisioned in 1904 by the Olmsted brothers, influential landscape architects who designed parks and college campuses throughout the nation.

11. The Park has vast areas of mature forest and wilderness preserve, numerous hiking and biking trails, and recreational and educational facilities. The Park is the second largest woodland park in the country. On its website, the City describes the Park as “a rare and exceptional urban resource - providing a diversity of ecosystem services and enhancing urban environmental conditions for the City of Baltimore.”

12. The Park also has historic significance, as evidenced by its inclusion in the Baltimore National Heritage Area, one of only 49 such areas designated by the federal government. Heritage areas are regions where historic structures, landscapes, cultural traditions, and other resources (such as parks and museums) work together to tell patterns of history unique to the location.

13. FOGFLP was established in 1983 in order to advocate for and preserve the Park as a public resource. FOGFLP’s early organizers were influential in stopping the extension of Interstate Route 70 eastward through the City. Route 70 now stops abruptly at the western entrance to the Park.

Pertinent Provisions of the City Charter

14. The Charter provides that the City’s title in its parklands and other public property is “inalienable.” Charter, Art. VIII, § 1. The Charter, however, authorizes the City to grant a franchise or right in or relating to parkland or other public property “for a limited time” so long as “such grant is *in compliance with the requirements of this Charter* and [] the terms and conditions of the grant *shall have first been authorized and set forth in an ordinance duly adopted.*” *Id.* (emphasis added).

15. Once introduced, the Charter requires that such an ordinance (referred to as a “franchise ordinance”) “shall, after first reading, be referred forthwith to the Board of

Estimates.” *Id.*, § 2. The Board of Estimates is then obligated to “make diligent inquiry as to the money value of said franchise or right proposed to be granted and the adequacy of the proposed compensation to be paid therefor to the City ... and the propriety of the terms and conditions of said ordinance....” *Id.* The Board of Estimates is “empowered to increase the compensation to be paid therefor to the City and to alter the terms and conditions of said ordinance....” *Id.* The Board is charged with the “duty” to “fix,” “by advertising or otherwise,” the compensation for the franchise “at the largest amount it may be able to obtain....” *Id.*

16. The Board must approve, by vote or resolution, the amount of the compensation for the franchise (referred to as the “franchise fee”) and other the terms and conditions, which must be entered in its minutes or records and attached to the ordinance before it is passed. In the absence of such a vote or resolution, the proposed ordinance “may not be passed but shall lapse and be void.” *Id.* Once approved by the Board of Estimates, the City Council must then adopt an ordinance specifically setting forth the terms and conditions and the nature, extent and duration of the franchise or rights granted. *Id.*

17. The Charter prohibits the granting of a franchise or right for longer than a period of twenty-five years. Charter, Art. VIII, § 3. The City may grant the right to renew the franchise (“on fair revaluation, including in such revaluation the value derived from the said franchise or right”), but the renewals may not “exceed[] in the aggregate twenty-five years.” *Id.*

18. In short, *before* any rights in a park or other public property may be granted, (i) a franchise ordinance proposing the granting of a franchise or right in the

property must be introduced to the City Council, (ii) after first reading, the Board of Estimates must conduct a diligent inquiry into the franchise fee to be paid for the franchise or right and fix that amount at the largest amount possible, either through advertising or some other means, (iii) the Board of Estimates must approve the amount of the franchise fee by vote or resolution, and (iv) the City Council must pass an ordinance authorizing the grant of the franchise or right and specifying the terms and conditions thereof.

19. The City may only pass ordinances that are “[c]onsistent with the Charter....” Art. III, § 11. The Board of Estimates, likewise, may exercise only those functions “to the extent, and in the manner provided for, in the Charter.” Art. VI, § 2.

The Omnibus Agreement

20. In or about September 2017, BGE and the City executed an “Omnibus Agreement” purporting to grant BGE the right to clear a 50-75 foot wide, 2.2 mile stretch of forest through the Park in order to construct a new 26” gas pipeline (the “Pipeline”).

21. In publicizing the Pipeline on its website, the City estimated, conservatively, that 2800 trees would be removed and described the environmental impact on the Park as follows:

[The] precise environmental impacts are uncertain, though a decline of overall forest health should be anticipated. The construction and maintenance of the pipeline will pose an inadvertent threat to the diversity, density and distribution of plants and wildlife in the park. Modifications to soils, water quality, migratory movements, habitat and wildlife food sources are all areas of concern. Disturbance in the forest creates a wide range of issues that must be closely monitored in order to inhibit the spread of pest plants, insects and diseases. The anticipated ecological responses to the pipeline project are sure to increase the cost of park maintenance for Baltimore City Recreation and Parks (BCRP).

In the words of the then Director of Recreation and Parks, “There’s beautiful trees out there. It makes me sick to my stomach when I stand out there and think about this.”

22. Pursuant to the Omnibus Agreement, BGE agreed to pay the City a nominal amount, \$2,537,590, as mitigation for removal of the forest and for park improvements.

23. Importantly, the Omnibus Agreement does not provide for the payment of a franchise fee by BGE, but merely contemplated that the parties would “diligently pursue” the adoption of a franchise ordinance. Omnibus Agreement, § 5.1.

24. At its regular meeting on September 27, 2017, the Board of Estimates approved the Omnibus Agreement without conducting an inquiry into either (i) the amount of compensation BGE agreed to pay under that agreement for forest mitigation and park improvements, or (ii) the amount of the franchise fee that BGE must pay for the legal right to construct and use the Pipeline in the Park and the other terms and conditions of the proposed grant to BGE of rights in the Park.

BGE’s Construction Of The Pipeline

25. In February 2018, BGE began construction of the Pipeline. Upon information and belief, BGE is nearing completion of the Pipeline and preparing to begin operation of it. As forecasted, the Pipeline has destroyed large swaths of forest and permanently scarred the Park, thereby affecting the ability of Plaintiffs and numerous others to use and enjoy the Park.

**The Post-Hac Introduction Of A Franchise Ordinance and the
Already-Negotiated Franchise Fee**

26. On October 29, 2018, more than a year after execution and approval of the Omnibus Agreement by the Board of Estimates, and many months after BGE had already begun construction of the Pipeline, the City Council introduced for the first time a franchise ordinance (Bill 18-0298) proposing to grant BGE rights to construct, install, maintain, repair and operate the Pipeline in the Park. The proposed franchise ordinance purports to grant BGE these rights for a period of 25 years and, upon BGE's request, for "additional periods of 25 years." Bill 18-0298, § 5(b).

27. The proposed franchise ordinance has not been referred to the Board of Estimates, but rather is scheduled for a vote by the City Council, without public comment, on April 23, 2019.

28. The proposed franchise ordinance does not specify an amount to be paid by BGE for the franchise fee. However, the amount of the fee has already been negotiated between the City and BGE, without Board of Estimates' consideration or public comment ("the "Negotiated Franchise Fee").

29. Upon information and belief, the Negotiated Franchise Fee is \$2 million. This amount was not based on the "money value" of the rights conveyed to BGE as the Charter requires and is grossly inadequate to compensate the City for, *inter alia*, the value of the parkland permanently destroyed by the installation of the Pipeline and for the loss of use of that parkland.

30. Upon information and belief, a representative of the Department of Recreation and Parks assessed the value of the parkland used by BGE for the Pipeline to

be \$14 million. A recent study indicates the value of urban parkland to be between \$511,000 and \$1.2 million per acre.

The City's And BGE's Multiple Violations Of The City Charter

31. The City's and BGE's conduct in this matter violated the City Charter in numerous respects, including:

- a. In the Omnibus Agreement, the City purported to grant franchise rights to BGE without the City Council first adopting an ordinance approving the granting of such rights and the terms and conditions of such grant;
- b. The City Council referred the Omnibus Agreement, but not a franchise ordinance, to the Board of Estimates;
- c. The Board of Estimates failed to make inquiry, much less "diligent inquiry," into the "monetary value" of the rights putatively granted to BGE;
- d. The Board of Estimates failed to make inquiry, much less "diligent inquiry," into the "adequacy" of the franchise fee to be paid by BGE for the rights granted;
- e. The Board of Estimates failed to make inquiry, much less "diligent inquiry," into the "propriety of the [other] terms and conditions" of the proposed grant of rights to BGE;
- f. The Board of Estimates did not discharge its duty to "fix" the amount of the compensation to be paid by BGE for the franchise rights at "the largest amount" it could obtain, by advertising or otherwise;
- g. The Board of Estimates did not exercise its power to "increase" the franchise fee or "alter the terms and conditions" of the proposed grant of rights to BGE;
- h. The Board of Estimates did not approve, by vote or resolution, the amount of the franchise fee or other terms and conditions of the proposed grant of rights to BGE;
- i. The Board of Estimates has failed to exercise its functions "to the extent, and in a manner provided for, in the Charter";

- j. The City Council has not adopted an ordinance “specifically set[ting] forth the terms and conditions and the nature, extent and duration of” the rights granted to BGE;
- k. The proposed franchise ordinance (Bill 18-0298) purports to grant rights to BGE for a period longer than 25 years;
- l. The proposed franchise ordinance (Bill 18-0298) purports to allow BGE the right to renew the franchise for additional periods of 25 years;
- m. The proposed franchise ordinance (Bill 18-0298) fails to grant rights to BGE “for a limited time”;
- n. The proposed franchise ordinance (Bill 18-0298) is not “consistent” with the Charter;
- o. The Negotiated Franchise Fee was not approved by the Board of Estimates. The Board did not make inquiry into the adequacy of that fee, the propriety of the terms and conditions, and did not exercise its duty to increase the fee or fix the fee at the largest amount;
- p. The Negotiated Franchise Fee was not based on the “money value” of the rights in the Park conveyed to BGE;
- q. The Negotiated Franchise Fee is grossly inadequate to compensate the City and its citizens for, *inter alia*, the value of the parkland permanently destroyed by the installation of the Pipeline and for the loss of use of that parkland;
- r. BGE exercised franchise rights, by destroying parkland and constructing the Pipeline, without an ordinance granting such rights; and
- s. To the extent rights were granted to BGE, such grant was not “in compliance with the requirements of th[e] Charter.”

32. In January 2019, counsel for FOGFLP informed the City of these violations of the Charter and requested that the City Council refer the franchise ordinance to the Board of Estimates as the Charter requires and allow the Board to conduct a new inquiry into its terms and conditions, including the value of the franchise fee. Counsel informed the City that if it elects to do nothing or seek retroactive approval of the

Negotiated Franchise Fee, then FOGFLP's intention was to file an action and seek appropriate declaratory and injunctive relief.

33. Representatives of FOGFLP subsequently met with BGE in attempt to obtain a commitment to pay a higher franchise fee than the amount already negotiated between the City and BGE, one that reflects the true value of the parkland. Despite this effort and subsequent efforts, BGE has not responded.

COUNT I
(Declaratory Judgment)

Plaintiffs incorporate the allegations in the preceding paragraphs as if fully stated herein.

34. Pursuant to Md. Code Ann., Cts. & Jud'l Proc. § 3-406, "[a]ny person ... whose rights, status, or other legal relations are affected by a statute, municipal ordinance, administrative rule or regulation, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, administrative rule or regulation, land patent, contract, or franchise and obtain a declaration of rights, status, or other legal relations under it."

35. Plaintiffs' interests and rights are affected by the provisions of the City Charter that this Court is asked to construe.

36. An actual and justiciable controversy exists between the parties.

37. Antagonistic and adverse claims are present between the parties.

38. Plaintiffs assert a legal relation, status, right or privilege that is challenged by defendants.

39. Granting a declaratory judgment will serve to terminate the uncertainty or controversy giving rise to this proceeding.

40. Pursuant to Md. Code Ann., Cts. & Jud'l Proc., § 3-412, the Court may grant "[f]urther relief based on a declaratory judgment or decree ... if necessary or proper."

WHEREFORE, Plaintiffs respectfully request that the Court enter a declaration that:

A. The City and BGE have violated Articles III, VI, and VIII of the City Charter in numerous respects, including:

1. In the Omnibus Agreement, the City purported to grant franchise rights to BGE without the City Council first adopting an ordinance approving the granting of such rights and the terms and conditions of such grant;
2. The City Council referred the Omnibus Agreement, but not a franchise ordinance, to the Board of Estimates;
3. The Board of Estimates failed to make inquiry, much less "diligent inquiry," into the "monetary value" of the rights putatively granted to BGE;
4. The Board of Estimates failed to make inquiry, much less "diligent inquiry," into the "adequacy" of the franchise fee to be paid by BGE for the rights granted;
5. The Board of Estimates failed to make inquiry, much less "diligent inquiry," into the "propriety of the [other] terms and conditions" of the proposed grant of rights to BGE;
6. The Board of Estimates did not discharge its duty to "fix" the amount of the compensation to be paid by BGE for the franchise rights at "the largest amount" it could obtain, by advertising or otherwise;
7. The Board of Estimates did not exercise its power to "increase" the franchise fee or "alter the terms and conditions" of the proposed grant of rights to BGE;
8. The Board of Estimates did not approve, by vote or resolution, the amount of the franchise fee or other terms and conditions of the proposed grant of rights to BGE;
9. The Board of Estimates has failed to exercise its functions "to the extent, and in a manner provided for, in the Charter";
10. The City Council has not adopted an ordinance "specifically set[ting] forth the terms and conditions and the nature, extent and duration of" the rights granted to BGE;

11. The proposed franchise ordinance (Bill 18-0298) purports to grant rights to BGE for a period longer than 25 years;
12. The proposed franchise ordinance (Bill 18-0298) purports to allow BGE the right to renew the franchise for additional periods of 25 years;
13. The proposed franchise ordinance (Bill 18-0298) fails to grant rights to BGE "for a limited time";
14. The proposed franchise ordinance (Bill 18-0298) is not "consistent" with the Charter;
15. The Negotiated Franchise Fee was not approved by the Board of Estimates. The Board did not make inquiry into the adequacy of that fee, the propriety of the terms and conditions, and did not exercise its duty to increase the fee or fix the fee at the largest amount;
16. The Negotiated Franchise Fee was not based on the "money value" of the rights in the Park conveyed to BGE;
17. The Negotiated Franchise Fee is grossly inadequate to compensate the City and its citizens for, *inter alia*, the value of the parkland permanently destroyed by the installation of the Pipeline and for the loss of use of that parkland;
18. BGE exercised franchise rights, by destroying parkland and constructing the Pipeline, without an ordinance granting such rights; and
19. To the extent rights were granted to BGE, such grant was not "in compliance with the requirements of th[e] Charter."

B. Because a franchise ordinance has not been adopted as required by the Charter, no franchise or right in the Park has passed to BGE, in the Omnibus Agreement or otherwise.

C. The proposed franchise ordinance (Bill 18-0298), if passed by the City Council, is "void" because the Board of Estimates did not approve, by vote or resolution, the amount of the franchise fee, as required by the City Charter.

D. BGE is prohibited from entering upon, or further exercising any rights in, the Park unless and until:

1. a franchise ordinance, after first reading, is referred to the Board of Estimates, in accordance with the Charter;

2. the Board of Estimates, in accordance with the Charter, conducts a diligent inquiry as to the “money value” of the rights in the Park conveyed to BGE and the “compensation” to be paid by it;
3. the Board of Estimates, in accordance with the Charter, faithfully exercises and fulfills its duty to fix the amount of the franchise fee at the largest amount it may obtain, by advertising or otherwise;
4. the Board of Estimates, in accordance with the Charter, conducts a diligent inquiry into the propriety of the other terms and conditions of the proposed ordinance and grant of rights to BGE in the Park;
5. the Board of Estimates, in accordance with the Charter, approves, by vote or resolution, the amount of the franchise fee and the other terms and conditions of the proposed ordinance and grant of rights to BGE;
6. the Board of Estimates, in accordance with the Charter, enters, in its minutes or records, the amount of the approved franchise fee and the other approved terms and conditions of the proposed ordinance and grant of rights to BGE;
7. the City Council, in accordance with the Charter, adopts the franchise ordinance as approved by the Board of Estimates;
8. the Board of Estimates approves, and the City Council adopts by ordinance, a franchise fee that is based on the “money value” of the rights conveyed to BGE;
9. the Board of Estimates otherwise exercises its functions to the extent, and in the manner provided for, in the Charter; and
10. the City Council adopts a franchise ordinance that otherwise is consistent with the Charter.

E. The franchise fee paid by BGE to the City shall be based on the “money value” of the rights conveyed to BGE and include, *inter alia*, the value of the parkland permanently destroyed by the installation of the Pipeline and compensation for the loss of use of that parkland.

F. The Board of Estimates’ inquiry into the “money value” of the rights conveyed to BGE and the compensation to be paid by BGE shall be based on the qualified opinion of one or more independent consultants retained by the Board.

G. Any franchise ordinance approved by the Board of Estimates and passed by the City Council shall not grant BGE rights in the Park for a period longer than 25 years, as is prohibited by the Charter.

H. Any franchise ordinance approved by the Board of Estimates and passed by the City Council shall not grant BGE the right to renew the franchise except upon fair revaluation, including in such revaluation consideration of the value derived by BGE from the franchise, but in no case longer than a period of 25 years in the aggregate, as is prohibited by the City Charter.

I. The City shall, at all times, exercise its power and right to reasonably regulate in the public interest the exercise of any rights granted to BGE in the Park, as required by the City Charter.

J. Plaintiffs are awarded their attorneys fees, costs, and expenses in bringing this action.

K. Plaintiffs are entitled to such other and further relief as the nature of this cause requires.

COUNT II
(Writ of Mandamus)

Plaintiffs incorporate the allegations in the preceding paragraphs as if fully stated herein.

41. The City and the Board of Estimates each have clear and ministerial duties under the City Charter regarding the approval and granting of a rights in public property such as the Park.

42. In violation of their ministerial duties under the Charter, the City and the Board of Estimates have violated their ministerial duties under the Charter.

43. Plaintiffs have no adequate remedy by which they can compel the City and the Board of Estimates to comply with the terms of the law.

WHEREFORE, plaintiffs respectfully request that the Court:

A. Issue a writ of mandamus ordering defendants, in connection with the proposed grant of rights in the Park to BGE, to perform their ministerial duties under Articles III, VI, and VIII of the City Charter, including that:

1. the City Council refer a franchise ordinance, after first reading, to the Board of Estimates;
2. the Board of Estimates conduct a diligent inquiry as to the “money value” of the rights conveyed to BGE and the “compensation” to be paid by BGE for those rights;
3. the Board of Estimates faithfully exercise and fulfill its duty to fix the amount of the franchise fee at the largest amount it may obtain;
4. the Board of Estimates conduct a diligent inquiry into the propriety of the other terms and conditions of the proposed ordinance and grant of rights to BGE in the Park;
5. the Board of Estimates approve, by vote or resolution, the amount of the franchise fee and the other terms and conditions of the proposed ordinance and grant of rights to BGE;
6. the Board of Estimates enter, in its minutes or records, the amount of the approved franchise fee and the other approved terms and conditions of the proposed ordinance and grant of rights to BGE;
7. the City Council adopt the ordinance as approved by the Board of Estimates;
8. the Board of Estimates approve, and the City Council adopt by ordinance, a franchise fee that is based on the “money value” of the rights conveyed to BGE;
9. the Board of Estimates approve, and the City Council adopt, an ordinance that does not grant rights to BGE in the Park for a period longer than 25 years;
10. the Board of Estimates approve, and the City Council adopt, an ordinance that does not grant BGE the right to renew the franchise except upon fair revaluation, including in such revaluation consideration of the value derived by BGE from the franchise, but in no case longer than 25 years in the aggregate;

11. the Board of Estimates otherwise exercise its functions to the extent, and in the manner provided for, in the Charter; and
12. the City Council adopt an ordinance that otherwise is consistent with the Charter.

B. Grant such other and further relief that the nature of this cause requires.

COUNT III
(Permanent Injunctive Relief)

Plaintiffs incorporate the allegations in the preceding paragraphs as if fully stated herein.

42. Plaintiffs will suffer irreparable harm if defendants are permitted to violate the law.

43. The benefits to plaintiffs of obtaining injunctive relief far outweigh the harm, if any, to defendants.

44. The public interest would be served by the granting of injunctive relief.

WHEREFORE, plaintiffs respectfully requests that this Court:

A. Enter an order enjoining BGE from entering upon, or further exercising any rights in, the Park unless and until:

1. a franchise ordinance, after first reading, is referred to the Board of Estimates, in accordance with the Charter;
2. the Board of Estimates, in accordance with the Charter, conducts a diligent inquiry as to the "money value" of the rights in the Park conveyed to BGE and the "compensation" to be paid by it;
3. the Board of Estimates, in accordance with the Charter, faithfully exercises and fulfills its duty to fix the amount of the franchise fee at the largest amount it may obtain, by advertising or otherwise;
4. the Board of Estimates, in accordance with the Charter, conducts a diligent inquiry into the propriety of the other terms and conditions of the proposed ordinance and grant of rights to BGE in the Park;

5. the Board of Estimates, in accordance with the Charter, approves, by vote or resolution, the amount of the franchise fee and the other terms and conditions of the proposed ordinance and grant of rights to BGE;
6. the Board of Estimates, in accordance with the Charter, enters, in its minutes or records, the amount of the approved franchise fee and the other approved terms and conditions of the proposed ordinance and grant of rights to BGE;
7. the City Council, in accordance with the Charter, adopts the franchise ordinance as approved by the Board of Estimates;
8. the Board of Estimates approves, and the City Council adopts by ordinance, a franchise fee that is based on the "money value" of the rights conveyed to BGE;
9. the Board of Estimates otherwise exercises its functions to the extent, and in the manner provided for, in the Charter; and
10. the City Council adopts a franchise ordinance that otherwise is consistent with the Charter.

B. Enter an order requiring the Board of Estimates to:

1. conduct a diligent inquiry into the "money value" of the rights in the Park conveyed to BGE and the "compensation" to be paid by BGE for such rights, in accordance with the Charter;
2. retain one or more qualified and independent consultants to determine the "money value" of the rights in the Park to be conveyed to BGE and the "compensation" to be paid by BGE for such rights;
3. faithfully exercise and fulfill its duty to fix the amount of the franchise fee at the largest amount it may obtain, by advertising or otherwise, in accordance with the Charter;
3. conduct a diligent inquiry into the propriety of the other terms and conditions of the proposed ordinance and grant of rights to BGE in the Park, in accordance with the Charter;
4. approve, by vote or resolution, the amount of the franchise fee and the other terms and conditions of the proposed ordinance and grant of rights to BGE;
5. enter, in its minutes or records, the amount of the approved franchise fee and the other approved terms and conditions of the proposed ordinance and grant of rights to BGE, in accordance with the Charter; and

6. approve a franchise fee that is based on the "money value" of the rights conveyed to BGE, in accordance with the Charter;
7. approve a franchise ordinance that does not grant rights in the Park to BGE for a period of longer than 25 years, in accordance with the Charter;
8. approve a franchise ordinance that does not grant BGE the right to renew the franchise except upon fair revaluation, including in such revaluation consideration of the value derived by BGE from the franchise, but in no case longer than 25 years in the aggregate; and
9. otherwise exercise its functions to the extent, and in the manner provided for, in the Charter.

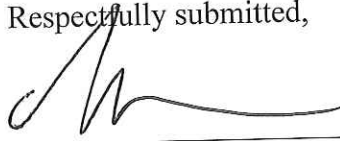
C. Enter an order requiring the City Council to:

1. refer a franchise ordinance, after first reading, to the Board of Estimates, in accordance with the Charter;
2. adopt the franchise ordinance as approved by the Board of Estimates, in accordance with the Charter;
3. adopt a franchise ordinance that requires a franchise fee based on the "money value" of the rights in the Park conveyed to BGE, in accordance with the Charter;
4. adopt an ordinance that does not grant rights to BGE in the Park for a period longer than 25 years;
5. adopt an ordinance that does not grant BGE the right to renew the franchise except upon fair revaluation, including in such revaluation consideration of the value derived by BGE from the franchise, but in no case longer than 25 years in the aggregate;
6. adopt an ordinance that otherwise is consistent with the Charter; and
7. exercise its power and right to reasonably regulate in the public interest the exercise of the rights granted to BGE, as required by the Charter.

D. Enter an order awarding Plaintiffs their attorneys fees, costs, and expenses in bringing this action.

E. Entering an order awarding Plaintiffs such other and further relief as the nature of this cause requires.

Respectfully submitted,



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