CV-12-1785 Swinton

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

AUG 22 2012

PATRICIA PRESLEY, COURT CLERK
by _____ DEPUTY

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

Patrick Anderson,	)
Plaintiff	)
	)
vs.	)
	)
Oklahoma Capitol Improvement Authority, an Agency of the State of Oklahoma[; US Army Corps of Engineers; City of Tulsa, Oklahoma; Tulsa County, Oklahoma; River Parks Authority, a public trust; Indian Nations Council of Government, an association of governmental entities; the Cherokee Nation, a recognized tribe of Indians; the Choctaw Nation, a recognized tribe of Indians; and the Chickasaw Nation, a recognized tribe of Indians	)
Defendants	)

CASE NO. CV-2012-1785

BARBARA SWINTON

PETITION

This is an action for declaratory judgment brought pursuant to 12 O.S. 2011, §§ 1651, *et seq.,* as amended.

1. Plaintiff, as a citizen and taxpayer of the State of Oklahoma ("State") and a member of the Oklahoma Legislature, has standing in this matter, and hereby petitions the Court to determine the constitutionality and validity of 73 O.S. 2011, §336, as amended, adopted as Laws 2009, SB 239, c. 115, §1 (the "Statute"), which purports to authorize the Oklahoma Capitol Improvement Authority ("OCIA" or "Authority"), an agency and instrumentality of the State, to acquire and finance improvements to the Zink Dam and other facilities on the Arkansas River in Tulsa County, Oklahoma (the "Zink Dam"), for itself and for or on behalf of other named defendants having or claiming some right, title or interest in and to the Arkansas River, its streambed, and facilities constructed or existing on said streambed. A true and correct copy of said Statute is attached hereto as Exhibit "A."

2. Defendant OCIA is a body corporate and politic and instrumentality of the State of Oklahoma, created pursuant to 73 O.S. 2011, §152. The Governor of the State is ex-officio Chairperson of the Authority, and the eight members of OCIA are set out in said §152, and OCIA, through its governing body and agents, is responsible for implementing the Statute. OCIA has heretofore acted to approve the Dam project and incurrence of indebtedness under the Statute. A copy of the OCIA Resolution approving the project is attached hereto as Exhibit "B."

3. It was the intention of the Legislature that the bonds issued pursuant to the Statute would be used to "secure an additional $50 million in federal funds" in order to create a series of low water dams along the Arkansas River with the understanding that the project would create 9,450 jobs and have an economic impact to the State of $2.8 billion for the State of Oklahoma. A copy of the Senate author's press release following the passage of Senate Bill 239 is attached hereto as Exhibit "C."

4. Instead of following the Legislature's original intent, the defendant OCIA now intends to use the funds authorized under the Statute to raise the level of the Zink Dam by three (3) feet in order to enhance a city park in Tulsa. A copy of a Tulsa World article outlining the park project is attached hereto as Exhibit "D."

5. The State of Oklahoma does not have an ownership interest in the Zink Dam.

6. Defendants Tulsa County; the City of Tulsa; the River Parks Authority, a public trust; the United States Corps of Engineers; the Indian Nations Council of Government (an association of local governmental entities); the Cherokee Nation, a federally-recognized tribe of Indians; the Choctaw Nation, a federally-recognized tribe of Indians; and the Chickasaw Nation, a federally-recognized tribe of Indians each claim, or may claim, some

right, title or interest in and to the bed of the Arkansas River where the Zink Dam is located in Tulsa County, and further claim, or may claim, some right, title or interest in and to the said Dam.

7. To the best of the knowledge and belief of Plaintiff, none of the said Defendants are authorized by law, nor will they be able to grant to OCIA a valid interest in and to said Dam. Consequently, the State of Oklahoma, acting through OCIA, will not be able to acquire a valid interest in the Dam project as envisioned by the Statute.

8. The Oklahoma Constitution contains significant restrictions on the borrowing or expenditure of public funds by the State. The State cannot loan its credit to counties or municipalities (Art. X, §15), cannot assume the debts or liabilities of counties, cities or political subdivisions (Art. X, §14), must specify the purpose for which money is borrowed, and cannot use borrowed money for other purposes (Art. X, §16), and cannot borrow money based on the general credit of the State without voter approval (Art. X, §25).

9. While State court decisions have permitted certain State agencies, such as OCIA, to borrow money without voter approval under limited circumstances where "revenue bonds" or obligations issued are self-liquidating (i.e., where revenues generated from a project financed by bonds are used to pay off such debt), the present situation is not such an authorized instance.

10. The Zink Dam will generate no revenues from which OCIA might repay revenue bonds, and the State holds no ownership interest in the Dam to be improved or financed.

11. The State of Oklahoma does not have an insurable interest in the Zink Dam and therefore cannot adequately protect the investment of State funds on Zink Dam.

12. The project to be actually financed is not the same as that described in the Statute; that is, the project proposed to be built is solely improvement of the Dam; no low-water dams or stream bank stabilization projects are planned, thus the proposed project is not the project considered or voted upon by the State Legislature, and thus the Statute is unconstitutional and unlawful as proposed to be applied.

13. Under the Statute, the State would be required to service the debt issued from general tax revenues appropriated by the Legislature to the State Department of Central Services or other entities without voter approval, in violation of the Constitution. Therefore, absent such voter approval, the debt will be invalid and unenforceable. The Statute is unconstitutional and the Court must so hold.

14. Under the Statute, the State would be required to loan its credit to either the City of Tulsa or to Tulsa County or the River Parks Authority. Therefore, the Statute is unconstitutional and the Court must so hold.

15. Under the Statute, the State would be required to assume the liabilities of the City of Tulsa, Tulsa County or the River Parks Authority. Therefore, the Statute is unconstitutional and the Court must so hold.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays the Court to construe the Statute, to determine the Statute to be in violation of the State Constitution and therefore invalid and unconstitutional, and for such other relief as may be justified in the circumstances.

Respectfully submitted,

Patrick Anderson, OBA #15633
2016 Comanche Trail
Enid, Oklahoma 73703
(580) 234-2628

Oklahoma Statutes Citationized

Title 73. State Capital and Capitol Building

Chapter 6 - Oklahoma Capitol Improvement Authority

Section 336 - Authority to Acquire Property and Issue Obligations for Zink Dam Improvements and Construction of Dams on Arkansas River in Tulsa County

Cite as: O.S. §, __ __

A. The Oklahoma Capitol Improvement Authority (OCIA) is authorized to acquire real property, together with improvements located thereon, and personal property for purposes of construction of Zink Dam improvements, stream bank stabilization and construction of two additional low-water dams on the Arkansas River in Tulsa County. The project will be coordinated with representatives of the City of Tulsa, Tulsa County and surrounding communities, the Indian Nations Council of Governments and the United States Army Corps of Engineers. The said projects herein described are hereby determined to be in the best interests of the State of Oklahoma and will accomplish an important public purpose. The OCIA may acquire and hold title to the real property and improvements, or any interest therein, until such time as any obligations issued for this purpose are retired or defeased and may lease the real property and improvements to the River Parks Authority, a public trust in Tulsa County. Upon final redemption or defeasance of the obligations created pursuant to this section, title to the real property and improvements shall be transferred from the Oklahoma Capitol Improvement Authority to the River Parks Authority.

B. For the purpose of paying the costs for acquisition of the real property and improvements and personal property authorized in subsection A of this section, and for the purpose authorized in subsection C of this section, the OCIA is hereby authorized to borrow monies on the credit of the income and revenues to be derived from the leasing of such real property and improvements and, in anticipation of the collection of such income and revenues, to issue negotiable obligations, in one or more series, in an amount sufficient to generate net proceeds of Twenty-five Million Dollars ($25,000,000.00) after providing for costs of issuance, credit enhancement, reserves and other associated expenses related to the financing. It is the intent of the Legislature to appropriate to the Department of Central Services sufficient monies to make rental payments for the purposes of retiring the obligations created pursuant to this section.

C. To the extent funds are available from the proceeds of the borrowing authorized by subsection B of this section, the OCIA shall provide for the payment of professional fees and associated costs approved by the OCIA.

D. The OCIA may issue obligations in one or more series and in conjunction with other issues of the OCIA. The OCIA is authorized to hire bond counsel, financial consultants, and such other professionals as it may deem necessary to provide for the efficient sale of the obligations and may utilize a portion of the proceeds of any borrowing to create such reserves as may be deemed necessary and to pay costs associated with the issuance and administration of such obligations.

E. The obligations authorized under this section may be sold at either competitive or negotiated sale, as determined by the OCIA, and in such form and at such prices as may be authorized by the OCIA. The OCIA may enter into agreements with such credit enhancers and liquidity providers as may be determined necessary to efficiently market the obligations. The obligations may mature and have such provisions for redemption as shall be determined by the OCIA, but in no event shall the final maturity of such obligations occur later than fifteen (15) years from the first principal maturity date.

F. Any interest earnings on funds or accounts created for the purposes of this section may be utilized as partial payment of the annual debt service or for the purposes directed by the OCIA.

G. The obligations issued under this section, the transfer thereof and the interest earned on such obligations, including any profit derived from the sale thereof, shall not be subject to taxation of any kind by the State of Oklahoma, or by any county, municipality or political subdivision therein.

H. The OCIA may direct the investment of all monies in any funds or accounts created in connection with the offering of the obligations authorized under this section. Such investments shall be made in a manner consistent with the investment guidelines of the State Treasurer. The OCIA may place additional restrictions on the investment of such monies if necessary to enhance the marketability of the obligations.

Historical Data

Added by Laws 2009, SB 239, c. 115, § 1.

Citationizer© Summary of Documents Citing This Document

Cite	Name Level
None Found.	

Citationizer: Table of Authority

Cite	Name Level
None Found.	

Exhibit "A"

OKLAHOMA CAPITOL IMPROVEMENT AUTHORITY
Minutes

Special Meeting
Monday, January 30, 2012
9:00 a.m.
Governor's Large Conference Room
State Capitol Building
Oklahoma City, Oklahoma

A meeting notice was filed with the Secretary of State and Agenda posted in accordance with the Open Meeting Act.

MEMBERS PRESENT: Mary Fallin, Governor
Todd Lamb Lieutenant Governor
Ken Miller, State Treasurer
Preston Doerflinger, Director, Office of State Finance
Dawn Cash, Commissioner, Oklahoma Tax Commission
Howard Hendrick, Executive Director, Human Service
Gary Ridley, Director, Department of Transportation
Deby Snodgrass, Director, Department of Tourism

GUESTS: Kimberlee Williams, Department of Central Services
Lisa Blodgett, Department of Central Services
Beverly Hicks, Department of Central Services
Perry Haywood, Department of Central Services
Jim Joseph, State Bond Advisor's office
David Kinney, AG's Office
Lynne Drive, Floyd Law Firm
Mike Patterson, Oklahoma Department of Transportation
Mr. McCarthy, River Parks
Chris Benge, Tulsa Chamber
Keith Beall, Lt. Governor Office
Mark Selvidge, Kutak Rock
Zack Robinson, BOSC, Inc.
Jeff Stava, Tulsa Community Foundation
Kirby Crowe, PMG, Rep. Tulsa County
Matt Meyer, River Parks Authority

Exhibit "B"

Agenda Item 1 - Call to Order

Governor Fallin called the meeting to order at 9:00 a.m. A roll call was taken and a quorum was established. The Governor was advised that Notice of the meeting had been given, and an Agenda posted in accordance with the Open Meeting Act.

Agenda Item 2 - Approval of Minutes

Lt. Governor Lamb moved to approve the Minutes of the meeting held December 12, 2011. Director Snodgrass seconded the motion and it carried with the following votes: Governor Fallin, yes; Lt. Governor Lamb, aye; Treasurer Miller, yes; Director Doerflinger, yes; Commissioner Cash, yes; Director Hendrick, Abstain; Director Ridley, Abstain; and Director Snodgrass, yes.

Agenda Item 3 - Discussion and possible action on a Resolution authorizing issuance of OCIA revenue bonds in a sufficient principal amount to net twenty-five million dollars ($25,000,000) after payment of issuance costs, to finance construction of Zink Dam improvements, stream bank stabilization and related projects on the Arkansas River on behalf of the Oklahoma Department of Central Services, pursuant to 73 O.S. § Section 336; providing for a certificate of determination, entering into an Agreement of Lease and Use as may be appropriate and necessary, and providing other terms and conditions in connection with the bonds; authorizing OCIA officers, staff and service providers to take necessary actions to structure, issue and deliver the Bonds. [Jim Joseph]

Mr. Joseph gave the members of the Authority and those present a recap of the December 12, 2011 meeting, reminding that the members from the River Park Authority gave their presentation of the Zinc Dam and Stream Dam stabilization project, that was scaled back, largely due to the failure of the Federal Government to come up with the monies that were expected for some of the renovated dams on the Arkansas River. Mr. Joseph said that the financing team for the project was selected back in 2009, when the original legislation was passed and that they are just now getting to the point where they are preparing to sell bonds. He asked that the members of Authority approve the documentation of the near final form in order to proceed and get the ratings to go to market. He introduced to the members of the Authority, Lynne Driver with the Floyd Law Firm, Mark Selvidge with Kutak Rock, and Zack Robinson with BOSC, Inc., which is the underwriter for this transaction. The State Treasurer's Office serves as the Trustee.

He informed the members of the Authority that this is a slightly different structure, than what is normally done, in that typically there's a lease with a state agency to improve certain facilities but in this case River Parks Authority is coordinating the improvements. They do have a lease with a state agency, the Department of Central Services (DCS), as the lessee. The Legislature has indicated its intent to appropriate monies to DCS to make lease payments to secure the bonds. The River Parks Authority will also be a party to the agreement in overseeing the improvements, so that the state will have a lease hold interest in the improvements. This is what the net proceeds not to exceed twenty-five million ($25,000,000) for the project will pay for.

Governor Fallin made Mr. Joseph aware that she and Secretary Doerflinger, Secretary of Finance, discussed this project in great length. Governor Fallin gave him a more detailed history on the background of this project provided by Crowe Dunlevy and Scott Meachum, to clarify some questions that were raised during the Bond Oversight Committee meeting and further information that was not presented at the meeting.

Secretary Doerflinger told the members of the Authority that he feels the Council of Bond Oversight acted without having complete information on this issue. As a member of that council, it is his intent at the next meeting to move for approval of this project, with the original conditions that were placed on it by the State Bond Advisor.

Director Ridley moved for approval as written on the agenda. Commissioner Cash seconded the motion and it carried and passed with the following votes: Governor Fallin, aye; Lt. Governor Lamb, aye; Treasurer Miller, aye; Director Doerflinger, aye; Commissioner Cash, aye; Director Hendrick, aye; Director Ridley, aye; and Director Snodgrass, aye.

Agenda Item 4- Presentation of eligibility and possible action to authorize participation in an Out-of-Court Settlement against the Bank of America Corporation for OCIA Bond Series 2003A and 2003B amounts of $10,064.17 and $4,448.16 respectively. [David Kinney]

Mr. Kinney gave the members of the Authority some background history of the 2003 issue, and informed them that they are in a class period where they are entitled to a settlement. Mr. Kinney told the members of the Authority that a cursory investigation was done and found that nothing went wrong on these issues.

It is his recommendation as the counsel to the board that they adopt the settlement proposal. This will result in about fifteen-thousand dollars ($15,000) that the state would not have to pay in the future on these bonds and that the monies received be deposited in the Sinking Fund Account, for each of these issues.

Treasurer Miller moved approval with Director Hendrick seconded the motion and it carried and passed with the following votes: Governor Fallin, aye; Lt. Governor Lamb, aye; Treasurer Miller, aye; Director Doerflinger, aye; Commissioner Cash, aye; Director Hendrick, aye; Director Ridley, aye; and Director Snodgrass, aye.

Adjournment

There being no further business the meeting adjourned at 9:25 a.m.

Oklahoma State Senate

Communications Division
State Capitol
Oklahoma City, OK 73105

Audio Print

For Immediate Release: **April 20, 2009**

Sen. Mike Mazzei

Bill Clearing Way for Arkansas River Corridor Development Heads to Governor

A bond authorization bill that could result in the creation of more than 9,000 jobs is now on its way to Governor Brad Henry for consideration. Senator Mike Mazzei, R-Tulsa, is principal author of Senate Bill 239, which will authorize bonds needed to make safety improvements to Zink Dam, as well as create low-water dams in Sand Springs and the Jenks/South Tulsa areas.

"SB 239 authorizes $25 million in bonds, but that will enable us to secure an additional $50 million in federal funds for this project," Mazzei said. "**Over the next seven years, these projects are projected to create a total economic impact of $2.8 billion and approximately 9,450 jobs**—this is a phenomenal economic development opportunity for Oklahoma."

Mazzei said the $25 million bond authorization language was actually approved by the 2008 legislature, but the State Supreme Court ruled the projects contained in the bill had to be approved in separate pieces of legislation.

"Certainly we've seen the economic growth and development along the Oklahoma River and what a success that has been for central Oklahoma," Mazzei said. "We are now poised to create an exciting array of projects along the Arkansas River Corridor that will create jobs, boost tourism and address important safety issues as well. These enhancements will ultimately benefit our entire state."

For more information contact:
Sen. Mazzei's Office - 405-521-5675

March Press Releases | Press Releases

Exhibit "C"

TULSA WORLD

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Design for Gathering Place park continues to grow

BY KEVIN CANFIELD World Staff Writer
Sunday, July 29, 2012
7/29/2012 7:31:34 AM

Construction of A Gathering Place for Tulsa is more than a year off, but already the proposed park along Riverside Drive is bringing people together.

Not couples walking hand-in-hand through meandering trails or kids being kids on playgrounds but architects, engineers, government officials and representatives of the George Kaiser Family Foundation, the philanthropic group that initiated the project and is putting up the estimated $100 million to $150 million it will cost.

After years of planning, including public meetings earlier this year, the project is approximately halfway through planning.

"We do have a good sense of direction, but we don't have a final plan," said Jeff Stava, project manager for the foundation project.

The public will have an opportunity to give input on the final conceptual plan when it is presented in the fall, Stava said. Construction is expected to begin in early 2014.

In the meantime, officials from the city of Tulsa, Tulsa County, River Parks and other stakeholders are meeting with the Kaiser Foundation to discuss not only the design of the park but also possible changes in infrastructure in the area.

The discussions are focused on two areas: Riverside Drive and nearby streets, and Zink Dam along the Arkansas River.

Earlier this year, the city put on hold two Fix Our Streets projects totaling $7.5 million - replacement of the Crow Creek Bridge south of 31st Street and Riverside Drive, and rehabilitation of Riverside Drive from 31st to 41st streets - both areas central to the planned park.

"The concern when we first saw the concept earlier this year was there were potential significant impacts that might cause us to redo some things," said Paul Zachary, the city's Engineering Services department director. "So portions of what we would have been doing would have had to be redone."

The possible need for an estimated $7 million to $10 million in additional road work along Riverside Drive also has been discussed, but Zachary acknowledged the city currently has no way to fund it.

City officials have not said whether the funding, if needed, would be included in a Fix Our Streets renewal that is expected to be pursued next spring or as part of a Vision 2025 renewal that area leaders are reportedly considering for a fall vote.

Stava, meanwhile, said the infrastructure issues won't get in the way of completing the project.

"The city has been a great partner and we are committed to completing this $100 to $150 million riverfront park regardless of their level of participation," Stava said. "The budget range we provided to the city, at their request and we would expect it to change, was a preliminary effort to begin the planning process for possible road and infrastructure improvements and did not reflect a final plan or budget."

Tulsa County has been working to modify Zink Dam since it was included in the first Vision 2025 package approved by voters in 2003.

Exhibit "D"

The project is funded at $28 million and calls for raising the elevation of the dam from 617 feet to 620 feet; adding new gates to improve the flow of water, sand, silt and fish; creating an optional 800-foot-long flume for recreational activities; and making improvements to the downstream face of the dam.

Taken together, officials say, the improvements will make the dam safer and the river more accessible and user-friendly.

Kirby Crowe of PMg, which oversees the river project for Tulsa County, said a recent legal challenge to the biggest chunk of funding for the Zink Dam project - $25 million in state bonds - has not slowed work on the project.

"We are not presently delayed as a result of the state money," Crowe said.

Stava said discussions with stakeholders are focused on ensuring that all three projects complement each other.

Along Riverside Drive, for example, the foundation has suggested adding trees on either side, widening the lanes and adding islands with trees and flowers. One suggestion includes eliminating the dip in the road just north of 31st Street under the pedestrian bridge.

The work would have to be done without cutting into River Parks property along the river, Stava said.

"What do other cities do along rivers or lakeshores or along the ocean?" he said. "They generally have a really nice parkway that has a lot of trees and has a lot of flower beds and are kind of an extension of that riverfront park."

As for Zink Dam, Stava said, the foundation wants nothing more than what was promised to the taxpayers - access to a usable body of water - that would link to the park they plan to construct on the other side of Riverside Drive.

"We feel like the voters are owed that," he said.

A Gathering Place for Tulsa

The George Kaiser Family Foundation is developing a plan to spend between $100 million and $150 million to transform land it owns east of Riverside Drive, including a small tract of city property, into a unique gathering place that ties into River Parks.

The foundation owns the 33.6 acres of the Blair Mansion property at 26th Place and the 21.5-acre tract that includes the Crow Creek Apartments, also known as the Sundance and Legacy apartments, south of 31st Street. The two tracts are connected by a 4.2-acre piece owned by the city.

Conceptual plans for the park include wooded areas, cascading lawns, a land bridge over Riverside Drive, an enhanced Crow Creek, meandering trails, a lodge, gardens, playgrounds, splash park, wetlands, cafes and a large pond.

Final design for the project is expected to be completed in the summer of 2013 with construction scheduled to begin in early 2014.

Original Print Headline: Growing parks design

Kevin Canfield 918-581-8313
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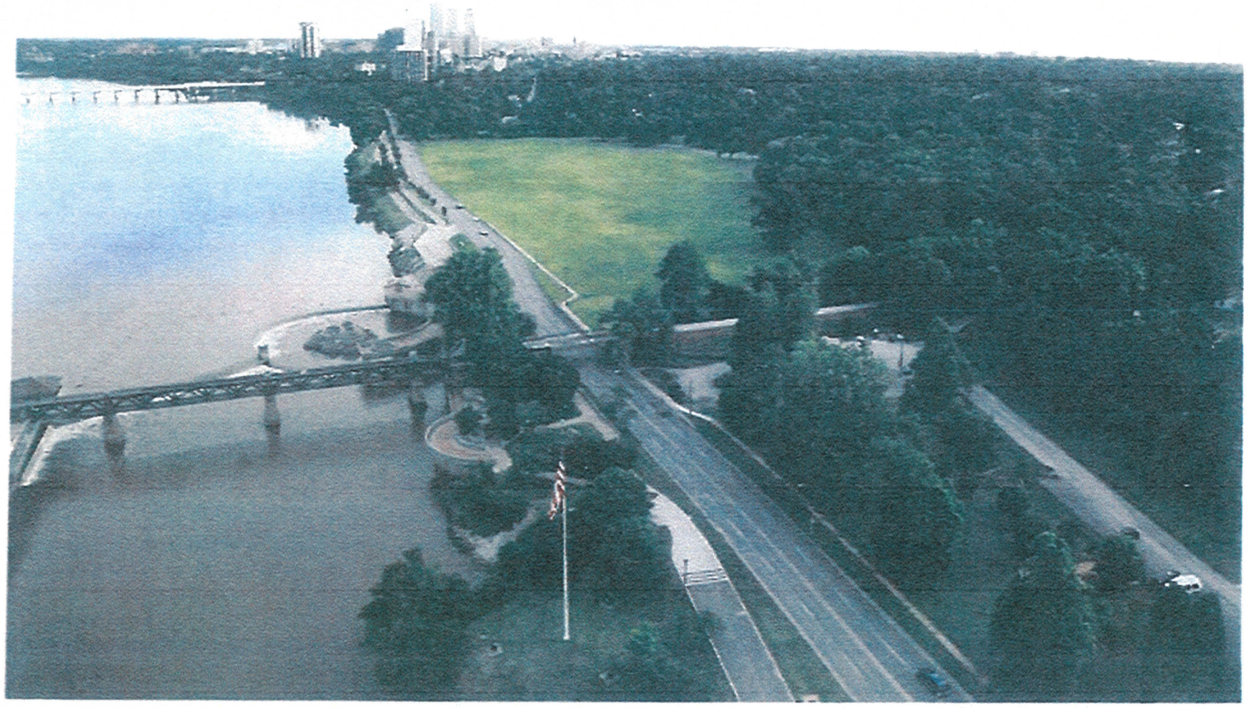
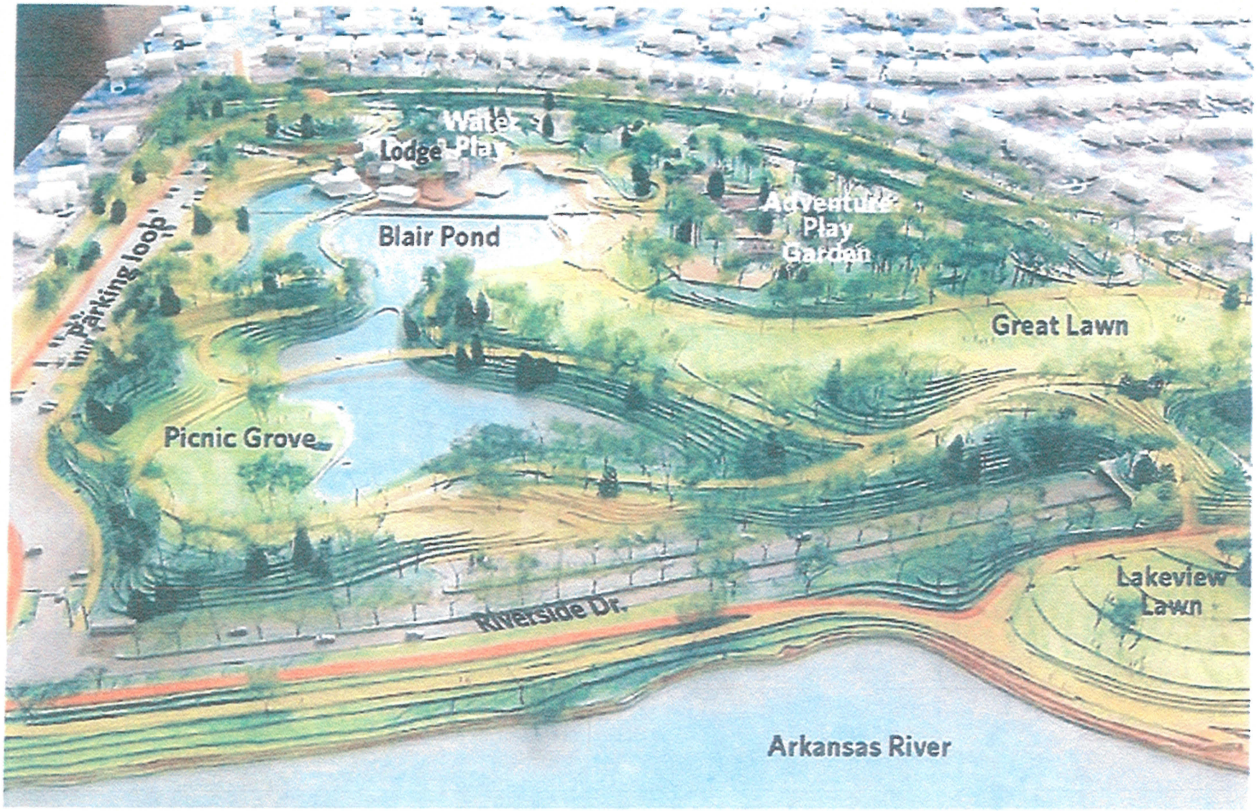
Associated Images:



The area along Riverside Drive, including part of the Blair Mansion property, is slated for the parks project, A Gathering Place for Tulsa. TOM GILBERT / Tulsa World