

**IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY, PART III**

**SAVE OUR FAIRGROUNDS)
Individually and EX REL,)
NASHVILLE FLEA MARKET)
VENDORS ASSOCIATION, AND ITS)
700+ MEMBERS, NEIL CHAFFIN,)
SHANE SMILEY, DUANE DOMINY,)
RICK WILLIAMS, JAMES)
TACKER, GEORGE GRUHN, TONY)
WATSON, DARHONDA DAY, STEVEN)
DYER, NATHAN MCWILLIAMS,)
MATHEW AND TONYA JACKSON,)
MILDRED SMITH, ALLYSON W)
HENDERSON,)**

Plaintiffs/Petitioners,)

VS.)

NO. 18-952-III

**METROPOLITAN GOVERNMENT OF)
NASHVILLE AND DAVIDSON)
COUNTY, TENNESSEE,)**

Defendant/Respondent,)

AND)

**NASHVILLE SOCCER HOLDINGS,)
LLC and WALSH MANAGEMENT,)
LLC,)**

Intervening Defendants.)

**FINDINGS OF FACT AND CONCLUSIONS OF LAW FROM
9/8/2020—10/1/2020 BENCH TRIAL; AND FINAL ORDER
DISMISSING PLAINTIFFS' CLAIMS WITH PREJUDICE**

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Summary of Case and Ruling

The Property

This lawsuit is about an approximate 125 acre tract of land located at 200 Rains Avenue/500 Wedgewood Avenue four miles south of downtown Nashville. The property is owned by the Metropolitan Government of Nashville and Davidson County (“Metro”) and is known as The Fairgrounds Nashville (the “Property”). It is where a divisional fair, called the Tennessee State Fair, has traditionally been held. It is also the site of the Nashville Flea Market, an auto race speedway, exposition events such as Christmas Village and the Home and Garden Show, and other uses. Over the years the exhibit halls on the Property have fallen into disrepair, and capital improvements and infrastructure have not been addressed or funded. Presently there is no capital account for the Property to fund long-term permanent work needed. The Property is operated on an “enterprise” fund where the Property tries to earn revenue to maintain itself. In recent years Metro has subsidized the operations of the Property but not made capital improvements.

On December 20, 2017 Major League Soccer (“MLS”) announced that Nashville had been granted an MLS franchise. Part of the agreement is construction of a new, soccer-specific stadium in Nashville to be located on The Fairgrounds Nashville. Metro will not fund this construction. It is issuing bonds to be paid by a soccer ticket tax with any shortfall being paid by the Nashville MLS team.

Locating the Stadium on The Fairgrounds Nashville is part of Metro’s plan to deal with the dilapidated exhibitions building, agricultural sheds, roads, and infrastructure, and

to revitalize the Property and surrounding area. The Metro Council has passed numerous ordinances for the redesign, construction and operation of a purported self-sustaining Fairgrounds Amusement District. In addition to the demolition of the old exhibition buildings and agricultural sheds and the construction of new ones, the District includes the MLS Stadium and a Mixed Use Development in collaboration with a Community Benefits Agreement for childcare, affordable housing, hotel, residences, restaurants, plazas and retail (the “Mixed Use”). Like the Stadium, the developer is paying for the construction of the Mixed Use. Metro will lease the tracts for the Stadium and Mixed Use to the developer; at the conclusion of the leases Metro will own all the infrastructure/buildings of the Stadium and the Mixed Use. The Stadium will take up approximately 25 acres and 10 acres for the Mixed Use of the 125-acre Fairgrounds Nashville Property.

In addition to an annual \$200,000 lease payment to Metro from the developer for the Mixed Use, the Metro Council has passed a resolution stating its intent for half of the property taxes generated by the Mixed Use (estimated at \$1.2 million) to be paid to the Metro Fair Board to provide a sustaining source of revenue for present and future capital improvements to the Property. Leases have been entered into by Metro and the Stadium and Mixed Use developer. The old exhibition buildings and agricultural sheds have been demolished, new ones erected, and prior to the COVID-19 pandemic the Nashville Flea Market was being held in these spaces and planning had begun for the 2020 Tennessee State Fair to be held on the Property. Preparation of the site for construction of the Stadium and Mixed Use is underway, and issuance of the bonds is anticipated shortly.

The Litigants

This lawsuit has been filed against Metro by two associations connected to The Fairgrounds Nashville and 14 Nashville residents and taxpayers who are opposed to the Development.¹ The relief they seek in the lawsuit is to halt construction of the Stadium and Mixed Use.

In addition to the Plaintiffs and Metro as parties, Nashville Soccer Holdings, LLC (“NSH”) and Walsh Management, LLC (“Walsh”) were granted leave by the Court to intervene and are referred to herein as the “Intervening Defendants.” NSH’s connection to the lawsuit is that it has been admitted into the MLS to operate the soccer team in Nashville at the Stadium planned for the Property. In addition, NSH is the parent company of four wholly owned entities related to its MLS team. One of those entities is the other Intervening Defendant, Walsh, who will operate the Stadium, and who is the lessee of the Property from the Metro Sports Authority.

Issues

The Plaintiffs’ claim in the operative pleading of the January 3, 2019 *Second Amended Complaint* is that the Development is *ultra vires*² (outside Metro’s authority), a

¹ As used herein “Development” refers to the entire development of both the MLS Stadium and the Mixed Use on the Property, and where applicable includes the 22-acre Fair Park parcel.

² Exceeding the power allocated to a municipality by its charter is termed under Tennessee law by the Latin phrase “*ultra vires*,” meaning beyond the powers. Tennessee law has identified two kinds of *ultra vires* actions: (1) outside the scope of the Charter or (2) undertaken in violation of the Charter.

The court first explained those situations wherein the action of a municipality will be declared void:

When a municipality fails to act within its charter or under applicable statutory authority, the action is *ultra vires* and void or voidable. *Crocker v. Town of Manchester*, 178 Tenn.

breach of Metro's fiduciary duty and violates Sections 11.601, 11.602(a), (c) and (d), and Article II, Sections 8 and 10 of the Metro Charter³ (including an argument of violation of Metro's law concerning surplus property, Metro Code Section 2.24.250). These laws (1) provide that certain activities, existing as of December 31, 2010, such as the Tennessee State Fair, Expo Center Events, Flea Market and Auto Racing ("Existing Uses"), shall be continued on the Property (Sections 11.601 and 11.602); and (2) refer to educational or amusement purposes for the Fair Board's leasing of the Property which leases shall not interfere with an annual divisional fair to be conducted on the Property (Article II, Sections 8 and 10 of the Metro Charter). The Plaintiffs contend that the Development violates these laws because the Existing Uses cannot viably coexist with the Development; the Development does not constitute an educational or amusement purpose as the Plaintiffs say is required by the Charter; and the Development is alleged to interfere with the annual divisional fair which Metro is required by the Charter to hold. The Plaintiffs seek a declaratory order that these violations are occurring and injunctive relief to halt them.

As to Metro, the Court had determined in pretrial orders that because Metro has an ongoing obligation under Section 11.602(d) of the Charter to maintain the Existing Uses on

67, 70, 156 S.W.2d 383, 384 (1941). Under Tennessee law, a municipal action may be declared ultra vires for either of two reasons: (1) because the action was wholly outside the scope of the city's authority under its charter or a statute, or (2) because the action was not undertaken consistent with the mandatory provisions of its charter or a statute. Thus, the law recognizes a difference between the existence of a municipal power and the manner or mode of exercising municipal power legitimately.

Sons of Confederate Veterans Nathan Bedford Forrest Camp #215 v. City of Memphis, No. W201700665COAR3CV, 2017 WL 4842336, at *7-8; *9 (Tenn. Ct. App. Oct. 24, 2017) (citation omitted).

³ The reference throughout this Order to "Section 11.602" is a reference to the Metro Charter, Part I, Article 11, Chapter 6, Section 11.602. Reference to "Article II, Sections 8 and 10" is a reference to the Metro Charter, Part II, Article II, Sections 8 and 10.

the Property, it had the burden at trial to come forward and show that it intends and is proceeding in good faith to adhere to its Section 11.602(d) obligation as the Development is planned, designed and constructed.

Trial

From September 8, 2020 to October 1, 2020 a bench trial was conducted in the case by Zoom video conferencing due to the pandemic pursuant to Tennessee Rule of Civil Procedure 43.01 and orders of the Tennessee Supreme Court and the Twentieth Judicial District. Thirteen witnesses testified by video conferencing and two by deposition, and 94 exhibits were admitted into evidence. At the conclusion of the Plaintiffs' proof, the Court granted Metro's and the Intervening Defendants' Rule 41 involuntary dismissal in part. Twelve Plaintiffs were dismissed for insufficient evidence of standing. Not dismissed were four Plaintiffs: Save Our Fairgrounds, Nashville Flea Market Vendors Association, Neil Chaffin and Mildred Smith, and the case proceeded with Metro's and the Intervening Defendants' proof. At the conclusion of the case, the Court took the matter under advisement to study the law and the evidence.

Ruling

Upon studying and construing the law, and applying it to the evidence adduced at trial, the Court concludes that the Plaintiffs have not proven that the construction and operation of the Development on The Fairgrounds Nashville Property is *ultra vires*, a breach of fiduciary duty or violates the Metro Charter. The proof established that the Existing Uses (including providing a divisional fair) and the Development can viably coexist on The Fairgrounds Nashville. In addition, the Court finds that as Metro and the

Intervening Defendants are planning, designing and undertaking construction of the Development, they are proceeding in good faith to continue the Existing Uses on The Fairgrounds Nashville along with the Development. The evidence showed that there is no intent or design of Metro or the Intervening Defendants to destroy or eliminate the Existing Uses.

It is therefore ORDERED that all of the Plaintiffs' claims to halt construction of and operation of the Development, as asserted in the January 3, 2019 *Second Amended Complaint* for declaratory and injunctive relief, are denied and dismissed with prejudice. Court costs are taxed to the Plaintiffs.

The findings of fact and conclusions of law on which this ruling is based are as follows.

Charter Provisions the Plaintiffs Claim Metro is Violating

The following is the text of the Metro Charter provisions the Plaintiffs claim that Metro is violating by leasing property at The Fairgrounds Nashville for construction and operation of the Development.

Section 11.601 – Created; number, qualifications, appointment and term of office of members.

There shall be a metropolitan board of fair commissioners, which shall consist of five (5) members to be appointed by the mayor and confirmed by a majority of the whole membership of the council. The members of the board shall serve for terms of five (5) years each, except that the members first appointed, one (1) shall serve for a term of one (1) year, one (1) for a term of two (2) years, one (1) for a term of three (3) years, one (1) for a term of four (4) years, and one (1) for a term of five (5) years. Any vacancy

occurring during the term of a member shall be filled in the manner prescribed for the original appointment and shall be for the unexpired portion of the term.

Section 11.602 – Functions and duties.

It shall be the duty of the metropolitan board of fair commissioners to:

- (a) Exercise all the powers and perform all the duties heretofore or hereafter imposed on the Board of Fair Commissioners of Davidson County, as established by chapter 490 of the Acts of Tennessee for 1909 and chapter 515 of the Private acts of 1923 and amendments thereto⁴
- (c) Perform such other duties as may be imposed by the board by ordinance.
- (d) All activities being conducted on the premises of the Tennessee State Fairgrounds as of December 31, 2010, including, but not limited to, the Tennessee State Fair, Expo Center Events, Flea Markets, and Auto Racing, shall be continued on the same site. No demolition of the premises shall be allowed to occur without approval by ordinance receiving 27 votes by the Metropolitan Council or amendment to the Metro Charter.

Article II. – Fair Commissioners

* * *

Sec. 8. - Special tax levy; authority to borrow money; title to property.

The county court of such counties may, at the July term of the 1923 court, and of each year thereafter, levy a tax upon all taxable property of the county of not more than two-tenths of a mill; to be known as the "fair tax," for the purpose of maintaining and operating a divisional fair. Said funds derived

⁴ All Counsel agree that the provisions of the 1909 and 1923 Acts are replicated in and are the same as the provisions of Article II, Sections 8 and 10, quoted below. The Plaintiffs confirmed at the Pretrial Conference that 11.602(b) is not a claim in this case.

from the levy of this tax shall be expended under the direction of the board of fair commissioners. Said board shall have control of the disbursement of all funds collected by taxation, received from the State of Tennessee, or collected from gate receipts, concessions, or leases of the said fair property for educational or amusement purposes, for the operation, maintenance or improvement of the fair property.

* * *

Sec. 10. - Powers and duties of board generally.

Said board of fair commissioners is hereby vested with the power, authority and duty to enter into negotiations with the commissioner of agriculture of the State of Tennessee, for the surrender and cancellation of any lease now held by the State of Tennessee of any fair property in such counties, and to take complete charge and control on behalf of such counties, and they shall use and maintain said property by holding thereon, at least once a year, for not less than six days, a fair or exposition for the benefit of the people of such counties, and they may lease for amusement purposes said property at such times and in such ways as not to interfere with the operation of said fair, the proceeds received from said leases to be used in the maintenance of said fair, at which shall be exhibited, as far as possible, the resources of said county and the State of Tennessee, and the progress of its people in all kinds of enterprises and endeavor. The agricultural, mineral, livestock, commercial, industrial, and all other interests, shall be duly exhibited, and every reasonable effort shall be made to develop, improve, encourage and stimulate all lawful and substantial interests and industries.

Findings of Fact and Conclusions of Law

Contained below are the Court's construction as a matter of law of each of the above Charter provisions the Plaintiffs claim are being violated, and the application of that construction to the evidence as weighed and determined by the Court.

Background Findings of Fact

Ownership of the Property by Metro began in 1911 when Davidson County acquired the first parcel of the Property. Prior to that, divisional fairs for Nashville/Davidson County and the Middle Tennessee region had been conducted on the Property variously by private and local entities and the State. The evidence at trial established that the name “Tennessee State Fair,” referred to in Section 11.602(d) of the Metro Charter as one of the Existing Uses that must be continued on the Property, is not a statewide fair, as the name indicates, but is a reference to the various divisional/regional fairs conducted on the Property over time.

Other pertinent history relates to a 1909 Tennessee Act and a 1923 Private Act. These laws are pertinent because they are referenced in Section 11.602(a) which the Plaintiffs claim has been violated. The reference in the Charter to the 1909 and 1923 Acts is to the powers and duties of the entity responsible for conducting the divisional fair. This entity in the Private Act of 1923 was the “Board of Fair Commissioners,” created for each of certain counties, including Davidson, to hold divisional fairs. The 1923 Private Act took powers and duties for conducting divisional fairs from the 1909 Act and gave these county boards the “power, authority, and the duty to enter into negotiations with the Commissioner of Agriculture of the State of Tennessee, for the surrender and cancellation of any lease now held by the State of Tennessee of any fair property” in the county, including the lease of the Property in this case.

From 1923-1962, the Board of Fair Commissioners held the divisional fair, known as the Tennessee Fair State, on the Property. Then, in 1962 when the Metropolitan

Government of Nashville and Davidson County was formed and the passage of the Metro Charter revoked all prior city and county offices as per the Charter and State statute, *see* Tenn. Code Ann. § 7-1-101, *et seq.*, the Davidson County Board of Fair Commissioners, which had been established by the 1923 Private Act, became also known as the Metro Fair Board.

From 1963-2009, the Metro Fair Board produced the divisional fair at the Fairgrounds under the name the “Tennessee State Fair.” The Metro Fair Board went as far as to trademark the name “Tennessee State Fair” for use for the divisional fair at the Fairgrounds. In 2010, the Metro Fair Board leased the Fairgrounds to North American Midway Entertainment to produce a fair at the Fairgrounds.

In 2011, a citizens group, which includes some of the Plaintiffs in this case, promoted a referendum which passed and amended the Metro Charter by adding Section 11.602(d). The Court concludes, as detailed later herein, that the reference in Section 11.602(d) to “Tennessee State Fair” is the Tennessee State Fair™ that Nashville had trademarked and refers to the divisional fair historically produced on the Property.

In 2012, the name “Tennessee State Fair” and production of that fair were taken over by the State with the passage of the *Tennessee State Fair and Exposition Act* (the “2012 Act”), “[i]t is the intent of the general assembly that the commission created herein shall be the sole body in Tennessee charged with administering a state fair and exposition.” TENN. CODE. ANN. § 4-57-101, *et seq.* In light of Nashville’s use of the name “Tennessee State Fair” and its trademark of that name, Section 4-57-106 of the Tennessee Code states, “[t]he use of the name ‘Tennessee State Fair’ or ‘Tennessee State Exposition’ in Tennessee

to denote a fair serving the state shall only be granted by the department of agriculture with the approval of the commission.” A Tennessee Attorney General Opinion No 13-57 opined that Metro’s trademark on the name did not invalidate the State’s appropriation under Section 4-57-106.

Also of note, Section 43-21-104 of the Tennessee Code sets forth the definitions of various fairs in Tennessee, listing “Community fairs,” “County fairs,” “District fairs,” and “Division fairs.” Notably absent is “State fairs,” as those did not exist when the statute was passed in 2007. The different definitions are based upon the differing populations the fairs serve and the amount of premiums paid at the fairs.

The State of Tennessee now owns the name “Tennessee State Fair,” and it is an event produced, since 2011, by the nonprofit Tennessee State Fair Association (“TSFA”). TENN. CODE ANN. § 4-57-105 (West 2020) (“The commission is authorized and empowered to: (1) Advise, facilitate, and coordinate with the Tennessee State Fair Association, a not-for-profit corporation, for the purpose of the Tennessee State Fair Association operating, managing, and conducting at least one (1) fair or exposition annually, under the supervision of the commission, with such additional fairs, expositions, or exhibitions as the commission determines are in the general public interest[.]”). The arrangement the TSFA has had is to lease the Property for \$85,000 from the Fair Board, and TSFA independently funds the fair.

Although through a lease contract between the TSFA and Metro the Tennessee State Fair, as produced by TSFA, has been held on the Property from 2011-2019, as stated, Metro does not own the name nor has it produced the event, whose brand the State of

Tennessee controls. The testimony at trial of Plaintiffs' witnesses from TSFA, Congressman Scott Rose and Scott Jones, established that dating back before the Stadium proposal TSFA has been actively looking to conduct the Tennessee State Fair at sites other than The Fairgrounds Nashville for many reasons including acreage and topography. Congressman Rose and Scott Jones testified that TSFA has researched other venues such as the Wilson County Fair or Bonaroo, and there is no guarantee or long-range plan to continue to lease The Fairgrounds Nashville for the Tennessee State Fair.

The evidence at trial established that part of the need for revitalization of The Fairgrounds Nashville is that the cost of maintenance and operation of the Property is not garnering high attendance at the fair. The Tennessee State Fair has very low attendance. The testimony of Expert Charles Smith is that only 10% of the regional population attends the Tennessee State Fair conducted on the Property by TSFA since 2011 which is very low attendance by industry standards. The Plaintiffs' witnesses also testified to the decline of attendance from the heyday of 200,000 in the 1970s–1990s to an average attendance of approximately 102,000. The divisional fair is not achieving the outreach of educating the regional population on the agriculture, commerce, industry and arts of Middle Tennessee and the State as stated as the purpose for the divisional fair to be held on the Property in Article II, Section 10 of the Metro Charter. The goal is to attract a variety of people to a divisional fair, not just insiders, and to educate fairgoers on the agriculture, cultural arts, commerce and industry of the division. Fair experts at trial explained that as agriculture decreased in the 20th and 21st centuries and the population, including in Middle Tennessee,

has become urban and suburban, the divisional fair's purpose stated in the Metro Charter is even more important.

From the testimony of Laura Womack, the Executive Director of the Fair Board, the proof established that The Fairgrounds Nashville has lacked significant capital investment for decades. Ms. Womack testified that the Property has no capital account for large-scale permanent projects and improvements. The Property is operated on "enterprise" funding where the Property tries to earn revenue for its maintenance. In recent years Metro has subsidized the Property. Witnesses for both sides testified to the disrepair and dilapidation of the exhibit and agricultural buildings. Their maintenance was difficult and expensive because of obsolete electrical and HVAC systems. Also there are roads on the Property which start and end randomly and are in disrepair. Overflow from Brown's Creek, bordering the Property, can be controlled with a backflow preventer but that has not been in the budget. The irregular topography of the Property could be more amenably excavated and reformed if funded. The barren landscape lacks trees and plants. There are no shady, hospitable walkways or plazas.

One of the successes on the Property is the Nashville Flea Market. The evidence established that it is one of the largest flea markets in the country, and has been in existence for over 50 years. The Nashville Flea Market is conducted on the fourth weekend of every month (except for December) and uses the exhibition buildings and agricultural sheds on the Property. The Flea Market is the only event on the Property that the Fair Board self produces. Booth rentals, onsite parking and equipment/furniture rentals generated by the Flea Market account for 54% of the Fair Board's total revenue each year.

In addition, Expo events such as Christmas Village, the Home and Garden Show, Roller Derby, pet shows, antique shows, indoor sports and luncheons are also conducted in the exhibition buildings. Approximately 300 events are held there each year.

The Property contains a speedway where auto racing is conducted. The speedway is leased by the Fair Board to an auto race producer. Such events as the All-American 400 and monster truck rallies are held there.

At trial the Plaintiffs' witnesses were nostalgic. Their collective testimony was about keeping things the same and operating as they have been for the last 20 years or more. Their testimony did not touch upon the issues of the lack of a sustaining source of revenue for capital improvements to the Property. Instead, their testimony focused on looking backwards at what the Fairgrounds had been instead of looking forward to new opportunities and needed revenue sources.

Metro's witnesses testified that its decision to locate the Major League Soccer Stadium and supporting Mixed Use at The Fairgrounds Nashville is part of a broad plan to revitalize the Fairgrounds in its entirety, and to ensure the Fair Board's access to revenue sufficient to maintain and improve the Fairgrounds for decades to come. *See e.g.*, Trial Ex. 113, BL2018-1290; Trial Ex. 114, BL2018-1291; Trial Ex. 106, RS2017-910.

The initial Metro action authorizing the Fairgrounds development and revitalization explains that the Stadium, the Mixed Use, and the other Fairgrounds improvements constitute a single integrated plan with several subparts that reinforce and depend upon each other. *See, e.g.*, Trial Ex. 106, Substitute Resolution 2017-910. Subsequent

ordinances and implementing agreements reinforce this plan. *See e.g.*, Trial Ex. 113, BL2018-1290; Trial Ex. 114, BL2018-1291; Trial Ex. 108, ¶ 4 (Feb. 12, 2020 Term Sheet).

The February 12, 2020 term sheet agreement between NSH (and affiliated entities) and Metro describes the interrelationship of the Stadium, the Mixed Use, and the other Fairgrounds improvements:

The Nashville Fairgrounds ... will be celebrated and enhanced with the addition of the recently completed new Expo facilities, a new Major League Soccer (MLS) Stadium, and a potentially renovated Nashville Speedway. Connecting these uses will be a vibrant and dynamic Mixed-Use Development featuring commercial and residential spaces that will transform the Fairgrounds into a new neighborhood, offering unique and compelling dining, shopping, living, and working options. Great neighborhoods are distinguished by the quality of their open spaces. Tying the Fairgrounds development together will be a network of open gathering spaces where recreational, entertainment and cultural events will take place Tied together by a new pedestrian-friendly and activated Benton Avenue fostering multi-model circulation, these flexible [open] spaces will support and enhance the visual relationships between the major uses at the Fairgrounds. ... [T]he design, placement and function of the [mixed-use] buildings ... are essential to their success

Trial Ex. 108 (Feb. 12, 2020 Term Sheet, Exhibit A).

The Mixed Use is planned to include restaurants, retail, a micro-incubator for local artisans, childcare, a hotel, residences and affordable housing, parking structures, and green spaces. *See e.g.*, Trial Ex. 113 (Substitute Bill 2018-1290); Trial Ex. 110 (Community Benefits Agreement); Trial Ex. 108 (February 12, 2020 Term Sheet Letter). The plan is that these uses and tenants will be part of a self-sustaining revenue circle. The concept is that human and financial support will help maintain the restaurants and other items year-round (apart from just the period narrow to soccer home games or the annual fair). The restaurants and other items will, in turn, augment the Stadium and make the

Fairgrounds more attractive. The Stadium will feed back into all of the foregoing. The plan is that property, sales, and other incidental taxes raised from the Mixed Use will create tax revenue for Metro and the Fair Board.

The Metropolitan Council has resolved that the Fair Board will benefit from receiving half of the property taxes generated—which is expected to be approximately \$1.2 million. (Exhibit 106, Substitute Resolution RS 2017-910). From the ground lease for the Mixed Use the Fair Board will collect at least \$200,000 per year in rent (and possibly an additional 50% of non-soccer event parking if that revenue exceeds \$200,000) (Trial Exhibit 111, § 5(a)).

The Court finds from the testimony of Executive Director of the Fair Board Laura Womack the agreements greatly expand the Fair Board's sources and amounts of recurring revenue, which will allow the Fairgrounds to be self-sustaining by providing necessary funding for management and operation of the entire facility and that the Fair Board will use this revenue for Fairgrounds capital expenditures. In addition to these new sources of recurring revenue that can be used for maintenance, the Metropolitan Government has already issued \$50 million in general obligation bonds for capital improvements that have been used to build the new expo buildings on-site (Trial Exhibit 115) where the Flea Market, Expo Events and Tennessee State Fair are being conducted. The infrastructure improvements that are still to be built include new roads and entrances, significant pedestrian upgrades and plazas to be used by all (Trial Exhibits 182-183).

The Property will also receive benefits from the Mixed Use itself. Parcel 8c of the Mixed Use is expected to have a plaza that will be used for Fairgrounds events. Another

plaza in the Mixed Use is to be larger than the Historic Courthouse green located on the south of that building. Certain parking in the Mixed Use garages is expected to be available for Fairgrounds events. The hotel (and residences) will be used by Fairgrounds guests and event patrons. These lodging options are expected to supplement the recreational vehicle parking (the only on-site lodging opportunities available now). Other value is a Community Benefits Agreement which provides for affordable housing in the Mixed Use.

The initial phase of the Development has been completed. That phase demolished the old exhibition buildings and agricultural sheds and relocated and rebuilt those structures where, before the COVID pandemic, six Nashville Flea Markets were held from September 2019 through February 2020.

In addition the evidence established at trial that prior to the Development there were 6,192 parking spaces available onsite at the Property. After all construction is completed in 2025, parking onsite will be reduced to 4,226 spaces.

The Plaintiffs' claims in their lawsuit are that these plans and actions of Metro to revitalize The Fairgrounds Nashville violate various provisions of the Metro Charter. These claims are analyzed below.

The witnesses who testified at trial concerning these claims and their source of knowledge to testify are listed as follows.

1. Caleb Hemmer (via Deposition) – Fair Board Commissioner
2. Doug Mack (via Deposition) – Former Fair Board Employee
3. Laura Womack – Executive Director at The Fairgrounds Nashville for the last 4 years supervising 15 fulltime employees

4. Jason Bergeron – Fair Board Commissioner since 2017 and licensed attorney
5. Claire Formosa – Former promoter and vice president of Nashville Speedway from 2010-2019 and part owner with her father in Formosa Productions who grew up in a family of auto racers and operators at the Nashville Speedway
6. Scott Jones – Mr. Jones began working at the Nashville Fairgrounds in 1988. From 2001 until 2009, Mr. Jones served as the Fair Coordinator for the Metropolitan Board of Fair Commissioners of Nashville-Davidson County to oversee the production of the divisional fair. Since 2011, Mr. Jones has been employed by the Tennessee State Fair Association to oversee the production of an annual agricultural fair at the Nashville Fairgrounds, and since 2012 as authorized by the Tennessee State Fair & Exposition Commission.
7. United States Congressman John Rose – Congressman Rose, the 33rd Agriculture Commissioner of the State of Tennessee's Department of Agriculture from 2002 to 2003, has served as a member on the Tennessee State Fair & Exposition Commission since May 21, 2018 to the present. He has also served as the Chairman of the Tennessee State Fair Association and has overseen the operation of agricultural fairs at the historic Fairgrounds Nashville since 2010. Congressman Rose's is an 8th generation Tennessean whose family owns a farm that predates the formation of the State of Tennessee.
8. Steven Wright – Mr. Wright is the chairman of the Nashville Flea Market Vendors Association. A Flea Market vendor since 2013, Mr. Wright has been going to the Fairgrounds his whole life. Mr. Wright rents multiple booths at the Flea Market selling indoor and outdoor furniture, metal work, artwork and vintage goods.
9. Neil Chaffin – Mr. Chaffin served as a member of the Metropolitan Board of Fair Commissioners from 1994 to 1997, acting as Chairman from 1996 to 1997. Mr. Chaffin grew up in the neighborhood around the Property, and has attended the Fair since he was about 10 years old and, prior to the pandemic, attended the Flea Market with his wife every month. He raced at the Nashville racetrack for about 10 years in the late 1980s.
10. Daniel Baron – Mr. Baron is the grandson of Plaintiff Mildred Smith. His family has lived adjacent to the Fairgrounds for 66 years and he initially developed an interest in the cave system under the Fairgrounds. His interest and research in the cave system transitioned to the development of the soccer stadium in 2018 when he began an in-depth research investigation of the history of the Fairground property.
11. Charles Smith – Mr. Smith, an architecture graduate of the University of Tennessee, has been described as "A World Leader" in the

- masterplanning and design of North American Fairgrounds and International Showgrounds with Charles D. Smith Architecture & Planning, LLC. With over thirty-five years' experience in the masterplanning, facilities programming and design of over 250 Fairgrounds and Showgrounds in all fifty state, seven Canadian Provinces and twenty-three countries, Mr. Smith is a member of the following professional organizations among others: the International Association of Fairs & Expositions Board of Directors, American Institute of Architects, University of Tennessee College of Architecture Board of Advisors, North American Livestock and Rodeo Managers Association, League of Equestrian Centers, American Horse Council, Canadian Association of Fairs and Exhibitions and International Association of Venue Managers.
12. David Lewis – Mr. Lewis has worked at the Nashville Fairgrounds for the last 22 years and is the current Fairgrounds Head of Operations and Maintenance. He grew up around the Fairgrounds with his Uncle serving as the Fair Manager in the 1970s. As a child, Mr. Lewis helped park cars and sell tickets for the Fair.
 13. Chris Rhodes – Mr. Rhodes is a licensed civil engineer with Kimley-Horn and Associates, Inc. who has 24 years of experience in traffic engineering with a discipline in transportation and parking. Mr. Rhodes was hired by NSH to develop a plan for gameday parking at the MLS stadium. Most recently he was involved in parking planning the recently completed Las Vegas Raiders stadium.
 14. Richard Frenette – Mr. Frenette has been involved in fair management and fair management consulting for over 50 years. The Founder and Chief Executive Officer of Fair Advantage, a company that provides a wide range of project management and other support for the planning, finance, operation, and marketing primarily for fairs, Mr. Frenette has consulted with over 20 Fairs including the Indiana State Fair, Iowa State Fair, Nebraska State Fair, North Dakota State Fair, South Carolina State Fair and State Fair of Virginia among others.
 15. Mary Cavarra – Ms. Cavarra is the Vice President of Nashville Soccer Holdings, LLC, and its four wholly owned subsidiaries including Walsh Management, LLC.

Article II, Section 8—Control of Funds

The last sentence of Article II, Section 8 of the Metro Charter provides as follows.

Said board [the Fair Board] shall have control of the disbursement of all funds collected by taxation, received from the State of Tennessee, or collected from gate receipts, concessions, or leases of the said fair property for educational or amusement purposes, for the operation, maintenance or improvement of the fair property.

The Plaintiffs' construction of this Section is that the Fair Board is the entity who must control the gate receipts, concessions and subleases of the Property, and from this the Plaintiffs argue that Section 8 requires the Fair Board to receive 100 percent of all funds received from activities on the Property, including the funds generated by the Stadium and the Mixed Use.

But the leases (Trial Exhibit 111—Mixed Use Ground Lease between the Fair Board and NSH; Trial Exhibit 138—Stadium Lease Between the Metro Sports Authority and Walsh; and Trial Exhibit 139—Stadium Ground Lease from the Fair Board to the Sports Authority) Metro has entered into concerning the Stadium and Mixed Use allow the Intervening Defendants to retain revenues from the parking, concessions, and sublease payments the Intervening Defendants receive from the Stadium and the Mixed Use they are funding and constructing, and to sublease the leased premises for events and activities to

third-parties. The Plaintiffs assert that this violates⁵ the last sentence of Article II, Section 8.

Interpretation of the Metro Charter is guided by well-established principles of statutory construction. *Renteria Villegas v. Metro. Gov't of Nashville & Davidson Cty.*, 382 S.W.3d 318, 321 (Tenn. 2012). Courts should give “full effect to the intent and purpose of the drafters, ... without unduly broadening or restricting the Charter.” *Id.* (citations omitted). If “the language is ‘clear and unambiguous’” then courts “must simply enforce it as written.” *Id.* (citation omitted). If “the language is ambiguous,” then courts “may refer to the broader statutory scheme, the history of the Charter, and other sources to discern its meaning.” *Id.* (citation omitted). The “language of a statute must be considered in the context of [the] entire statute without any forced or subtle construction which would extend or limit its meaning” and courts “must construe terms reasonably and not in a fashion which will lead to an absurd result.” *Jefferson Cty. v. City of Morristown*, 1999 WL 817519, at *3 (Tenn. App. Oct. 13, 1999) (internal citations and quotations omitted). Statutes should be construed as a whole and words given their natural and ordinary meaning. *Hargrove v. Metro. Gov't of Nashville and Davidson Cty.*, 154 S.W.3d 565, 567-68 (Tenn. Ct. App. 2004). (Feb. 5, 2020 Op. at 23 n. 9.) Courts are “not required to construe a statute in light of remote or strained interpretations that conflict with the clear and unambiguous meaning of the statute’s language.” *Knox Cty. v. City of Knoxville*,

⁵ From this point on, when the Court uses the phrase “violates the Charter” or a particular section therein, the Court uses that phrase to collectively and interchangeably refer to the Plaintiffs’ terms *ultra vires* and breach of fiduciary duty which the Plaintiffs have not differentiated or specified.

1987 WL 31640, at *8 (Tenn. Ct. App. Dec. 30, 1987), *aff'd as modified and remanded*, 786 S.W.2d 936 (Tenn. 1990) (citation omitted).

The Plaintiffs' construction that the Fair Board has control of all funds collected on the Property is not adopted by the Court because this construction gives no effect to the word "disbursement." The plain meaning of Article II, Section 8 from the ordinary use of the words and grammar is that the "control" the Fair Board "shall have" is control of "disbursement." This word, "disbursement" details/explains/modifies "control." Thus, the function of the last sentence of Section 8 is that the Fair Board controls/decides how to use the funds (in its operation, maintenance or improvement of the Property) that the Fair Board is paid from various sources. Those sources can include concessions, gate receipts or leases the Fair Board, itself, generates, but there is no requirement in the wording of the Section that the Fair Board control and manage and receive all the funds from every activity that generates revenue on the Property. The plain textual meaning of Section 8 is that funds paid to the Fair Board shall be used for the operation, maintenance, or control of the Property—including funds which come to the Fair Board from taxes, the State, or through money the Fair Board itself has collected from gate receipts, concessions, or leases.

In addition to this textual analysis, the evidence at trial of the long-standing custom and practice on the Property is that exhibitors, racers, commercial businesses, food services, and many events and activities have historically retained all or part of the revenues they generate. The testimony at trial showed that the Fair Board currently controls the disbursement of all funds collected, but it does not control all funds generated

by the entities who lease the Property from the Fair Board or hold events there. For example, Fairgrounds Director Laura Womack testified that the Christmas Village rents expo center space and then sublets it to individual vendors. The proceeds of such subletting are not collected by the Fair Board. Similarly, Neil Chaffin testified that when he was on the Fair Board proceeds from the Gun Show were retained 100% by the individual vendors. Another example is that the Speedway promoter rents the racetrack and charges for entrance to the races. The proceeds from the entrance tickets are not collected by the Fair Board (Trial Exhibit 36—Speedway Lease). The Tennessee State Fair rents the Fairgrounds and charges for entrance to the Fair, for refreshments, and for games and rides. The proceeds from the entrance tickets, refreshments, and games and rides are not collected by the Fair Board. In addition, there was no evidence that the Fair Board has the staff or resources to produce these events and activities, and without private lessees and producers, all the activities could not be held there. The evidence was clear that the method used by the Fair Board is to lease the Fairgrounds for hundreds of events each year, and vendors and exhibitors are typically allowed to keep the majority or all of the revenue they earn from events. None remits all of its revenue to the Fair Board, and many remit none of it. It is this same custom that is implemented with the Development.

The evidence established that the Fair Board will control the disbursement of the funds that it collects from the Development for the operating, maintenance or improvement of the Property. As a result of the Mixed Use, the Metropolitan Council has resolved that the Fair Board will collect half of the property taxes generated—which is expected to be approximately \$1.2 million (Exhibit 106, Substitute Resolution RS 2017-910). From the

ground lease for the Mixed Use the Fair Board will collect at least \$200,000 per year in rent (and possibly an additional 50% of non-soccer event parking if that revenue exceeds \$200,000) (Trial Exhibit 111, § 5(a)).

Executive Director Laura Womack testified that these leases and agreements will provide substantial new sources of recurring revenue and capital funding for the operation, maintenance and improvement of the Property that has never existed before. Piecemeal, grant or budget based funding has barely enabled upkeep and maintenance and has not allowed for long-term capital improvements. Executive Director Womack testified that a recurring revenue source to fund a capital account for projects that will permanently improve and sustain the Property will be transformative. Thus, the Fair Board's decision concerning the Development to lease property onsite and allocate the revenue that it collects in ways that benefit the overall Fairgrounds property complies with Section 8.

The Court therefore determines and declares that Metro is not violating Article II, Section 8 of the Metro Charter with respect to the Intervening Defendants retaining revenues they collect from their leases of the Property, and this claim of the Plaintiffs is dismissed with prejudice.

Article II, Sections 8 and 10—Extent of Fair Board Control, Amusement and Educational Purposes of Leases, and Surplusing of Property

The next of the Plaintiffs' claims that Metro is violating the Charter is that the Development leases for the Stadium and the Mixed Use are not for amusement or

educational purposes. For this claim, the Charter text the Plaintiffs cite to is quoted as follows.

Section 8

Said board shall have control of the disbursement of all funds collected by taxation, received from the State of Tennessee, or collected from gate receipts, concessions, or leases of the said fair property **for educational or amusement purposes**, for the operation, maintenance or improvement of the fair property [emphasis added].

Section 10

Said board of fair commissioners is hereby vested with the power, authority and duty to enter into negotiations with the commissioner of agriculture of the State of Tennessee, for the surrender and cancellation of any lease now held by the State of Tennessee of any fair property in such counties, and **to take complete charge and control** on behalf of such counties, and they shall use and maintain said property by holding thereon, at least once a year, for not less than six days, a fair or exposition for the benefit of the people of such counties, and they may lease **for amusement purposes** said property at such times and in such ways as not to interfere with the operation of said fair, the proceeds received from said leases to be used in the maintenance of said fair, at which shall be exhibited, as far as possible, the resources of said county and the State of Tennessee, and the progress of its people in all kinds of enterprises and endeavor [emphasis added].

Stadium

The Court has already concluded and ruled on summary judgment that the Stadium, like the Speedway, constitutes an amusement and on that basis does not violate Article II, Sections 8 and 10. That summary judgment ruling dismissing Plaintiffs' claim on this issue is incorporated herein by reference and is made final.

Memorandum and Orders: (1) Denying Metro's Pretrial Motions to Dismiss Lawsuit and Denying Plaintiffs' Cross Motion for Partial Summary Judgment and Requiring Case to be Set for Trial, and (2) Issuance of Rulings on Other Pending Motions Argued at 1/30/2020 Hearing, February 5, 2020 at 18.

Mixed Use

As to the Mixed Use, the evidence established that Metro and the Intervening Defendants' plans are for it to contain, as set forth in Trial Exhibit 110: childcare, micro-unit incubators for the use of artisans and small business merchants, and local artist beautification projects. Mary Cavarra testified additional aspects of the Mixed Use will be retail, bars/restaurants, commercial office space, and a hotel. **The Court finds that these uses patently constitute an amusement or educational purpose, and therefore, were those to be an applicable requirement of the Metro Charter, these uses do not violate Article II, Sections 8 and 10, and the Plaintiffs' claims in that regard are dismissed.**

The Mixed Use is also planned to have residences. The Plaintiffs have suggested during trial that the residential use, as one component of the Mixed Use, violates the Metro Charter because it does not serve an educational or amusement purpose. This argument derives not only from the reference in Article II, Sections 8 and 10 quoted above that the Fair Board's leases of the Property are to be for educational or amusement purposes, but also Section 10 of Article II which states that the Fair Board is "to take complete charge and control" of The Fairgrounds Nashville. From these Charter provisions, the Plaintiffs argue that it is the Fair Board who has sole control of the Property and, therefore, all leases on the Property must be for educational and amusement purposes. As follows, the Court comes to a different conclusion.

As characterized by Metro "the Fair Board is *not* the fiefdom that Plaintiffs envision. It is *not* the only entity that controls what happens on the Fairgrounds,"

Metropolitan Government's Response To Plaintiffs' Statement Of Legal Authority, p. 2 (Sept. 29, 2020), based on several premises.

First, Metro is in the superior position and control as the owner of the Property. In this regard Article II, Section 8 provides that “the title to any property purchased under the provisions of this Act shall be taken in the name of Metro: [Nashville and] Davidson County.” Also, the deeds to the Property (Trial Exhibit 201) list Metro as the owner and do not contain any restrictions concerning education and amusement.

Additionally, the reference to amusement and educational leases in Article II, Sections 8 and 10 is stated in relation to the powers and duties of the Fair Board which is an instrumentality of Metro. This is not a reference to the power of the owner Metro.

The history of The Fairgrounds Nashville confirms that the amusement/educational reference in the Charter refers to the Fair Board, not to Metro. Historically Metro has used the Property for purposes outside of amusement and education. In 2001, the Metropolitan Council through Ordinance BL 2001-754, approved a lease between the Fair Board and Senior Citizens, Inc. as being in the public interest and allowed the Fifty Forward Senior Citizens Center to be built and operated on the Fairgrounds.

Whereas, the Metropolitan Charter grants the Metropolitan Board of Fair Commissioners the authority to lease the Fairgrounds for amusement purposes; **however, the use of the Senior Citizens Center will not be restricted to amusement purposes**; and,

Whereas, it is therefore proper for the Metropolitan Council to approve the lease as provided in Section 2.24.210 of the Metropolitan Code; and

Whereas, the lease agreement between the Metropolitan Board of Fair Commissioners and Senior Citizens, Inc. is in the public interest.

Trial Exhibit 186 (emphasis added). This is a charitable use and not an amusement or educational one. Although the scale of the projects are very different, the Fifty Forward Lease (Trial Exhibit 186), is similar to the Stadium Lease between the Sports Authority and Walsh Management, LLC (Trial Exhibit 138) in at least two ways – reserving some use for Metro and managing scheduling conflicts for existing uses. The Fifty Forward Lease provides that during the Fair and during the October Flea Market, Metro may use the parking area on the premises. §1.3. In addition, Metro may use the break rooms and common areas for office use during the Fair. *Id.* The Fifty Forward Lease also recognizes that there will be Fairgrounds events that require extensive parking and that the parties agree to negotiate in good faith on a case by case basis to allow Metro to use the parking lot during those times. Similarly, the Stadium Lease carves out Metro’s ability to use both the inside and outside of the Stadium. The Fair Board has the right to use the concourse and other similar areas of the Stadium for Fairgrounds Events. §10(d). The Metropolitan Government (including the Fair Board) may use the entire premises for up to 20 days each year. §10(f).

Another example of a non-amusement/educational use on the Property is that Metro for years used a 2-acre tract known as “Voter Island” with a warehouse to store voting equipment.

There is also the Lamar Advertising Billboard agreement which is another example of a non-amusement lease of the Property.

WHEREAS, **a lease of the Fairgrounds for non-amusement purposes requires the approval of Council** under Section 2.24.211 of the Metropolitan Code; and,

WHEREAS, the lease has been approved by the Metropolitan Planning Commission; and

WHEREAS, the lease agreement between the Metropolitan Board of Fair Commissioners and Lamar Advertising is in the public interest.

Trial Exhibit 21 (emphasis added).

Even more fundamental authority that Metro controls the Property, not the Fair Board, is Section 11.602(c) of the Charter. At the time of the formation of the Metropolitan Government, Metro could alter, consolidate, or abolish by ordinance boards that had been established by private acts. Metro chose to continue the Fair Board. But the Charter did not continue the Fair Board exactly as it had existed before. In Section 11.602, the Charter continued Chapter 515 Private Act of 1923, but it also included an additional, key provision—the requirement that the Fair Board perform such other duties as may be imposed upon the Board by ordinance, quoting as follows.

Metropolitan Charter Section 11.602. - Functions and duties.

It shall be the duty of the metropolitan board of fair commissioners to:

(a) Exercise all the powers and perform all the duties heretofore or hereafter imposed on the Board of Fair Commissioners of Davidson County, as established by chapter 490 of the Acts of Tennessee for 1909 and chapter 515 of the Private Acts of 1923 and amendments thereto.

(b) Within the limitation of its budget appropriation and funds otherwise available, employ and fix the compensation of such personnel as may be necessary.

(c) **Perform such other duties as may be imposed upon the board by ordinance.**

(d) All activities being conducted on the premises of the Tennessee State Fairgrounds as of December 31, 2010, including, but not

limited to, the Tennessee State Fair, Expo Center Events, Flea Markets, and Auto Racing, shall be continued on the same site. No demolition of the premises shall be allowed to occur without approval by ordinance receiving 27 votes by the Metropolitan Council or amendment to the Metropolitan Charter.

(emphasis added).

Thus, the Metro Charter gave the Council authority to impose additional duties upon the Fair Board, beyond those duties included in Chapter 515 of the Private Acts of 1923 of amusement and educational leases and holding a fair. This provision in 11.602(c) supports and harmonizes⁶ with the construction of Article II, Section 10 above, that the wording therein that the Fair Board take “complete charge and control” of the Property applies to the Fair Board’s stewardship of the Property but does not eliminate or curtail Metro’s power over the Property.⁷ Section 11.602(c) is further authority that Metro is in the superior position to the Fair Board to dictate its duties and use of the Property.

Metro’s superior position of control is particularly significant with respect to the Plaintiffs’ argument that the Mixed Use must adhere to the amusement and educational purposes referred to in Article II, Sections 8 and 10 on duties assigned to the Fair Board.

Through the authority of Section 11.602(c), Metro land is subject to Metro’s laws, including the surplus provisions set forth in § 2.24.250 of the Metro Code (the “Surplus Code”). As Metro Code 2.24.180 provides, “[t]he director of public property

⁶ Courts “endeavor to construe statutes in a reasonable manner ‘which avoids statutory conflict and provides for harmonious operation of the laws.’” *Holloway v. Tanasi Shores Owners Ass’n*, 2019 WL 1988502, at *3 (Tenn. Ct. App. May 6, 2019) (citation omitted).

⁷ For these same reasons, the Plaintiffs’ claims that the agreements executed between the Metro Parks Department and the Fair Board with respect to the 22-acre parcel on the Property, as asserted in particular in paragraphs 49-53 of the January 3, 2019 *Second Amended Complaint*, are without merit and are dismissed.

administration shall ... establish standard procedures for acquiring and disposing of land for metropolitan departments, boards and commissions[.]” The Fairgrounds Nashville, in turn, is subject to that Surplus Code, which states:

Beginning January 1, 2018, any property owned by the Metropolitan Government of Nashville and Davidson County that is to be leased for a term greater than fifty years is required to be declared surplus pursuant to this section prior to the lease taking effect.

Metro Code 2.24.250(H).

On August 7, 2018, the Metro Council adopted BL2018-1291⁸ directing the Fair Board to enter into the 99-year Mixed Use Ground Lease (Trial Exhibit 111). In addition, as this Court has previously held, because the Mixed Use Ground Lease was for over 50 years, Metro was required to surplus the land pursuant to Metro Code 2.24.250. The Property “automatically” became a requirement for a surplus action under 2.24.250 because the Mixed Use ground lease “was for more than fifty (50) years.” Jan. 24, 2019 Op. at 20. The Fair Board therefore declared the 10 acres for the Mixed Use to be “surplus” on August 16, 2018.

The Court held that Metro followed the surplus procedures and that, “as a matter of law . . . [Metro] did not violate the law” when it declared 10 acres surplus for the Mixed Use. (Jan. 24, 2019 Op. at 17; *Id.* at 17-21.)

As this Court has previously determined and which is adopted herein, the result of the Fair Board’s actions and BL2018-1291 is that the 10 acres is “surplus” and therefore is

⁸ In Ordinance BL2018-1291 (Trial Exhibit 114), the Metropolitan Council declared the 10 acres for mixed-use development to be surplus and authorized, empowered and directed the Chairman of the Fair Board to execute and deliver the Ground Lease Agreement, and authorized, empowered and directed the officers of the Metropolitan Government to do all such acts and execute all such documents as may be necessary to carry out and comply with the provisions of the Ground Lease.

no longer regulated by the Article II reference to an amusement and education purpose.
(Feb. 5, 2020 Op. at 18.) The Court likewise held and adopts herein,

As to the part of the Stadium Development that is a Mixed Use under a Community Benefit Agreement of retail, affordable housing, and child care, and the fact that that is not an amusement, the Mixed Use parcel of the Fairgrounds parcel of the Fairgrounds Property has been carved out and surplus, and is, therefore, not regulated by Article II, section 8.

(Feb. 5, 2020 Op. at 18; *Id.* at n. 7, 38-39.)

Thus, the Court concludes that the plain wording of the Surplus Code and the Metro Charter grant Metro (including acting through the Fair Board) the power to surplus property, including The Fairgrounds Nashville, and that the Surplus Code was followed here. The Surplus Code required the action that Metro took, Metro then took the required action in adopting the requisite ordinance, and the Fair Board is obligated to follow that action pursuant to § 11.602(c).

Section 11.602(c) further confirms that the power to declare land surplus is found in Metro ordinances. It states that “[i]t shall be the duty of the metropolitan board of fair commissioners to ... [p]erform such other duties as may be imposed upon the board by ordinance.” Here, BL2018-1291 directed the Fair Board to enter into the Mixed-Use Ground Lease. The term of the Mixed Use Ground Lease (99 years) was such that the Fair Board was bound to comply with the Surplus Code and surplus the ten acres.

The consequence of Metro’s and the Fair Board’s actions is straightforward. The Court concludes that the Mixed Use parcel of the Fairgrounds Property has been carved out and surplus, and is, therefore, not regulated by Article II, Sections 8 and 10. In addition, under the authority of Section 11.602(c) to expand the duties of the Fair Board by

ordinance, the Metro Council enacted Substitute Bill 2018-1290 specifically contemplating and approving the Mixed Use, including its residential uses. (*Id.* at §§ 4(5) (“residential uses”) & 7 (“NSH ... has voluntarily agreed to develop a portion of the residential units as affordable and workforce housing”).) Metro Council also passed BL2018-1290 related to the Mixed Use. BL2018-1290 authorized the rezoning “from IWD to SP zoning ... a portion of property located at 300 Rains Avenue ... to permit a mixed-use development, (10.0 acres).” (Ex. 1, Substitute Bill BL2018-1290.)

On a number of grounds, then—Metro’s ownership of the Property, the custom and usage, no absence of deed restrictions, and surplusage—the amusement and educational reference in Article II, Sections 8 and 10 does not apply to the Mixed Use. Accordingly, on this basis the Court dismisses the Plaintiffs’ claim that the Mixed Use violates the provision in Article II, Sections 8 and 10 related to Fair Board control and amusement and educational purposes, and dismisses the Plaintiffs’ asserted violations with respect to the surplusage of the Mixed Use.

But even if the Article II references to amusement or educational leases are applicable to the Mixed Use lease, it does not violate the Metro Charter.

In Substitute Ordinance 2018-1290 (Trial Exhibit 113), the Metropolitan Council rezoned the acreage within the Fairgrounds to permit a “Sports Village Entertainment District at The Fairgrounds Nashville” – a mixed-use district with residential units (some of which shall be affordable units), restaurants, retail, pedestrian pathways and plazas.

Page 05, titled “Concept Plan,” states that:

The concept for the Mixed-use District is to establish a vibrant destination for the neighborhood and all Fairgrounds uses together. Ground floors and streetscapes will be lined with restaurants, retail and other *active uses*. The pedestrian environment will be emphasized through the appropriate use of scale, form, details and transparency and will sensitively address public open spaces and surrounding forming integrated connections to the other uses on site. (emphasis in original).

Page 06, Regulations, states “Residential uses along public streets shall include stoops or articulation that engages the pedestrian environment.”

Substitute RS2017-910 further expresses the will of the Metropolitan Council that the Mixed Use is “important and integral” to the Stadium Development Project:

WHEREAS, as an important and integral part of the overall Stadium project, the Team and the Metropolitan Government, by and through the Metropolitan Government Board of Fair Commissioners (the “Fair Board”), further desires to enter into an agreement wherein the Team will agree to commence on or before a certain date the development of certain property adjacent to the Stadium consisting of +/- 10 acres, which property shall be leased from the Metropolitan Government and/or Fair Board, as applicable, pursuant to a nominal 99 year ground lease, on the terms and subject to the conditions set forth in said agreement. Such ground lease agreement shall require approval of the Metropolitan Council by resolution and shall further be conditioned upon approval by the Council of the site plan as part of the Specific Plan (SP) zoning designation; and . . .

Trial Exhibit 106.

The Court further finds that it was established at trial, by the testimony of the NSH representative, Mary Cavarra, and the Fair Board Executive Director, Laura Womack, that the Mixed Use lease is a keystone element of the Development—which is primarily an amusement project. Mary Cavarra testified that the Mixed Use will provide income to support the stadium bond payments. Ms. Cavarra also testified that removing the

residential component from the Mixed Use project would substantially reduce its value, which is required to be at least \$150 million under the terms of the ground lease with the Fair Board. Laura Womack testified that the Mixed Use will provide recurring, substantial property tax income that can be spent on Fairgrounds capital expenses, and any reduction in the value of the Mixed Use would necessarily mean less income to the Fair Board.

The inclusion of one or more component uses (such as residential units) does not alter the overall amusement nature of the development. As is clear from the Community Benefits Agreement, the 2020 Term Sheet, Substitute Bill 2018-1290, and elsewhere, the Mixed Use will provide amusements to supplement the soccer and Fairgrounds amusements: e.g., food and beverage experiences, artisan shops and experiences, concerts, events held on the plazas, hotel rooms, and so forth. Any corresponding and integrated use that does not fall within whatever was contemplated by “amusement,” are necessary and incidental to the overall Mixed Use and Stadium entertainment district and are thus allowed.

Examples from case law cited by the Intervening Defendants that another use is permitted because it relates to or is necessary to the overall purpose, so-called ancillary or complementary uses are as follows.

- *New Brunswick Cellular Tel. Co. v. Old Bridge Twp. Planning Bd.*, 636 A.2d 588, 594 (Law. Div. 1993) (propose cell tower was “subordinate” and “incidental” to primary use of “warehouse and shopping center” because cell tower was “integral to the main use of the property”) (emphasis in original);

- *Durdan v. Deschutes Cty.*, 43 Or. LUBA 248, 257 (2002) (the Oregon land use Board of Appeals declined to overturn hearing officer’s decision that “year-round lodge with 10 cabins, food service and recreational activities, staffed by three to four employees” was “incidental or subordinate to a ranching operation.”);
- *McLaughlin v. Howell Twp. Zoning Bd. of Adjustment*, 2011 WL 5137782, at *4 (N.J. Super. Ct. App. Div. Nov. 1, 2011) (“the Board made specific findings in its resolution that farm labor housing is commonly, habitually and by long practice established as reasonably associated with the primary use of a horse farm”);
- *Georgetown Residents All. v. Dist. of Columbia Bd. of Zoning Adjustment*, 816 A.2d 41, 47 (D.C. 2003) (“child development center” was “customarily incidental and subordinate to the principal use” of college campus education);
- *Elder v. Watts*, 312 S.E.2d 331 (Ga. 1984) (building a tennis court on an adjoining lot did not violate a restrictive covenant limiting lots to use “for single family residence purpose only” because the recreational development on the double lot “as a whole” was consistent with the residential purpose);
- *Congregation Rabbinical Coll. of Tartikov, Inc. v. Vill. of Pomona*, 138 F. Supp.3d 352 (S.D.N.Y. 2015) (dorm was an accessory use to uses permitted under campus plan for which university had already received special exception, and thus, an additional exception was not required);⁹

⁹ The court in that case included the following points, 138 F. Supp. at 383:

[T]here is ample case law indicating that *the size of a development is not dispositive to whether it is accessory*. See, e.g., *Mamaroneck Beach & Yacht Club, Inc. v. Zoning Bd. Of Appeals of Vill. of Mamaroneck*, 53 A.D.3d 494, 862 N.Y.S.2d 81, 85 (2008) (“The [zoning board of appeals], in engrafting area requirements upon provisions defining a permissive accessory use, based upon the square footage of other building structures on the property,” namely by ruling that a structure that constituted more than 50% of total building square footage on the property could not be an accessory use, “was irrational and unreasonable.”). Rather, what matters is the size of the accessory use *relative to the need for that use*. See *De Mott v. Notey*, 3 N.Y.2d 116, 164 N.Y.S.2d 398, 143 N.E.2d 804, 806 (1957) (finding that use of two out of three buildings as dwellings was permissible accessory use to hospital because “[i]t is ... generally known ... that hospitals customarily provide living accommodations for at least some of their personnel”).

- *De Mott v. Notey*, 143 N.E.2d 804, 806 (N.Y. 1957) (finding that use of two out of three buildings as dwellings was permissible accessory use to hospital because “[i]t is ... generally known ... that hospitals customarily provide living accommodations for at least some of their personnel”); and
- *Valley Green Grow, Inc. v. Town of Charlton*, 2019 WL 3815837, at *19 (Mass. Land Ct. Aug. 14, 2019) (post-harvest cultivation of marijuana was accessory and incidental to marijuana farm in area zoned for agricultural use).

Finally, in relation to Article II, Section 8, the Fair Board is further relying on the tax revenue from the Mixed Use to maintain the Fairgrounds and its amusement events, including the fair.

From the foregoing the Court finds that the proof established that the Stadium, the Mixed Use, and the other components of the Development were designed to form one related, self-sustaining Fairgrounds amusement district. The Court finds that viewed in this appropriate full context, the Mixed Use and all its uses create an amusement district consistent with the references to amusement and education purposes Sections 8 and 10 of the Charter if those provisions were to apply. The Court therefore finds that the Mixed Use and Stadium entertainment district is considered as a whole that creates an amusement district that comports with Article II. These findings constitute an additional basis for dismissal, and on this basis as well the Court dismisses the Plaintiffs’ claims that the Development violates the Article II, Sections 8 and 10 provisions on Fair Board control and on amusement and education leases.

Dismissal of the Plaintiffs' Article II, Sections 8 and 10 claims that: the Fair Board exclusively controls the Property, that the uses on the Property are confined to education and amusement, and that the surplusage of the Mixed Use parcel violated the Metro Charter, does not, however, end the inquiry. Even though the foregoing analysis is that Metro can surplus and use the Property for non-amusement and non-educational purposes, Metro is nevertheless constrained by the requirements of Section 11.602(d) and another portion of Article II, Section 10. These Charter provisions require Metro to continue activities on the Property that existed as of December 31, 2010 and to hold annually on the Property a divisional fair. These sections are analyzed below.

Article II, Section 10 and Section 11.602(d)—Divisional Fair; Section 11-602(d)—Existing Uses

Section 11.602(d) of the Charter requires that activities being conducted on the Property as of December 31, 2010, such as the Tennessee State Fair, Expo Center Events, Flea Markets and Auto Racing, “shall be continued on the site.”¹⁰ In addition Article II, Section 10 requires the Fair Board to hold annually a divisional fair, described therein. These Sections are quoted again as follows.

- Section 11.602 provides that “All activities being conducted on the premises of the Tennessee State Fairgrounds as of December 31, 2010, including, but not limited to, the Tennessee State Fair, Expo

¹⁰ In relation to the application of Section 11.602(d), in its Order on Summary judgment, this Court held and affirms herein that the meaning of Section 11.602(d) of the Metro Charter is that the Existing Uses referred to in Section 11.602(d) consisting of the Flea Market, Tennessee State Fair, Expos and Speedway are not exclusive uses, and the Development is not a *per se*, facial violation of Section 11.602(d) of the Metro Charter. There is nothing in the wording of Section 11.602(d) which precludes additional uses.

Center Events, Flea Markets, and Auto Racing, shall be continued on the same site.”

- Article II, Section 10 provides that the Fair Board¹¹ shall “use and maintain said property by holding, thereon, at least once a year, for not less than six days, a fair or exposition for the benefit of the people of such counties [in this case Davidson County], and they may lease for amusement purposes said property . . . in such ways as not to interfere with the operation of said fair, the proceeds received from said leases to be used in the maintenance of said fair, at which shall be exhibited as far as possible, the resources of said county and the State of Tennessee and the progress of its people in all kinds of enterprises and endeavor. The agricultural, mineral, livestock, commercial, industrial, and all other interests, shall be duly exhibited, and every reasonable effort shall be made to develop, improve, encourage and stimulate all lawful and substantial interests and industries.”

Divisional Fair

Both sides agree that the fair referred to in 11.602(d) as the “Tennessee State Fair” and the “fair or exposition” in Article II, Section 10 are references to a divisional fair. That is, these Charter sections require the Fair Board to hold annually a divisional fair and to assure that the holding of an annual divisional fair is continued on the site of The Fairgrounds Nashville. The evidence as testified to by witnesses for both sides: Scott Jones, Congressman Rose, Charles Smith and Richard Frenette is that a divisional fair is a fair held by a region, as opposed to the entire State. In Tennessee, there are fairs in each of the three grand divisions which are regional fairs. There are also some county fairs which draw attendance from outside the county and from their regions. To date, according to the testimony of Scott Jones and Congressman Rose, there is no state fair conducted in Tennessee where winners from county and regional fairs advance to compete in a state fair.

¹¹ As explained above in the Background Findings of Fact, the term used prior to the formation of the Metropolitan Government was “fair commissioners,” which are also known under the Metro Government as the “Fair Board.”

The evidence established that the fair that has historically been conducted at The Fairgrounds Nashville, although called the “Tennessee State Fair,” was a regional fair drawing attendance from Middle Tennessee. Also, Section 43-21-104 of the Tennessee Code sets forth the definitions of various fairs in Tennessee, listing “Community fairs,” “County fairs,” “District fairs,” and “Division fairs.” Notably absent is “State fairs,” as those did not exist when the statute was passed in 2007. The different definitions are based upon the differing populations the fairs serve and the amount of premiums paid at the fairs.

In previous rulings, however, the Court ruled that Metro’s obligation was not to hold a divisional fair, but instead the Court concluded that Metro’s duty under the Charter to hold an annual fair meant that Metro has to be able to and must hold the Property in waiting and be available to conduct the State’s Tennessee State Fair, as established by Tennessee Code Annotated sections 4-57-101 *et seq.*, should the TSFA select The Fairgrounds Nashville as the venue. In so concluding the Court was dealing with Metro’s argument that Tennessee Code Annotated sections 4-57-101 *et seq.* repealed or preempted Metro Charter Section 11.602(d). In rejecting the repeal and preemption argument, the Court had to reason out how Section 11.602(d) remained valid in light of the passage of Sections 4-57-101 *et seq.* The Court’s answer was the interpretation that Metro’s duties were to have the Property always “on call” for the State’s Tennessee State Fair. At the time, though, the parties’ positions on a divisional fair had not been developed as it was at

trial.¹² The parties' agreement at trial that Metro's obligation under the Charter is to hold a divisional fair changes the analysis, and the Court alters and amends its February 5, 2020 summary judgment in that regard as follows.

The Court, then, from the evidence at trial and the text of the Charter provisions, concludes that Metro is not obligated to hold in reserve the Property for the Tennessee State Fair that is being produced by the TSFA. The Court adopts the analysis of the Intervening Defendants that with the history of the "Tennessee State Fair" and the "Tennessee State FairTM"/Nashville Divisional Fair in clearer view, there is a simpler way to read the Tennessee Code and Metro Charter together. The Court concludes that the meaning is that Section 11.602(d) referred to all that was in existence at the time and had been presented over the prior years—Tennessee State FairTM/Nashville Divisional Fair. This simpler reading is supported by the testimony of Plaintiffs' own witnesses, who testified that the fairs they presided over were divisional fairs bearing the name the "Tennessee State Fair." The Court concludes that Metro's Charter obligation is not to hold the Property on call for the TSFA. Metro's obligation is to annually hold a divisional

¹² On page 22 of the Order on Summary Judgment, the Court grappled with the use of the term "Tennessee State Fair" to describe what was happening at the Fairgrounds (and Mayor Beverly Briley's decision to trademark the name "Tennessee State Fair"). The Court stated,

One additional issue concerning Metro's duty under Article II, Sections 8 and 10 relates to hosting a "divisional fair." The context in which this arises is that the term "Tennessee State Fair" has been used by the Court and the parties to refer to the fair, provided for in Tennessee Code Annotated section 4-57-101 *et seq.* that the State of Tennessee must initiate and select Metro to host, and that is also the term used explicitly in Section 11.602(d) of the Metro Charter. There is, though, another concept referred to by the parties in the lawsuit—a divisional fair—which is distinct from the references herein to the Tennessee State Fair. "Divisional fair" is referred to in Article II, Section 8 of the Metro Charter. **As to a divisional fair, the parties' positions, both factually and legally, have not crystallized, are still developing, and are not ruled upon in any respect herein** [emphasis added].

fair on the Property. Accordingly, if the Tennessee State Fair and Exposition Commission and/or Tennessee State Fair Association seek to lease that site or Metro wishes to apply to them to host the Tennessee State Fair, each may do so. But Metro's Charter obligation is to provide a divisional fair, as described in Article II, Section 10 and to continue that activity on the Property as included in Section 11.602(d). If Metro contracts with the Tennessee State Fair and Exposition Commission and/or TSFA to hold the Tennessee State Fair on the Property, that satisfies its Charter obligation to hold an annual divisional fair. Even if the Tennessee State Fair and Exposition Commission and/or TSFA move the "Tennessee State Fair" to another location, both Laura Womack and Metro's Counsel stated that Metro has an independent 11.602(d) affirmative duty to hold annually a divisional fair at the Nashville Fairgrounds site and will continue to conduct such a fair.¹³

In addition to this meaning and scope of the term "divisional fair" established by the witnesses' testimony of custom and the industry, the Court concludes from the wording of Article II, Section 10 that the parameters of the divisional fair that Metro must provide is to have exhibited "as far as possible, the resources of said County and State and the progress of its people in all kinds of enterprises and endeavor. The agricultural, mineral, livestock, commercial, industrial, and all other interests, shall be duly exhibited, and every reasonable effort shall be made to develop, improve, encourage and stimulate all lawful and substantial interests and industries."

¹³ Nevertheless, as found below, the evidence establishes that a reasonable facsimile of the Tennessee State Fair, traditionally held on the Property, can be conducted at The Fairgrounds Nashville with the Development.

Now, as to violation of these Charter provisions, the Plaintiffs' claims are that the

Development:

- will take up so much acreage that there is no place to hold a midway for the divisional fair;
- will eliminate sufficient parking for a divisional fair and there will be a decline in parking revenue for the Fair Board's maintenance of the Property;
- has inadequately restructured and outfitted the exhibition sheds and space for livestock; and
- will result in holding soccer matches at the same time as the divisional fair, thereby exceeding the attendance capacity of the Property, and posing a logistical and security threat.

The Court finds that none of these claims is supported by the evidence.

Acreage and Midway

The expert proof provided by Defendant Metro and the Intervening Defendants established that there is adequate acreage after the Stadium is constructed on 25 or so acres and the Mixed Use on 10 or so acres to continue to hold a divisional fair including that the midway can be positioned in the infield of the Speedway. These opinions were provided by two experts: Charles Smith and Richard Frenette. Their qualifications and experience are vast and weighty. The Court rarely uses this term to describe experts but does in this case: these experts are eminent in their field. Their testimony was knowledgeable, understandable, and unshaken on cross examination. They were unbiased and clinical in their assessment that it was feasible to operate a successful fair of the scope and size of a divisional fair and the 2010 Tennessee State Fair, including a typical midway with carnival rides and vendors and attractions, on the Property after the Stadium

and Mixed Use are constructed. Each expert has years in the industry and vast experience all over the world with consulting, planning and operating large and small fairs of every description. They each demonstrated an understanding of The Fairgrounds Nashville Property before and after the Development, and the history of the fair and its scope that has been held on the Property.

As to the testimony of the Plaintiffs' witnesses, they want to keep things as they are. Their testimony consisted of resistance to change and a list of preferences and needs that are not fatal but can and in many cases have been addressed. The Court finds that the testimony of the Plaintiffs' witnesses did not establish that the Development will make it not feasible to conduct a divisional fair of the scope and description as provided in Article II, Section 10 of the Charter or past Tennessee State Fairs. While the placement of the fair on the Property and its location is different in the plans of these experts, the evidence did not establish that the Development will interfere with the fair or cause it not to be continued on the Property. The proof is that the fair and the Development can coexist, and in all probability that the Development will enhance the fair and increase attendance to accomplish the outreach mission of the fair stated in the Charter. The testimony of the experts outweighed the anecdotal observations and concerns of the Plaintiffs' nonexpert lay witnesses.

Charles Smith testified as an expert in masterplanning and fair design of North American and international fairgrounds. Mr. Smith, an architecture graduate of the University of Tennessee, has been described as "A World Leader" in the masterplanning and design of North American Fairgrounds and International Showgrounds. Mr. Smith

has consulted with the Wilson County Fair and the Williamson County Fair. With over thirty-five years' experience in the masterplanning, facilities programming and design of over 250 Fairgrounds and Showgrounds in all fifty state, seven Canadian Provinces and twenty-three countries, Mr. Smith is a member of the following professional organizations among others: the International Association of Fairs & Expositions Board of Directors, American Institute of Architects, University of Tennessee College of Architecture Board of Advisors, North American Livestock and Rodeo Managers Association, League of Equestrian Centers, American Horse Council, Canadian Association of Fairs and Exhibitions and International Association of Venue Managers. In 1982, Mr. Smith was among the 12 architects and contractors who worked on producing and designing the 1982 World's Fair. In addition to his worldwide experience in fairs and expositions, Mr. Smith testified that he has worked directly with 22 State Fairs, including Tennessee's State Fair, and routinely conducts stakeholder meetings with multiple groups including mayors, fair boards and governors. Mr. Smith testified that he is very familiar with the Nashville Fairgrounds property as he has participated in six studies over the years regarding the Nashville Fairgrounds property.

Richard Frenette testified as an expert in providing strategic solutions in all aspect of fair and event planning, implementation, site evaluation and management. Mr. Frenette testified that he has been involved in fair management and fair management consulting for over 50 years. The Founder and Chief Executive Officer of Fair Advantage, a company that provides a wide range of project management and other support for the planning, finance, operation, and marketing primarily for fairs, Mr. Frenette testified that

he has consulted with over 20 Fairs including the Indiana State Fair, Iowa State Fair, Nebraska State Fair, North Dakota State Fair, South Carolina State Fair and State Fair of Virginia among others. With a Bachelor of Science Degree in Mathematics and Computer Science and a Masters of Business Administration – Finance Concentration, Mr. Frenette testified that he is a member of the CFE-International Association of Fairs and Expositions – Certified Fair Executive and is a Hall of Fame member and former Chairman of the International Association of Fairs and Expositions Board of Directors. Prior to establishing Fair Advantage, Mr. Frenette worked as the Finance Director for the Minnesota State Fair, Executive Director of the Ohio Expo Center and State Fair, Executive Director/CEO of the Utah State Fair Corporation and the Executive Director/CEO of the Wisconsin State Fair Park. Working for his father who produced the local county fair since he was fourteen years old, Mr. Frenette testified that fairs are in his blood and that he has personally visited over 200 fairgrounds around the world.

A representative sampling of the details of the testimony of these experts that a divisional fair can be successfully conducted on the Property alongside the Development is as follows.

Accounting for the Stadium and Mixed Use to be constructed on the Property, Mr. Smith has designed a fair lay-out (1) that consists of 45-53 acres that will exceed the existing and projected attendance for 2020-2025 and beyond and (2) that provides a large, vibrant fairgrounds with a significant expo/livestock complex, large entertainment/exhibition stadium, expanded carnival, improved grandstands and stage/dirt events area, all connected with side tree lined pedestrian ways showcasing independent concessionaries

and exhibits. Mr. Smith testified that locating a mixed use development on a fair/event site is now a trend in the industry. His report is quoted as follows.

The fair zone existing and proposed acreages are shown on the diagram 22, 23, 24 and 25 [of his report].

2019 Existing Fair Zone Acreage 32.3 Acres
2020 Available Fair Zone Acreage 50.5 Acres
2021 Available Fair Zone Acreage 52.2 Acres
2022-2025 Available Fair Zone Acreage 45-53 Acres

In summary, in the years 2020-2025 and beyond, the available fair zone acreages will exceed the existing and projected attendance for the 2020 through 2025 fairs and years to come. Additionally, TSF [Tennessee State Fair] management met with representatives of Metro Fairgrounds management to discuss, provide input and agreement with the placement of fair time use zones with the Fairgrounds Expo Center. Those zones are shown on diagram 33.

The masterplan and aerial view of the 2025 fair are shown on pages 31-32 of this report. These images show a large, vibrant fairgrounds with a significant expo/livestock complex, large entertainment/exhibition stadium, expanded carnival, improved grandstands and stage/dirt events area, all connected with wide, tree lined pedestrian ways showcasing independent concessionaires and exhibits. There are significant opportunities at the new Tennessee State Fair to implement new programs and entertainment, improved commercial exhibits, and other promotions to enhance the fair within its new building, mixed use development neighbors, and improved visitor experience on the grounds.

Trial Exhibit 91—Report of Charles Smith, April 24, 2020, at 6.

Cross examination did not demonstrate that Mr. Smith's design is not feasible or inaccurate. As to cross examination of the carnival midway operating in the infield of the speedway, Mr. Smith deflected and rebutted that issue with testimony such as the following.

- When he was at The Fairgrounds Nashville site in 2019 his observation is that the speedway track is not as steep as the Daytona track and is not overly steep.
- The speedway is not in a floodplain. It is in a floodway. The latter does not have the restrictions on use that the former has. In addition, fill to raise the infield and a backflow preventer has been designed and can be installed. This will keep the water from Brown's Creek from coming onto the speedway.
- At numerous sites with raceways he has made a continuous midway, for example at the New York State Fair. Attendance increased by 27%.
- Mr. Smith testified, as did Ms. Womack, that 18 wheelers can access the infield for installation of rides.

As to acreage, Mr. Smith testified that the lesser 32.3 acres for the public in 2019, due to construction, was sufficient for a divisional fair.

Richard Frenette opined as follows.

It will be feasible for the Fairgrounds to provide a venue to host or produce a fair, which in the recent past has been the "Tennessee State Fair," during and after construction of an MLS soccer stadium and mixed-use development, of similar or equitable production and presentation by previous fairs at the Fairgrounds. In fact, the fair will have the opportunity to improve its presentation with the use of the new multi-purpose permanent facilities in the new Expo Building, the new and improved roadways, and grass areas including improved access to all areas of the Fairgrounds and other amenities. The Fairgrounds will be able to provide more than enough space to maintain the current event for the Tennessee State Fair. The development will also result in the Fairgrounds becoming a year-round destination for amusement and entertainment creating year-round exposure to the existing events held on the Fairgrounds to more visitors, likely generating strong interest to those existing events including the Tennessee State Fair. The MLS soccer stadium and mixed-use development will thus likely create increased interest in the Tennessee State Fair, if it is held at the Fairgrounds. It will also be feasible for the Fairgrounds to continue to provide a venue to host the Flea Market, during and after construction of the MLS soccer stadium and mixed-use development, in the Expo Building and other locations in the Fairgrounds.

* * *

Going forward, even within some range of flexibility, a fair can be presented at the Fairgrounds that would be substantially similar if not even improved compared to the Tennessee State Fair as it was presented in 2019 or prior years.

* * *

The presentation of fairs has evolved, and in all likelihood will continue to evolve, in ways that are difficult to predict. Precisely how fairs may be offered in the future is particularly uncertain, given the potential impact of the COVID-19 pandemic. A truly accurate prediction of how fairs in the near future will be present will need to consider the impact from the pandemic. It is possible that fairs even beyond the near term may need to implement some changes put . . .

* * *

Due to social distance requirements and other limitation in the era of the Covid-19 pandemic, I have been unable to travel to Nashville to personally tour the Fairgrounds since my engagement in this matter. However, I have viewed aerial photographs of the Fairgrounds from Apple Maps, viewed the depictions of Charles Smith, and reviewed other materials and information identified in exhibit 3. Those steps were sufficient for my purposes and reasonably allowed me to understand the Fairgrounds in order to form my opinions.

* * *

Trial Exhibit 93—Report of Richard Frenette, April 24, 2020, at 5, 7.

In addition, in a Supplemental Report, dated August 3, 2020, and in his testimony, the Court finds that Mr. Frenette clearly rebuts that his inability, due to COVID, to visit the site lessens the weight of his testimony.

Finally, the Court finds that Mr. Frenette states in his report and demonstrated with his testimony that, “All of the Plaintiffs’ witnesses’ concerns regarding topography,

parking, ingress/egress, livestock, etc. can be addressed and handled by good management, planning and decisions. Nothing any witness has said causes me to doubt that a successful fair can be hosted at the Fairgrounds during and after construction of the Stadium and mixed-use development.” Mr. Frenette also testified that all of the fair exhibits and activities listed in Article II, Section 10 of the Charter can be accomplished with the acreage and set-up on the Property as the Development is constructed and after it is completed.

Parking

As to parking (including the Plaintiffs’ claims at paragraphs 49-53 of the January 3, 2019 *Second Amended Complaint* concerning Fair Park), the evidence established that prior to the Development, there were 6,192 parking spaces available onsite of the Property. After construction is completed in 2025 onsite parking will be reduced to 4,226 spaces. The way Metro addresses this differential is with offsite parking. This is not a novel concept for the Property. The Plaintiffs’ witnesses, Neil Chaffin and Scott Jones, testified to the historical use of private offsite parking where neighbors charged fair attendees to park in their yards until Metro Codes stopped this practice. The old Central High School was also used for offsite parking for the Fairgrounds.

Director Laura Womack testified that for the 2019 State Fair, the Fair Board secured offsite parking at the Boot Factory and Metro School Board although these ultimately were not needed despite the fact that the 2019 State Fair had higher attendance than previous years. Scott Jones testified that in 2019 there was higher fair attendance than in 2016-2018 despite that in 2019 50% of the parking in prior years was not available.

In addition the evidence established that offsite parking is a viable, modern industry-wide method for fairs and events. In particular, expert Richard Frenette established that there is no correlation between onsite parking and attendance at a fair, and that onsite parking consumes valuable space that can be used for the fair, including generating revenue. Mr. Frenette's expert opinion correlated with the empirical evidence from the records of The Fairgrounds Nashville which showed that in 2019 when onsite parking decreased due to construction, attendance increased from previous years when more onsite parking was available. Similarly, expert Charles Smith testified that 60 to 80% of fairs in North America do not park onsite. The majority of fairs in North America have offsite parking.

The Court finds from Mr. Frenette's testimony that a fair's success is not dependent on onsite parking nor completely on the acreage, but, instead, that the success of a fair is operational—keeping up with the times and trends, providing new attractions, appealing to a wider demographic. Mr. Frenette and Mr. Smith both established that the way most fairs accomplish a mission such as the Nashville divisional fair, stated in the Charter of educating the citizenry at large about the agriculture of the region and the State, as well as the commerce, industry and products, is to attract a variety of people with a midway, carnival, entertainment, new and unique as well as “fair” food. These attractions bring a broad demographic to a divisional fair who, once there, have onsite the agricultural, cultural arts, and educational exhibits to which they are exposed.

Further adding to the weight of the evidence that parking is not an issue which violates the Charter is the testimony of Middle Tennessee resident and 24-year traffic

engineer Chris Rhodes, whose firm's office is across the street from the Property. He provided a thorough analysis that Metro control sufficient offsite parking in proximity to the Property to assure that by using a combination of on and offsite parking, the Tennessee State fair and a divisional fair, can be held on the Property now and into the future (Trial Exhibit 92).

Decreased Parking Revenue

With respect to the Plaintiffs' claims about the decrease in parking revenue for the Fair Board from the elimination of acreage attributable to the Development, the evidence established that about 15 to 20% of the Fair Board's annual revenue is attributable to parking and that the acreage now being used for the Development had been or could be used for parking.

First, the Plaintiffs did not provide legal analysis of how this claim is a violation of the Charter provisions in issue. Instead, this claim appears to be a dispute over policy decisions made by the Metro Council about moving to a portion of property tax from the Mixed Use along with the \$200,000 lease fee to sustain the Property as well as the value of the structures the Intervening Defendants are constructing at their own cost and the uptick in persons on the Property to increase the profile of the Property. As the Court stated in the summary judgment ruling on February 20, 2020 while the Plaintiffs may disagree that the Stadium Development constitutes an improvement, a disagreement with a government's policy decision does not constitute and does not state a claim of *ultra vires*.

The courts are not in the business of reviewing the merits of legislative or executive policies; rather, our role is confined to determining whether a particular action is legal. Thus, for example, a court would refrain from

adjudicating whether a commission's decision to sell certain property under its control is a good policy decision. However, if the issue is whether the commission had the legal authority to sell the property, then the court has an obligation to review the dispute.

Newman v. Richland Cty. Historic Pres. Comm'n, 480 S.E.2d 72, 76 (S.C. 1997). “Courts are not authorized to consider whether legislation is unwise or inequitable; thus, we cannot consider the wisdom or necessity of the legislature's policy decisions. *See Baldwin v. Knight*, 569 S.W.2d 450, 452 (Tenn.1978).” *Ragsdale v. City of Memphis*, 70 S.W.3d 56, 72 (Tenn. Ct. App. 2001). “Courts are not ‘super’ legislatures. They do not decide whether a challenged legislative action is wise or unwise. It is not the role of judges to set public policy for local governments, nor do we decide if a municipality has adopted the ‘best,’ in our judgment, of two possible courses of action. That is not our role. The concept of separation of powers precludes such an activist role on our part.” *Varner v. City of Knoxville*, No. E2001-00329-COA-R3CV, 2001 WL 1560530, at *3 (Tenn. Ct. App. Nov. 29, 2001).

But even if this choice of funding alternatives states a claim of violation of the Charter, the Plaintiffs did not demonstrate the Council’s funding decisions are irrational or not viable.

Livestock Buildings

With respect to the exhibition sheds for livestock, the Plaintiffs’ witnesses, with knowledge and experience of conducting the Tennessee State Fair on the site from 2011-2019, cited to inadequacies in the agricultural sheds (no wash rack, no animal misting system, no animal tie down area, no manure pit). As to these matters, however, the Court

finds from the testimony of experts Charles Smith and Richard Frenette that these do not have to be permanent fixtures, and that there are temporary ways standard in the industry to handle these issues so that the 10-day Tennessee State Fair use or an annual divisional fair does not limit the buildings for other multi-purpose events during the year. In addition Executive Director of the Fair Board, Laura Womack, testified that Metro has a solution that is being implemented for each of the preferences and needs expressed by these witnesses. Also, the proof established that the Tennessee State Fair was successfully conducted, with attendance above previous years, in 2019 even after excavation of the site for the Development had been commenced. The proof further established that the Tennessee State Fair had selected The Fairgrounds Nashville as its site for 2020 but for the subsequent pandemic.

The one criticism by Plaintiffs that has not yet been completely worked out is that Scott Jones testified that the Mule Pull will have to be downsized from two days to one day, and Congressman Rose testified that the equine presentation would be reduced to exhibition of show horses but no competitive events. These circumstances, the Court finds are insufficient to establish a violation of the Charter.

The proof, then, is that in compliance with Section 11.602(d) of the Charter and Article II, Section 10 an annual divisional fair is being maintained and will continue to be conducted at The Fairgrounds Nashville, and that the Tennessee State fair can be conducted at The Fairgrounds Nashville of substantially the scope and level it has been in the past without interference by the Development.

Concurrent Activities

As to the Plaintiffs' claim that holding a soccer match at the same time as the divisional fair will exceed the attendance capacity of the Property and pose a logistical and security threat and thus "interfere" with the fair as prohibited by the Charter, the evidence established that the likelihood of such a concurrence of these events is so remote as to be statistically irrelevant.

- The Stadium Lease (Trial Exhibit 138) provides that Walsh shall use reasonable efforts to coordinate the scheduling of Stadium Events and Fairgrounds Events to ensure that the Fairgrounds is able to continue the existing uses of the fair, expo center events, flea markets and automobile racing. § 10(e)(1). Walsh covenants to work with the Executive Director of the Fairgrounds and the MLS diligently and in good faith, regarding scheduling conflicts related to regularly scheduled flea market events. §10(e)(4).
- There are only 17 home soccer matches in the eight-month (late February to October) season.
- The testimony of Mary Cavarra, Vice President of NSH who is its representative and works with the MLS, testified that each team in the MLS provides a list of days when they cannot hold home events for the MLS to work through so there is a good likelihood that a Nashville soccer match will not coincide with the fair.
- There is a safety valve in the Stadium Lease (Trial Exhibit 138) that allows NSH to hold a limited number of home games at another venue.
- For years, the Executive Director of The Fairgrounds Nashville has managed multi-use of the Property and concurrent events. Multi-use and managing different events with differing needs on the Property is routine.
- The track record of working matters out between the Executive Director and the Intervening Defendants is good.

- Soccer matches, for the most part, do not start until 7:30 p.m. and take place on Saturday with some on other days for rain-outs or other contingencies. The Flea Market closes at 6:00 p.m. on Saturday.

Thus, the greater weight and preponderance of the evidence is that the construction and operation of the Development on The Fairgrounds Nashville Metro does not violate the provisions of Article II, Section 10 and Section 11.602(d) of the Charter concerning the requirement that Metro conduct an annual divisional fair on the Property. The evidence does not demonstrate that the Development and annual divisional fair and the Tennessee State Fair cannot coexist. Moreover, there is evidence that the construction and operation of the Stadium and the Mixed Use will help to increase the outreach of the fair thereby having more success in accomplishing its mission. Accordingly the Court dismisses the Plaintiffs' claims of violation of Section 11.602(d) and Article II, Section 10 that the Development will interfere with the fair or will cause the fair not to be continued on the Property.

Other Existing Uses

In addition to the Tennessee State Fair, Section 11.602(d) of the Metro Charter requires that the Flea Market, Expo Events and Auto Racing continue at the Property. The Court finds that the Development does not violate this Section of the Charter. The evidence established that for the organizers of events at the Fairgrounds, it is an opportunity to promote events that will be held in 230,000 square feet of new, modern exposition and flea market facilities on par with the best in Middle Tennessee. Significant new revenue streams will allow these new facilities to be maintained, so they will not fall into disrepair. The testimony at trial was that (but for COVID-19 halting mass

gatherings), the flea markets were continuing at the new expo buildings, expo shows were continuing, and there have continued to be auto races—with the next one scheduled for October of this year.

As to parking the testimony of Executive Director Laura Womack was that parking is never guaranteed for Expo events. The Court also finds through her testimony and expert traffic engineer Scott Rhodes that on average 750-760 spaces are needed for Speedway parking. Mr. Rhodes' report shows that before and after construction of the Stadium (2021-2025) that a minimum of 1,450 spaces are available onsite (Trial Exhibit 92).

As to Flea Market parking, Director Womack testified that 3000-4200 spaces are used for the Flea Market. The expert proof of Mr. Rhodes established that the reduced parking onsite in 2025 will not substantially detract from or eliminate the Flea Market because of the offsite parking that will be available and that the Flea Market attendee parking is come and go. As to the Flea Market space itself, the proof established that it is superior to the old space in its cleanliness and spaciousness and newness. The Court finds that the testimony of the Plaintiffs' witnesses about access to load and unload by vendors has been addressed in part by the Fair Board adding another day to allow vendors to unload set up. The longer traffic line of vendors on the Sunday night take-down is an inconvenience but not a violation of the Charter. Also, for the same reasons listed above, the proof did not demonstrate that scheduling conflicts will occur so as to violate Section 11.602(d) of the Charter.

In addition the Mixed Use does not interfere with the Existing Uses and does not violate Sections 11.601 and 11.602 of the Metro Charter because Section II(1)(b) of Trial Exhibit 111 requires that the activities of the Mixed Use shall not “compete directly with existing Fairgrounds Nashville flea market vendors.”

Based upon all this evidence, the Court dismisses the Plaintiffs’ claims of violation of Section 11.602(d) of the Charter as to the Existing Uses.

Metro and the Intervening Defendants are Proceeding in Good Faith

The Court previously ruled that because Metro has an ongoing obligation under Section 11.602(d) of the Charter to maintain the Existing Uses on the Property, it had the burden at trial to come forward and show that it intends and is proceeding in good faith to adhere to that obligation as the Development is planned, designed and constructed. **The Court concludes that Metro carried its burden of proof and has demonstrated it is proceeding with the Development in good faith.** Executive Director Laura Womack testified that Metro has considered the effect the Stadium would have on the Existing Uses. The Fair Board decided that the Stadium would not negatively impact the flea market, Divisional Fair, auto racing, or the exposition events at the Fairgrounds. At every stage, Metro has planned the new Expo Building and Stadium to assure that the Existing Uses can continue.

Additional proof that Metro has planned the Fairgrounds improvements and Development with the goal and intention of continuing the Existing Uses are the following.

— **RS2017-910** (Trial Exhibit 106)

On November 8, 2017, a resolution on issuance of public facility revenue improvement bonds by the Sports Authority was approved. The issuance of the bonds was conditioned upon Metro being entitled to 20 public use days of the stadium per year and the Fairgrounds being entitled to use of the stadium concourse for its events. Further, the Team must agree to coordinate scheduling with the Executive Director of the Fair Board to ensure the Fairgrounds' ability to provide all the activities as provided by Section 11.602 of the Metro Charter. The Fair, Expo Center Events, Flea Markets and Auto Racing are all specifically mentioned.

— ***Memorandum of Understanding between the Fair Board and the Parks Department*** (Trial Exhibit 107)

On March 6, 2020, the Parks Department and the Fair Board entered into a Memorandum of Understanding which provides for limited parking on the multipurpose fields during the Flea Market and the State Fair.

— ***Community Benefits Agreement between Stand Up Nashville, Inc. and Nashville Soccer Holdings, LLC*** (Trial Exhibit 110)

On September 3, 2018, Nashville Soccer Holdings, LLC and Stand Up Nashville, Inc. entered into a Community Benefits Agreement, in which NSH specifically provided that the artisan and small business merchant micro-unit incubator would not compete directly with existing flea market vendors.

— **BL2018-1289** (Trial Exhibit 112)

On September 5, 2020, the Metro Council enacted an ordinance approving demolition of the old expo center buildings, but the Council provided that replacement buildings must be constructed prior to demolition so as not to disrupt the regular operation of the Fairgrounds.

— **BL2018-1290** (Trial Exhibit 113)

Also on September 5, 2020, the Metro Council enacted an ordinance approving the SP zoning that would permit the mixed-use development. The Council memorialized Nashville Soccer Holding,

LLC's agreement that the artisan and small business merchant micro-unit incubator would not directly compete with existing flea market vendors.

— ***MLS Stadium Operation – Term Sheet*** (Trial Exhibit 118)

On August 4, 2018, the Fair Board approved an agreement with Walsh related to the operation of the stadium on the Property. In that agreement, the parties agreed that the Fairgrounds would have the right to use the stadium concourse and other similar areas. It states that Walsh will use reasonable efforts to coordinate the scheduling of stadium events and Fairgrounds events in order to ensure that the Fairgrounds is able to provide the activities specified in Section 11.602 of the Metro Charter. Again, the Fair, Expo Center Events, Flea Markets and Auto Racing are all mentioned by name. The Term Sheet further provides an annual schedule for notifying the Fair Board of soccer events and for notifying Walsh of fairgrounds events. Finally, it states that the Fairgrounds will have the right to use the parking lot adjacent to the Expo Center at all times, even during stadium events.

— ***Stadium Lease between Sports Authority and Walsh Management*** (Trial Exhibit 138)

The Stadium Lease entered into by the Sports Authority and Walsh Management repeats many of the terms found in the MLS Term Sheet related to use of the stadium by the Fair Board and scheduling of events. It further provides (as required by RS2017-910) that Metro is entitled to twenty days of rent-free use of the stadium for non-soccer events, which could include use by the Fairgrounds for events related to the Existing Uses.

— ***Ground Lease between the Fair Board and the Sports Authority*** (Trial Exhibit 139)

The Ground Lease entered into by the Fair Board and the Sports Authority on July 16, 2020 acknowledges and consents to the terms of the Stadium Lease with Walsh Management, which includes the terms discussed above relating to the Existing Uses.

Dismissal of All Plaintiffs' Claims

In addition to the above, all of Plaintiffs' claims, including but not limited to those described in the August 31, 2020 *Plaintiffs' Statement Of Legal Authority* and the September 7, 2020 *Plaintiffs' Pretrial Brief*, are dismissed with prejudice as unsupported by the evidence and/or the law, and/or outside the scope of the pleadings and issues identified in the August 27, 2020 *Final Pretrial Order Except As To Trial Exhibits*.

Conclusion

Based upon the foregoing findings of fact and conclusions of law, the Plaintiffs' claims to halt construction of the Stadium and Mixed Use Development on The Fairgrounds Nashville are dismissed with prejudice.

s/ Ellen Hobbs Lyle
ELLEN HOBBS LYLE
CHANCELLOR

cc: Due to the pandemic, and as authorized by the COVID-19 Plan of the Twentieth Judicial District of the State of Tennessee, as approved by the Tennessee Supreme Court, this Court shall send copies solely by means of email to those whose email addresses are on file with the Court. If you fit into this category but nevertheless require a mailed copy, call 615-862-5719 to request a copy by mail.

For those who do not have an email address on file with the Court, your envelope will be hand-addressed and mailed with the court document enclosed, but if you have an email address it would be very helpful if you would provide that to the Docket Clerk by calling 615-862-5719.

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Rule 58 Certification

A copy of this order has been served upon all parties or their Counsel named above.

s/Phyllis D. Hobson

October 13, 2020

Deputy Clerk
Chancery Court