

**DISTRICT COURT
DENVER COUNTY, COLORADO**

1437 Bannock Street, Room 256
Denver, CO 80202

Plaintiff:

**FRIENDS OF DENVER PARKS, INC., a
Colorado non-profit corporation; and
STEVE WALDSTEIN, an individual; and
ZELDA HAWKINS, an individual**

V.

Defendant:

**CITY AND COUNTY OF DENVER, a municipal
corporation; and SCHOOL DISTRICT NO. 1
IN THE CITY AND COUNTY OF DENVER, a
public entity, and DEBRA JOHNSON, in
her capacity as clerk and recorder of
the City and County of Denver**

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Case Number:

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Courtroom 376

Volume II of III

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The matter came on for hearing on Thursday, June 13, 2013, before the HONORABLE HERBERT L. STERN, III, Judge of the District Court, and the following FTR Proceedings, transcribed from an electronic recording, were had.

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1 DENVER, COLORADO; THURSDAY, JUNE 13, 2013

2 (Call to Order at 11:42 a.m.)

3 THE COURT: This is the Friends of Denver Parks case,
4 13-CV-3244. I see we've got -- looks like just about everybody
5 from yesterday, so let's, for the record, just get your entries
6 and then we'll get going.

7 MR. CASE: John Case for the Plaintiffs.

8 MR. BROADWELL: David Broadwell and Patrick Wheeler
9 for the City and County of Denver and Clerk Debra Johnson.

10 MR. DEHERRERA: Jerome DeHerrera and Michael Hickman
11 for the Denver Public Schools.

12 THE COURT: Okay. Let's get going. Next witness.
13 Sorry to keep you all waiting by the way, I just needed a
14 little break and unwinding from the previous hearing, which
15 went a little longer than I anticipated. I think some of you
16 might have seen it.

17 MR. HICKMAN: No problem, Your Honor.

18 THE COURT: Go ahead.

19 MR. HICKMAN: We would like to call our third
20 witness, David Suppes.

21 THE COURT: All right.

22 DAVID SUPPES, DEFENDANTS' WITNESS, SWORN

23 THE COURT: Hold on one second. I'm trying to get a
24 little circulation in here.

25 MR. HICKMAN: It's a little warm.

1 THE COURT: Okay.

2 DIRECT EXAMINATION

3 BY MR. HICKMAN:

4 Q Mr. Suppes, could you please introduce yourself to
5 the Court and spell your last name.

6 A Sure. David Suppes, S-U-P-P-E-S.

7 THE COURT: Say it again, S-U.

8 THE WITNESS: P-P-E-S, P as in Peter twice, E-S.

9 BY MR. HICKMAN:

10 Q Could you tell us, who do you work for?

11 A I work for Denver Public Schools.

12 Q What is your position at Denver Public Schools?

13 A I'm the chief operating officer.

14 Q How long have you worked for Denver Public Schools?

15 A Almost six years.

16 Q Can you give us a brief summary your responsibilities
17 and duties as Denver Public Schools' chief operating officer?

18 A Sure. I have responsibilities for, I would say, most
19 of the non-instructional portions in the District, so it
20 includes our financial services, our technology services, our
21 facilities management, which includes both maintaining the
22 existing facilities and construction and modification of new
23 facilities, our choice and our enrollment services, our
24 planning organization, our food services, our transportation
25 services. I know I'm forgetting something here. Safety and

1 security services. Those are the probably the major functions.

2 Q This is a tough question. About how many people does
3 that entail?

4 A With full and part-time, it's 3,000 or 4,000 people.

5 Q And that group that's your responsibility, what is
6 their role in DPS in terms of what support or services do they
7 provide in DPS?

8 A Well, the ones I just noted, all of the functions
9 really in our operations area are support services for the
10 District. Our primary mission is, as everyone knows, is to
11 provide a quality education for all children. And with that,
12 obviously, we have principals in our schools and teachers in
13 all of our classrooms, but this is the work basically that
14 supports and enables that. Everything from transporting kids
15 to and from to school to feeding them lunch to managing the
16 District's budget to providing the technology that's used in
17 schools and in support of the District.

18 Q So frequently do you have to give reports to the
19 Board of Education?

20 A I do. I speak to the Board of Education on a fairly
21 regular basis.

22 Q Do you recall giving a presentation back in March of
23 2013?

24 A Yes, I did. I gave a presentation at the -- I
25 believe it was the March 23rd -- Board meeting.

1 MR. HICKMAN: Before we get there, I'd like to
2 approach, Your Honor, and hand the witness a copy of this
3 document.

4 THE COURT: Okay. By the way this may be a little
5 bit late, but it occurs to me, and it only occurred to me just
6 now, that I should disclose that I have a child in DPS at East
7 High School, who was just finished her junior year. It's of no
8 consequence to me, but if it's a concern I can discuss it with
9 counsel, if you want to.

10 MR. CASE: No concern for the Plaintiff.

11 MR. HICKMAN: We have no concern, Your Honor. Only
12 that you're happy and satisfied with your child's education.

13 THE COURT: Depends on where she gets into college.

14 BY MR. HICKMAN:

15 Q I just handed you a document. Do you recognize that
16 document?

17 A Yes, this is a document that we prepared for the
18 Board of Education presentation.

19 Q What is that document?

20 A It is a summary of the land exchange agreement
21 between City and County of Denver and Denver Public Schools
22 with context around it in order -- because our Board needed to
23 vote in March on that transaction, basically, voting that
24 Denver Public Schools would approve entering into the
25 transaction with the City and County of Denver. So this was, I

1 would say, a briefing document around that.

2 Q So were you part of creating this document?

3 A Yes. My organization created this document and I was
4 involved personally.

5 Q And the copy in front of you, is it an accurate and
6 true and full copy of the document that was produced for that
7 day?

8 A Yes, it appears to be.

9 MR. HICKMAN: Your Honor, at this point we would like
10 to move this into evidence. We have a question as to how we
11 should label this in terms of the exhibit.

12 THE COURT: So this is a summary of the actual
13 contract?

14 MR. HICKMAN: No, this is a summary of a Board
15 presentation on March 18, 2013.

16 THE COURT: Oh, okay. Where the board approved by
17 four to three or three to three with a tie breaker?

18 MR. HICKMAN: Vote, yes.

19 THE COURT: To go forward.

20 MR. HICKMAN: And that was part of the testimony we
21 heard yesterday. And, Your Honor, if I can approach I'll
22 provide a copy to the Court as well.

23 THE COURT: Okay. Well, we've got A through F
24 already. Why don't we call this G, unless there's going to be
25 a G.

1 MR. BROADWELL: Your Honor, the City is going to have
2 a couple more exhibits when we present our witnesses in a
3 moment. I guess my only question is whether we need to
4 distinguish the Defendant DPS exhibits from the Defendant City
5 exhibits.

6 THE COURT: I don't frankly think that distinction
7 needs to be made. I've been arguing for 20 years that there
8 should be no distinction between plaintiff and defendant. Who
9 cares?

10 MR. BROADWELL: Okay. So let's do them sequentially
11 then and this one will be G, and we'll work around with ours.

12 THE COURT: Okay. Thanks. So this will be Exhibit
13 G.

14 MR. HICKMAN: Thank you.

15 BY MR. HICKMAN:

16 Q Mr. Suppes, can you briefly turn to page 2.

17 THE COURT: Are you going to ask to have this
18 introduced?

19 MR. HICKMAN: Yes, Your Honor, I move that we enter
20 this into evidence at this point.

21 MR. CASE: No objection.

22 THE COURT: Okay, G is admitted.

23 (Defendant's Exhibit G admitted into evidence)

24 BY MR. HICKMAN:

25 Q On page , is in sort of the outline or agenda of this

1 presentation, and I would like to ask you about the second
2 bullet point. Specifically, can you give a brief reason why
3 DPS would need to acquire property and summarize what's in this
4 presentation?

5 A Sure. Just to correct some context, one of the
6 things we do is, on an ongoing basis, and you heard it
7 mentioned from witnesses yesterday, is twice a year we perform
8 what's called a strategic regional analysis. And, among other
9 others things, that work in the document that's produced from
10 it determines or identifies where we may have constraints in
11 capacity for schools, where we may have access capacity, where
12 we also may have areas where we do not have sufficient capacity
13 to meet the needs. Either schools are overcrowded or we even
14 just don't have seats to meet the needs to exist there. As a
15 part of that or the following-up of that work, it ends up being
16 -- we look into the areas where we have the largest concerns.

17 Q At that point was there a concern about a particular
18 area within DPS?

19 A Yes.

20 Q What was that area?

21 A Several areas, but certainly Southeast Denver was a
22 primary area where we had severe overcrowding amongst our
23 elementary schools that are in the region. Particularly the
24 far Southeastern part of the District and city.

25 Q And if you could walk us through the presentation

1 that you gave the Board, and maybe you can give us briefly sort
2 of that presentation that was given to the Board as to why
3 there was a need for an elementary school and sort of some the
4 details around the land exchange agreement that was being
5 proposed.

6 A Sure.

7 MR. CASE: Excuse me, Your Honor. The need for an
8 elementary school is not in dispute. It's the location. If we
9 could focus on that, we'll save quite a bit of time.

10 MR. HICKMAN: Your Honor, we think it's sort of a
11 preamble to why we're in this particular location and it's
12 important.

13 THE COURT: Overruled. Go ahead.

14 MR. HICKMAN: Thank you.

15 THE WITNESS: Sure. Page 4 of the document just
16 provides some summary bullet points that really talks about the
17 needs. The overcrowding, I think, is a big one. The
18 overcrowding in the existing elementary schools, which up to
19 five schools that were in this area collectively were at about
20 104 percent of capacity, which is significantly above where we
21 want to be. We typically -- educationally, we prefer our
22 schools around 85 percent.

23 BY MR. HICKMAN:

24 Q Can I stop you there? Can you sort of explain to the
25 Court what overcapacity is and sort of what capacity maybe 5

1 percent is so we have a better understanding of some of these
2 numbers?

3 A Sure. Each of our buildings we assign a capacity to,
4 and it's based on a number of factors, but includes the number
5 of classrooms, the other needs of the school program, what the
6 school can offer, what are needed for shared spaces. And with
7 that we try to stay within that capacity, ideally 85 percent.
8 We have quite a few schools that are above that. But when
9 schools get into the 100 percent range and above it, a lot of
10 things start to break down and become more problematic that
11 impacts the educational program. For example, when you have
12 over 100 percent, typically the shared spaces in the schools
13 weren't designed for that. So what that means is you have kids
14 who may be having lunch at 10:30 in the morning or 1:30 in the
15 afternoon because there's such a limited amount of space in the
16 lunch room to cycle through that many kids, as the school
17 wasn't designed for that many kids.

18 You run into similar things with the auditorium, with
19 the playground, with the gymnasium. Again, typically not sized
20 for those greater amounts. And as result, it requires a great
21 deal of scheduling and can sometimes result in students not
22 getting access to certain things when we would want them to be
23 able to have access to those things. So it impacts the
24 educational environment. And those are situations we take very
25 seriously and we look to see what solutions we can bring to

1 them.

2 Q You heard testimony about overcrowding, going
3 forward, what is the projected demand in the Southeast area?

4 A Sure.

5 Q What are the needs in terms of those demands?

6 A The area continues to grow. We've seen very
7 significant growth. If you look at in this document, I think
8 it's page 7 in the document, it just gives you a view about the
9 overall student growth over the last several years in this area
10 of the city, and then some projected growth. And as you can
11 see, pretty significant growth has occurred over the last five
12 to seven years and we're projecting additional growth somewhere
13 in the range of 350 to 400 students over next several years.
14 Now, that's across all grade levels, but that includes at least
15 150 at the elementary grade level, and where we have schools
16 that are already well over capacity. So as you can see, that
17 would create the greater strain on those schools.

18 Additionally, and this really -- you see the birth
19 rates that are included there, which again are a leading
20 indicator of where the enrollment expectations and needs will
21 be going forward, and those are also very high inside the city
22 and have been accelerating.

23 And finally, if you go to the following page, which
24 is page 8, and you heard this a little bit yesterday I think
25 from several of the Board members who spoke, early education is

1 a very high priority for us. This is one of the highest areas
2 of need, of unmet need, in the City and County of Denver in
3 terms of need for early education seats. Previously we were
4 constrained because we don't have the space, and I would say
5 previously in some cases we were also constrained because we
6 didn't have the funding. With the passage of the mill levy
7 that happened last November, we actually have the funding to
8 offer additional early education seats. We don't currently
9 have the space to do so.

10 Q So you're prepared to do the early childhood
11 education work, but you just don't have the capacity. Can you
12 explain at these five elementary schools the lack of capacity
13 for the early childhood education program?

14 A Well, I think Holm has basically cut back in what
15 they can offer and Samuels has as well. Samuels actually went
16 down a little bit in enrollment over the past year, although
17 they still have three modulars on the site, they're in access
18 of 90 percent of capacity. So we've had to constrain our early
19 education needs, again, in an area with a growing population of
20 very young students, as you see the birth rates.

21 So it's an area, again, that's highly -- it's highly
22 important to us. We believe strongly in early education.
23 Particularly in areas with low-income students. These students
24 at Holm, for example, and Samuels are both predominantly
25 schools that serve high populations of free and reduced lunch

1 students, which is an indicator of poverty.

2 Q So would you say that -- would it be fair to say at
3 this point you're shuffling people around in the five schools
4 that you currently have?

5 A Yeah. I think we've added three modular building at
6 Samuels. At Holm we've moved their fifth grade over to the
7 Hamilton building. And Southmoor has two modulars already and
8 now has created a classroom in the library, basically taking a
9 portion of their library for a classroom. So we've been doing
10 things we need to do to try to serve the students there as best
11 you can, but we've reached a point where there's a need that
12 goes beyond some of the creative things we can do in an
13 individual building.

14 THE COURT: Hold on, counsel. I don't want to spend
15 too much time on the need issue, which I think is conceded by
16 the Plaintiffs, but looking at Exhibit 8, I mean, page 8 of
17 Exhibit G. Sir, is the red area the area that we're talking
18 about or is it more than that?

19 THE WITNESS: It's primarily the red area. There may
20 be some of that orange area to the left of the red that would
21 be included in that, but it's primarily the red area.

22 THE COURT: Okay. What is that white in the red and
23 orange area. What does that represent?

24 THE WITNESS: It's a carved-out area that I think is
25 non-Denver, I believe. It's not DPS. There's a couple of

1 areas that are around the city and someone else can --

2 MR. HICKMAN: Glendale --

3 THE WITNESS: -- speak to it better than I.

4 MR. HICKMAN: -- is one.

5 THE WITNESS: But there are several areas which are
6 not part of Denver Public Schools.

7 MR. HICKMAN: Glendale, for instance, it's an island
8 within the City and County of Denver.

9 THE COURT: What's it called?

10 MR. HICKMAN: Glendale.

11 THE WITNESS: This isn't Glendale though.

12 THE COURT: Glendale.

13 MR. HICKMAN: Yeah. I'm just showing it as an
14 example. Those are places that are not percent part of Denver.

15 MR. BROADWELL: Your Honor, I can speak to it
16 briefly, if you would like.

17 THE COURT: Okay. I'm just trying to understand it.

18 MR. BROADWELL: The area you're referring to is part
19 of unincorporated Arapahoe County, which really has no
20 municipal status. It's just unincorporated Arapahoe Count
21 along the Cherry Creek corridor. It's an example of a couple
22 of enclaves of territory that were left after the Poundstone
23 Amendment, when the City could no longer annex and they were
24 just --they stayed a part of Arapahoe County, and that's one of
25 them. It's sometimes called the Four Square Mile Area, for

1 some reason, by Arapahoe County. But it's unincorporated.

2 THE COURT: So if you or I got picked up for a DUI in
3 this area, we got charged with a DUI or with a burglary, we
4 would end up in Arapahoe District Court or County Court?

5 MR. BROADWELL: Exactly, because through the judicial
6 district here it's just coterminous with City and County
7 boundaries, so that's exactly right.

8 THE COURT: And is Glendale the other white area?
9 I'm trying to figure out the orientation.

10 MR. BROADWELL: Yes. The other white is both
11 Glendale and some additional unincorporated Arapahoe County
12 territory that's no municipality. But you are right, the one a
13 little bit further north there is generally in the area of
14 Glendale.

15 THE COURT: This is all interesting. Sir, you
16 mentioned five schools and in the red area there are only
17 three. Could you --

18 THE WITNESS: Sure, if you go back to page 5. These
19 are the five that I'm referring to. But you're right, the
20 three that are noted -- that are shown in the red area there
21 are those three green circles, which Holm Elementary, Samuels
22 Elementary and Southmoor Elementary. That's the furthest
23 southeast. In this particular chart, both the graphic with the
24 bars as well as the map, it shows the two other closest
25 elementary schools to this area in the southeastern portion of

1 Denver.

2 THE COURT: So that one would be -- in the orange
3 would be Samuels?

4 THE WITNESS: That's Samuels, correct, which is the
5 most southern of those.

6 THE COURT: And that little flag north of Samuels on
7 the orange/red border is Ellis?

8 THE WITNESS: On the orange/red border would be
9 Ellis, yes.

10 THE COURT: I got you.

11 THE WITNESS: I'm sorry. You know what, sir, that's
12 actually Bradley, and Ellis is the one north of it, just north
13 of the white space, just south of the white space in the
14 orange.

15 THE COURT: Those are the five schools that you'll be
16 referencing.

17 THE WITNESS: Yes.

18 THE COURT: Okay, I got it.

19 BY MR. HICKMAN:

20 Q Let's move on. That presentation also included the
21 -- a general overview of the land agreement, proposed land
22 agreement between the City and DPS. Can you briefly give us a
23 summary of the presentation around that agreement that we
24 entered into with the City and County of Denver?

25 A Sure. As we identified this site as, we thought, an

1 appropriate site for a school, we approached the City and
2 County of Denver on whether there might be an opportunity to
3 acquire that land through various negotiations over a period of
4 time. We landed on an agreement which would involve the City
5 transferring ownership of -- it actually says 11.5 acres here,
6 but it sounds like we ended up at 10.77, so apologize. But
7 let's say in the range of 11 acres of land adjacent to Hentzel
8 Park in that natural area.

9 And in return, Denver Public Schools would transfer
10 ownership to City and County of Denver of our facility located
11 at 1330 Fox Street. In addition, the City and County of
12 Denver, in part paid by the City and in part, I believe, by the
13 nonprofit organization that's been established, would pay
14 Denver Public Schools \$705,000 in cash in order to make up the
15 differences, basically.

16 Q Do you have an idea of how DPS sort of arrived at
17 choosing this particular location or property?

18 A Sure. You know, as we look at where there are areas
19 of need, the first thing we start with is where are the
20 students today and where may the students be as we look
21 forward. So proximity. A school with proximity toward where
22 the need is, is really the single most important factor in
23 trying to find a location. And then we obviously look into
24 suitable land, if we're looking to buy land or something for an
25 elementary school. We are -- our standard would be ten acres

1 of land. For a middle school it would be more in the 12 to 15
2 acres of land. So as you can imagine in areas of new
3 development, for example, we're building several schools up in
4 Stapleton. They built the land need into the development plan,
5 and therefore finding ten acres is possible or is certainly
6 easier.

7 In areas of the city where there isn't a significant
8 amount of brand-new development done, finding ten acres amongst
9 existing developed neighborhoods is very challenging. There
10 just -- generally that's a big parcel of land and they're not
11 readily available or, if so, they may not be in the right
12 locations.

13 Q So at the end of that board meeting, how did the
14 board vote?

15 A The Board voted on that, at least the Thursday night
16 meeting, four to three in favor of this land exchange
17 agreement.

18 Q Was there some contingency in terms of what would
19 happen if it wasn't a one-way deal? What else was required in
20 order for the deal to be finalized?

21 A Sure. It was in recognition that the City Council
22 would have also to approve the transaction from the City's
23 side.

24 Q Do you recall if they actually voted?

25 A Yes. I was actually at the meeting. But on April 1,

1 then, City council did take forward this motion and voted to
2 approve it as well.

3 MR. HICKMAN: Your Honor, at this point I would like
4 to approach the witness and show him a document.

5 THE COURT: Okay. Sir, what was your understanding
6 of the position of three Board members who voted against this
7 deal? I think this may be already an exhibit.

8 MR. HICKMAN: It is an exhibit. If we can just
9 stipulate to it, then, I won't worry about foundation.

10 THE COURT: Isn't the contract to exchange property
11 one of Plaintiff's exhibits?

12 MR. WHEELER: Your Honor, when we were going to get
13 up and present our witnesses, we are going to make sure that
14 the contract itself is in evidence. It was attached as Exhibit
15 B to our response to the motion for preliminary injunction, and
16 I conferred with counsel, Mr. Case, and he agreed to stipulate
17 both B and C should be entered, B and C attached to our
18 response. One was the full-blown contract. C was an ordinance
19 from the 1930s about drainage districts in the area. But the
20 attorneys have agreed that they can come in.

21 THE COURT: B and C?

22 MR. WHEELER: B and C, yes.

23 THE COURT: So this document is?

24 MR. HICKMAN: Exhibit B.

25 THE COURT: Exhibit B. Okay. I thought I had seen

1 it somewhere. Okay. Got it. Mr. Case, just to clarify,
2 Exhibit B and C are okay?

3 MR. CASE: Yes, Your Honor.

4 THE COURT: All right. Thank you.

5 BY MR. HICKMAN:

6 Q Mr. Suppes, can you briefly -- again, I think we've
7 asked, but maybe you can explain this contract to exchange
8 property and the deal that it entailed.

9 A Yes. This is -- appears to be the contract that was
10 negotiated with the City and County of Denver's real estate
11 group to exchange property.

12 Q Can you summarize this agreement?

13 A Yeah. It's similar to what I spoke to when I spoke
14 about the Board presentation. It contains the terms of DPS
15 exchanging our Fox Street property for this acreage in
16 Southeast Denver, and some amount of cash that would need to
17 change hands as well. And obviously lays out the timing and
18 elements of -- other elements of the transaction, but those are
19 the substantive terms.

20 Q Could you turn to page 7, Section 9. In there are
21 date of closings. What is the date we're supposed to close on
22 this deal? Can you see that Section 9, page 7?

23 A Uh-huh. It says, "The date of closing for Hampden
24 Heights, which is what the transaction is referred to, shall be
25 no later than ten business days from the election period, plus

1 any applicable cure period or June 30, 2013, whichever is
2 later, or such other date that may be mutually agreed upon by
3 the parties."

4 Q Yes. And so in reliance upon this contract, has the
5 District begun or started to do any development of this site?

6 A Yes, the District has been doing a number of things,
7 has been doing preliminary design work on the site and now that
8 preliminary is moving into more detailed design work. We have
9 engaged an architect full time and committed work and funding
10 to them. We have conducted several traffic studies, are
11 conducting engineering studies, environmental studies as well
12 of the site.

13 Q In addition to this, what's the timeline for the
14 development of the school or the build-out of the school?

15 A The plan is to open the school in 2015.

16 Q If this injunction were granted, what would be the
17 impact to that schedule?

18 A Obviously it depends on how long things would play
19 out, but at this point we feel that actually the schedule is
20 relatively tight. We feel like further delays in moving to
21 closing and moving forward full speed with the project puts
22 that date in jeopardy of opening the school in time.

23 Q So if we didn't get in this project also, what would
24 happen, if we didn't get this property?

25 A If we didn't get this property, we would step back

1 and reevaluate what options might be available to us in this
2 area or in other areas.

3 Q Can you talk about how much due diligence went into
4 ultimately getting this site and where we stand right now and
5 what we would have to do, again, if this injunction were
6 granted today?

7 A Sure. You know, obviously work to select to a site,
8 which is a period of time. It can take a very short period or
9 it can take a very long period. The work on the design side
10 has been extensive. We've had an architect doing some level of
11 work now for, you know, in access I would say -- in the range
12 of a year at some level of work. Those designs, some of those
13 might be reusable. I would expect that a good portion of it
14 would not reusable, since they've been fit onto the site. And
15 so we would have to -- likely that would be throwaway. We have
16 already spent in the range of \$400,000 cash out of pocket, and
17 we've already committed to design fees in excess of \$1 million.

18 Q So do you have a Plan B at this point?

19 A We do not have a Plan B at this point.

20 Q There was some testimony and questioning yesterday
21 about alternative sites, and I think Plaintiffs' counsel said
22 that one of the sites that the school should consider is the
23 Hamilton/Holm site because of the availability of vacant land.
24 Do you recall hearing that testimony yesterday?

25 A I did. I heard the comment referring to the land on

1 the Hamilton site as vacant land. That is completely
2 inaccurate.

3 MR. HICKMAN: I would like to approach, Your Honor.
4 I have a diagram of the two schools. I'd like to hand one to
5 the witness and one to the Court.

6 THE COURT: Which exhibit, please?

7 MR. BROADWELL: This will have to be Exhibit H.

8 BY MR. HICKMAN:

9 Q So what's the likelihood, the possibility, the
10 feasibility of trying to site a school between Hamilton and
11 Holm?

12 A It's not possible. The land that, again, that was
13 referred to as vacant isn't vacant land. It's the fields for
14 the middle school. It's the baseball field and a soccer field.
15 Again, as I mentioned earlier, we target ten acres for an
16 elementary school and 12 to 15 acres for a middle school. This
17 combined site, which contains an elementary school and a middle
18 school, has about 23 acres. So again, there isn't land to put
19 another school on the site.

20 You could remove all the fields; you might be able to
21 seat a building on there, you would have no fields to do that,
22 and you would basically be putting on a piece of land and
23 acreage that currently supports around 1,450 students, you
24 would be then adding up to 550, 2,000. You would have --
25 there's not land to do it. The traffic, there would be

1 significant traffic issues that you would need to deal with.
2 So it's not just an appropriate site. We did look at it. That
3 certainly would be -- love it if that could have been a
4 workable site, but it was not.

5 MR. HICKMAN: Your Honor, no further questions. 1

6 THE COURT:

7 THE COURT: Cross-exam.

8 MR. CASE: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. CASE:

11 Q Good morning, Mr. Suppes. We first met at the City
12 Council meeting on April 1, true?

13 A I believe so, yes.

14 Q Yes. And at that time you were asked by the City
15 Council what is your Plan B, weren't you?

16 A Yes, I was.

17 Q And you said we don't have a Plan B, true?

18 A That's correct.

19 Q So you committed to this site without a backup plan,
20 in case it had to go to the vote of the people, true?

21 A We committed to this site given the knowledge that we
22 had and the expectation that this was -- from our working with
23 the City and County of Denver, that this was a transaction that
24 could be closed.

25 Q Now, you had attorneys working on the situation,

1 true?

2 A Can you be a little more specific? During what?

3 Q During the negotiation process to trade a building
4 for land, you had lawyers for DPS working on the exchange.

5 A We certainly had an attorney that we used to look at
6 the agreements, yes.

7 Q And he was able to research the zoning of the land
8 that you wanted acquire, true?

9 A I don't recall.

10 Q You knew that the land that you wanted to acquire was
11 zoned open space, true?

12 A I believe that is true.

13 Q You never submitted any kind of request to rezone
14 that open space land, true?

15 A Denver Public Schools, as an entity that's not -- is
16 not required to actually rezone our properties.

17 Q So your testimony is that you can do whatever you
18 want with land without getting any kind of a zoning variance
19 over existing zoning; is that what you're saying?

20 A I'm saying as under State law Denver Public Schools
21 is not subject to the same zoning laws that other entities may
22 be subject to.

23 Q So you can build a school in a park and nobody can
24 object at a zoning meeting; is that your testimony?

25 A What is the question specifically?

1 Q DPS can build a school in a public park and there's
2 no remedy through an objection to the rezoning; is that your
3 testimony?

4 A No, it's not my testimony because I would need to
5 know the specifics of that particular situation. Under that
6 situation there may be other things that would prevent that
7 from happening. But again, with Denver Public Schools
8 acquiring a piece of land that may be zoned for other purposes,
9 Denver Public Schools is not required to rezone that land under
10 State law.

11 Q Now then, how long had the building at 1330 Fox
12 Street been for sale?

13 A It had not been officially listed for sale.

14 Q Was it in use in 2011?

15 A Yes.

16 Q By DPS or was it being rented?

17 A It's been in use by DPS.

18 Q You mentioned that you have had architects working on
19 the of this school for a year; is that true?

20 A Yes.

21 Q So you've been in discussions with Denver then about
22 this site for how long, two years going back to 2011?

23 A I believe the discussions probably started either at
24 the end of 2011 or could have been very beginning of 2012.

25 Q Yes. And at that time there was a gentleman named

1 Kelly Leid, L-I-E-D, who worked for DPS, true?

2 A Yes, L-E-I-D, actually.

3 Q Thank you. And Mr. Leid then transferred from an
4 employee of DPS to an employee of the Mayor's office, true?

5 A That's correct.

6 Q And --

7 MR. HICKMAN: Your Honor, objection. This seems to
8 be beyond the scope of direct. Seems to be going into areas
9 that are really not relevant.

10 THE COURT: Overruled for now.

11 BY MR. CASE:

12 Q And Mr. Leid was key -- he was a key person in
13 selecting this site, true?

14 A Mr. Leid was certainly one of the people who
15 evaluated sites and was involved, yeah, in evaluating this site
16 in particular.

17 Q And you testified that if the Court enters an
18 injunction DPS would then try to find a Plan B and select
19 another site, true?

20 A We would start looking for other options.

21 Q Now then, you mentioned you considered the Hamilton/
22 Holm campus.

23 A Yes.

24 Q And we have Exhibit H.

25 A Yes.

1 Q So it is correct that we're looking at Exhibit H on
2 the screen now?

3 A It looks like this, yes.

4 Q And the buildings are in pink; is that true?

5 A Yes, I believe so.

6 Q The T-shaped building at the top is Hamilton Middle
7 School, true?

8 A Yes.

9 Q Hamilton Middle School was built for 1,000-student
10 capacity, true?

11 A I actually think the capacity is slightly higher than
12 that. Yeah. I think the capacity could be as high as 1,100.

13 Q At the present time there are 750 middle school
14 students at Hamilton, true?

15 A No, that's not correct. This past year we had 864
16 students at Hamilton.

17 Q So with the 864, you still have 236 seats available
18 at Hamilton, true?

19 A That would be yes, assuming that you could use every
20 bit of space. That's not the case though, however, when we
21 have -- first of all, it depends on how the schools may be
22 using them, but I would say more importantly when you locate
23 more than one school in the building, and we've done this quite
24 a lot over the last five years, you lose some of the capacity
25 because you're trying to create separation between the schools.

1 Sometimes you have to create multiple other officing space as
2 well. So we've typically seen somewhere in the range, not a
3 science, somewhere in the range of 10 percent loss of total
4 capacity when you locate multiple schools.

5 Q Right. And Holm Elementary is the pink outlined at
6 the bottom of Exhibit H, true?

7 A That's correct.

8 Q This is a single-story school, true?

9 A Yes, I believe so.

10 Q So you could add a second story on top of Holm, true?

11 A I don't know if you could.

12 Q Did you ever hire an architect to look into that
13 possibility?

14 A I don't recall if we've hired an architect. It's
15 certainly possible we did. I would add that are common in
16 addition, again, as I spoke earlier when counsel asked me about
17 how school's behave with common and shared spaces, the more
18 kids you try -- it's not just the number of classrooms; it's
19 the number and size of the shared spaces as well. So trying to
20 put -- even if you -- I have no idea whether you could add a
21 second story or not, but doing so would also require you would
22 have to significantly expand all other spaces, all other common
23 spaces. Again, that's the reason why we say we need ten acres
24 for an elementary school.

25 Q It's true, isn't it, that some of the students who

1 you anticipate would attend this new school in what is now open
2 space, would be coming from the east side of Havana, they live
3 east of Havana and south of Dartmouth Street, true?

4 A I'd have to look at the map. Actually, I'm not
5 positive, but I think that's certainly possible. I would have
6 to look at the map to confirm.

7 Q I want you to be sure.

8 A Well, these maps aren't going to -- I can't comment.
9 I don't know for sure if that is where the students would be
10 coming from. They would be coming from the City and County of
11 Denver, and obviously based upon the boundary that would likely
12 be established there would be kids who would reside in that
13 boundary who would be the primary kids coming to that school.
14 If that would be within the boundary, which means within the
15 District and within the City and County of Denver, then I would
16 say yes, highly likely those kids would be coming from that
17 area.

18 Q All right. So just tell us yes or no. Are you able
19 to tell us whether you anticipate students would come from the
20 east side of Havana?

21 A I can't tell you that without more information in
22 front of me.

23 Q All right. Let's go back to page 8 of Exhibit G.
24 Can you use the laser pointer, please, and tell us where is the
25 triangular piece of property that's in dispute in this case?

1 A What might be easier, a suggestion, would be to put
2 up the map from page 5. It's actually labeled on the map on 5.

3 THE COURT: Where the star is?

4 THE WITNESS: Yes, that's correct.

5 BY MR. CASE:

6 Q All right. So Havana Street would run right down
7 here, true?

8 A Uh-huh. I think you're right, yeah.

9 Q So you would be drawing students from east of Havana,
10 true?

11 A I think looking at this map, this is helpful to me,
12 and I think you're probably right. I don't know exactly how
13 many students are located there, what the residential situation
14 is, but I would say it's likely, yes.

15 Q Let's look at Exhibit F. On Exhibit F, this is South
16 Havana Street on the right side, true?

17 A Looks like it, yeah.

18 Q And the students who would be coming from the east
19 side of Havana, how would they get to the school?

20 A You know, I would put out a couple of things. One,
21 we have hazards that are established. whenever we have a
22 school, we look at where the boundary of the school would be
23 and who would be attending. If there are hazards that are
24 designated as hazards that could impede students' ability to
25 get to school, then even beyond our normal transportation

1 policy we'll often offer transportation for students crossing
2 those hazards.

3 Secondly, we work on a very regular basis with the
4 City and County of Denver on safe routes to school, and it
5 involves everything from crossing guards or working with
6 families and others to ensure that students have a safe way to
7 actually get to the school.

8 Q Did you understand my question?

9 A I would prefer you ask it again.

10 Q Specifically in this case, how are the students who
11 live east of Havana who are in your catchment area going to get
12 to this school you plan to build?

13 A I don't know until we know if there's a boundary
14 established or if Havana was labeled as a hazard.

15 Q Right. So let's say they wanted to walk. How do
16 people get from the east side of Havana to the west side where
17 you want to build your school?

18 A Well, I don't live in that part of the city, so I
19 can't speak to it. Looking at the map, I would maybe presume
20 that they would cross at Dartmouth, but I don't know that.
21 They may walk down -- well, I don't know that.

22 Q Isn't it true there's a foot trail here that goes
23 under Havana and ends up going under this bridge here, and
24 that's all the cyclists get from the east of Havana to the
25 west?

1 A That may be true.

2 Q Right. Now, if children were going to walk there,
3 they would have to walk down next to the creek, right?

4 A I'll believe you. You seem to know it.

5 Q So you've never inspected this area; is that right?

6 A Oh, no, I've been out to the site. I have not walked
7 under the bridge you talk about specifically.

8 Q When you were on the site, did you notice this sign
9 warning people who use the foot path under Havana to beware of
10 flash flooding when it rains?

11 A I have not noticed that sign, no.

12 Q So I take it then the safety of five-year-olds who
13 would be walked by their parents to this new early learning
14 center, walking under Havana as pedestrians, was not
15 considered, true?

16 A We consider all the safety elements that we think are
17 appropriate to consider, and yes --

18 Q And you didn't think this was appropriate?

19 A I have no idea where the sign is, sir. I have not
20 seen it personally. I rely on the people who work -- that's
21 what they do for a living is to look for the appropriateness of
22 school sites and how we ensure that they can be safe and
23 accessible.

24 Q Okay. Let me point out to you exactly where this
25 sign is. We are looking at Exhibit F. See where I drew that

1 little mark?

2 A Sure.

3 Q That's where the sign is. You have never seen that?

4 A I have not seen that sign, no.

5 MR. CASE: Thank you, no further questions.

6 MR. HICKMAN: One question on redirect with that.

7 REDIRECT EXAMINATION

8 BY MR. HICKMAN:

9 Q Would you be so kind as to put that map back up
10 there. Mr. Suppes, are you aware of what lines are the
11 property lines in question in terms of the DPS property?

12 A Yes, I believe so.

13 Q That sign, is it within the boundaries?

14 A No, it appears to be outside of the boundary.

15 MR. HICKMAN: Thank you, no further questions.

16 THE COURT: Recross?

17 MR. CASE: No recross.

18 THE COURT: Sir, I can't remember if I asked you this
19 or not. What was your understanding at the time the meeting as
20 to the issues that the Board members who voted against this
21 proposal had?

22 THE WITNESS: Well, I will tell you what I know. I
23 didn't hear --

24 THE COURT: Just what you know, what you understand.

25 THE WITNESS: Sure. I didn't hear substantive

1 concerns with the need for a school, nor particularly with the
2 location. One of the Board members I recall raised whether
3 sufficient public process had occurred along the way. And
4 there was evidence communicated back that the other Board
5 members felt there had been and what had been done.

6 I will tell you, Your Honor, the DPS Board of
7 Education, as is currently constituted, has at times been
8 somewhat divisive and many of the votes end up four/three. And
9 sometimes there's very substantive reasons why that is and
10 sometimes it's unclear on what the reasons are why some people
11 are voting one way versus the other.

12 THE COURT: Are you suggesting that there might be
13 political issues involved in the Board members that have
14 differences of opinion?

15 THE WITNESS: I don't think I'm suggesting that so
16 much as to say it is often -- there's is a great division on
17 many votes within our Board of Education, and it's often
18 unclear when the minority votes against something why they're
19 specifically -- the substance of why they're voting against it.

20 THE COURT: Okay. On page 10 of this presentation,
21 is this like a PowerPoint presentation?

22 THE WITNESS: It was, yes.

23 THE COURT: It says 11.5 acres, and we've talked in
24 this hearing about 10.7. Is it 10.7 or 11.5 or do you know?

25 THE WITNESS: I believe it's 10.7. I assume there

1 was a former survey and completed after.

2 MR. HICKMAN: Your Honor, I can address that.
3 Because of the date of this, it was unclear. We hadn't quite
4 worked out the very minutia of the legal description. So at
5 the end of the day, once the legal description was figured out,
6 it came out to be 10.7.

7 THE COURT: Okay. So on page 10 of this, where the
8 DPS site is outlined in the red there might be some minor
9 adjustments in the border?

10 MR. HICKMAN: That would be accurate, Your Honor.

11 THE COURT: Okay. Got it.

12 MR. HICKMAN: Thank you.

13 THE COURT: Thank you, sir. You may step down.

14 Next witness.

15 MR. DEHERRERA: Denver Public Schools calls Jim
16 Grazier.

17 JAMES GRAZIER, DEFENDANT'S WITNESS, SWORN

18 THE COURT: Be sure you speak into the microphone.
19 We'll take a lunch break after this witness.

20 DIRECT EXAMINATION

21 BY MR. DEHERRERA:

22 Q Good afternoon. Could you please state your full
23 name for the record.

24 A James Ryan Grazier.

25 Q Spell your last name.

1 A G-R-A-Z-I-E-R.

2 Q And your address, please.

3 A 3124 South Elmira Court.

4 Q How long have you lived there?

5 A Two and a half years.

6 Q Your occupation?

7 A Technical support.

8 Q Your employer?

9 A Great west.

10 Q Are you familiar with the proposed site of a new
11 elementary school in the Hampden Heights area?

12 A Yes, I am.

13 Q And do you live nearby that proposed site?

14 A Yes, about three-quarters of a mile.

15 Q Do you have any opinion regarding the location of the
16 proposed school at that site?

17 MR. CASE: Objection, foundation.

18 THE COURT: Foundation as to him having an opinion?

19 MR. CASE: No. Okay, I withdraw the objection.

20 Sorry.

21 THE COURT: I don't know why I care what his opinion
22 is, but I assume he's going to say he's in favor of it.

23 MR. DEHERRERA: Let's find out.

24 THE WITNESS: Yes, Your Honor. I walk past the site
25 every day, sometimes twice a day, depending on if I'm biking to

1 work or just walking the dog. And I'm all in favor of a school
2 at that site.

3 BY MR. DEHERRERA:

4 Q Can you tell us a little bit more about your
5 familiarity with this park property.

6 A Like I said, every day I walk the site. I walk
7 passed it. No one actually goes to the site. It's a parking
8 lot. It's not really up to a par standard. So I, like
9 everyone else, move down to the creek area a little west of the
10 site and use that site daily.

11 Q Can you tell us a little bit more about the
12 conditions of the entire ten-acre parcel?

13 A Sure. One of the biggest things you see as you come
14 off of Havana and Girard is you see an dilapidated, abandoned
15 parking lot with some graffiti that welcomes you to Denver.
16 Just past the parking lot there's a drainage ditch. My
17 understanding is that the -- that's going to be reworked in the
18 near future. But it's just kind of a drainage ditch that
19 collects bits of trash as the things come out of the bins, et
20 cetera. And then there's an open space that has a few prairie
21 dogs, has bits of riprap from past construction projects,
22 sometimes it's used for storage. Basically, a little section
23 of empty land and then you get to the bike trail.

24 Q Do you have school-aged children or young children
25 who will be of school age at some point?

1 A Not school-aged yet. My daughter is four and a half
2 months old. If the school is built, she would be one of the
3 first children to attend, first few grades to attend.

4 Q Are you familiar with the other options that she
5 would have if this school is not built?

6 A There's another school that is on the -- in another
7 neighborhood. It's across Yosemite. I'm familiar Yosemite is
8 a fairly busy street. My daughter would not walk there,
9 obviously. That school has 600 kids and 20 classrooms. I'm
10 afraid I went to Cherry Creek Schools, so that's 30 kids per
11 classroom, and I wouldn't sending my child to there. So our
12 options would be to the beg DPS for a school choice. If we
13 didn't win that lottery, we'd move.

14 Q Have you participated in any of the public meetings
15 regarding the proposed school site?

16 A I have.

17 Q And have you spoken with any of your neighbors or
18 other community members regarding the school site?

19 A I have. I have spoken with my immediate neighbors.
20 The majority of my neighbors --

21 MR. CASE: Objection to the hearsay, Your Honor.

22 THE COURT: He's going to say the majority of his
23 neighbors are favor of it, and that's fine. I don't really
24 care. It's not -- my job isn't to make a decision based on a
25 public opinion poll, counsel. I don't see why I need this. I

1 realize that there are people in the area, like Mr. Grazier,
2 who have their reasons in favor of it and there are people
3 other the side who have their reasons against it. I've got to
4 make my call based on what I perceive the law to be, whether I
5 agree with it or not, so I guess that's a longwinded way of
6 saying: Why do I care what he says? Why do I care what his
7 opinion is? Why do I care what his neighbors say? Some of the
8 Plaintiffs are probably his neighbors.

9 MR. DEHERRERA: Certainly. We just wanted to present
10 before the Court that there are difference of minds and a
11 portion of the community that's in favor and a portion that's
12 not.

13 THE COURT: Well, I've got Exhibit 10, which is a
14 transcript of the city Council hearing, and a variety of people
15 in that area testified pro and con, so I think I've got that.

16 MR. DEHERRERA: Thank you. No further questions,
17 Your Honor.

18 THE COURT: Okay. No offense to you, sir.

19 MR. CASE: No questions.

20 THE COURT: Thank you. You can step down. Mr.
21 Grazier, did you speak at the public hearing before the City
22 Council?

23 THE WITNESS: Yes, Your Honor.

24 THE COURT: I thought I recognized your name from
25 glancing at Exhibit 10. So I've already got his testimony.

1 THE WITNESS: Thank you. Okay.

2 THE COURT: Any other witnesses from DPS?

3 MR. DEHERRERA: No, Your Honor.

4 THE COURT: City?

5 MR. WHEELER: Yes, Your Honor.

6 THE COURT: How many witnesses? Two? About how
7 long?

8 MR. WHEELER: On our direct about 30 minutes, maybe a
9 little more.

10 THE COURT: Okay. Just a minute. Let's pick it up
11 again at quarter of 2:00. I've got a 2:00. I'll try to push
12 them out a little bit. We'll finish this before I take my
13 2:00. So an hour and ten minutes for lunch break.

14 MR. CASE: Judge, just so you know, I have some
15 rebuttal witnesses.

16 THE COURT: Okay.

17 MR. CASE: They won't be long.

18 THE COURT: Okay.

19 MR. CASE: Thank you.

20 MR. HICKMAN: Thank you, Your Honor.

21 THE COURT: We'll be in recess.

22 (Recess at 12:37 p.m., recommencing at 1:55 p.m.)

23 THE COURT: We've reconvened in the Friends of Denver
24 Parks case, 13-CV-3244.

25 Let's get started.

1 MR. WHEELER: Your Honor, before the City calls their
2 next witness, may I offer, please, into evidence Exhibit H,
3 which was identified by the witness, Suppes and the Foundation
4 established, it's this diagram of the home, Hamilton Campus.
5 It was not offered into evidence, but Mr. Suppes testified
6 about it.

7 THE COURT: Any objection?

8 MR. CASE: No objection, Your Honor.

9 THE COURT: Which one is that, H?

10 MR. WHEELER: Yes, Your Honor.

11 THE COURT: Okay. H is admitted.

12 (Defendant's Exhibit H admitted into evidence)

13 THE COURT: First witness for the City?

14 MR. BROADWELL: The City would call Ron Ellis.

15 RONALD T. ELLIS, DEFENDANT'S WITNESS, SWORN

16 DIRECT EXAMINATION

17 BY MR. BROADWELL:

18 Q Could you state your full name, please?

19 A Yes. My name is Ronald T. Ellis.

20 Q And for whom do you work?

21 A I am a land surveyor supervisor for the Department of
22 Public Works for the City and County of Denver.

23 Q Could you -- do you have a -- is that your title as
24 well?

25 A Yes, my title is land surveyor supervisor.

1 Q Can you describe, basically, with the nature of the
2 duties you have working as a surveyor?

3 A Yes. I perform or oversee various survey data
4 collection for various projects concerning city right of way,
5 city projects. I'm responsible for the maintenance and
6 perseveration of the Horizontal and Vertical Survey Control for
7 the City. I perform various land surveys for the City. I
8 prepare and review legal descriptions for the City.

9 Q Are you also acquainted with historic public works
10 documents, such as maps, deeds and ordinances?

11 A Yes, I am.

12 Q Were you involved in the collection and maintenance
13 of those documents?

14 A Yes, I am.

15 Q Are these kinds of documents kept in the ordinary
16 business of the Public Works Department?

17 A Yes, they are.

18 MR. BROADWELL: May I approach, Your Honor?

19 THE COURT: Yes.

20 BY MR. BROADWELL:

21 Q What I -- this is a document that's already been
22 admitted. It's Exhibit A to the City's response to the
23 preliminary injunction and it's also Exhibit 1 to the
24 Plaintiffs motion for a preliminary injunction.

25 Can you identify this document?

1 A Yes. This is a warranty deed conveying a certain
2 parcel of land in 1936 from James D. Canary (phonetic) to the
3 City and County of Denver.

4 Q Is this the parcel that has been the subject of this
5 -- the testimony in this action today --

6 A Yes, it is.

7 Q The -- did this parcel have a particular name or
8 description put on it?

9 A Yes. At the time it was just Parcel 31 in a series
10 of parcels along the Cherry Creek channel.

11 MR. BROADWELL: So just for reference, Your Honor, I
12 will be referring to this property as Parcel 31.

13 THE COURT: You'll be calling --

14 MR. BROADWELL: Because --

15 THE COURT: Go ahead.

16 MR. BROADWELL: May I also approach again?

17 THE COURT: Yes.

18 MR. CASE: Is A offered?

19 MR. BROADWELL: A's already admitted.

20 THE COURT: It's added to the F you just gave,
21 counsel?

22 MR. BROADWELL: Yes. The --

23 THE COURT: The area --

24 MR. BROADWELL: Exhibit -- as I just said Exhibit A
25 is to our response and it's also Exhibit 1, which was

1 previously admitted on the Plaintiffs. It's exhibit -- I'm
2 sorry, 3.

3 THE COURT: Plaintiff's 3?

4 MR. BROADWELL: Yes. Which was --

5 THE COURT: The deed, okay.

6 MR. BROADWELL: Which was admitted yesterday.

7 MR. CASE: All right. Just for the record, Your
8 Honor, we don't object to the admission of A, even though it's
9 duplicative because I think it's more legible than our Number
10 3.

11 THE COURT: All right. A's admitted.

12 (Defendant's Exhibit A admitted into evidence)

13 BY MR. BROADWELL:

14 Q I hand to you what was previously admitted as Exhibit
15 F; is that correct?

16 A Yes.

17 Q Is this the parcel that's identified as Parcel 31?

18 A Yes, it is.

19 Q The -- can -- what part of this aerial map is Parcel
20 31?

21 A Parcel 31 is the triangular area outlined in orange.

22 Q Okay. Can you tell me is the entire width of Havana
23 Street right a way contained within the easterly side of Parcel
24 31?

25 A Yes, it appears to be.

1 Q Is a portion of Girard Avenue also showing at the
2 southerly end of Parcel 31?

3 A Yes, it is.

4 Q So somewhere in the past some action was taken to
5 make -- to establish Havana Street right a way in Parcel 31 and
6 Girard Avenue as part of Unit Levin 31; is that correct.

7 A Yes, that is correct.

8 Q Do you have personal knowledge that that indeed
9 occurred?

10 A Yes, I do have personal knowledge by -- from reading
11 the ordinances that took those actions, yes.

12 Q Okay.

13 MR. BROADWELL: May I approach once again, Your
14 Honor?

15 THE COURT: Yes.

16 MR. BROADWELL: This is now called Exhibit A.

17 BY MR. BROADWELL:

18 Q Can you tell me what the images that I just gave to
19 you?

20 A Yes, this is an 11 by 17 print of a copy of a digital
21 photograph I obtained from a local firm here in Denver that was
22 flown in May of 1955 with Parcel 31 superimposed on it.

23 Q And do you believe that were that -- where Parcel 31
24 -- Parcel 31 is the orange area once again?

25 A Yes, it is.

1 Q And do you think that that's the correct location of
2 Parcel 31 on this area?

3 A Yes, I do.

4 THE COURT: So this is Parcel 31 as we now know it
5 shown on a 1955 aerial photo?

6 MR. BROADWELL: Yes, Your Honor.

7 THE COURT: All right.

8 BY MR. BROADWELL:

9 Q Do you think that the aerial correctly depicts what
10 the area looked like in 1955?

11 A Yes, I do. This -- yes.

12 Q Have you used the services of Colorado Aerial Photo
13 Service in the past?

14 A No, I have not used this particular service in the
15 past.

16 Q But are you acquainted with their service?

17 A Yes. I obtained their service from their website on
18 the internet and I went to their offices at 2757 West 2nd
19 Avenue here in Denver, earlier this week. And they've been
20 providing aerial photography since 1948 and that is how I
21 obtained the photograph. And they had flown all the aerials
22 from within the company itself, I was told.

23 MR. BROADWELL: At this time, Your Honor, I would
24 move admission of Exhibit I.

25 MR. CASE: No objection.

1 THE COURT: Admitted.

2 (Defendant's Exhibit I admitted into evidence)

3 BY MR. BROADWELL:

4 Q Does the aerial also show Cherry Creek, where it runs
5 up to and through Parcel 31?

6 A Yes, it does.

7 Q And in that aerial do you see much of anything else
8 within Parcel 31, other than Cherry Creek?

9 A No, I do not.

10 Q Over to the right is some kind of a structure. Do
11 you know what that structure is?

12 A Yes. I was told when I obtained the aerial
13 photograph, I was told that that was a greenhouse and it is so
14 noted on some of the USGS quadrangles maps of that area as
15 well.

16 MR. BROADWELL: We will be introducing those in a
17 minute, Your Honor.

18 BY MR. BROADWELL:

19 Q Right now, I mean just looking at that it does appear
20 that, basically, there was naked ground out there at that time;
21 is that correct?

22 A Yes, that's correct.

23 Q Did Havana Street reached down to Parcel 31?

24 A No, it does not appear so. It appears that Havana
25 Street went down as far as south of Parker Road and then

1 perhaps it was a rudimentary dirt road from there on, but
2 certainly not in the condition it is today.

3 THE COURT: Where do you see Havana?

4 THE WITNESS: Okay. This is Havana right here, and
5 this goes down here and this is Parker Road, and they're
6 labeled on the photograph.

7 THE COURT: Oh, okay. I see.

8 BY MR. BROADWELL:

9 Q Do you have any information as to when the manner was
10 constructed on Parcel 31?

11 A Well, there was an ordinance in 1955 that conveyed
12 some of the property from Parcel 31 to the State Highway
13 Department for the construction of Havana, but when the actual
14 construction took place, I'm not sure.

15 Q But the ordinance granted authority for the Colorado
16 Department of Highways to construct South Havana on 31?

17 A Correct.

18 MR. BROADWELL: May I approach again, Your Honor?

19 THE COURT: Yes.

20 MR. BROADWELL: These are called J and K; these are
21 the tug boat renters.

22 MR. CASE: Okay.

23 THE COURT: So this is J and K?

24 MR. CASE: Yes, Your Honor.

25 THE COURT: Okay.

1 BY MR. BROADWELL:

2 Q Can you tell me what these documents are?

3 A Yes. Both of these documents are 11 by 17 printouts
4 of a portion of a US Geological Survey quadrangles topographic
5 map for 1957 that was obtained from the USGS site on the
6 internet.

7 Q Is the site on -- in it contained the true and
8 correct USGS maps from the time period indicated?

9 A Yes, I believe it does.

10 Q Do they -- does -- do these two drawings contain the
11 parcel -- at least portions of Parcel 31 on them?

12 A Yes. Parcel 31 is located in Section 34, captured 4
13 south ranges 67 west and that is straddled by the two maps.
14 That is why they are two maps to encompass that section and
15 Parcel 31.

16 MR. BROADWELL: So Your Honor, it's a little hard to
17 see. If you look at K, it's easy to find 34. You just look
18 north of what's called Cherry Creek Dam --

19 THE COURT: Hold on. Yeah?

20 MR. BROADWELL: And you will see Hampden and Havana,
21 what's now the curve there now. 34 is located just above that.

22 THE COURT: Right.

23 MR. BROADWELL: And then if you look over to the far
24 right edge of Exhibit J, you will see the same 34.
25 Unfortunately, these maps cut right through the property.

1 THE COURT: Got it.

2 BY MR. BROADWELL:

3 Q So is that correct, the map -- it does cut through
4 the property?

5 A Yes, that is correct.

6 Q So one of them is contained in a 1957 map that's
7 referred to as the Englewood Map and the other one is contained
8 on a -- and K is on what's called the Fitzsimons Map?

9 A Yes, that is correct.

10 Q Does -- what are these maps illustrate about the --
11 what was occurring out there on the property in 1957?

12 A Well, they indicate several things. In 1957 they
13 indicate on the Fitzsimons Map that Cherry Creek Dam was built
14 and was there. They indicate that Havana Street was there and
15 Hampden Street was there. They indicate on the Englewood Map
16 that there were no subdivisions in Section 34 and there was
17 very little construction that apparently occurred. In Section
18 34 there is a pipeline that is shown crossing Section 34, but
19 little else.

20 Q And do the structures we saw on the aerial map
21 labeled here as greenhouses?

22 A Yes. On the Fitzsimons Map the greenhouse is clearly
23 shown just to the east of Havana Street in Section 35.

24 Q So your testimony is that there was no subdivision.
25 There was no other development on Parcel 31 other than

1 existence of Cherry Creek; is that correct?

2 A Yes, that --

3 THE COURT: Was that 34?

4 MR. BROADWELL: Section 34.

5 THE WITNESS: Section 34.

6 MR. BROADWELL: Yes.

7 THE COURT: Oh, I see it.

8 THE WITNESS: Parcel 31.

9 THE COURT: Yeah, I'm sorry.

10 BY MR. BROADWELL:

11 Q Yes. Parcels were -- was named just as a sequence of
12 a group of documents that were -- the actual location here is
13 within Section 34; is that correct?

14 A Yes, that is correct.

15 Q Okay. Do you see any evidence as of 1957 that this
16 area was indicated as being any kind of a park?

17 A No, I do not.

18 Q Do you have any other evidence that in 1957 or '55,
19 more importantly, that any area was -- this area was regarded
20 as being a park?

21 A No, I don't.

22 Q Looking back at Exhibit A, which is the deed --

23 THE COURT: Hold on a second before you leave this.

24 Are any parks listed on either of these two exhibits
25 because I don't see a legend?

1 MR. BROADWELL: Well, typically, when they name
2 something on these maps they just put the label right on the
3 map. It does not necessarily --

4 THE COURT: Well, I'm asking the witness, counselor.

5 MR. BROADWELL: Oh, okay.

6 THE WITNESS: Yeah, the only legend that appears on
7 this map is down at the lower right. They have something for
8 rope classification, but they don't have anything for the
9 topographic features themselves. And I haven't inspected the
10 entire map, but generally speaking, I don't see anything
11 labeled as park on here.

12 BY MR. BROADWELL:

13 Q On Exhibit J, though, there are some parks
14 identified; is that not correct?

15 MR. CASE: Objection, leading?

16 THE COURT: I'll allow it. It's in response to a
17 question by the Court.

18 THE WITNESS: I'm just not seeing any parcel
19 identified per se. I do some green area down at the lower
20 center of the map, but I don't know if those represent a park.

21 BY MR. BROADWELL:

22 Q But there's some parks indicated within Denver, are
23 there not? They're not green, but --

24 THE COURT: Like where?

25 MR. BROADWELL: North of Hampden. There's -- on the

1 map there shows the Mamie Doud Eisenhower Park. It also shows
2 the Wellshire Municipal Golf Course.

3 A Oh, I'm sorry. Yes, yes. Yeah, I was looking for
4 the Mamie Doud Eisenhower Park because that is right near the
5 location of where I grew up.

6 THE COURT: Okay.

7 BY MR. BROADWELL:

8 Q So --

9 THE COURT: Okay. Go ahead.

10 BY MR. BROADWELL:

11 Q Looking back at Exhibit A, which is the 1936 deed,
12 have you seen similar deeds for a property acquired by Denver
13 along Cherry Creek?

14 A Yes, I have.

15 Q Can you basically describe what --

16 A Yes. There were a series of deeds that were acquired
17 by the City of Denver between, generally, 1934 and 1936 for the
18 purpose of the mitigation of the flooding of Cherry Creek that
19 historically had occurred for -- since 1864 was the first
20 recorded flood of Cherry Creek in Denver. And in generally
21 these parcels were on the corridor itself, but in certain
22 occasions not on the corridor itself. They may have been
23 obtained for drainage purposes for eventual construction of a
24 dam on Cherry Creek.

25 Q Was a dam eventually built along -- on Cherry Creek?

1 A Yes. Cherry Creek reservoir itself was begun in 1946
2 and completed in 1950 and before that there was a dam known as
3 the Kenwood Dam that was built a little northwest of the
4 present site of the Cherry Creek Dam that was constructed in
5 1935, and I assume it was demolished when the construction of
6 the Cherry Creek Dam itself began.

7 Q Was the Kenwood Dam just located to the south and
8 east of the Parcel 31?

9 A Yes, I believe it was.

10 Q You indicated that it was -- that these lands were
11 acquired to deal with flood control and drainage control --

12 A Yes.

13 Q -- along Cherry Creek. Is that based upon your
14 knowledge of records of the Public Works Department?

15 A Yes, it is. There's various records that indicate
16 that. There's a primary piece of evidence I've seen in that
17 respect is Ordinance Number 23 to 1935, which established a
18 Cherry Creek flood control district.

19 MR. BROADWELL: Your Honor, that particular document
20 is Exhibit B to the City's response. I believe it's -- no,
21 it's C, I'm sorry, Exhibit C to the City's response, which was
22 admitted just a little while ago.

23 THE COURT: Exhibit C?

24 MR. BROADWELL: Yes, Your Honor.

25 ///

1 BY MR. BROADWELL:

2 Q It's an ordinance from 1935, isn't it?

3 A Yes.

4 Q Yes.

5 THE COURT: Okay.

6 BY MR. BROADWELL:

7 Q And is it your testimony that you believe that Parcel
8 31 was one of the parcels collected for this purpose of flood
9 control and drainage control along Cherry Creek?

10 A Yes, it is.

11 Q And this is all based upon your knowledge of the
12 public works records; is that correct?

13 A That is correct.

14 MR. BROADWELL: That's all we have, Your Honor.

15 THE COURT: Cross of this witness?

16 MR. CASE: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. CASE:

19 Q Good afternoon, Mr. Ellis.

20 A Good afternoon.

21 Q So you testified that the City in 1935 enacted an
22 ordinance to acquire land along the Cherry Creek corridor --

23 A No, that's not correct. I testified that the
24 ordinance created the Cherry Creek flood control district.

25 Q And Exhibit -- I'm sorry. Parcel 31 was acquired as

1 part of the flood control district?

2 A Yes, that is my belief.

3 Q But that's not stated in Exhibit C, true? There's no
4 reference to Parcel 31 in Exhibit C?

5 A No, there's no reference to the individual parcels.

6 Q So you're just making an inference that this is --
7 that Parcel 31 is one of the parcels acquired for flood control
8 purposes pursuant to Exhibit C?

9 A Yes, by putting together that and various other
10 pieces of information in the City and County records, that is
11 true.

12 Q Right. So you've also reviewed other deeds to
13 parcels that were along Cherry Creek?

14 A Yes, that is correct.

15 Q And were there easement deeds in there as well, sir?

16 A No. Most of the deeds were either warranty deeds or
17 quick-claim deeds.

18 Q Right, but there were easements acquired by the City
19 and County of Denver through properties along the Cherry Creek
20 corridor, true?

21 A I'm not aware of that.

22 Q You've never seen that?

23 A I mean the deeds I'm aware of were either quick-claim
24 deeds or warranty deeds.

25 Q Right. So you didn't look for easement deeds, then?

1 A I looked for all the deeds in the Cherry Creek
2 corridor that was shown on a map that we have in our records
3 and I did not find any deeds of easement.

4 Q Now then, Exhibit I, which is the 1955 photograph.
5 So in this photograph the Cherry Creek Dam has been completed;
6 is that true?

7 A I believe so. The dam is being constructed, but as
8 you can see on the photograph there is -- apparently is not a
9 large body of water behind it at that time.

10 Q Right. I believe you testified it was constructed
11 between 1946 and 1950?

12 A Yes.

13 Q Now, the initial failure that set the City on a
14 course of flight control was the failure of the Castlewood Dam
15 in 1933; is that true?

16 A Yes, it is.

17 Q And Castlewood is upstream from where we are looking
18 here, true?

19 A Yes, it is. I'm not sure of the exact distance.
20 It's probably between 20 miles or so.

21 Q Yes. It's in Douglas County?

22 A Correct.

23 Q So what happened when the Castlewood Dam failed is
24 that water cascaded away into downtown Denver through the
25 Cherry Creek corridor and actually caused a great deal of

1 property damage down as far as Ogden Street, true?

2 A Yes, that is correct.

3 Q And so to protect its residents against a recurrence
4 the City began acquiring property along the Cherry Creek
5 corridor, true?

6 A Correct.

7 Q And you believe that Parcel 31 was one of these
8 parcels?

9 A Yes, I do.

10 Q Now, the Denver Country Club is located approximately
11 at University Boulevard and Speer Boulevard, true?

12 A Yes.

13 Q And that is along Cherry Creek, is it not?

14 A It is.

15 Q Cherry Creek runs through the Denver Country Club,
16 doesn't it?

17 A Yes, it does.

18 Q Yes. And are you aware, sir, that in the 1930's and
19 '40's and '50's, people housed their horses close to the Denver
20 Country Club so that they could ride the trail east along
21 Cherry Creek through Glendale, all the way to the Kenwood Dam?

22 A I knew there was a Cherry Creek bridle path at
23 several locations along Cherry Creek. I wasn't sure of the
24 exact location and I wasn't aware of where the horses were
25 housed.

1 Q Right. And you agree, don't you, that riding on
2 horseback is a recreational use?

3 A It can be.

4 Q Now then, you're familiar with the trails along
5 Cherry Creek; is that right?

6 A Yes, most of them.

7 MR. CASE: I'm going to label this Exhibit 51. It's a
8 historic trail map of Greater Denver.

9 THE COURT: 51?

10 MR. CASE: 51. Actually, I put the sticker on the
11 envelope, but I'm taking the USGS map out of it.

12 May I show it to the witness, Your Honor?

13 THE COURT: Yes.

14 MR. CASE: Thanks. Sorry about the sock in the book.

15 THE WITNESS: No problem.

16 BY MR. CASE:

17 Q Now that is a map of the historic trails around
18 Denver published by the USGS in 1976, isn't it, Mr. Ellis?

19 A Well, I see here on the left it says that the base
20 was compiled by the US Geological Survey in 1972 from 1 to
21 24,000 quadrangles, yes.

22 Q All right. And you recognize the USGS as an
23 authoritative of source of maps, true?

24 A In general, yes.

25 Q So you would not dispute the positions of the trails

1 in Exhibit 51 on the overlay of Denver geography, would you?

2 A As a surveyor I could dispute their accuracy, yeah,
3 because their generally broad-brushed, they were not obtained
4 with the technological equipment we have today, so there's that
5 difference.

6 Q All right. But aside from minor differences that you
7 would discover on a survey, the location of the trails appear
8 to be accurate with respect to the Cherry Creek corridor?

9 A Yes.

10 Q Agreed?

11 A Yes.

12 Q Right. And one of those trails is an historic trail
13 known as the Wells Fargo Stage Coach Trail, true?

14 A Yes, I see that.

15 Q Right. And there was a stage coach trail along
16 Cherry Creek that actually came through 17-mile house, through
17 nine-mile house, through seven-mile house and then went up to
18 four-mile house at Leetsdale and Monaco, true?

19 A I believe so, yes.

20 Q So the use of Cherry Creek corridor as horse trails
21 and actually as a highway for horse trail was common place from
22 the time Colorado became a territory, wasn't it?

23 A I don't know how far it went back, but I would assume
24 so.

25 Q Right. Now then, on Exhibit I here, you don't see

1 any fences, true?

2 THE COURT: Any what?

3 MR. CASE: Any fences.

4 THE WITNESS: Not that I can delineate from that
5 photograph, no.

6 BY MR. CASE:

7 Q So far as you know that land was open to people who
8 used the Cherry Creek Trail for recreational use, true?

9 A That could have been one of the uses, yes.

10 Q So people riding on horseback from say the Denver
11 Country Club, who wanted to go out to Kenwood Dam on a nice
12 trail ride on a sunny day with trees along the banks, they can
13 do that without any impediment, true?

14 A As far as I can tell from this map that is true.

15 Q And being an historian you know that was commonplace
16 recreation in the '30's, '40's and '50's was horseback riding
17 along Cherry Creek, true?

18 A Yeah, certainly that was a form of recreation.

19 Q And there was a series of stables, one at Denver
20 Country Club and several in the -- what is now the City of
21 Glendale, true?

22 A I don't have actual knowledge of that, but that may
23 be true.

24 Q And you're aware, aren't you, that there was a
25 particular stable that leased riding horses in 1955 called the

1 J&J or -- excuse me, called the Flying J&J Ranch located
2 approximately at Evans and Yosemite?

3 A I --

4 Q Are you aware of that?

5 A I'm not familiar with that, no.

6 Q Right. So when did you come to Denver?

7 A I was born in Denver.

8 Q When?

9 A 1947.

10 Q All right. Did you ever go out exploring in
11 southeast Denver on East Evans when it was still a dirt road?

12 A If I did I don't recall it. I probably did.

13 Q Did you ever ride horses out there?

14 A No, I did not.

15 Q Did you ever walk along Cherry Creek out there at
16 Parcel 31?

17 A I don't know if it was in Parcel 31.

18 Q Yeah. And how old were you when you did that?

19 A I may not have been out there until I became an avid
20 bike rider in the '70's and '80's.

21 Q All right. So you use to ride along Cherry Creek in
22 the --

23 A Absolutely.

24 Q -- '70's and '80's? And when you rode along Cherry
25 Creek in the '70's and '80's, did you see people riding on

1 horseback along Cherry Creek headed east?

2 A At times.

3 Q Yes. And as you rode your bike you would find horse
4 droppings along the dirt trails by Cherry Creek, true?

5 A Sure.

6 Q And those were from recreational horseback riders
7 that use those trails, true?

8 A I really don't know what horse riders drop those --
9 or what horses made those droppings.

10 Q Now then it's true, isn't it, that in 1955 there were
11 no obstructions to travel in Parcel 31? A person could ride
12 his horse through there forward and back as much as he wanted,
13 true.

14 A That would seem to be the case, yes, from looking at
15 this aerial photograph.

16 Q It wasn't posted no trespassing, true?

17 A I don't know.

18 Q It was available for public use as far as you know,
19 true?

20 A As far as I know, yes.

21 Q And actually, the acquisition of land for the flood
22 plain of Denver accomplished another purpose, true?

23 A It put ownership of the Cherry Creek channel into the
24 hands of Denver, yes.

25 Q Yes. And it provided a land area around Cherry Creek

1 for the citizens of Denver to recreate, to ride on horseback
2 and to walk, true?

3 A That certainly could be a purpose.

4 Q And that is a park use, isn't it, Mr. Ellis?

5 A Once again, that depends on how you define park. You
6 could construe it as a park use.

7 Q So I've taped Exhibit J and K together here.

8 A Okay.

9 Q Did I do it correctly?

10 A Yes, I think so.

11 Q So that's how they fit when you put them together?

12 A Right.

13 MR. CASE: And, Your Honor, I would offer the
14 combined J and K, if it will be of any assistance to the Court,

15 THE COURT: I don't think I need it. I've heard --

16 MR. CASE: I offer Exhibit 51.

17 THE COURT: Which is?

18 MR. CASE: The trail map.

19 THE COURT: And I haven't seen that.

20 MR. BROADWELL: And I haven't either, Your Honor. If
21 I could take a look at it?

22 THE COURT: Sure.

23 (Counsel confer)

24 BY MR. CASE:

25 Q Mr. Ellis, this document that's been offered by the

1 Plaintiffs shows a very large area that -- the Denver
2 metropolitan area; is that correct?

3 A It appeared to, yes.

4 Q And it has a date of 1976 on it, does it not?

5 A Yes, I did notice that.

6 Q So this is not necessarily reflected of anything in
7 1955; is that correct?

8 A That is correct.

9 Q And indeed it shows things like the development of
10 the Hampden Heights subdivision, does it not?

11 A I didn't have a chance to inspect it that closely to
12 determine that.

13 Q These -- is this -- it looks like it's lifted from a
14 USGS map, but mostly USGS map portions are put out in kind of
15 an orange faded color; was that correct?

16 A Up until a certain point they were. Until extensive
17 development took place, then a lot of time they reflected the
18 colors of the municipalities.

19 Q Well, I'm just talking about what's on this map right
20 here?

21 A Yes.

22 Q And then there's -- it looks like the main purpose of
23 this map was to show some trail locations?

24 A That -- yes.

25 Q So is this really what you would consider to be a

1 USGS topo map?

2 A No, it is not.

3 Q They just use U.S. topo maps to set up a line -- a
4 set of trails; is that correct?

5 A That is what they stated on the map, yes.

6 Q So we have no idea whether -- I mean, this -- there's
7 no reason necessarily to take this document was intended to be
8 a correct depiction of property back in even the 1930's or the
9 1950's?

10 A No.

11 Q It just shows trail locations; is that correct?

12 A Yes.

13 Q These things that are showed as trails, like the
14 Wells Fargo, doesn't look like a recreational trail, it looks
15 like a stage trail; is that correct?

16 A Well, since Wells Fargo is the name of the stage
17 coach company that is what one would infer.

18 Q Since it goes up close to the nine-mile house, so it
19 goes up to the nine-mile house, seven-mile house, four-mile --

20 A Yes.

21 Q -- house that's what it was, wasn't it?

22 A Yes, that's what I believe.

23 Q And there's also a railroad shown on here; is that
24 correct?

25 A I believe so. Once again, I didn't get a chance to

1 inspect it that closely to determine that.

2 Q And some of these trails like the Smokey Hill Trail
3 was -- weren't those actually Indian trails?

4 A I would assume so, yes. I assume that preceded the
5 settlement of Colorado.

6 Q So is there any reason to believe that this was
7 offered for no other reason than just as a historical trail,
8 railroad, all kinds of other transportation routes from back in
9 the day?

10 A Yes, that would be my belief.

11 Q And these were all done based upon knowledge of 1976?

12 A Yes.

13 MR. BROADWELL: For the purpose -- for what purpose
14 and value this map has and with the understanding of his
15 testimony on this, we don't have objection to the map being
16 introduced.

17 THE COURT: Okay. I'll admit 51.

18 (Plaintiff's Exhibit 51 admitted into evidence)

19 BY MR. CASE:

20 Q Can you show the Judge please, where the historic
21 Wells Fargo Trail runs through or near Parcel 31?

22 THE WITNESS: Okay. Let's see. Okay, Wells Fargo
23 Trail and here's Cherry Creek Dam, Kenwood Dam and the Texas &
24 Gulf Railroad and here's the curve in Hampden Havana, so Parcel
25 31 is generally in this area.

1 THE COURT: Okay. Why don't you just circle it with
2 this highlighter --

3 THE WITNESS: Okay.

4 THE COURT: -- and circle the general area and you
5 may show them. Thank you.

6 THE WITNESS: You're welcome.

7 THE COURT: Go ahead, counsel.

8 BY MR. CASE:

9 Q So Mr. Ellis in 1936, when the City acquired Parcel
10 31, it's your understanding that people rode on horseback along
11 Cherry Creek through the parcel, true?

12 A No, it's not my assumption that they did that. They
13 certainly could have done that, but I have no knowledge that
14 they did.

15 Q You've never researched that?

16 A No.

17 Q Are you familiar with what's called the Cherokee
18 Trail?

19 A Vaguely, but not specifically.

20 Q The Cherokee Trail is actually the historical name
21 for the trail over which the Wells Fargo Wagon Trail traversed.

22 A Okay.

23 Q Are you aware of that?

24 A No, I wasn't aware of that.

25 Q Let me just ask you to make an assumption. It's a

1 hypothetical. Assuming that in 1936, when the City acquired
2 this parcel, people were able to ride on horseback for the
3 recreational purposes through the parcel along Cherry Creek.
4 You know of no reason why they would have not continued to do
5 that up through and including 1955, true?

6 A I'll agree with that.

7 Q And so if this had a part use for recreational
8 horseback riding and walking in 1936, you would agree that it
9 probably continued up through 1955, true?

10 A Once again, that depends upon your definition of park
11 use versus recreational riding, so I really can't speak to
12 that.

13 Q Horses are permitted in Denver parks, true?

14 A I really don't know if they are or not.

15 Q Horses --

16 A They're permitted in Denver mount parks, I know that.

17 Q Right. Horses are permitted in the 98-acre natural
18 area known as Paul Hentzel Park, true?

19 A I'm not aware of that. I can't speak to that.

20 Q All right. Thank you, sir.

21 MR. CASE: That concludes my cross-examination.

22 THE COURT: Anything further?

23 REDIRECT EXAMINATION

24 BY MR. BROADWELL:

25 Q Going back to the saga where Mr. Case was basically

1 testifying as to the uses of property out there, you -- he
2 asked you some questions though in the course of that about
3 your activities out here in this area.

4 A Uh-huh.

5 Q When you were out in this area you went through
6 different pieces of property down through here, did you, when
7 you were a kid?

8 A When I was real young I don't even know if I was out
9 that far southeast from where we lived.

10 Q But there were areas where you were just -- big --
11 vast pieces --

12 A Oh, absolutely.

13 Q -- of open space?

14 A Absolutely. We use to go up to, for example, Hampden
15 and Ivy, which is east -- or west of I-25 and that was an open
16 field with ponds and so forth. So yeah, there was -- as far as
17 I know that was all open area.

18 Q And you went out there and walked around it and --

19 A Yes.

20 Q -- enjoyed it?

21 A Sure.

22 Q Did you regard all of that land as being a park?

23 A I regarded it as a place to play. I could have
24 regarded it as a potential park or a potential subdivision or
25 something, but I was too young to even envision any of those

1 things.

2 Q And these areas where you've seen other people moving
3 around, was some of it outside of the Cherry Creek corridor?

4 A Sure.

5 Q Was some of it on private property?

6 A Possibly. I don't know for certain, but certainly
7 that's possible.

8 Q Was some of it on property that's not a park?

9 A I'm sure there was.

10 Q So just because people are out about on open space
11 areas, which this has -- as shown by this picture is a vast
12 amount of land out there, didn't make it all turn into a park,
13 did it?

14 A No, definitely not.

15 Q I mean it's quite possible some people were out
16 recreating on -- or where Hampden Heights --

17 A Absolutely.

18 Q -- was built?

19 A Absolutely.

20 Q Not of all Hampden Heights, not everybody's house out
21 there is a park, is it?

22 A No.

23 Q Well, getting back to something more fundamental to
24 what you do about public works, is it fair to say that Denver
25 Public Works has general jurisdiction over Denver rights of

1 ways?

2 A Yes.

3 Q That includes a lot of sidewalks as well?

4 A Yes.

5 Q And those areas are regularly used by pedestrians and
6 bicyclists?

7 A Yes, they are.

8 Q And so people that you've seen jogging or biking down
9 Denver rights of way, there are not in a park, are they?

10 A No, they're not.

11 Q And there's areas like that now in and around Parcel
12 31; is that not correct?

13 A That's correct.

14 Q I mean you can walk down Havana, can you not?

15 A Certainly.

16 Q And part of that piece you walk down Havana is within
17 Parcel 31, is it not?

18 A Correct.

19 Q But it's -- in your mind not a park and not a --

20 A No, it is not.

21 Q I don't know if I want to get in -- there's really
22 not a whole lot of purpose to get into all these other
23 discussions, but of all the stuff you heard, questions from Mr.
24 Case, did any of that in your mind, prove that anything's a
25 park --

1 MR. CASE: Objection, calls --

2 Q -- as far as your concerned?

3 MR. CASE: -- for a legal opinion, Your Honor. He's
4 not qualified to give it.

5 MR. BROADWELL: Well, the argument being made by
6 counsel over here is that just basically anything where people
7 go and recreate is a park, so --

8 THE COURT: I don't care what this guy has to say
9 about that either.

10 MR. BROADWELL: Well, he is a -- part of his
11 responsibility is to know basically what land and the City is
12 used for, so that's all I'm asking is basically is just because
13 areas of land are used for recreating, for walking, hiking,
14 jogging, all kinds of pleasurable activities, that would not
15 make all of it a park, would it?

16 THE WITNESS: It would not in my opinion.

17 BY MR. BROADWELL:

18 Q And indeed parks -- segments of Cherry Creek going
19 back into the City are not park; is that correct?

20 A That is correct.

21 MR. BROADWELL: That's all I have, Your Honor.

22 THE COURT: Anything further?

23 MR. CASE: No recross.

24 THE COURT: Thank you, sir. Appreciate it.

25 THE WITNESS: Thank you.

1 Next witness?

2 MR. WHEELER: Your Honor, we're going to forego
3 having anymore witnesses?

4 THE COURT: Pardon?

5 MR. WHEELER: We're going to forego any more
6 witnesses at this point and we'll stand on what we provided so
7 far.

8 THE COURT: Music to my ears.

9 MR. WHEELER: I kind of thought so.

10 THE COURT: Now, you're going to strain my ears, Mr.
11 Case, and tell me you have some rebuttal, right?

12 MR. CASE: I do.

13 THE COURT: Let's go.

14 MR. CASE: Thank you.

15 I call Charles Bonniwell.

16 CHARLES BONNIWELL, PLAINTIFF'S WITNESS, SWORN

17 THE COURT: Make sure you speak up.

18 THE WITNESS: I will.

19 THE COURT: Big guy, soft voice.

20 DIRECT EXAMINATION

21 BY MR. CASE:

22 Q Mr. Bonniwell, would you please state your full name?

23 A Charles Clayant (phonetic) Bonniwell.

24 Q Where do you live --

25 THE COURT: Excuse me. I need the spelling of the

1 last name.

2 THE WITNESS: Sure, B as in Boy, O-N-N-I-W-E-L-L.

3 BY MR. CASE:

4 Q Where do you live?

5 A 1313 Williams, Denver, Colorado.

6 Q What's your occupation?

7 A I'm an attorney. I'm a publisher of a local
8 newspaper and I'm an historian.

9 Q The newspaper is?

10 A The Glendale Cherry Creek Chronicle.

11 Q How long have you published that newspaper?

12 A Since 1998.

13 THE COURT: So are you the guy that wrote that
14 editorial I read recently about how we ought to go back to
15 electing judges instead of --

16 THE WITNESS: Absolutely not. That had to be Ed
17 Thomas who works for the paper. I had nothing to do with that.

18 THE COURT: I just couldn't resist.

19 Go ahead.

20 MR. CASE: Thank you, Your Honor.

21 THE COURT: But I recall now that was Mr. Thomas.

22 BY MR. CASE:

23 Q So you mentioned you are a historian?

24 A Yes, and I was official historian for the City of
25 Glendale from 2005 to 2009. I've written a book which is --

1 this one, The History of the Denver Country Club. I published
2 articles for the Colorado Historical Society now called History
3 of Colorado. I'm working with Cherry Creek Chamber in an
4 historical manner and I have various other historical projects
5 that I'm working on.

6 Q What is your educational background?

7 A I have a BA in history from Vanderbilt University; I
8 have a JD from the University of Colorado; and have an LM in
9 taxation from the University of Denver.

10 Q How did you become interested in the history of
11 Glendale and Denver in general?

12 A Well, I loved history and I like to write about
13 history and I like to do history, and I was hired -- whatever
14 you want to call it -- to write the history of the Denver
15 Country Club, Glendale. I became legal counsel to Glendale.
16 One of the important projects was understanding Glendale's
17 history, and the past is prologue'd in some places. Being an
18 historian maybe just a quaint title Glendale, it's everything.
19 Glendale, since it was founded in 1859, up through about, I
20 don't know, maybe about ten years ago was in constant war with
21 Denver, and so we had to understand all the historical aspects
22 of Glendale. Why did Denver own all the creeks -- I can't say
23 all -- a portion of the creek bed that ran through Glendale?
24 Why did they have an extra territorial road that ran through
25 Glendale? Why did Glendale own property in Denver? What could

1 Denver do in with property it owned within Glendale? What
2 could Glendale do with regards to the property it owned in
3 Denver?

4 Q All right. You said you were counsel to the City of
5 Glendale.

6 A Yes. Legal counsel to the planning commission.

7 Q When did you hold that office?

8 A Contemporaneously with being the official historian.
9 I was also fire marshal.

10 Q That was?

11 A 1905 -- 2005 through 2009.

12 Q Thank you. Now then, do you consider yourself to
13 have special knowledge or expertise in the history of the
14 Cherry Creek corridor?

15 A I do.

16 Q And the basis for that is?

17 A Years and years of research, years and years of
18 research of writing this book, years and years of research of
19 being historian for Glendale.

20 THE COURT: Excuse me, counsel. You said this book.
21 What book are you referring to? What's the title of the book?

22 THE WITNESS: The history of the Denver Country Club,
23 1887 to 2006.

24 BY MR. CASE:

25 Q And as attorney for the Glendale planning commission,

1 did you have to look up deeds?

2 A I did. I had to look up the deeds that Denver had
3 conveyed on Cherry Creek, and I had to look up the deeds for
4 the parcels in which Denver was not able to obtain the creek
5 bed and why they hadn't been able to obtain the creek bed. I
6 also had to look at rights of way that Denver had obtained
7 through the parcels they were not able to acquire.

8 MR. CASE: Your Honor, at this time we would offer
9 Mr. Bonniwell as an expert in the history of the Cherry Creek
10 corridor.

11 THE COURT: Any objection?

12 MR. WHEELER: No objection at this point. I'm
13 waiting to hear what aspect of our testimony he's going to be
14 rebutting and I may have an objection as to the scope of this
15 so-called rebuttal later.

16 THE COURT: Fair enough. I'll have him testify as an
17 expert, given his apparent special knowledge of the history and
18 use of this Cherry Creek corridor area. Go ahead.

19 MR. CASE: Judge, to the extent my examination of Mr.
20 Bonniwell exceeds the pointed rebuttal of Mr. Ellis, I would
21 ask to reopen my case to that small extent. I found out about
22 this witness's expertise yesterday after I had rested, so I had
23 no knowledge of the history that he could provide to the Court,
24 and I think it's going to be extremely helpful to the Court in
25 understanding the use Parcel 31 at the time it was acquired by

1 Denver.

2 THE COURT: Well, go ahead.

3 MR. CASE: Thank you, Your Honor.

4 BY MR. CASE:

5 Q Mr. Bonniwell, what did you find as far as Denver's
6 acquisition of rights of way through properties that it could
7 not obtain for flood control?

8 A I want to go back maybe to Mr. Ellis's testimony,
9 which I want to concur with. As you indicated, on August 3,
10 1933, the Castlewood Dam broke. Tremendous property damage.
11 It's noted in this book. It's also noted in the history of
12 Glendale, from 1934 through 1936, Denver acquired numerous
13 parcels. Some in Glendale, some in unincorporated Arapahoe
14 County. Part of the time Glendale was unincorporated Arapahoe
15 County. So there are various parcels. I've looked at all the
16 parcels, including the deeds at Parcel 31 and all the ones in
17 Glendale.

18 Q What did you find as far as Denver's ability to
19 acquire all of the land along Cherry Creek?

20 A It did not. It was unable to acquire various
21 portions because the landowner was unwilling to sell to them,
22 which is a little unusual because they were buying floodplain,
23 other than of a school, I guess, you can't normally build in.
24 And this was the depression. So they were buying basically the
25 floodplain, but some owners refused to sell. The Denver

1 Country Club refused to sell its creek bed to the City and
2 County of Denver. The owners of the property on Colorado
3 Boulevard where -- Cherry Creek South, refused to sell any
4 property to the City and County of Denver. City and County of
5 Denver then later went back and got rights of ways in order
6 that its citizens could recreate and go through those parcels
7 unimpeded.

8 Q And when you say rights of way, what do you mean?

9 A That's exactly what they were. They were easements
10 to allow them to build a path and to allow residents to go
11 through that path so they could reach all the way from downtown
12 Denver to Cherry Creek Dam.

13 Q Were those easements acquired to allow people to go
14 through Parcel 31 for recreational purposes?

15 A To get to Parcel 31, yes, and the other parcels. And
16 if I can give some background, you must understand that we live
17 in what is called the Great American Desert. It's not
18 technically a desert, but if we turned off the irrigation in
19 Denver today, every tree, every tree would die except those
20 along Cherry Creek and the South Platte. Because that is the
21 existence of what happened when the Gold Rush of 1859 occurred.
22 The corridor, the Cherry Creek corridor, is one of the
23 incredible recreation ones, and it's been since 1859.

24 People have gone up and down because, as you heard
25 the testimony yesterday, people love wildlife. They love

1 trees. They love green. And this is the only area that is
2 green. And they talked about how far. Well, 100 yards, a
3 couple hundred yards either side of Cherry Creek, it is simply
4 prairie land. It is simply clumps of grass. Not a single tree
5 would exist and didn't exist.

6 The Cherry Creek Trail went through Cherry Creek
7 because if you got off the trail you died. You starved. In
8 fact, the one trail did not go along the watercourse is called
9 the Starvation Trail. So this has been one incredible
10 recreational habitats for the City and County of Denver and
11 other people, including City of Glendale, for 150 years.

12 Q So prior to the time that Denver acquired this land
13 in 1936, did people use it for recreational purposes?

14 A Absolutely. Absolutely. This is where the horse
15 trails went through. This is one beautiful section of Cherry
16 Creek, where it bends around. People love to go there for 150
17 years. They'd go there to picnic. They'd go to there to
18 recreate.

19 Q Thank you. After 1936 and before 1955, did people go
20 into Parcel 31 along Cherry Creek for recreation --

21 A Yes. if I could I would like to make --

22 Q Just a moment, please. I need you to let my finish
23 my question.

24 A Sure, sure, sorry.

25 Q After 1936 and before December 31, 1955, did citizens

1 of Denver ride on horseback and walk along Cherry Creek through
2 Parcel 31 for recreational purposes?

3 A Yes.

4 Q How do you know that?

5 A I'd like to refer to the history of Glendale, which
6 makes a reference, and this is one of thousands, the
7 independent Dairy, which --

8 Q Hold on hold. You're reading from?

9 A The History of Glendale.

10 THE COURT: This is your book?

11 THE WITNESS: No, it is not. This is a book by Jack
12 Patricia Fletcher, who are the experts on the Cherry Creek
13 Trail. They also wrote History of Glendale.

14 MR. CASE: Your Honor, this testimony is admissible
15 as an exception to the rule against hearsay under 8-03-20,
16 reputation concerning boundary or general history, and also 8-
17 03-18 learned treatises.

18 BY MR. CASE:

19 Q Sir, the book you are reading from is what?

20 A History of Glendale.

21 Q Who wrote it?

22 A Jack E. and Patricia A. Fletcher.

23 Q Is it a recognized authoritative treatise on the
24 history of Glendale?

25 A It is.

1 Q Read and tell us the page that you're reading from,
2 please.

3 A Sure. Page 90, second full paragraph.

4 "The independent Dairy, which has been
5 prevalent in Glendale since the late 1980s declined
6 in number over the years, but even more swiftly after
7 War World II. On the south side of Cherry Creek,
8 horse stables and riding clubs replaced many of the
9 dairies, some of them public, some of them private,
10 some rode English, some rode western. One of the
11 groups owned and maintained a railroad car for a
12 clubhouse and a bridle path, which ran east on Cherry
13 Creek and up Cheery Creek as far as Kenwood Dam."

14 Kenwood Dam is slightly, I guess it would be --
15 Parcel 31 is -- Kenwood Dam is southwest of Parcel 31. It's
16 about, I don't know, half mile or a mile, maybe a little
17 longer.

18 Q So you would have to ride, if you were coming from
19 Denver, from the Denver Country Club and you were riding to
20 Kenwood Dam, you would ride through Parcel 31 to get there?

21 A Yes. And all the riding clubs, you mean, just to
22 correct the record, Denver Country Club had stables from 1905
23 to 1923. From 1923 to 1942, there were stables at the polo
24 clubs grounds. After that, all of riding clubs were located in
25 Glendale. They were less regulated and it's a place where you

1 could go park your horse or have your horse there and then you
2 could ride up the trail, the four miles from Four Mile House up
3 to what is today Cherry Creek Dam.

4 Q And that activity went on from the '20s all the way
5 up through when? Present?

6 A Today. Today people tend to use bikes as preferable
7 transportation. You don't to a feed a bike.

8 Q Tell us where the stables were in Glendale.

9 A They were all over the place in Glendale. There were
10 six, seven ten stables. One of the more prominent ones, if
11 somebody's lived Denver, was the Riviera. The Riviera was the
12 Glendale Riding Club. Today that structure has been torn down,
13 but a lot people ate at the Riv, and that was one of the
14 stables. It was the Glendale Riding Club.

15 Q And that would have been located at East Kentucky and
16 Colorado Boulevard?

17 A Colorado boulevard, correct.

18 Q And it's now --

19 THE COURT: Excuse me, is that near where the former
20 Mexican restaurant, the Riviera, used to be?

21 THE WITNESS: The former restaurant known as the
22 Riviera was the Glendale Riding Club, and then the Mexican
23 restaurant took it over. Took over the clubhouse for Glendale
24 Riding and changed the name to the Riviera.

25 THE COURT: Now it's Las Delicias?

1 THE WITNESS: That's correct. And the only thing
2 that exists from that time period is the sign.

3 BY MR. CASE:

4 Q Now, were there other stables and riding clubs to the
5 east, more toward Parcel 31?

6 A Yes.

7 Q Are you familiar with a ranch, a horse ranch that
8 rented horses to people called the flying J&J Ranch?

9 A Yes, vaguely.

10 Q Was that one of the stables that rented horses to
11 people who wanted to ride out through Parcel 31?

12 A Yes, that would be correct.

13 Q Now, Mr. Bonniwell, have you -- you've written some
14 articles critical of the City's decision to do this land swap;
15 is that true?

16 A I have written an editorial that was critical. I
17 wrote some objective articles, which indicated both sides, at
18 least in my mind.

19 Q Now, although you may have a point of view and
20 opinion about the land/swap, are the facts that you've told us
21 today historical facts?

22 A Yes. Writing articles -- I'm writing an article
23 today about the hearing, quite frankly, that's why I originally
24 came down here, there are people out there from the
25 Examiner.com and others who will write about the hearing.

1 Q The point that I'm getting at is notwithstanding your
2 personal opinions about the land swap, are the facts that you
3 have told us about the history of Cherry Creek corridor, and in
4 particular the recreational use of Parcel 31 from 1936 past
5 1955, are those all true facts?

6 A Those are all true facts.

7 MR. CASE: Thank you Your Honor. That concludes my
8 direct examination.

9 THE COURT: Cross?

10 MR. BROADWELL: Just a couple of quick questions.

11 CROSS-EXAMINATION

12 BY MR. BROADWELL:

13 Q Mr. Bonniwell, I'm going to ask you as a historian,
14 would you agree that the land we've been talking about is
15 depicted in yellow in Exhibit I? Is that yellow or orange?

16 A I can't tell.

17 Q On Exhibit I was not in the boundaries of the City
18 and County of Denver in 1955?

19 A No, it was owned by the City and County of Denver in
20 1955.

21 Q As a historian, I'm sure you're aware that in 1955
22 and before, for a long period of time the City did own
23 extraterritorial parks known as mountain parks.

24 A It still does. That's what Red Rocks is, that's what
25 Evergreen Park is. In fact you still own, although you

1 conveyed all the real rights to it, to Winter Park. You still
2 own it, technically, since you didn't put it to a vote, and
3 therefore it couldn't be transferred. So the City and County
4 of Denver today technically owns Winter Park.

5 Q Hopefully I'm going to ask you just a couple more
6 yes-or-no questions.

7 A Sure.

8 Q To the extent we owned extraterritorial parks back in
9 1955 and before, would you agree that they all had a distinct
10 identity as a named park that you could find on a park map of
11 our mountain parks?

12 A Absolutely not.

13 Q To the best of your knowledge, is the triangular
14 parcel located on this 1955 aerial map recorded anywhere by
15 name as a park, acknowledged anywhere officially as park, as of
16 December 31, 1955?

17 A I know it was repeatedly referred to as a park after
18 1955. I know of no designations, per se, I just know it was
19 used as a park.

20 MR. BROADWELL: Thank you.

21 THE COURT: Used as a park before 1955?

22 THE WITNESS: Correct.

23 THE COURT: Anything else?

24 MR. CASE: No, Your Honor.

25 THE COURT: Thank you, sir. You may step down. Does

1 DPS have any questions? I didn't mean to leave you out.

2 MR. DEHERRERA: No, Your Honor.

3 THE COURT: Thank you, sir.

4 THE WITNESS: I will talk to Mr. Thomas about that
5 editorial.

6 THE COURT: Mr. Thomas is acquainted with me from
7 years ago. He probably won't remember.

8 MR. CASE: So, Judge, we appreciate the time you've
9 given us. I have two more witnesses that I can put on, but it
10 might help if I did it by an offer of proof, and then you can
11 see if you want to hear from them.

12 First witness would be Mr. Richard Laugesen, who's a
13 practicing Denver lawyer who lives in Hampden Heights, who's
14 been there since 1968. And his testimony, if he's permitted,
15 will be to testify that when he bought his home in 1968, Havana
16 had not been completed and he used to walk along Cherry Creek
17 to the north of Hampden Heights down past where Havana comes.
18 And when he walked, he would see people riding east on
19 horseback and riding west on horseback through the property,
20 which has continued up through today.

21 Second witness would be Judy Case. Her testimony
22 will be that in 1970, she rented horses at the Flying J&J Ranch
23 and rode eastward through the Cherry Creek corridor. Sometimes
24 when the creek was dry in the sand at the bottom of Cherry
25 Creek behind Hampden Heights, in that area.

1 The purpose of this testimony, Your Honor, would be
2 to show that recreational use, park use by horseback riders in
3 this property has been continuous since the City of acquired it
4 in 1936. Do you want to hear from those witnesses?

5 THE COURT: I don't think I need to. Mr. Broadwell,
6 what are your thoughts about the offer of prove?

7 MR. BROADWELL: Your Honor, the City doesn't dispute
8 that people may have ridden horses or walked and hiked or
9 whatever on this property for decades.

10 THE COURT: Understood. What was name of the second
11 witness, for my notes?

12 MR. CASE: Judy Case.

13 THE COURT: Spell it.

14 MR. CASE: C-A-S-E.

15 THE COURT: Any relation?

16 MR. CASE: Yes, Your Honor, she's my wife.

17 THE COURT: I don't know whether to compliment her or
18 give her my condolences.

19 MR. CASE: She'd prefer your condolences.

20 THE COURT: We'll just leave it at that.

21 Counsel, I don't have time for closings. Do you want
22 to do closings? I'm assuming there's no further evidence to
23 present. What to do written closings?

24 MR. BROADWELL: I did have a very brief closing
25 prepared, Your Honor. If you would prefer to forgo it, that's

1 fine. You know, one of the points that we wanted to encourage
2 and inquire about is how quickly we might get a ruling on the
3 case in terms of whether or not you're going to be able to rule
4 quickly or if you're going to need to take it under advisement.
5 That's where would you tell us. You essentially heard our
6 theory of the case at the beginning, and if you would I'll
7 await a response to the motion. You certainly have a flavor of
8 where we're coming from.

9 THE COURT: I think I have a pretty good idea where
10 both sides are coming from, and a reasonably good idea what the
11 issues are and the like. That being said, I think it might be
12 helpful to have some closing arguments, helpful to me. I will
13 try to get a -- some kind -- I have to do an oral order because
14 I'm going to be in trial for next two or three weeks nonstop.
15 I think I spoke to my clerk yesterday about being able to do an
16 oral ruling around the 28th. As I understand it, everybody
17 wants something done by -- in advance of the 30th; am I right?

18 MR. HICKMAN: Your Honor, because of the filing of
19 this injunction, the District is already sort of constructively
20 acting as though the injunction is in place, so we're somewhat
21 caught between a rock and hard place. Waiting two weeks
22 continues to delay our ability to do work that we're performing
23 now.

24 THE COURT: Got you. Well, I can only what I can do.

25 (Clerk and Court confer)

1 THE COURT: It's already been set. So it's already
2 set for an oral ruling on the 28th. Okay. Sorry. Let's leave
3 it at that. If I have a decision ahead of time, we'll let you
4 know. It may be something I could issue simply -- if I'm going
5 to grant the injunction, it's more complicated than if I'm
6 going to deny the injunction. I'll get to this as quickly as I
7 can. One of my ideas is perhaps we could do short closings
8 tomorrow afternoon. I don't not seeing a whole lot of happy
9 faces.

10 MR. BROADWELL: Your Honor, I'm scheduled to fly to
11 St. Louis on a business trip tomorrow morning, and I would be
12 happy to submit a written closing if you would like.

13 THE COURT: How about three-page written closings; no
14 more than three pages.

15 MR. CASE: Perfect.

16 MR. BROADWELL: Thank you, Your Honor.

17 MR. CASE: By when?

18 THE COURT: When? A week from today? Less than
19 that?

20 MR. BROADWELL: That's more than generous. We can
21 probably have something for you by Monday.

22 THE COURT: So June 17. Mr. Case?

23 MR. CASE: June 17 is fine. No later than 5:00 p.m.,
24 June 15, simultaneous written closings, no rebuttal.

25 THE COURT: Right.

1 MR. CASE: Thank you.

2 THE COURT: And a three-page limit. Don't fool
3 around with fonts or spacing, my clerk says. Okay. Thank you
4 all, very much. I'm realize that this is a hard-fought matter
5 where there are strong feelings on both sides.

6 I understand that the Plaintiffs feel there was a
7 certain degree of lack of transparency perhaps. They feel
8 somewhat left out of the process.

9 I understand the City's position on its -- and Denver
10 Public School's position on the rights to contract and the
11 like.

12 The reality is 50 percent of the people are going to
13 be happy with what my decision is and the other 50 are not.
14 That's the nature of my job. And I will call it as I see it,
15 and I will apologize to you in advance to those who are
16 disappointed with my decision. But I'll do my job as best as I
17 can and as honestly and consciously as I can. Thank you all,
18 very much.

19 MR. CASE: Thank you, Your Honor.

20 MR. BROADWELL: Thank you.

21 (Proceedings adjourned at 3:12 p.m., recommencing in
22 Volume III)

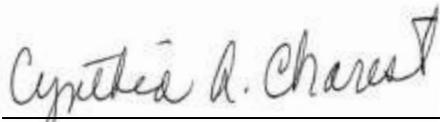
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CERTIFICATE

I hereby certify that the foregoing is a true and correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



CYNTHIA A. CHAREST
Digital Court Transcriber

DATED and SIGNED this 1st day of August 2013.