

DENVER DISTRICT COURT, STATE OF COLORADO Denver City and County Building 1437 Bannock Street Denver, CO 80202	
Plaintiff: FRIENDS OF DENVER PARKS, INC., a Colorado non-profit corporation; and STEVE WALDSTEIN, an individual; and ZELDA HAWKINS, an individual vs. Defendant(s): CITY & 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.	▲ COURT USE ONLY ▲
John Kechriotis, Attorney Reg. No. 27587 Michael J. Hickman, Attorney Reg. No. 30610 Jerome DeHerrera, Attorney Reg. No. 35893 900 Grant Street, Suite 401 Denver, Colorado 80203 Tel. No: 720-423-3393 Fax No: 720-423-3892 Attorneys for Defendant School District No. 1 in the City and County of Denver	Case No: 2013CV032444 Courtroom: 376
CLOSING STATEMENT BY DEFENDANTS SCHOOL DISTRICT NO. 1 IN THE CITY AND COUNTY OF DENVER IN REGARD TO THE HEARING ON PLAINTIFFS’ MOTION FOR A PRELIMINARY INJUNCTION	

School District No. 1 in the City and County of Denver (“DPS”), through undersigned counsel, makes the following closing statement in opposition to Plaintiffs’ Motion for a Preliminary Injunction:

The Motion should be denied because Plaintiffs failed to carry their burden of showing: (1) a reasonable probability of success on the merits; (2) that the granting of a preliminary injunction will not disserve the public interest; and (3) that the balance of equities weighs in favor of the injunction.

Plaintiffs have shown no likelihood of success on the merits. The Denver Charter governs whether City owned property can be conveyed by act of the Mayor and City Council, or

whether voter approval is required. As the City has explained, the Charter is unambiguous that City owned lands can be conveyed without a vote of the people, unless that land is a “park” so designated by an ordinance of the City Council, or the land was a City owned “park” before 1955. For example, even though a portion of the property was once designated a “natural area” by the Manager of Parks and Recreation, the Charter does not require voter approval for the conveyance of “natural areas.” Similarly, while it is true that the property was zoned OS-A, which the City typically uses for park lands, a particular zoning classification does not legally designate property as a park subject to the voter approval requirements of the Charter. As this Court has now seen, the evidence showed that the 10.7 acre parcel at issue (“Property”) was never designated as a “park” by municipal ordinance, nor was it a City-owned park before 1955. Because the factual record is undisputed and the Charter is unambiguous, Plaintiffs have no likelihood of success on the merits of whether voter approval is required before the City can sell the Property.

The public’s interest will be disserved if the Court grants the injunction. The DPS School Board and the City’s Mayor and City Council are duly elected political representatives of the residents of Denver. In their role as elected officials, they are vested with specific responsibilities and powers. For the City Council Members and the Mayor, those responsibilities and powers include purchasing and conveying real property. In this case, those duly elected representatives are attempting to carry out this responsibility and power by exchanging land with DPS so that the City can construct a domestic violence center nearby the courts and jail. Similarly, the DPS School Board Members are vested with the responsibility and power to determine the locations and operations of its schools. *See* CRS § 22-32-110(b) (“...each Board of Education of a school district shall have the following specific powers, to be exercised in its

judgment:...to determine the location of each school site, building, or structure.”); *id.* at § 22-32-110(i)(1) (granting to school boards the power “to determine which schools of the District shall be operated and maintained”); *Hawkins v. Cline*, 420 P.2d 400, 403 (Colo. 1966) (same).

A court issued injunction will impede the policy-making process as provided in the Colorado Constitution and Revised Statutes. The City’s decision to sell the Property, and DPS’ decision to build a school on the Property, are decisions that were appropriately made by those political bodies pursuant to their legal responsibilities and powers. The decisions that Plaintiffs seek to reverse were made in due course by the political bodies elected to make those decisions. Plaintiffs may disagree with those decisions, but their disagreement doesn’t give rise to the legal remedies they seek. To enable Plaintiffs’ efforts to interfere with this policy-making process would disserve the public’s interest in protecting the policy-making process provided under Colorado law, and in safe-guarding the results of that policy-making process.

As the Court heard through the testimonial evidence provided by Members of the DPS School Board and its Chief Operating Officer, there are important reasons why the School Board has decided to build a school on the Property. These reasons include overcrowding at the schools in the nearby area and the demand for future, additional classrooms. The testimony also established that the site is appropriate for a school and no readily available alternative locations exist. While Plaintiffs raise concerns with the Property’s suitability for a new school, the DPS School Board exercised its judgment after weighing many considerations. In any event, the DPS School Board exercised its legal authority in determining that a new school is needed in this area and that the Property is its desired location for the new school.

Plaintiffs failed to demonstrate that the equities weigh in favor of issuing an injunction. The evidence demonstrated the fact that there are some community members who are opposed to

building a school on the Property and that other members support building a school on the Property. However, the evidence also demonstrated that DPS and the residents of Denver would suffer immediate and significant harm if the injunction is granted. On April 1, 2013, DPS and the City executed a contract to exchange real property, including the 10.7 acre Property. Prior to the filing of Plaintiff's Complaint, DPS and the City were preparing to close on the by June 30, 2013. In reliance on that agreement, DPS has incurred approximately \$400,000 in out-of-pocket expenses on architectural design and soil engineering and testing in anticipation of constructing the new school on the Property. Since the filing of the Complaint, DPS has been denied access to the Property and its work has now been set back by as much as six to eight weeks. These delays are jeopardizing the scheduled opening of the new school by January 2015. This delay in the opening of the new school will cause real, significant harm to DPS and the students and families who live in the far southeastern part of Denver.

Plaintiff's alleged injury is not sufficient to tip the scales in favor of the injunction. The evidentiary record established that the 90-acre site encompassing Paul A. Hentzell Park and its use and enjoyment by the public is not in danger. The proposed sale of the approximately ten-acre corner to DPS will not have a significant impact on the public's continued use of the remaining eighty acres. The site being purchased by DPS mostly consists of an unused, weed covered parking lot and a portion of the prairie dog colony. Moreover, no part of the bike trail, Cherry Creek, or golf course is located on the 10.7 acre site. If the court grants the requested injunction, it would be DPS, not the Plaintiffs, who would suffer the real and immediate harm.

For the foregoing reasons, DPS requests that Plaintiffs' Motion be denied.

Respectfully submitted this 17th day of June, 2013.

/s/ Michael J Hickman, Esq.

Document filed electronically. See C.R.C.P. 121, § 1-26. Original in file.

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of June, 2013, a true and correct copy of the foregoing CLOSING STATEMENT BY DEFENDANTS CITY AND COUNTY OF DENVER AND DEBRA JOHNSON, CLERK AND RECORDER, IN REGARD TO THE HEARING ON PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION was served upon opposing counsel by e-filing, and addressed to the following:

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