

**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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▲ COURT USE ONLY ▲

Case Number:

**2013-CV-032444**

**Courtroom 376**

**Volume I of III**

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The matter came on for hearing on Wednesday, June 12, 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; WEDNESDAY, JUNE 12, 2013

2 (Call to Order at 9:17 a.m.)

3 THE COURT: This is the Friends of Denver Parks case,  
4 13-CV-32444. Counsel, please enter.

5 MR. CASE: Good morning, Your Honor. My name is John  
6 Case, Registration Number 2431. I represent the Plaintiffs.  
7 Present with me this morning is Renee Lewis, the president of  
8 Friends of Denver Parks, Inc. Also, Mr. Steve Waldstein, who  
9 is an individual plaintiff. And I have two law clerks with me,  
10 Ian Farrell and Ben Ossenberg (phonetic). And we have an  
11 assistant to run the projector. His name is Christopher  
12 Francesci (phonetic).

13 THE COURT: Thank you.

14 MR. BROADWELL: Good morning, Your Honor. I'm David  
15 Broadwell, an Assistant City Attorney for the City and County  
16 of Denver, Registration Number 12177. I'm here today  
17 representing the City and County, as well as Debra Johnson,  
18 Clerk and Recorder for the City and County of Denver. And I'm  
19 accompanied, from the City Attorney's Office, by Assistant City  
20 Attorney Mitch Behr and Patrick Wheeler. And I believe I'll  
21 let the attorneys for DPS represent themselves.

22 MR. KECHRIOTIS: Good morning, Your Honor. John  
23 Kechriotis on behalf of the Denver Public Schools. Also  
24 Attorneys Michael Hickman and Jerome Deherrera. My bar number  
25 is 27587, if you require that.

1 THE COURT: What's your -- how do you spell your last  
2 name?

3 MR. KECHRIOTIS: K-E-C-H-R-I-O-T-I-S

4 THE COURT: And pronounce it for me once more,  
5 please?

6 MR. KECHRIOTIS: Keck-ree-otis.

7 THE COURT: Okay. I've got Plaintiffs' exhibits up  
8 here. The timeline of events. Whose is this?

9 MR. CASE: That's mine, Your Honor.

10 THE COURT: Okay.

11 MR. CASE: It's just a guide. It's not evidence.

12 THE COURT: Is there any dispute, Mr. Broadwell or  
13 Mr. Kechriotis? About this timeline?

14 MR. BROADWELL: Judge, we just received it a few  
15 minutes ago. It generally appears to be a correct chronology  
16 as is reflected in the other pleadings.

17 THE COURT: Okay.

18 MR. BROADWELL: And to the extent there may be  
19 factual assertions about the status of the property in here  
20 that I'm not spotting, that's obviously what we're arguing  
21 about here today. So, in general, the dates look correct.

22 MR. KECHRIOTIS: And Your Honor, I apologize. As  
23 general counsel I wanted to introduce these attorneys, but  
24 these guys -- these two attorneys will be taking the lead on  
25 behalf of Denver Public Schools.

1 THE COURT: Okay.

2 UNIDENTIFIED SPEAKER: And Your Honor, with regard to  
3 the timeline, we would just reserve any objection we have as we  
4 go through it. Again, we just received it this morning, so.  
5 At this point, we have no objection.

6 THE COURT: All right. How much time, Mr. Case, do  
7 you think you're going to need for the -- your side?

8 MR. CASE: I think I'm going to need the morning, and  
9 I'll go as fast as I can.

10 THE COURT: Okay. And how about for the City and  
11 DPS? We going to be doing this all day?

12 MR. BROADWELL: Your Honor, we only have two  
13 witnesses to substantiate some of the facts that are asserted  
14 in our answer to the motion. I anticipate it'll take us no  
15 more than maybe half an hour to 45 minutes to say what we need  
16 to say. Of course, it's somewhat dependent on what we hear  
17 from the other side. And again, I'll let the DPS attorneys  
18 speak for their witnesses.

19 THE COURT: Okay.

20 UNIDENTIFIED SPEAKER: Your Honor, the Denver Public  
21 Schools has three witnesses, and we anticipate it'll take  
22 45 minutes to an hour. If that.

23 THE COURT: Okay. I have received, just this  
24 morning, Plaintiff's brief in support of its motion for a  
25 preliminary injunction, which was filed yesterday, and



1 Defendants' response, which appears to have been filed  
2 yesterday. I haven't had a chance to review either of those.  
3 So if you think I should look at those ahead of time, we should  
4 take a quick recess and I can do some speed reading. Any  
5 thoughts on that, or should we just go and --

6 MR. CASE: I prefer to get started, since we're going  
7 to -- if you, you know, want to interpose a question, I can  
8 answer it, but we do -- our first witness has to be at a  
9 funeral at 11, so he needs to leave here by 10:30.

10 THE COURT: Okay. So I don't need your first amended  
11 -- or, your motion for a preliminary injunction has been  
12 supplanted by the first amended one; right?

13 MR. CASE: Yes, Your Honor.

14 THE COURT: And the complaint's been supplanted, too,  
15 by your second amended complaint?

16 MR. CASE: Yes, Your Honor.

17 THE COURT: Okay. Let's go. Go ahead.

18 MR. CASE: Good morning, Your Honor. So this case is  
19 about this natural area, which is 90 acres total. It starts up  
20 here at Yale, comes down, and then there's this triangular  
21 piece on the bottom. And the City actually acquired title to  
22 these -- to this entire parcel in two phases. This lower  
23 triangular piece was acquired in 1936 when it was still part of  
24 Arapahoe County and it became part of Denver in 1965, when it  
25 was annexed. This piece of ground was owned by the Water Board

1 and then, in 1975, the Water Board conveyed that to the City.  
2 And in 1983 the City designated this top piece as Paul A.  
3 Hentzel Park. There was never an ordinance designation of the  
4 bottom triangular piece. Our position is that with the City  
5 Charter Statute 2.4.5, since the City acquired it prior to 1955  
6 and thereafter, after it was annexed, called it a park, it's a  
7 park under Charter Section 2.4.5. If it's not a park under  
8 2.4.5, it's a park because of common law dedication. And the  
9 McIntyre case is our authority for that.

10 The City, from 1966 forward, when this neighborhood  
11 was platted -- Hampden Heights East is this neighborhood in  
12 here. And it was platted in 1966, and all of these homes were  
13 built in 1968 and 1969. And this whole area was an open space  
14 area for the use of all the residents of Hampden Heights and  
15 for everybody in the city. There was a dirt trail through it  
16 which the Parks Department later improved to an asphalt trail  
17 and then, in more recent years, a concrete trail. And now  
18 about 2,000 cyclists a week ride this bike trail between  
19 downtown Denver and the top of the Cherry Creek Dam. So  
20 basically that's our case, Your Honor.

21 I can tell the Court that we have a stipulation on  
22 Exhibits 1 through 14. They are admitted without foundation.  
23 And the same with 18 through 25. And Exhibit 48, as well. So  
24 the way this --

25 THE COURT: All right. Well, those are admitted.

1 (Plaintiff's Exhibits 1-14, 18-25, 48 admitted into  
2 evidence)

3 MR. CASE: Thank you. The way this all came to a  
4 head is in 2012 residents of Hampden Heights and neighborhood  
5 organizations were notified there was going to be a land swap  
6 that was going to trade out 11 acres out of this bottom  
7 triangle. And when the residents protested at, first, the  
8 Parks Advisory Board, then the Denver Public School Board, then  
9 the City Council, they were just blown off and an ordinance  
10 passed approving the land swap with DPS.

11 DPS's plan is to build an elementary school here, in  
12 a flood plain, next to a five-lane highway with a 45-mile an  
13 hour speed limit. The Plaintiffs think that this is not  
14 appropriate, but -- as a location for a school, but there's no  
15 -- the School Board should not be taking park land to build  
16 schools. These are parks. These are open space areas that  
17 belong to the citizens of Denver, and they can't just be traded  
18 away by city officials.

19 Thank you, Your Honor.

20 THE COURT: So, clarify for me. You've indicated  
21 that you've got two theories as to why that lower triangle is  
22 park land, one of which is -- I don't know what your term was.  
23 Something, some kind of de facto common law theory based on --

24 MR. CASE: It's called common law dedication.

25 THE COURT: Common law dedication.

1 MR. CASE: That's our second theory.

2 THE COURT: Right.

3 MR. CASE: The first theory is when the City adopted  
4 Charter Section 2.4.5 in 1955 it said, "Any land used as a park  
5 by the City acquired prior to 1955 is a park." So they don't  
6 have to be designated by ordinance. This land was acquired in  
7 1936. It was listed on every city map as a park starting in  
8 1966 through today. Exhibit 1 and Exhibits 18 through 25 are  
9 all maps off the City website. Every single city map that they  
10 are publishing today lists this piece of ground as a park.  
11 There are signs posted that say it's a park. There are trail  
12 improvements done by the Parks Department. The Parks  
13 Department maintains it. They apply weed control. It's a  
14 park. Everybody knew it's a park. The City even gave it a  
15 name. They call it Hampden Heights North Park.

16 THE COURT: Okay. And the other question I have is,  
17 you mentioned the inappropriateness of putting an elementary  
18 school in a flood plain. Is that a challenge? Are you asking  
19 me to rule on the appropriateness of Denver Public Schools'  
20 choice for this location, based on why would anybody put a  
21 elementary school in a flood plain kind of thing?

22 MR. CASE: Next to a five-lane, 45-mile-an-hour  
23 highway. Yeah. We are. That goes into the fifth and sixth  
24 factors, which require the Court to -- in considering a  
25 preliminary injunction, to balance the equities. And the

1 City's -- or, the DPS argument is, "We need this location real  
2 bad because the schools are overcrowded." And we're saying  
3 this is an inappropriate location; there are plenty of other  
4 places to build a school.

5 THE COURT: So you're not asking me to -- well, maybe  
6 you are. You're not -- tell me, are you asking me to make a  
7 finding that Denver Public Schools' choice of this location for  
8 a elementary school is in some legal sense -- well, in some  
9 legal sense should be stopped by court order?

10 MR. CASE: No. We're saying it's a factor to  
11 consider when balancing the equities.

12 THE COURT: So it's -- that's where it fits into the  
13 Rathke factors?

14 MR. CASE: Yes.

15 THE COURT: Okay. All right.

16 MR. BROADWELL: Thank you, Your Honor.

17 The City is opposing the motion for preliminary  
18 injunction because it's our position that the Plaintiffs can't  
19 meet the Rathke standards justifying the issuance of a  
20 preliminary injunction in this case. The major focus of our  
21 arguments as set forth in our response to the motion more fully  
22 are that they cannot show a reasonable probability of success  
23 on the merits of their actual underlying legal claims and that  
24 the granting of an injunction would substantially disserve the  
25 public interest, particularly the interests on the DPS side of

1 the world in terms of getting a school built in this location.  
2 We do address to some degree some of the other Rathke  
3 standards, but that's basically the thrust of our response to  
4 their motion.

5 On the issues of reasonable probability of success on  
6 the merits, Mr. Case didn't mention in his opening, there are  
7 actually two quite different legal theories in play here. The  
8 one that he addressed was whether or not it was illegal for  
9 City Council and DPS to enter into the real estate contract on  
10 the theory that it violates Section 2.4.5 of the Charter,  
11 meaning that it should have been put to a vote of the people  
12 before the conveyance of the property was approved. But his  
13 complaint and motion also go to claims against Debra Johnson,  
14 the Clerk and Recorder, a dispute they're having with the Clerk  
15 about the fact that at the same time as they're bringing this  
16 suit, arguing it automatically should have gone to a vote, they  
17 were trying to force a referendum on the same thing via a  
18 referendum petition. And I'll address that briefly in just a  
19 moment, even though Mr. Case didn't.

20 Back on the issue of the land exchange, Your Honor,  
21 we believe this case is a fairly straightforward question of  
22 interpreting the actual language of the City Charter. The City  
23 Charter, Section 2.4.5, defines precisely the circumstances  
24 under which voter approval is required to convey park land.  
25 Now, in general, as we cited in our response, in general real

1 estate transactions by the City can be approved simply by the  
2 mayor and the City Council acting by ordinance. That's the  
3 general rule, that the executive branch and the legislative  
4 branch can get together and approve a transfer of city-owned  
5 property. But there are exceptions in the charter for certain  
6 types of park land requiring voter approval prior to their  
7 conveyance.

8           And those two -- there are two distinct triggers in  
9 the Charter for when voter approval is required. One is, if  
10 there's ever been official dedication or designation of the  
11 subject property as park land by ordinance, then, once that has  
12 happened the property cannot be alienated without voter  
13 approval. The Plaintiffs haven't shown and can't shown -- show  
14 in this case that there was ever any ordinance formally  
15 dedicating or designating this property as park land within the  
16 meaning of that trigger.

17           The other trigger, which was just misquoted by  
18 Mr. Case -- I'll quote it more precisely -- is that voter  
19 approval is required for any "park belonging to the city as of  
20 December 31st, 1955." Thus, the question is whether or not the  
21 subject property reasonably met that definition as a park  
22 belonging to the City as of 1955.

23           Now, there's no dispute in this case that the title  
24 to that property was vested in the City as long ago as 1936.  
25 But we strongly dispute the notion that it could be considered

1 a park belonging to the city as of 1955, because it certainly  
2 wasn't. The property was vacant. It had been acquired  
3 originally for drainage and flood control; was not really being  
4 used or managed for any other purpose as of 1955 when the key  
5 charter amendment occurred. So we think, as a matter of law  
6 and as a matter of fact, that neither of the triggers for voter  
7 approval are met in this case, nor can they be proven.

8 Now, we have reason to believe, based upon the  
9 complaint and the motion, that evidence -- additional evidence  
10 is going to be offered here today as to a lot of facts and  
11 circumstances and so forth occurring after 1955 which the  
12 Plaintiffs believe have caused the property to take on the  
13 de facto status of being a park. But our -- I don't intend to  
14 argue relevancy each and every time someone makes that sort of  
15 assertion, but I want to frame it for the Court to understand  
16 that it's our position that there isn't a third way. There  
17 isn't some way that property could have de facto become a park  
18 under some common law theory. The Charter controls. The  
19 Charter provides the two triggers for voter approval; neither  
20 of which were met in this case.

21 And briefly, Your Honor, on the other aspects of the  
22 complaint against Debra Johnson. The Plaintiffs assert that  
23 Johnson was incorrect in denying the referendum petition to  
24 refer the ordinance, Ordinance 170, approving the real estate  
25 transaction. They're attempting to refer it to a vote of the



1 people via the referendum. Colorado law is crystal clear on  
2 the fact that contract ordinances, transactional-type  
3 ordinances, are not legislative, not subject to the referendum  
4 power under the Colorado Constitution. Clerk Johnson took that  
5 position. She rejected their petition forms, and the  
6 Plaintiffs are disputing that in terms of claiming that she  
7 erred, as well.

8           Again, mainly a question of law, and we just invite  
9 the Court, as we set forth in our response to the motion, there  
10 is abundant case law on this, including cases involving sale of  
11 open space and other real estate transactional matters where  
12 the Supreme Court has consistently held that ordinances and  
13 city actions of that nature are simply not subject to  
14 referendum, up to and including a Supreme Court decision just  
15 this year, Wagner versus City of Aspen, which is an  
16 encyclopedic review of all the cases in this area that talk  
17 about legislative versus non-legislative in terms of what is in  
18 fact subject to referendum in Colorado.

19           THE COURT: Okay; thanks.

20           MR. BROADWELL: Thank you.

21           THE COURT: First witness. Or, wait. DPS; anything?

22           MR. KECHRIOTIS: Just real briefly, Your Honor. Your  
23 Honor, the Denver Public Schools will offer three witnesses to  
24 speak about the potential damages that would be suffered by  
25 Denver Public Schools if the injunction is granted. We'll also

1 offer two school board members to discuss the need for the  
2 school as well as the process by which the site was selected.

3 THE COURT: Thank you.

4 MR. CASE: Plaintiffs call David Longbrake.

5 DAVID LONGBRAKE, PLAINTIFF'S WITNESS, SWORN

6 DIRECT EXAMINATION

7 BY MR. CASE:

8 Q Good morning, Mr. Longbrake. Would you please  
9 introduce yourself to the Court?

10 A I am David Longbrake.

11 Q Spell your last name?

12 A L-O-N-G-B-R-A-K-E.

13 Q Where do you live?

14 A 3016 South Geneva Street, Denver, Colorado, 80231.

15 Q Do you own that property?

16 A Yes.

17 Q When did you buy it?

18 A August 1976.

19 Q How close is it to the property that's in dispute  
20 here?

21 A It abuts onto the property.

22 Q Can we see Exhibit 1. So, where is your house on  
23 this map? Can you see the exhibit okay?

24 THE COURT: Here.

25 THE WITNESS: Oh. Where am I pointing to?

1 THE COURT: Here you are. Take that.

2 BY MR. CASE:

3 Q Where your house is?

4 A Oh.

5 THE COURT: Just press it.

6 THE WITNESS: Okay. Right here.

7 BY MR. CASE:

8 Q Does your backyard look out on this area called  
9 Hampden Heights North Park?

10 A Yes. Right there.

11 Q So your fence adjoins that property?

12 A Yes.

13 Q Why did you come to buy that house in 1976? Were you  
14 changing jobs?

15 A Yes.

16 Q Where did you go to work in Denver?

17 A University of Denver.

18 Q What do you do there, or did you do?

19 A Professor in the Department of Geography.

20 Q Did you have a family?

21 A Yes. A wife and three children.

22 Q How old were your children?

23 A Seven, five, and one at that time.

24 Q Why did you pick this house at this location?

25 A Okay. I started out with a certain amount of

1    trepidation coming to Denver to look for a house myself,  
2    leaving my wife behind with the kids. Knowing that if I didn't  
3    do this right I would probably hear about it ad nauseam. We --

4               THE COURT: Welcome to my world.

5               THE WITNESS: Your Honor, I beg the Court's  
6    indulgence. I'm recovering from an upper respiratory tract  
7    infection that I picked up from visiting my two small grandsons  
8    in Santa Barbara recently. I'm happy to say I'm not infectious  
9    anymore, but I haven't recovered my voice and I'm not sure how  
10   long that's going to work. But anyway.

11              My wife and I talked about this and we decided we  
12   wanted to buy a home specifically in Denver because in Miami  
13   they already had busing and my older child had benefited from  
14   the cross-cultural experience with the Cuban culture. And so  
15   we wanted to be in Denver because we had heard that Denver also  
16   had busing and we wanted to continue our children's experience  
17   in cross-cultural experiences.

18              So I was looking for a property specifically in the  
19   City and County of Denver. The University of Denver is in  
20   southeast Denver, so I was also looking down in the southeast  
21   quadrant of the city. And probably the most important  
22   consideration, based on what I said about the ad nauseam  
23   factor, I wanted to do a very careful and thorough search with  
24   the principal consideration in mind being my wife and my  
25   family. And what I was looking for in my wife's case was a

1 good, nice, stable neighborhood. For my children, some elbow  
2 room and open space in which they could be outside and enjoy  
3 the outdoors and nature.

4 BY MR. CASE:

5 Q All right. So what amenities that you were looking  
6 for did this house offer?

7 A Well, first of all, my -- I'll tell you about how  
8 this came about.

9 Q Well, we got to speed up here. Okay?

10 A Okay.

11 Q So, did it have open space?

12 A Yes; it did. The realtor I worked with that I had  
13 talked to before I came had several properties in mind. I had  
14 told him my general price range and what I was looking for, and  
15 he said, "There's one I want you to see that's out of your  
16 price range and farther away from the university." And he  
17 brought me out to this property.

18 Q All right.

19 A And it had -- I could see it had open fields in the  
20 back. He had gone to some trouble; apparently was very  
21 interested in selling this property. He gave me a plat map  
22 with a lot of information on it, including designating bike  
23 trails and a golf course. He knew I was a biker. I bike to  
24 work. That I play golf. I tried not to act too enthusiastic.  
25 The price goes up with realtors, but I was definitely

1 interested. And came back that evening to walk out and walk  
2 around the property and look at it. It was awesome. The views  
3 -- there were no buildings across the way. There were trails.  
4 A good place to jog, bike, run; all the things that I and my  
5 wife and my family do.

6 Q Before purchasing the home did you do any  
7 investigation with officials of the City of Denver?

8 A Yes. Of course, as I said, I was going to do a  
9 careful and thorough search, and on that plat map that the  
10 realtor had given me, it was penciled in "scheduled park." But  
11 I've learned through experience not to trust the word of  
12 realtors necessarily, and being a planner myself with some  
13 experience I knew that it was important if there's empty,  
14 undeveloped, open space around a property you're interested in,  
15 you need to find out what jurisdiction it's in, who owns it,  
16 and what other potential uses in the future in order to be able  
17 to avoid the possibility of later development that might spoil  
18 or destroy the nature of the site; in this case, the open  
19 aspect of it.

20 Q So, what did you do?

21 A So I went to -- being a planner, I went to the City  
22 and County of Denver's Planning Office to answer these  
23 questions. Introduced myself as a planner. They were very  
24 helpful; pulled out maps, et cetera. And the first thing I  
25 notice is that there were two separate parcels that abutted,

1 both of which about the property that I was interested in. And  
2 that was interesting because I had walked around and looked.  
3 There was no fence or any particular -- no way to tell that  
4 there were two separate properties.

5 But, in any case, they showed me maps that indicated  
6 that both parcels were within the City and County of Denver;  
7 information that both were owned by the City and County of  
8 Denver; and from a flood plain map that both of the parcels  
9 were in a flood plain. So I asked what are the uses that are  
10 permitted within a flood plain, and they dug out a relatively  
11 short list, most of which had to do with parks, open space,  
12 recreational uses.

13 There were a few other things, too, that was -- were  
14 a little concerning, but they said that -- not to worry about  
15 those because in fact both parcels were park land managed by  
16 the City's Parks Department and which was even more restrictive  
17 in terms of the uses. And they ended up giving me a pamphlet  
18 which I've shared with you, which showed the use of both of  
19 those properties as being public open parks.

20 Q Could you look at Exhibit Number 14, please? You've  
21 got a book in front of you; Tab 14. You can take it out of the  
22 little envelope there.

23 A Oh.

24 Q What is Exhibit Number 14?

25 A This was the land use map of Denver prepared as of

1 June 1st, 1967.

2 Q Where did you get it?

3 A I got it -- they were kind enough to share this with  
4 me and give me -- give this to me when I was at the Planning  
5 Office on that particular occasion.

6 THE COURT: I'm sorry. I may have misunderstood.  
7 What was the date you said of this?

8 THE WITNESS: The document itself, June 1st, 1967.

9 THE COURT: Oh; okay. So this is what they gave you  
10 in 1976 or thereabouts?

11 THE WITNESS: Yes.

12 THE COURT: Okay.

13 BY MR. CASE:

14 Q Now, Mr. Longbrake, did you make any marks on that  
15 showing the location of your home?

16 A Yes; of course. There's -- I circled it here in the  
17 position that I showed before on the screen.

18 Q All right. Can you show the judge the circle mark  
19 you made?

20 Okay. And did you make any notes on that in your own  
21 handwriting?

22 A Well, yes, I got a few other little notes on here:  
23 "Paradise Valley Country Club. Interested in golf. The U.S.  
24 Government Reserve below the Cherry Creek Reservoir Dam." I  
25 got a little sketch there of the property itself that I had



1 sort of doodled on here.

2 Q Have you kept this in your possession ever since 1976  
3 when the City Planning Office gave it to you?

4 A Yes. I'm a packrat.

5 MR. CASE: Your Honor, we offer Exhibit Number 14.

6 THE COURT: I think it's already stip'd. So it's  
7 admitted.

8 MR. CASE: Yes, Your Honor.

9 BY MR. CASE:

10 Q Mr. Longbrake, is there a code or a key for  
11 understanding what the colors on this map mean?

12 A Yes. There is a -- being a geographer, mapping is  
13 one of my specialties. Yes; there is a key here, as there  
14 should be.

15 Q And could you look at Exhibit Number 15, please? Do  
16 you have 15?

17 A Yes.

18 Q Is 15 an enlargement of the lower right quadrant of  
19 the map in Exhibit 14?

20 A Yes.

21 MR. CASE: Your Honor, we offer 15.

22 MR. BROADWELL: No objection.

23 THE COURT: 15 is admitted.

24 (Plaintiff's Exhibit 15 admitted into evidence)

25 ///

1 BY MR. CASE:

2 Q Mr. Longbrake, what is the key that applies to the  
3 property behind your house to the north and east of your  
4 property?

5 A The color-coded key; is that what you're referring  
6 to?

7 Q Yes.

8 A Yes; it's under "Public and semi-public uses," and it  
9 is a specific one that says "Public open parks."

10 Q "Parks"?

11 A Parks.

12 Q Now, you mentioned you were a planner. Do you have  
13 some expertise in planning?

14 A Yes; considerable.

15 Q All right. Where did you get your undergraduate  
16 degree?

17 A Carroll College in Waukesha, Wisconsin.

18 Q Your major?

19 A Geography and history.

20 Q Year graduated?

21 A 1961.

22 Q Did you get a Master's?

23 A Yes.

24 Q In what --

25 A University of Chicago, 1964, in geography.

1 Q Did you get a Ph.D.?

2 A Yes.

3 Q Where?

4 A University of Iowa, 1972.

5 Q Subject?

6 A Geography.

7 Q Thesis topic?

8 A Retail location theory.

9 Q Did you have any experience planning for the  
10 government?

11 A Yes.

12 Q When?

13 A I was introduced to urban geography and planning  
14 during my Master's degree work at the University of Chicago,  
15 and I was employed directly after that into NIPC, the  
16 Northeastern Illinois Planning Commission, where I worked for  
17 three years.

18 Q What did you do there?

19 A Well, I was a research associate, working on projects  
20 and Chicago was a very vital, dynamic, interesting city. It  
21 was a great experience for a budding planner.

22 Q After you worked at the Northeastern Illinois  
23 Planning Commission where did you go?

24 A Well, that planning commission, by the way, was  
25 located downtown. It included Chicago and the six-county area

1 around it. I always knew I was going to go back for a Ph.D.  
2 At that time I would have gone back for a Ph.D. in planning,  
3 but planning was a relatively new form of profession. At that  
4 time there were no Ph.D. programs in planning, so I went back  
5 in geography again; University of Iowa.

6 Q Did you end up becoming a teacher?

7 A Yes. I went in January of 1970 to the University of  
8 Miami. I was a joint appointment in the Urban Studies Center,  
9 Department of Geography. And I taught planning and land use  
10 courses there, and continued my involvement in planning  
11 activities. In fact, I incorporated or joined Sorenson and  
12 Associates, Inc., which was a consulting firm in regional and  
13 community development, and was served as vice president of that  
14 particular company; had had offices in Illinois and Indiana.  
15 I was vice president in charge of operations in Florida, did  
16 extensive contract work in Broward County, which is the Fort  
17 Lauderdale area principally, with the Fort Lauderdale  
18 Department of Planning.

19 Q So you were doing city planning?

20 A Yes.

21 Q And getting paid --

22 A Plans for smaller communities like at White House  
23 Point, Denver Pines, et cetera.

24 Q And you mentioned you became a professor at the  
25 University of Denver?

1           A     Yeah. I also, at the time in Florida, joined the  
2 APA, which is the American Planning Association.

3           Q     Thank you. And then, in Denver, did you become  
4 chairman of the Geography Department?

5           A     Eventually. After serving some time.

6           Q     Did you have anything to do with helping interns  
7 learn city planning?

8           A     Yes. I carried over my planning activities from when  
9 I was in Florida, but I did them through the university to the  
10 benefit of the university and the students.

11          Q     You mean the University of Denver?

12          A     University of Denver. And placed planning interns in  
13 most of the planning departments in the Denver metropolitan  
14 area. I also became involved in the energy boom on the Western  
15 Slope in the late '70s. At the University of Denver, the  
16 Business School had a Ford Foundation grant to provide  
17 management. It turns out it was not management they needed; it  
18 was planning. And so I worked with them and placed planning  
19 interns who lived on-site in small communities on the Western  
20 Slope and in Wyoming to help assist with planning activities  
21 during the rapid growth period. And they would live there for  
22 as much as three to six months. And I supervised all of those  
23 and have continued on with an internship program as the  
24 technologies developed with automated mapping, GIS, GPS. I  
25 taught all of the first courses of that.

1           And planning interns continued -- the demand for them  
2 continued to mushroom. I had sometimes as many as 20 to 25  
3 interns working in various agencies around the state, both in  
4 private companies, in local government agencies, also like the  
5 Water Board, DRCOG, county government, particularly Denver,  
6 City and County of Denver. Also natural resources state of  
7 Colorado and many with the federal agencies out at the Denver  
8 Federal Center, principally with the National Park Service.

9           Q     All right.

10           MR. CASE: Your Honor, at this time we would offer  
11 Mr. Longbrake as an expert in city planning.

12           THE COURT: Any objection?

13           MR. BROADWELL: No objection.

14           THE COURT: He'll be allowed to testify as an expert  
15 in city planning.

16 BY MR. CASE:

17           Q     Mr. Longbrake, when you reviewed the city plan here,  
18 Exhibits 14 and 15, did you have an opinion about whether or  
19 not this was a good plan for the area in which you were living?

20           A     Well; yes, certainly. And it was through the  
21 information that I gathered there and what I was told, that I  
22 felt comfortable that this property behind -- or the area  
23 behind my house would be in some form of open space in  
24 perpetuity. And it was interesting too at the time, when they  
25 told me what uses were permitted in a flood plain, schools were

1 not mentioned as a permitted use.

2 Q Was there a neighborhood school for your children to  
3 walk to?

4 A Yes.

5 Q Where was that?

6 A Holm School, up across -- it was about maybe about a  
7 mile away.

8 Q And is there also a middle school on that campus?

9 A Yes; there is.

10 Q And is there still ground there that's unused?

11 A Substantial unused ground to the west of both of  
12 those facilities; yes.

13 Q Now, you mentioned earlier that your realtor gave you  
14 a plat map?

15 A Yes.

16 Q Could you look at --

17 A A portion of a plat map.

18 Q Could you look at Exhibit Number 16, please?

19 A That's it.

20 Q Is that the map the realtor gave you in 1976?

21 A Yes.

22 Q And there's handwriting on this in red. Whose notes  
23 -- whose handwriting is that?

24 A That's the realtor, if you can believe it. I think  
25 he was really wanting to push this site.

1 Q So he wrote in the names of all your neighbors?

2 A Yes. And I felt guilty about that and did go and  
3 speak to some of them. In fact, there's still six of them  
4 there who have lived there even longer than I have.

5 THE COURT: The X is the property you bought?

6 THE WITNESS: Yes.

7 BY MR. CASE:

8 Q Now, then, were the bike trails important to you,  
9 Mr. Longbrake?

10 A Absolutely. As I said, I biked to work in Miami to  
11 the University of Miami. I also biked to work to the  
12 University of Denver four or five times a week, which was a  
13 very good experience for me. It's a slower way of travel to  
14 see things through a beautiful area. And at that time, there  
15 were stables there. It was -- felt like living in the country.  
16 And I would plan my day -- it took about a half an hour to bike  
17 in -- plan my day in the morning as I rode my bicycle, and  
18 licked my wounds at night as I came home after the day's  
19 events.

20 Q About how many miles a year did you ride your bike on  
21 the trails emanating from your house?

22 A Well, it was seven miles each way, which is a perfect  
23 amount of exercise twice a day. Plus, I would ride the  
24 bicycles trails otherwise, too. High Line Canal and Cherry  
25 Creek, et cetera. Sometimes as often as 2,500 miles a year.



1 Q Now, are there other amenities in this -- that are  
2 shown on this map, like a neighborhood library, a pool and  
3 tennis courts, and so forth?

4 A Well, he --

5 Q In addition to the open space?

6 A He put everything in here that he thought would sell  
7 me, including a mention of the Kennedy golf course over here.  
8 And yes; the library, the pool, ball fields. The bicycle path  
9 up here by the High Line Canal, and the routing to get to it,  
10 et cetera.

11 Q Now, are you familiar with best practices for  
12 locating schools?

13 A Yes.

14 Q And where those --

15 A As general principles; yes.

16 Q What generally are the requirements for locating a  
17 school under best practices?

18 A Well, there's -- what's probably more important is  
19 the ones that are generally considered as things you should not  
20 be locating near. And that tends to be, with not even  
21 mentioning flood plains, which in my experience I've never  
22 encountered, in the situations that I've dealt with, a school  
23 in a flood plain. But also good principles and practices are  
24 to avoid being next to or near water features, such as streams,  
25 canals, or drainage ditches. Those --

1 Q Why?

2 A Those are accidents waiting to happen. There was  
3 one, a drowning in a pool just a couple of days ago on TV.  
4 These things happen. And also, to avoid being adjacent to or  
5 near high-use congested traffic arterials, for the same reason.  
6 These are hazardous kinds of situations for especially  
7 elementary schools or preschools.

8 Q Let me just ask you about the property we're looking  
9 at here. Is this a flood plain?

10 A Yes.

11 Q And on Exhibit Number 1, this yellow area; what is  
12 that?

13 A Well, that's the immediate first level flood plan.

14 Q And then what is the green area surrounding it?

15 A Okay; that is also the secondary flood plain for a  
16 larger event.

17 Q So, if a school were built in that area it would be  
18 subject to flooding in the event that Cherry Creek overflowed?

19 A Potentially. It would take a reasonable event to  
20 create that, with the exception of all of the development that  
21 has taken place since that time, there is so much impervious  
22 surface now that even with a moderate rainstorm now there is  
23 substantial flooding in the creek. To the point that the  
24 underpass that goes under Havana is frequently flooded.

25 Q Okay; so --

1 A And impassable.

2 Q All right. You mentioned the underpass that goes  
3 under Havana. Could you look at Exhibit Number 47?

4 A Yes.

5 Q What is this photograph of?

6 A Well, this is a sign as you enter the underpass that  
7 goes under Havana.

8 Q And which direction are you looking in the  
9 photograph?

10 A Let's see. This would be looking south.

11 Q And is the Hampden Heights neighborhood shown in the  
12 photograph?

13 A Yes.

14 Q And is the property that's in dispute in this case  
15 shown behind the sign?

16 A Yes.

17 MR. CASE: Your Honor, we offer Exhibit 47.

18 THE COURT: Any objection?

19 MR. BROADWELL: No objection.

20 THE COURT: 47 is admitted.

21 (Plaintiff's Exhibit 47 admitted into evidence)

22 BY MR. CASE:

23 Q What does the sign say, Mr. Longbrake?

24 A "Beware of flash flooding during rainfall."

25 Q Personally, have you seen the underpass trail

1 underneath Havana flood?

2 A Yes.

3 Q With water during heavy storms?

4 A Yes.

5 Q And you mentioned impervious services -- surfaces.

6 What did you mean by that?

7 A Well, by all the development that has gone in with  
8 streets and sidewalks and paving of all sorts. And --

9 Q And that tends to force more runoff toward the creek?

10 A Yes.

11 Q Whereas before, it would just get -- some of it would  
12 get soaked up in the dirt?

13 A That's right. Yes.

14 Q Now, then, in making your decision to purchase this  
15 home did you rely on the statements that were made to you by  
16 the Planning Office that this was a park and was going to  
17 remain a park?

18 A Yes. I think I've already indicated that that was  
19 the determining factor.

20 Q Would you have purchased this home if you had not  
21 been assured that this open space would remain in perpetuity?

22 A Absolutely not.

23 Q Why not?

24 A Who knows what would happen? And again, it was the  
25 character of the site itself as an open space and a place for

1 my children to play, et cetera, that was -- made the site  
2 desirable.

3 Q Now, you mentioned your children and play. Let me  
4 ask you. How did they use this -- these fields? This open  
5 area?

6 A Well, I should say that despite -- or my excitement  
7 over the site initially when I first saw it, even before I  
8 purchased it. Since that time it's proven to be even better,  
9 and it's become almost a focal point of much of the family  
10 life. And for several reasons. The views; I tore down my  
11 fence so I'd put in a lower one so I could have the vistas and  
12 see out through the property. I put a gate there so that my  
13 children would have direct access to the park area. In fact,  
14 that's what we used to tell them, "Go out back and play in the  
15 park." And they did all kinds of things with other kids in the  
16 neighborhood. Played hide and seek, capture the flag. They  
17 built forts, played cowboys and Indians. They dug in the  
18 sandpits. They got crawdads out of the creek. They rode their  
19 bicycles around. They created some of the paths that are still  
20 down there in the park yet. And then they would bring their  
21 little treasures back to us now and then of things that they  
22 found while exploring around, one of which was a huge rock that  
23 I have never checked, but I'll swear is a piece of petrified  
24 wood.

25 Q Now, then, have you seen wildlife back in this open

1 space area?

2 A Oh; good heavens, yes.

3 Q What kind of animals have you seen?

4 A There's the occasional deer that comes over from the  
5 Cherry Creek reservoir. There are lots of red fox. I even saw  
6 a black fox one time, which is very rare. There's skunks too.  
7 I'm not excited about all of these things. But beavers.  
8 Beavers built dams. In fact, just last night I saw a beaver in  
9 the creek. And this is very educational, very interesting.  
10 Where in a city like this do you find situations like this?  
11 I've seen muskrats; the prairie dogs, of course. Kids love  
12 those. There are mixed opinions about them. But birds, too.  
13 Owls, hawks, a black-crown night heron, other kinds of  
14 waterfowl. Ducks with baby ducks. Been very educational; a  
15 wonderful experience for my children as they were growing up.

16 Q Have you seen coyotes?

17 A Oh; yes.

18 Q Raccoons?

19 A Raccoons.

20 Q Are there horse trails back there?

21 A The raccoons climb over my house. The coyotes visit  
22 my yard on occasion. It's very interactive. And I think the  
23 first time I heard the raccoons I thought there was a burglar  
24 on the roof. They're big and they're not very stealthy.

25 Q Are there horse trails back there?

1 A Yes.

2 Q And do people --

3 A There are still some horses. Many fewer, because all  
4 the stables are gone now. And all -- much of the land along  
5 Syracuse as I drove down there, which originally got my  
6 attention when I was driving out to the site, is all gone. But  
7 at the same time, my wife and I could still walk out there, and  
8 down by the creek you still -- it was quiet, it was a  
9 sanctuary. It's still the sense of being in the country in the  
10 middle of a city.

11 Q Now, in the 36 years since you purchased your home  
12 have you seen the Denver Department of Parks and Recreation  
13 maintain and improve the park behind your house?

14 A Yes. On many occasions over the extended period of  
15 time that I've lived there. And again, I didn't teach in the  
16 summer. I was more involved in research and so forth. I was  
17 at home more. I could see people out working in the park. I  
18 would go out and talk to them and ask them what they were  
19 doing. And they did mowing, of course, of the fields  
20 especially behind the residential properties and the paths, but  
21 also came and sprayed noxious weed and did cleanup, picking up,  
22 trash or major things that people tend to sometimes dump there.  
23 And in all of this, I never notices that there was any  
24 distinction between the two parcels of land. It just seemed  
25 like all one big park land area, and they did same things in

1 both parcels. The only -- and of course they did improve the  
2 bicycle trails as well.

3 The only other thing that was a major and very  
4 interesting activity, and I don't know whether this was  
5 associated with the time that it was declared a natural area,  
6 is the park brought in goats. And this went on for about two  
7 weeks or so, or much of the summer. And this is down on the  
8 southern triangular wedge-shaped property that they put pens in  
9 and they brought goats in in the morning, and they were taken  
10 out in the evening, and the goats eat everything.

11 Q Can you show us where the goats where in Exhibit 1  
12 with the laser pointer?

13 A Okay. All up and down there here.

14 Q So that would be the area where this DPS proposes to  
15 build the school now?

16 A Yes.

17 Q When were the goats --

18 A And I guess the idea was that this was a natural way  
19 to improve the land or conserve things. The goats would eat  
20 all of the noxious plants and weeds that had invaded the area,  
21 and at the same time they seeded it with native grasses. And  
22 the idea was that the goats sharp hooves would punch these  
23 grass seeds and so forth into the ground so that would  
24 germinate. And I did spend some time out talking with the  
25 individual who was doing this, and they would move each -- move



1 the pen further north every time one section was completed,  
2 until the entire area was done.

3 Q Now, did the City mark the park with signs?

4 A Yes.

5 Q Could you look at Exhibit 35. I have it.

6 A Yes.

7 Q What is Exhibit 35?

8 A This is the entrance to the aforementioned park area  
9 from the west side.

10 Q Is would be the entrance to Hampden Heights Park  
11 North?

12 A North. I never realized it had a name.

13 Q Right.

14 A It was always just one piece of land.

15 Q And then could you look at Exhibit 35-2.

16 A Yes.

17 Q What is 35-2?

18 A That's a sign that's on the fence behind the pine  
19 here on the first exhibit.

20 Q Do these two photographs correctly depict the  
21 entrance to Hampden Heights North Park and the sign posted  
22 there by the Parks Department?

23 A Yes.

24 MR. CASE: Your Honor, we offer 35-1 and 35-2.

25 THE COURT: Any objection?

1 MR. BROADWELL: No objection.

2 THE COURT: Admitted.

3 (Plaintiff's Exhibit 35-1 and 35-2 admitted into evidence)

4 BY MR. CASE:

5 Q So where exactly is this sign, Mr. Longbrake?

6 A I said it's on the fence as you enter, go through the  
7 fence into the park land from the parkway on Hampden Heights  
8 east development.

9 Q Does this indicate whether or not Hampden Heights  
10 North Park is a park?

11 A One would certainly think so.

12 Q Does it say it's a park?

13 A Yes. It talks about Denver Parks and Recreational  
14 park rules, the following are not allowed in the park.

15 Q It has the City ever posted anything on this property  
16 saying it is not a park?

17 A No.

18 Q Since you've lived, has it been always open, unfenced  
19 and available to the public for use as open space park land?

20 A Yes. I have never, in all the time that I've  
21 interacted with various City agencies, et cetera, ever heard it  
22 referred to otherwise or been corrected and told it's not a  
23 park.

24 Q I'd like you to look now in the last few minutes here  
25 at some photographs that were taken along Cherry Creek, and see

1 if you can help us understand what this area is like using the  
2 photographs.

3 MR. BROADWELL: Your Honor, is this exhibit going to  
4 be entered? I think we're skipping ahead. This hasn't been  
5 moved.

6 THE COURT: 35-1 and 35-2 were admitted.

7 MR. BROADWELL: Okay.

8 THE COURT: I mean, is that what you're referring to,  
9 the photograph of the park sign?

10 MR. BROADWELL: The one on the screen now. In fact,  
11 I'm asking if that was previously stipulated.

12 THE COURT: No, but I thought I didn't hear any  
13 objections.

14 MR. BROADWELL: Okay, sorry.

15 THE COURT: Do you want to object?

16 MR. BROADWELL: I just had a question for the  
17 witness, if I can inquire one question.

18 THE COURT: Sure.

19 VOIR DIRE

20 BY MR. BROADWELL:

21 Q Quickly. Is the sign that we're looking at on this  
22 exhibit, you said it's where the trail and turnoff for the  
23 subdivision comes out into the larger property; is that  
24 correct?

25 A Yes. Enters into the other property, yes.

1 Q So is the physical location of this sign on the  
2 property that the City is proposing to sell to DPS or is it  
3 further north?

4 A It's at the north end of that property.

5 Q But not on the property the City is selling to DPS?

6 A Not this specific one.

7 MR. BROADWELL: Okay, thank you.

8 THE COURT: Could you use Exhibit 1 or 2 and show me  
9 where this sign is, for clarification?

10 MR. CASE: Use your pointer.

11 THE WITNESS: Okay, it would be right about here.

12 THE COURT: Thank you.

13 DIRECT EXAMINATION CONTINUED

14 BY MR. CASE:

15 Q Mr. Longbrake, could you look at Exhibits 31, 32 and  
16 33, please.

17 A Yes.

18 Q What are these photographs of?

19 A They're Cherry Creek as it a passes through the park  
20 land property.

21 Q And could you show the Judge with your pointer where  
22 these photographs were taken? Do these accurately depict the  
23 condition around Cherry Creek in the winter when there's snow?

24 A Yes.

25 MR. CASE: We offer 31, 32 and 33.

1 MR. BROADWELL: Your Honor, could I briefly inquire  
2 again?

3 THE COURT: Sure. Hold on a second on 32, sir. Are  
4 those houses in the background, is that Hampden Heights?

5 THE WITNESS: East.

6 THE COURT: East?

7 THE WITNESS: Yes.

8 THE COURT: And then -- okay.

9 MR. BROADWELL: Your Honor?

10 THE COURT: Yes.

11 MR. BROADWELL: Just my quick question.

12 VOIR DIRE

13 BY MR. BROADWELL:

14 Q Mr. Longbrake, would you agree that none of these  
15 pictures depict the property being conveyed by the City to DPS?  
16 They perhaps depict nearby property, but not the property being  
17 conveyed to DPS?

18 A Not the southern tip.

19 MR. BROADWELL: Thank you.

20 THE COURT: What does that mean, not the southern  
21 tip?

22 THE WITNESS: Well, it's a triangle wedge, so it  
23 would be the bottom-most tip of the wedge.

24 THE COURT: I'm confused. Can someone show me on the  
25 map the part that Denver Public Schools is --

1 THE WITNESS: Right here.

2 THE COURT: Okay. So there at the bottom of that  
3 triangle?

4 THE WITNESS: Yes.

5 THE COURT: And these pictures are taken a little bit  
6 north of that?

7 THE WITNESS: Over here.

8 THE COURT: Okay. How many acres was it? 11? 9?

9 MR. CASE: 11. 10.771.

10 DIRECT EXAMINATION CONTINUED

11 BY MR. CASE:

12 Q Mr. Longbrake, would you look at Exhibit 34, please.

13 A Yes.

14 Q What is that?

15 A The sign for Hampden Heights Park.

16 Q Where is that -- just show us where that sign is  
17 approximately on Exhibit 1.

18 A Right about there.

19 Q So this is a parkway area that leads up to the  
20 swimming pool?

21 A Yes.

22 MR. CASE: Your Honor, we offer 34.

23 THE COURT: Well, let's deal with 31, 32 and 33. Is  
24 there an objection on those or did you just want to clarify the  
25 location of the pictures versus the location of the school?

1 Proposed school.

2 MR. BROADWELL: Your Honor, our purpose needs to be  
3 as clear as possible. As I said in my opening, we question  
4 the relevancy of a lot of the testimony being offered here  
5 today in terms of the actual legal issue to be determined, so  
6 we're just looking for clarity here. Whenever something is  
7 depicted or shown, we want it to be clear whether it is the DPS  
8 property or it isn't. And we would say the same thing about  
9 Exhibit 34. We'd ask the witness whether that depicts anything  
10 on the site to be conveyed from the City to DPS.

11 MR. CASE: Should the witness answer that question?

12 THE COURT: Sure, go ahead.

13 THE WITNESS: No, that's not on the property.

14 MR. CASE: So, Judge, just to establish -- to respond  
15 to Mr. Broadwell's relevance argument, this 90-acre area is a  
16 -- one natural area. It's been treated that way by the Parks  
17 Department.

18 THE COURT: You mean the 90-acre triangle?

19 MR. CASE: The triangle piece is 26.

20 THE COURT: 26 acres.

21 MR. CASE: But it is part -- this northern piece  
22 called Hentzel Park is 64. So the two combined are 90. But  
23 there's no visible --

24 THE COURT: I understand.

25 MR. CASE: It's all one area.

1 THE COURT: All right. Well, 31, 32, 33 and 34 I  
2 will admit, recognizing the relevance objection by the City and  
3 I assume also by DPS.

4 MR. DEHERRERA: I'm sorry, Your Honor?

5 THE COURT: What's your position on 31, 32, 33 and  
6 34?

7 MR. DEHERRERA: Your Honor, we have no objection.

8 THE COURT: All right. So they will be admitted.

9 (Plaintiff's Exhibits 31, 32, 33 and 34 admitted into  
10 evidence)

11 BY MR. CASE:

12 Q Mr. Longbrake, in 1987, was there an issue with a  
13 developer wanting to put a Water World park in this park?

14 A Yes.

15 Q What happened to that?

16 A It was successfully denied.

17 Q By whom?

18 A By the Parks Department.

19 Q Would you look at Exhibits 36, 37, 38, and 39,  
20 please.

21 MR. CASE: Judge, I'm asking permission to use  
22 leading questions for these to speed them up.

23 THE COURT: All right.

24 THE WITNESS: Okay.

25 ///



1 BY MR. CASE:

2 Q Mr. Longbrake, between 1990 and 2006, did the Parks  
3 Department install four metal footbridges --

4 A Yes.

5 Q -- to connect the trails through this natural area?

6 A Yes.

7 Q Are these four footbridges shown in Exhibits 36, 37,  
8 38 and 39?

9 A Yes.

10 MR. CASE: Your Honor, we offer 36 through 39.

11 THE COURT: Where are these located on Exhibit 1?

12 MR. CASE: May I respond to that?

13 THE COURT: Yes.

14 MR. CASE: Judge, 36 is right up here at the  
15 confluence with the High Line Canal. 37 is right here. It's a  
16 bridge into the greens and the park. 38 is a footbridge that  
17 is right here, goes over a little creek that leads into Cherry  
18 Creek. And 39 is the bridge that gets you out of Hampden  
19 Heights North Park over Cherry Creek toward Havana.

20 THE COURT: Any questions or objections on 36, 37, 38  
21 and 39?

22 MR. BROADWELL: Again, just to pointedly ask the  
23 question again, are any of these bridges located on the  
24 property to be conveyed to DPS?

25 THE WITNESS: No, but the latter one is very close.

1 MR. BROADWELL: Same comment as before, Your Honor.

2 THE COURT: Okay.

3 BY MR. CASE:

4 Q So Mr. Longbrake, looking at --

5 THE COURT: Hold on a second.

6 MR. CASE: Sorry.

7 THE COURT: What's the public school's position on  
8 those exhibits?

9 MR. DEHERRERA: We have no objection.

10 THE COURT: All right, those will be admitted, 36,  
11 37, 38 and 39, with the notation of the City's relevancy  
12 objection.

13 (Plaintiff's Exhibits 36, 37, 38 and 39 admitted into  
14 evidence)

15 THE WITNESS: Although children would be using that  
16 bridge.

17 THE COURT: 39?

18 THE WITNESS: Yes.

19 BY MR. CASE:

20 Q How would they be using it?

21 A They'll have to cross Cherry Creek.

22 Q Mr. Longbrake, looking at 36 --

23 A Yes.

24 Q -- do you see these rocks?

25 A Yes.

1 Q Pile of rocks here that the water sort of tumbles  
2 over?

3 A Yes.

4 Q What is that?

5 A Well, they're called drop structures and they're to  
6 help prevent the natural erosion processes of streams from  
7 undermining the bridge.

8 Q And is there another drop structure located in  
9 Hampden Heights North Park?

10 A Yes, there is.

11 Q Could you look at Exhibit 40.

12 A Yes.

13 Q Is Exhibit 40 the drop structure in Hampden Heights  
14 North Park?

15 A Yes.

16 Q And if we could put up Exhibit, where approximately  
17 is that drop structure?

18 A Right there.

19 THE COURT: Where again? Okay.

20 MR. CASE: Your Honor, we offer Exhibit 40.

21 THE COURT: Same objection by the City?

22 MR. BROADWELL: Yes, sir.

23 THE COURT: So noted. No objection by Denver Public  
24 Schools?

25 MR. DEHERRERA: No objection.

1 THE COURT: All right. What was it, 40?

2 MR. CASE: Yes.

3 THE COURT: It will be admitted.

4 (Plaintiff's Exhibit 40 admitted into evidence)

5 BY MR. CASE:

6 Q Mr. Longbrake, could you look at Exhibit Number 41.

7 A Yes.

8 Q And 42 and 43, please.

9 A Yes.

10 Q All right. What is Exhibit 41?

11 A That's the junction of the entrance to Hampden  
12 Heights North Park coming down from the parkway and crossing  
13 over the bicycle path. There's a dirt path that goes down to  
14 the drop structure.

15 THE COURT: Off to the left?

16 THE WITNESS: To the left.

17 BY MR. CASE:

18 Q And then it says Cherry Creek Trail South. Where  
19 does that lead?

20 A Cherry Creek Trail South goes up over the dam to  
21 Cherry Creek Reservoir Park about 20 miles further south, and  
22 eventually down to the Castlewood Park.

23 Q And does Cherry Creek Trail South run through Hampden  
24 Heights North Park?

25 A Yes, it does.

1 Q And does that bike trail cross over the bridge that  
2 we saw in Exhibit 39?

3 A Yes.

4 Q About how many cyclists use that bike trail now every  
5 week?

6 A Oh, I've sat out there and counted it at times and it  
7 varies between holidays and weekends and the regular week, but  
8 there's -- I would say a thousand or more, maybe two. It's  
9 very heavily used.

10 THE COURT: Excuse me, did you say on Exhibit 41 that  
11 that bridge kind of in the middle there is the Exhibit 39  
12 bridge? Did I understand you to say that?

13 MR. CASE: No, Your Honor. That's not correct.

14 THE COURT: Okay. What bridge --

15 MR. CASE: The bridge in 41 is the bridge in 38.

16 THE COURT: Okay.

17 BY MR. CASE:

18 Q Mr. Longbrake --

19 A In fact, that path has been so heavily used they had  
20 to paint a center line to keep people on either side.

21 Q Where is that center line?

22 A Down in the underpass going under Havana.

23 Q Now then, we see a photograph here in 42 and 43 of a  
24 bench and a plaque. Can you tell us about that?

25 A Yes. I donated it in my wife's honor, who died of

1 breast cancer in '08. We spent so much time walking back here,  
2 it was an area that she loved, that I got in touch with the  
3 Parks Department about putting a bench at this site because I  
4 travel so much on these paths I see benches around at various  
5 places, including the drop structures, and I thought this would  
6 be appropriate, and the park agreed to that, and it was a  
7 lovely spot.

8 And actually, I offered to put in picnic benches and  
9 other facilities, but they said no, the bench would be allowed  
10 because it was a resting area for people using the trail, but  
11 no other development would be allowed in the provisions of a  
12 natural area that would draw more people to the site or make  
13 more intensive use of the site.

14 Q Who told you that?

15 A Dan Pitner, the parks naturalist. He was supervisor  
16 of parks operations, I guess.

17 MR. CASE: Now then, Your Honor, have we offered 41,  
18 42 and 43? If I haven't may, I do so now?

19 THE COURT: Same objection by the City?

20 MR. BROADWELL: Yes, Your Honor.

21 THE COURT: All right. DPS, no objection?

22 MR. DEHERRERA: No objection.

23 THE COURT: 41, 42 and 43 will be admitted.

24 (Plaintiff's Exhibits 41, 42 and 43 admitted into  
25 evidence)

1 BY MR. CASE:

2 Q Mr. Longbrake --

3 A I still bicycle there several times a week and I  
4 always stop at that bench and sit down and tell her about the  
5 day and the grandkids, and I don't know that she's listening,  
6 but that's what I do and I'm happy when I see so many other  
7 people using it.

8 Q How would it affect this area if 500 to 750  
9 schoolchildren were located in the bottom 11 acres of this  
10 natural area, in a two-story building with asphalt parking  
11 lots, cars and so on?

12 A Well, one has to assume, of course, but based on  
13 generally accepted effects, it would certainly affect the  
14 wildlife activity in the area. It's still part of the eco  
15 system, however you want to cast it.

16 Q Now then, could you look at Exhibit 44.

17 A Yes.

18 Q What is this?

19 A Okay. This is a view actually behind my house. You  
20 can see the fence there that -- the lower fence that I put in,  
21 looking up from Hampden Heights Park North into I guess what is  
22 supposed to be Paul Hentzel Park.

23 Q So Paul Hentzel Park would be on the right and  
24 Hampden Heights Park would be on the left?

25 A Yes.

1 MR. CASE: Your Honor, we offer 44.

2 THE COURT: Same basic positions by Defendants?

3 MR. BROADWELL: Your Honor, we believe the photo does  
4 accurately show at least a portion of the property to be  
5 committed to DPS. We do object to the characterization to the  
6 photo on the cover sheet as an invisible boundary. But the  
7 photo does at least, in part, incorporate a view of part of the  
8 property, the subject property.

9 THE COURT: Show me where that would be on Exhibit 1.

10 MR. CASE: Got your pointer, Dave?

11 THE COURT: So we're looking - this is a view looking  
12 north and a little bit west?

13 THE WITNESS: Looking up this way, yes.

14 MR. CASE: Judge, I need to correct this. I don't  
15 want to mislead the Court. This photograph, see the pole here?

16 THE COURT: Right.

17 MR. CASE: That telephone pole is right here.

18 THE COURT: Right. That's what I thought.

19 THE WITNESS: Uh-huh.

20 THE COURT: So this does not show --

21 THE WITNESS: It's looking up from here.

22 THE COURT: So, at best, this reflects the northern  
23 boundary of the 11 acres at issue.

24 MR. CASE: Yes.

25 THE COURT: Okay.



1           MR. CASE: The point of the photograph is to show  
2 there's no visible demarcation separating Hentzel Park from  
3 Hampden Heights North Park.

4           THE COURT: Oaky.

5           MR. CASE: May it be admitted, please?

6           THE COURT: Yes.

7           (Plaintiff's Exhibit 44 admitted into evidence)

8 BY MR. CASE:

9           Q     Mr. Longbrake, I'd like you to look at one more  
10 picture. That's Exhibit 46.

11          A     Yes.

12          Q     What does this show?

13          A     This again is looking up at -- from further south  
14 now, which does incorporate the parcel in question and it's an  
15 unobstructed view, which is unique in parks. It gives really a  
16 spectacular view corridor.

17          Q     So the photograph would be taken from down here?

18          A     Yes.

19          Q     And it's looking north?

20          A     Yes.

21          Q     And so it's showing the land where DPS proposes to  
22 build a school?

23          A     Yes.

24          Q     Right here in the foreground. How would that affect  
25 the view if there was a two-story building in front of your

1 face instead this vista?

2 A It would severely impact it, of course.

3 THE COURT: Is that bridge Exhibit 39?

4 MR. CASE: Exactly.

5 THE COURT: On the right-hand side?

6 THE WITNESS: Yes.

7 BY MR. CASE:

8 Q So Mr. Longbrake, as a person experienced in City  
9 planning, do you have an opinion whether DPS's proposal to  
10 build an elementary school in this park is considered best  
11 practices in City planning?

12 MR. BROADWELL: Objection.

13 MR. DEHERRERA: I'll object to the foundation. I  
14 don't think the witness has been entered or shown any  
15 foundation as having the expertise to give such an opinion.

16 THE COURT: I'll allow it. Overruled.

17 THE WITNESS: May I answer?

18 BY MR. CASE:

19 Q You may answer.

20 A Okay. Yeah, based on good planning principles and  
21 practices, this could or would be conceived as a hazardous and  
22 not an appropriate site for this kind of a use.

23 Q What would be hazardous about it?

24 A Well, again, we've talked about some of that already.  
25 Congestion, the entrance to the site off of Havana, there's

1 only two lanes going south, while there's three lanes going  
2 north.

3 Q What's the speed limit?

4 A There is no provision to turn left into the site when  
5 you're going north. If you have a reduced school speed limit,  
6 that's going to slow down and congest traffic even more. The  
7 entrance on the south end is, at best, 100 feet from the  
8 intersection of Girard with Havana. That's going to be huge  
9 congestion again with drop-offs and busses. There is no room.  
10 It's already a busy intersection that most of the people in the  
11 neighborhood use for egress from the development going north on  
12 Havana, plus all the office buildings there and all the cars  
13 and the traffic. It's going to be a mess.

14 Q All right. So what's the speed limit on South Havana  
15 Street?

16 A Forty-five.

17 Q You say there's two lanes going south?

18 A Only two lanes going south, three going north. So  
19 it's more congested coming south, which is the entrance to the  
20 site.

21 Q You mentioned a concern with safety. Is part of that  
22 the issue with the speed on Havana Street and the amount of  
23 traffic?

24 A Speed and congestion, yes.

25 Q All right. Would the possibility of flooding present

1 any hazard?

2 A Well, the possibility of flooding in the underpass.  
3 Now, the reconstruction of the bridge on Havana going across  
4 Cherry Creek elevated the paths a little bit, but obviously  
5 from the sign there there's still the potential for flooding.  
6 And in the past that's happened frequently.

7 It's also -- the golf courses uses that as a cart way  
8 path. There's two paths that go under there. That one is  
9 lower, and oftentimes that shuts down the use of the course  
10 when it does flood there. But the other aspect of the creek  
11 there is the fact that children will be drawn to the area.  
12 They will wander off. There's always the potential there for  
13 someone drowning in a water facility.

14 Q What if something happened at Cherry Creek Dam like  
15 happened with the Big Thompson Dam?

16 A Well, again, one never knows. There was just a few  
17 years ago that the press made much of a terrorist threat, one  
18 of which targets was to blow up Cherry Creek Dam. If that  
19 should happen -- I thought about that when I bought this  
20 property. If that dam ever goes, I'm the first one gone.

21 Q So if the dam failed, would it take out the school?

22 A Oh, of course. One might claim that the dam is  
23 overbuilt. Well, yes, it's always overbuilt until it's  
24 breached, and then you scratch your head and say, well, that  
25 wasn't supposed to happen, but it did.

1 Q Mr. Longbrake, did you find out about this proposal  
2 to build a school here in fall of 2012?

3 A Yes.

4 Q Did you write a letter to the City?

5 A I wrote to the Parks Department when they were having  
6 hearings on this. Angela Casias, I guess it was, spelling out  
7 what some of my concerns were about the use of this particular  
8 site as being inappropriate, at least or best, and hazardous.

9 Q Essentially, in your letter did you point out the  
10 same concerns that you've testified to this morning?

11 A Yes.

12 Q Ever get a letter back from a City official?

13 A No.

14 MR. CASE: That concludes my direct examination, Your  
15 Honor.

16 THE COURT: All right. How long for cross do you  
17 think?

18 MR. BROADWELL: Very short for me.

19 MR. DEHERRERA: Maybe five, ten minutes.

20 THE COURT: All right. Let's get it done. Then  
21 we'll take a break.

22 MR. BROADWELL: Mr. Longbrake, just a few questions  
23 from me. I think one of the things I would like to do first is  
24 offer another map, an aerial photograph which does purport to  
25 depict the -- which does depict the DPS site that's a part of

1 the conveyance. It's marked as Defendant's Exhibit F, Your  
2 Honor. We had five exhibits attached to our response, so we're  
3 starting with F.

4 THE COURT: To your response?

5 MR. BROADWELL: Response to the motion for  
6 preliminary injunction.

7 THE COURT: David, could you print those out?

8 Go ahead.

9 MR. BROADWELL: I'm sorry, I don't have this in the  
10 form of an overhead, but I would like to offer this to clear up  
11 where the 10.7 acres are down at the southern tip of the  
12 property.

13 CROSS-EXAMINATION

14 BY MR. BROADWELL:

15 Q So would you take a quick look at this. Does this  
16 appear to be a fairly accurate view of your neighborhood  
17 adjacent to the property we've been talking about here this  
18 morning?

19 A Yes.

20 Q So I call your attention especially to what we have  
21 been calling the southerly tip. Look below that yellow line  
22 you see in the middle. Is that your understanding from there  
23 down to Havana is the property the City is proposing to sell to  
24 DPS; is that accurate as far as your understanding goes?

25 A Yes.

1 Q Okay. And I assume one of these rooftops to the left  
2 would be your home directly adjacent to that property.

3 A Not to the one on the southern end, no. I'm on the  
4 northern end.

5 Q Okay. I understand, but you're one of those houses  
6 we see depicted in the picture?

7 A Yeah, in the picture. Yes.

8 Q One other detail question in terms of what's visually  
9 depicted here. Down toward the very south on the property,  
10 next to the Havana Street, is what appears to be a large  
11 parking lot; is that accurate?

12 A Yes.

13 Q As a long-time resident, what's your understanding  
14 about whether it's in use or whether anything is going on with  
15 that parking lot right now?

16 A It's not in use. It's been abandoned. It's  
17 overgrown. And I think there was the intent by the Parks  
18 Department to remove it.

19 Q Moving a little bit further north in the picture,  
20 again the yellow line depicting the division between below  
21 what's being sold to DPS, above what's being retained, would  
22 you agree that that main Cherry Creek bike path that serves all  
23 those cyclists, including yours truly, is outside of the area  
24 being conveyed to DPS?

25 A Yes, it is.

1 Q And the golf course that's a part of Kennedy Golf  
2 Course a little further north is also outside the area being  
3 conveyed to DPS?

4 A Yes.

5 MR. BROADWELL: Thank you. Your Honor, we would  
6 offer Exhibit F, Defendant's Exhibit F.

7 MR. DEHERRERA: No objection.

8 MR. CASE: No objection.

9 THE COURT: Admitted.

10 (Defendant's Exhibit F admitted into evidence)

11 MR. BROADWELL: I'm have no further questions of the  
12 witness as to that exhibit. If you would like to hand it to  
13 the Judge, Mr. Longbrake, so he can have it in front of him.

14 BY MR. BROADWELL:

15 Q Just a couple of questions for you. Long-time  
16 residence, 1976, and I appreciated your testimony as to when  
17 you purchased the property. Do you have any personal knowledge  
18 as to the use, condition or status of the property as of  
19 December 31, 1955, meaning the property the City is proposing  
20 to sell to DPS? Do you know anything about its status and use  
21 as of December 31, 1955?

22 A No.

23 Q Have you ever seen an ordinance of the City Council  
24 formally designating or dedicating this property as a park  
25 adopted by the Denver City Council?



1 A No.

2 Q And kind of related to that last question, I know  
3 that we've offered into evidence now a planning document that  
4 you saw at the time you purchased your house. As an expert on  
5 urban planning, land-use planning, you're aware, aren't you, of  
6 the difference between a plan and a law?

7 A Yes.

8 Q Okay. And a plan is not technically an ordinance of  
9 the Denver City Council?

10 A But it does reflect intent.

11 Q I understand. But it's not a law or an ordinance of  
12 the City. Is that a yes?

13 A Yes.

14 THE COURT: Counsel, let me just clarify this Exhibit  
15 F. There's the triangle and then there's -- is the 10.7 acres  
16 this part incorporating the parking lot?

17 MR. BROADWELL: Yes, Your Honor. Everything below  
18 that yellow line down to Havana, incorporating the parking lot,  
19 comprises the 10.77 acres.

20 THE COURT: Okay. And as to the area at the top of  
21 the triangle, has that been designated park land?

22 MR. BROADWELL: Our witnesses who are coming are  
23 going to put it in that context exactly. Everything outside  
24 that yellow line has, in fact, now been formally designated as  
25 a park by the City, going up the creek into -- as a part of

1 Hentzel Park, as you hear that term used today. That's now a  
2 part of Hentzel Park formally.

3 THE COURT: Okay.

4 BY MR. BROADWELL:

5 Q And then just one final question, Mr. Longbrake, and  
6 that is I think I heard you say in your testimony that before  
7 now you had never heard the name Hampden Heights North Park  
8 applied to the property behind your fence line; is that  
9 accurate?

10 A Yes, it was always just referred to as a park.

11 MR. BROADWELL: But not by that name. Okay. Thank  
12 you, very much.

13 THE COURT: Cross-exam?

14 CROSS-EXAMINATION

15 BY MR. DEHERRERA:

16 Q Mr. Longbrake, have you ever been employed by a  
17 school district?

18 A No.

19 Q Have you ever been a paid consultant to a school  
20 district?

21 A No.

22 Q Have you ever performed coursework related to the  
23 siting or the site selection process for locating new schools?

24 A Not specifically.

25 Q Have you ever provided written comments regarding

1 site selection process for schools?

2 A No.

3 Q Have you participated in any public meetings  
4 regarding the site selection process regarding this proposed  
5 school?

6 A No.

7 Q Do you have any understanding, under Colorado law,  
8 who is vested with the authority to determine the location for  
9 a particular school, for example, within the location, within  
10 the boundaries of the Denver Public School District; do you  
11 have any understanding who has the legal authority to determine  
12 that?

13 A This obviously varies from jurisdiction to  
14 jurisdiction, but I'm not directly familiar with what you're  
15 saying, no.

16 Q Do you know the status of the capacity at each of the  
17 local elementary schools in this area, Southeast Denver?

18 A Only by word of mouth.

19 Q You mentioned Holm Elementary School; is that  
20 correct?

21 A Yes.

22 Q Would you say that that's the elementary school  
23 closest to the proposed new school?

24 A Yes.

25 THE COURT: I'm sorry, I didn't catch that last

1 question.

2 MR. DEHERRERA: I asked the witness if he would  
3 characterize Holm Elementary School, which is the school that  
4 he mentioned during his direct as the nearest elementary school  
5 to the proposed school we're discussing today.

6 THE WITNESS: Yes.

7 BY MR. DEHERRERA:

8 Q Did you have any understanding about whether that  
9 school is at capacity or over capacity?

10 A It was my sense from those who work there that there  
11 is some capacity.

12 THE COURT: Is "some capacity" problem or is "some  
13 capacity" leftover?

14 THE WITNESS: Available, available, yes.

15 BY MR. DEHERRERA:

16 Q Who are those folks that you received that  
17 information from?

18 A Elizabeth Laugeson (phonetic) is one.

19 Q Who is she?

20 A She worked at Hamilton, in the office.

21 Q Now, we were speaking about Holm Elementary School  
22 and you said she works at Hamilton.

23 A Okay. What I've heard is from her.

24 Q But she works at a different school?

25 A She works at a different school but obviously they're

1 right next to each other.

2 Q Her position at Hamilton is?

3 A She was in the office in her function was scheduling.

4 Q So she's a scheduler. Do you recall specifics about  
5 what she told you about the capacity?

6 A No.

7 Q So it's just in casual conversation she says there's  
8 capacity at Holm?

9 A Yes.

10 Q You haven't done any research to see whether Holm is  
11 actually at capacity or over capacity?

12 A No, not recently. My wife did teach there at one  
13 time and there was capacity then, but that's not currently.

14 Q What year did your wife teach there?

15 A It would have been about 15 years ago.

16 Q You talked about different factors that should or  
17 that you believe should go into the process of determining the  
18 site for a new school; is that correct?

19 A Yes.

20 Q And you've talked about the natural areas here, the  
21 Cherry Creek Trail and the water features; is that correct?

22 A Yes.

23 Q And you've provided the opinion that there are  
24 problems with that or potential problems.

25 A Potential.

1 Q Right. I think you went as far as to say hazardous.

2 A Yes, if death is hazardous.

3 Q But this is also the area where you said you  
4 encouraged your children or your grandchildren to go out there  
5 and spend time.

6 A Yes.

7 Q And play in this area unsupervised.

8 A I did lower the fence so that I could see what they  
9 were doing, and I was not worried about the water features  
10 because living in Florida where there are canals and stuff  
11 everywhere, you teach your kids how to swim before they're two.

12 Q So there are things that you can teach kids or  
13 explain to kids about the water features, so they can go and  
14 enjoy those areas

15 A Yes.

16 Q And learn from those areas.

17 A But that's -- yes, but that's a specific parental  
18 initiative. One that is probably less than fully implemented  
19 in a larger community.

20 Q Would you agree that there are benefits from locating  
21 a school near natural areas that include water features, such  
22 as Cherry Creek?

23 A It depends upon the proximately.

24 Q But there are potential benefits; is that right?

25 A I would be interested in the term potential, because

1 it's my sense that not much use is made sometimes of potential.

2 Q I don't think that answered my question, but let me  
3 move on. Would you agree that demand for a school is a factor  
4 to be determined or a factor that should be used when  
5 determining where the new school should be located?

6 A Well, that's certainly a consideration. But given  
7 the era of bussing, there's certainly options and alternatives.

8 Q Certainly there are plenty of options, but you would  
9 agree that the demand for a school is a factor in determining  
10 where the school should be located.

11 A Of course.

12 Q Would you also agree that the availability of land is  
13 a factor that should be included in the process of determining  
14 where a new school should be located?

15 A Well, I would say that the demand for a school of the  
16 child-age population is an ephemeral thing. It's a temporary  
17 thing. Building a whole new school to meet an immediate demand  
18 in an inappropriate area is not necessarily the best solution.

19 Q In your opinion?

20 A In my opinion, yes.

21 Q Do you have grandkids in the schools in this area?

22 A They are too small, no. But I'm looking to forward  
23 to my grandkids being able to come and enjoy the area in which  
24 their parents grew up in.

25 Q So at least for your grandkids this will not be an

1 ephemeral demand, right? It's a real demand that in a few  
2 years they'll need elementary schools; is that correct?

3 A Where they are. But that doesn't reflect what's  
4 happening in this neighborhood.

5 Q Can you refer to Exhibit F. Do you still have that  
6 in front of you? It's the oversized map.

7 THE COURT: Here.

8 BY MR. DEHERRERA:

9 Q I direct you to the southern tip there. That's a  
10 parking lot; is that correct?

11 A Yes.

12 Q And did you say that it's not being used?

13 A It's gated.

14 Q It's gated, so it's shut off. Nobody is using it.

15 A Yes.

16 Q Do you know how long that's been gated?

17 A A number of years, yes.

18 Q A number meaning five to ten?

19 A I don't know exactly how many. At least five.

20 Q Could it be as many as ten?

21 A I couldn't swear to that.

22 Q Do you recall the last time it was used?

23 A I recall it being used, but I can't attach a date to  
24 that.

25 Q What was it being used for when you recall that it



1 was being used?

2 A I think it was being used at that time for the office  
3 buildings across the street from there.

4 Q Across Havana Street?

5 A No, no, no, across Girard.

6 Q Cross Girard, okay. Now, immediately to the  
7 northwest of the parking lot, is that the location of a prairie  
8 dog colony?

9 A Yes.

10 Q Do you ever go into the prairie dog colony?

11 A I did yesterday.

12 Q What for?

13 A On my way walking in the evening that I do.

14 Q Did you walk along the path that -- you see there's  
15 sort of a large path that winds -- that goes around the creek  
16 and then it crosses over on that bridge; do you see that? Is  
17 that the path you take?

18 A Which one again? I take all the paths.

19 Q You take all the paths. Can you tell me, is there an  
20 entrance into the southern portion of the property that is  
21 within the orange lines there, the property that would be  
22 deeded to Denver Public Schools, is there an entrance into any  
23 of that from these houses?

24 A No.

25 Q Mr. Longbrake, you've talked about the floodplain.

1 As a planner, are you aware that there are designing  
2 construction methods that can be used to alleviate the issues  
3 with floodplains?

4 A Yes.

5 Q And your houses in your neighborhood, those houses  
6 are also constructed in this floodplain; is that correct?

7 A No.

8 Q It's a different floodplain?

9 A No, it's not a floodplain.

10 Q Can you explain?

11 A Where the houses are constructed.

12 Q Because the houses are at a higher elevation?

13 A Yes.

14 Q So if the school was also built at a higher  
15 elevation, it would be outside the floodplain?

16 A Yes, but that would be a considerable expense,  
17 wouldn't it?

18 THE COURT: You mean if the school was put on stilts  
19 or something?

20 MR. DEHERRERA: I'm assuming that this --

21 THE COURT: I'm trying to understand what you mean by  
22 higher elevation.

23 BY MR. DEHERRERA:

24 Q Yea, I'm assuming this land has different elevations;  
25 is that correct?

1 A Some variability, yes.

2 Q Certainly. And it's possible that the actual site  
3 location for the school building could be on a higher elevation  
4 than what is the elevation immediately next to the creek.

5 A If made so, but then that raises the question what's  
6 the cost feasibility of doing this? Why do this and spend the  
7 kind of money that's is going to have to be done to eliminate  
8 congestion, flood potential, et cetera?

9 Q Have you had an opportunity to review any proposed  
10 designs for the construction of the school facility?

11 A No.

12 Q Regarding South Havana Street, I think you said  
13 that's a 45 mile per hour thoroughfare. Have you examined  
14 whether other schools in the Denver Public Schools or in the  
15 Denver Metropolitan area are also located adjacent to major  
16 thoroughfares?

17 A It happens. Schools are sometimes built in  
18 anticipation and arterials become busier with time. But it was  
19 not the intent, necessarily, in starting and locating the  
20 school.

21 Q As a city planner, you're aware that there are  
22 methods of reducing the concerns with a major thoroughfare next  
23 door to a school, for example, stop lights, crosswalks, reduced  
24 speed limit during school time zones; are you familiar with  
25 those?



1 BY MR. CASE:

2 Q Are you now retired?

3 A I am.

4 Q How did you spend your professional career?

5 A Well, my last 20 years I was a senior planner for  
6 Denver Parks and Recreation from 1990 until I retired January  
7 1, 2010.

8 Q Did you also serve as acting director of natural  
9 resources?

10 A I did for the last three or four months of my tenure  
11 there.

12 Q Where did you grow up?

13 A I grew up in Lincoln, Nebraska, moved to Colorado as  
14 soon I discover it and have lived here since.

15 Q Did you get an undergraduate degree?

16 A My undergraduate is 1971, English literature,  
17 Nebraska. I have a master's degree in landscape architecture  
18 from the University of Illinois Champaign Urbana, and a  
19 doctorate in geography from CU Boulder, 1996.

20 Q Why did you choose a career in Denver City Department  
21 of Parks and Recreation?

22 A Well, it was an absolute privilege to work there.  
23 When you're a landscape architect and a planner, you're really  
24 looking at places, special places in the interaction with  
25 people and the physical world and design. And to be able to

1 practice that in a public sector, because public service was  
2 very important to me, and with the park system, like a 130-  
3 year-old park system that has, you know, historic structures  
4 and an incredible mountain park system and natural areas and  
5 you're trying to preserve places that are important from the  
6 past, and you're also trying to then create new places that are  
7 really more of preservation.

8           So I was able to do -- I primarily specialized in  
9 long-term planning, doing master plans, but was able to work  
10 on, like, the long-range plans for Stapleton, master plan for  
11 the City, for the mountain parks, a variety of work, you know,  
12 a collegial place. It was a great job.

13           Q     Now, what was your approach, as far as the Parks  
14 Department, managing land in trust?

15           A     Could you ask that a little bit differently?

16           Q     Sure. Do you believe that land belonged to you or to  
17 the people of Denver and what were your responsibilities toward  
18 the land that you managed?

19           A     Oh, no, to me the number one goal, the number one  
20 responsibility we all had was that it was public trust; that we  
21 were stewards really protecting a system, you know. Again, it  
22 was almost 140 years old and -- that really is threatened by  
23 things continually and so it really was one of stewardship and  
24 preservation.

25           Q     Did the Denver Parks Department depend on you to do

1 their long-term planning for natural areas?

2 A If I could back up, I can explain a little bit how  
3 that happened.

4 Q Go ahead.

5 A Again, parks have always been a combination of, say,  
6 formal park land and natural areas, and you can see this is  
7 very true, say, like in the east where it rains, and so that  
8 your parks have woods and meadows. In the arid west, there was  
9 sort of a more artificial division between formal parks and,  
10 say, the original landscape. And so Denver, like a lot of  
11 cities, turned its back on all of its drainage ways, used its  
12 rivers and gulches as dumping grounds, as did other cities, and  
13 then --

14 Q What period many of time are you talking about?

15 A I'm saying up until really -- in Denver, the catalyst  
16 really was the redevelopment of the South Platte River, so they  
17 were really talking about cleaning up that river. So we're  
18 talking about the '60s and the '70s and '80s. So that started  
19 a whole new ethic in terms of, I think, sort of embracing or  
20 recognizing how important sort of wildness is in the city, and  
21 those kinds of natural areas, either stand-alone areas or as a  
22 part of a park. So that has really moved from, again, using  
23 these areas as dumping grounds.

24 Q When you say dumping grounds what do you mean?

25 A I mean literally Cherry Creek was a dump, and there

1 are parks still along Cherry Creek that, you know, have methane  
2 gas below them. These were -- these were dumps on the banks.  
3 And, you know, and the South Platte River, again, you know, in  
4 terms of contamination. So it's really -- it was a whole new  
5 ethic in the City. And the redevelopment of the South Platte  
6 River really starting in the '80s and then into the '90s, was a  
7 catalyst for saying we have some different kinds of parkland  
8 that we need to protect, we need different kinds of rules and  
9 regulations for them, we need restore them.

10 We knew also just from data how important these areas  
11 were for people in terms of just walking, bird watching, you  
12 know, in terms of what people actually did for recreation  
13 outdoors. And there was also a whole shift in terms of  
14 hydrology and looking that at sort of green infrastructure in  
15 the City's so that water quality, detention of storm water, how  
16 you treat that water, how you clean that water, and how you can  
17 use open space, which is public recreation open space, what an  
18 important role, you know, that has in that.

19 So then today, if you looked at Stapleton or Lowry  
20 you would see a park system that's designed to have an equal  
21 balance of formal parks and natural areas and clean water above  
22 ground. So the Neil Sperandeo was the long-range planner until  
23 I joined him in the 1990s, and we moved ahead and worked very  
24 closely with the City Attorney's Office to create a whole new  
25 designation that was internal within the Department, and a



1 program that was really about protecting, recognizing natural  
2 areas, also restoring them.

3 Q What is a natural area?

4 A I would consider it talking about sort of what is a  
5 native landscape, you know, for Denver. And that really varies  
6 from the riparian areas to grass lands to woods. Certainly, of  
7 course, in the Denver mountain parks that part of the system,  
8 again, those are all, you know -- Denver parks system really  
9 ranges from, in terms of eco levels and eco terms, from the top  
10 of Mt. Evans, you know, really to you Sand Hills kind of  
11 prairie. So it's really all of those kinds of things of what  
12 Colorado looked like.

13 Q All right. So you were working with two kinds of  
14 land, one would be left in its natural state and the other had  
15 improvements and looked more like what we think of as a park  
16 with trees and sidewalks and bushes and things like that. Is  
17 that a fair statement?

18 A Yes. In a formal park you're going to have  
19 irrigation, you're going to have plant material that is not  
20 indigenous to Colorado, you're going to have blue grass, you're  
21 going to have plant materials. It's totally artificial. We  
22 love them, but it's a totally artificial landscape. It's based  
23 on an English landscape model.

24 Q All right. Now, are you familiar with how the term  
25 city park land is defined in the Denver Municipal Code?

1           A     You would have to refresh me.

2           Q     All right. Let me show you, this is page 3 of our  
3 brief, but it quotes two sections of the code there. Can you  
4 read out loud the section of the code that defines city park  
5 land?

6           A     City park land. "Any parks, parkways, mountain parks  
7 and other recreational facilities, as well as other land,  
8 waterways and water bodies owned, operated or controlled by the  
9 Department of Parks and Recreation."

10          Q     Now then, you're familiar with the property that is  
11 at issue in this case.

12          A     Yes. I was closely involved with Hentzel Park being  
13 one of the very first officially designated natural areas in  
14 the system.

15          Q     All right. And when you say "Hentzel Park," could  
16 you look at Exhibit 17, please. What is Exhibit 17?

17          A     Exhibit 17 is a map from the Parks and Recreation's  
18 natural areas inventory and resource book, and it shows the  
19 entire 90 acres of land. This was the map, and this was the  
20 area that we used -- that we had a scientist actually survey  
21 and that we designated. We didn't see -- we always treated it  
22 as one piece of land because if you talk about a natural area,  
23 even if you talk about a formal park, you've got a whole piece  
24 of land. And particularly a natural area that's in a riparian  
25 zone, where it's really dealing with water, it's talking about

1 the importance of the sandy soil, to it's a part of the water,  
2 it's a recharge basin for Cherry Creek, wildlife moves through  
3 that. So we looked at the entire parcel.

4 Q So you treated it as one 90-acre natural area?

5 A Yes.

6 Q Now, does that 90-acre piece that's shown in Exhibit  
7 17 fit the definition of city park land that you just read to  
8 us?

9 A Yes. It really had been -- the Department had been  
10 managing and maintaining that land. We had built trails  
11 through there. We were already, I guess, when resources were  
12 available talked about restoring that. It was in many ways  
13 probably similar to other City-owned land along other drainage  
14 ways, whether it's Bear Creek or the South Platte, that really  
15 function as a recreational corridor and a wildlife corridor  
16 taken care of by the Parks and Recreation Department.

17 Q You mentioned that this is one of numerous natural  
18 areas that are included in a book.

19 A Yes.

20 Q Do you have that book with you?

21 A I do.

22 Q Could you show that to Judge Stern, please, just so  
23 he can see what it is.

24 THE COURT: So it's November 24, 2009, titled Denver  
25 Natural Areas Field Guide and Map Book, Natural Areas Program,

1 and these are aerial photographs of the Natural Areas Program  
2 by Denver through Parks and Rec; is that right?

3 THE WITNESS: It is. It's all lands that are  
4 currently managed as a natural area by Denver Parks and  
5 Recreation. The legal foundation --

6 BY MR. CASE:

7 Q If I could interrupt you there.

8 A I'm sorry.

9 MR. CASE: Your Honor, I would like to offer that  
10 book as Exhibit 50.

11 THE COURT: 5-0?

12 MR. CASE: 5-0. Just to give context to the evidence  
13 here. May I show it to counsel?

14 THE COURT: Sure. Is it her book? She may not --  
15 she might have to take it back at the end of the proceedings.

16 MR. BROADWELL: No objection, Your Honor.

17 THE COURT: All right. 50 will be admitted.

18 (Plaintiff's Exhibit 50 admitted into evidence)

19 MR. CASE: Thank you.

20 BY MR. CASE:

21 Q So is Exhibit Number 17 page number 91 from Exhibit  
22 50?

23 A Yes.

24 MR. CASE: Your Honor, we offer 17.

25 THE COURT: 17 will be admitted.

1 (Plaintiff's Exhibit 17 admitted into evidence)

2 BY MR. CASE:

3 Q Now then, is there a definition in front of you how  
4 the City Code defines a natural area?

5 A Yes.

6 Q Would you read that, please, and tell us the citation  
7 to the municipal code.

8 A It's municipal code 39-191(1). Natural areas.

9 "A geographical area of land of either geologic  
10 or biologic significance which retains, has had it  
11 reestablished or has the potential to reestablish  
12 many aspects of its natural character. Such an area  
13 could now or in the future support native vegetation,  
14 associated biological and geological features, or  
15 provide habitat for indigenous wildlife or plant  
16 species. Such an area could host geological, scenic  
17 or other natural features of scientific, esthetic or  
18 educational value."

19 Q Does this 90-acre parcel we see in Exhibit 17, does  
20 that meet the definition of a natural area in the City Code?

21 A Yes, it does.

22 Q You mentioned you worked with the City Attorney's  
23 Office to reach these definitions and get them codified into  
24 our city law.

25 A We did. I believe it was in 2001, I worked with

1 Patrick Wheeler, actually, at the table and we drafted the  
2 language to create the natural area's rules and regulations and  
3 a process to designate natural areas.

4 Q These are the same City attorneys who are saying  
5 today this is not a park?

6 A Well, I can't speak for them.

7 Q Now then, why are natural areas important?

8 MR. CASE: Your Honor, I offer this witness as an  
9 expert in land use and park planning.

10 MR. BROADWELL: No objection.

11 MR. DEHERRERA: No objection.

12 THE COURT: All right. She can testify as an expert  
13 in land use and park planning.

14 BY MR. CASE:

15 Q Ma'am, can you tell us why are natural areas  
16 important to the people of Denver?

17 A You know, they are important from a functional to a  
18 very sort of emotional kind of level, you know. Today we read  
19 about and talk about reconnecting kids to nature, and, you  
20 know, research has just shown what actually physically, in  
21 terms of, you know, the benefits really of being out in nature  
22 and in parks and what it really does for you, in terms of sort  
23 of -- just even sort of physical health and certainly, you  
24 know, emotional health. We've got few of these places left  
25 where you can see that little snowy owl and, you know, where

1 you've got these sort of wide-open vistas, where you really,  
2 you know, experience as the City gets built -- more built up in  
3 terms of experiencing, again, those kind of natural areas.

4           It's like the prairie dogs are our cornerstone  
5 species and people have really strong feelings for or against  
6 prairie dogs, but, you know, we wouldn't have hawks and we  
7 wouldn't have eagles without them. So, again, it's all a  
8 system together.

9           And what we found from doing, like, the master plan  
10 for the entire system in 2003, we did some statistical  
11 surveying about how important the different types of parks were  
12 in the City, and we found that 80 percent of the people  
13 surveyed, and this was again a large survey of users and in  
14 some ways probably non-users, that went to Denver residents,  
15 and says said that natural areas were either very important or  
16 moderately important and that City should be doing more,  
17 actually, to acquire more. So, you know, in terms of for  
18 people -- and again in terms of recreation.

19           Q     Pardon me for interrupting, but is the Hentzel Park  
20 natural area, including these 11 acres to the south, is that  
21 any different in the landscape and the types of plants than,  
22 say, the land was on Beer Creek or Sand Creek or the High Line  
23 Canal or the Platte River Greenway before that was improved?

24           A     What's fortunate about Hentzel Park and Cherry Creek  
25 is that there's some land adjacent to it. It's like the South

1 Platte River today, they're aggressively trying to acquire  
2 land. And not only in terms of recreation, but for flood  
3 control and water quality. And so Cherry Creek was just  
4 fortunate, as it moves through the eastern part of the City, of  
5 having some of that land. I don't know the status in terms of  
6 some of the other land adjacent to the other drainage ways, in  
7 terms of whether or not they are dedicated park land, but they  
8 always have been treated and function as parks.

9 Q Well, Mr. Broadwell is making the point here today  
10 that this land was originally acquired for flood control  
11 purposes. Is there anything unusual about that; did the City  
12 try to acquire land along streams to improve flood control?

13 A Absolutely. I mean, if you look at even at the State  
14 level almost all of our -- many of our State parks are flood  
15 control facilities, such as Cherry Creek Dam. And, you know,  
16 land has been purchased over time adjacent. When the -- again,  
17 you know, it was private land in the City and the rivers were  
18 used as dumps, you know, like the Platte River Greenway. It's  
19 really a whole different ethic.

20 Q All right. So is there anything inconsistent about  
21 land being acquired for flood control purposes, and then later  
22 being converted or designated as a park?

23 A No.

24 Q Do flood control areas make good parks?

25 A They do. And recently today there's an



1 acknowledgment that that makes total -- that makes so many more  
2 sense than always putting water in a pipe, you know. It's  
3 economical and engineering-wise it makes sense.

4 Q Now, what are the natural characteristics of this 90-  
5 acre natural area?

6 A You know, again, it's riparian area that has the  
7 shrubs and the trees, grasslands, you know, again, sort of  
8 wooded areas. The difference between sort of the northern  
9 section and the southern section is that the City had moved  
10 ahead and really put in a number of years and aggressively  
11 restored the northern section of Hentzel Park. And what that  
12 means, essentially, is weed control. Because the seed stock,  
13 we learned from the scientist surveying the entire site, was  
14 that there were seeds in that soil that are not even available  
15 from native nurseries today; that it was really important  
16 prairie seed stock. And that's just as true for the southern  
17 piece of the property, but it has not been actively restored.

18 Q If we could put up Exhibit 17 here. There was a  
19 pointer up here. Do you see it? Laser pointer.

20 Ma'am, you mentioned that the City aggressively  
21 restored the northern part of Hentzel natural area or what's  
22 shown on the map as Hentzel Park. Could you show us the area  
23 that was aggressively restored?

24 A This was aggressively restored as was Babi Yar Park,  
25 north of Yale.

1 Q And then was there weed control throughout the ground  
2 to the south and west of Cherry Creek there in the park?

3 A There certainly was itself the of weed control.  
4 Again, I think it was mentioned like there were goats used and  
5 there were goats used throughout Hentzel Park and Babi Yar  
6 Park. It really could be up to a ten-year process to eliminate  
7 weeds and to bring back an area.

8 Q Now, could you look at Exhibit Number 45, please.  
9 What is it?

10 A It's a sign posted, I don't know exactly where in the  
11 area, that says "Denver Parks and Recreation Natural Area  
12 Program. This area is under restoration. Please be patient as  
13 it develops."

14 Q Did the Parks Department put those signs around in  
15 areas that they were trying to restore?

16 A Yes.

17 Q Is that in Babi Yar Park, if you know?

18 A I'm sorry, I don't know the location.

19 MR. CASE: Your Honor, we would offer 45 as an  
20 example of the sign that the Parks Department posted when they  
21 were trying to restore areas.

22 MR. BROADWELL: Same general objection, Your Honor.  
23 It's not -- there is no evidence that it's on the property to  
24 be conveyed.

25 THE COURT: All right. So noted. 45 will be

1 admitted.

2 (Plaintiff's Exhibit 45 admitted into evidence)

3 BY MR. CASE:

4 Q So Ms. Baird, what is the goal of trying to restore  
5 these areas? If the Parks Department had finished restoring  
6 the southern portion of Paul Hentzel Park in the triangle, if  
7 they had then finished it, what would it look like today?

8 A I don't know if you've been to the northern section  
9 or Babi Yar Park, but they're beautiful. I mean they really of  
10 are full of flowering indigenous plants, they're better sites,  
11 really, to support wildlife because they're not full of weeds.

12 Q So the better the property is restored, the more  
13 opportunity the people will have to see native wildlife and  
14 native plants there?

15 A Correct. And the plan always was to restore that  
16 entire site.

17 Q Well, the City is making a point that we have a  
18 parking lot here. How did this get here?

19 A I don't know the history of how that got there. I  
20 know that, again, in order to designate Hentzel as an official  
21 natural area, again, we had natural resource surveying done and  
22 management and restoration guidelines and specific steps, and  
23 the recommendation, of course, was to remove that.

24 Q Was that part of the plan, to take out the asphalt  
25 and reseed it with native grasses?

1 A Yes.

2 Q Did that ever happen?

3 A No.

4 Q Do you know why?

5 A No, except that all I know is, again, the City and  
6 Parks Department really has limited funds and they, you know,  
7 have to prioritize and schedule their work over time. You  
8 know, the plan if for restoration here, but I don't know how  
9 much that has happened.

10 Q Who maintained this 90-acre natural area from the  
11 time that you joined the Denver Parks and Recreation Department  
12 in 1990, who took care of this?

13 A The Parks and Recreation Department. In fact that  
14 district office is right here, located -- excuse me, is just  
15 this little piece right here, not all the car sales places.  
16 And Jim Kellner was the superintendent and his staff took care  
17 of the entire area.

18 Q So what did they do when they took care of it?

19 A Trash, prairie dog control, in terms of prairie dogs  
20 getting out of the natural area and into people's yards and  
21 things. Certainly helped to oversee recreational development,  
22 such as the building of trails and, again, restoration,  
23 particularly in the northern part of Hentzel.

24 THE COURT: I have a question. On that Exhibit 17,  
25 what is that area that's in the designated part that's got the

1 dots and everything?

2 THE WITNESS: That is an area of prairie dogs.

3 THE COURT: It's what?

4 THE WITNESS: Prairie dogs.

5 THE COURT: Why make a notation of that?

6 THE WITNESS: The City also inventoried, surveyed and  
7 noted where there were prairie dog colonies in order to provide  
8 some protection.

9 BY MR. CASE:

10 Q How does the prairie dog colony serve the wildlife in  
11 the area such as hawks, owls, foxes and coyotes?

12 A Well, it's food. Their food. And there are coyotes  
13 and there's foxes in this area, and I think the neighbors  
14 around this area like, I think, any riparian or natural area in  
15 town would say that, you know, they would rather have coyotes  
16 eating prairie dogs than their cats that didn't return at night  
17 because, you know, these are predators. So, again, we call  
18 prairie dogs, again, a cornerstone species that others are  
19 dependent upon.

20 Q Now, if the City tore up this asphalt and reseeded  
21 this area and restored it like it did the northern part, would  
22 it be just as beautiful as the northern part of Hentzel Park?

23 A It probably would, you know, it may look a little bit  
24 different, but it would, yes, it would.

25 Q While you were working at the City, did it ever occur

1 to you that the City would try to sell part of this land that  
2 you were working so hard to design and protect?

3 A No, it never would have occurred to me. I mean, I  
4 have tell you I'm surprised today for a number of reasons.  
5 First of all, we really went to great lengths to recognize this  
6 land, to inventory and through a legal and public process to  
7 designate it an official natural area, which to me was sort of  
8 acknowledging it, in the site's entirety, its importance.

9 Q So there was a legal process where people got to make  
10 public comments about whether this should be designated or not?

11 A Yes, it's not a city council ordinance that  
12 designates natural areas; the manager is able to do that, take  
13 any recommendation from his or her advisory board.

14 THE COURT: The manager?

15 THE WITNESS: Of Parks and Recreation can officially  
16 designate natural areas. Which is what happened in this  
17 situation the manager undesignated it, and has the authority to  
18 do that.

19 Could I add though, again, why -- I would like to add  
20 a little bit in terms of what surprises me about this, is that  
21 again to build in this area, whether it's a school or whatever  
22 is building built, to me goes against every adopted plan that I  
23 can think of. Not only for this area, but for the City,  
24 because if you look at the Cherry Creek corridor master plan,  
25 you look at the Cherry Creek water basin plan, you look at the

1 game plan, which again was the master plan for the entire  
2 Department, and you look at Hentzel Park, what is the pattern  
3 in terms of what the goals are for all of these areas is to  
4 acquire more land. It's to actually, where possible, remove  
5 buildings from these areas and to acquire more land.

6 As I said, I know that the Platte River, you know, is  
7 trying to do that at this time. And the other thing that it  
8 brings up for me is -- and I was familiar of course with the  
9 ordinance that talks about dedication, grandfathering in parks  
10 from 1955 and earlier, but it raises the question for me of  
11 what other land over these past 50 to 60 years have been added  
12 to the system primarily probably in these kinds of native open  
13 areas, that really have been City owned and -- perhaps some of  
14 it City owned and from the City's origins and developed into  
15 trails and recreation areas and into parks, that don't have  
16 that kind of level of dedication or protection.

17 I don't even know if there are, like, parks that we  
18 think of, say like Bible Park, that also kind of comes down  
19 though a point, whether or not there are areas of land that  
20 were added to dedicated parks that have not been dedicated. I  
21 think it raises the whole question of all of this land, in  
22 terms of protection.

23 BY MR. CASE:

24 Q So were you familiar with City maps during the time  
25 that you worked at the Parks Department?

1 A Yes.

2 Q All right. Let me just ask you if you could look at  
3 Exhibit 18, 19, 20, 21 up through 25. I'm sorry, up through 24  
4 and 25. Is it correct that on every of those maps the property  
5 that is in dispute in this case is shown as open area, open  
6 space park?

7 THE COURT: Open space park.

8 MR. CASE: Yes.

9 THE COURT: Is that a name? Or do you mean Hampden  
10 Heights North Park?

11 MR. CASE: I'm sorry, it's the -- I'm sorry, Your  
12 Honor, let me do it map by map.

13 THE WITNESS: I would suggest it as a passive park.

14 BY MR. CASE:

15 Q Let's start with Exhibit 18. These are all in  
16 evidence. The property that's in dispute here today, how is it  
17 shown on this map? Which is published on the City website as a  
18 floodplain map.

19 A As Hampden Heights North Park.

20 Q Does this map, if the City wanted to correct this, is  
21 there a button a user can push to report a map error? Do you  
22 see that down in the lower are corner in the right?

23 A I do see that.

24 Q The City, as far as you know, continued to use this  
25 map while you were working there?



1 A Yes.

2 Q Let me ask you to look at 19. This is a land use  
3 map. How is this area shown on the Community Planning and  
4 Development map?

5 A As open space conservation.

6 Q Is it given a name?

7 A Hampden Heights North Park.

8 Q Now, the bike trail that runs through here, the Parks  
9 Department improved that by pouring concrete walkways, true?

10 A Yes.

11 Q And bikeways. Now, is that part of an historic trail  
12 that settlers used when the west was being settled and miners  
13 were coming to Denver; do you know?

14 A I don't know the exact alignment. I know the Smokey  
15 Hill Trail is in this vicinity.

16 Q All right. Let me ask to you look at Exhibit Number  
17 20. This is a Community Planning and Development map. How is  
18 this property shown on this map?

19 A The same, as park land, Hampden Heights North Park.

20 Q Let me ask you to look at Exhibit 21, the Denver Land  
21 Use and Transportation map. How is this land shown on that  
22 map?

23 A Well, this one is a little odd because it has that  
24 white square in the middle. It shows -- the top part shows  
25 Hentzel Park and Hampden Heights North Park triangle, the

1 school, proposed school site below as park, and then middle  
2 part goes is -- I'm not sure.

3 Q But the southern part that's in dispute, that is  
4 shown on here as a park?

5 A Yes.

6 Q All right. Look at Exhibit 22-1, please.

7 A The area is shown as a park.

8 Q And this is from the City and County of Denver Fire  
9 District map; is that correct?

10 A Yes.

11 Q And it shows the Hentzel Park area as all one 90-acre  
12 park?

13 A Correct.

14 Q Exhibit 22-2, the police map, does that show the same  
15 90 acres as one park area?

16 A Yes.

17 Q And the Parks and Recreation map, does that show the  
18 90-acre area as one --

19 A Yes.

20 Q -- contiguous area? And this is the Parks and  
21 Recreation map. It says Hentzel to the north and Hampden  
22 Heights North to the south?

23 A Correct.

24 Q Then Exhibit Number 34 is the City and County of  
25 Denver street map; is that right?

1 A Yes.

2 Q That also shows this 90-acre parcel as one continuous  
3 park area?

4 A Yes.

5 Q Lastly, the zoning map, exhibit 25. Is that area  
6 shown as OSA?

7 A Yes, open space.

8 THE COURT: Which is what?

9 BY MR. CASE:

10 Q What does open space mean?

11 THE COURT: OS is open space?

12 MR. CASE: Yes.

13 THE COURT: What does A mean?

14 BY MR. CASE:

15 Q Do you know?

16 A I'm sorry, I can't speak to that.

17 Q Now, while you were researching, did you go through  
18 the files of the Parks Department looking for documents that  
19 had something to do with whether or not the City itself  
20 considered this a park?

21 A Yes.

22 Q And did you find Exhibit Number 26 in the files of  
23 the Parks Department?

24 A I did.

25 Q What is Exhibit 26?

1           A     It's a 1979 letter from a concerned neighbor talking  
2 about the home they purchased, and that there's a vacant lot  
3 just to the north that is filled with weeds, grass, ruined.  
4 They discovered that the vacant lot is designated as a  
5 greenbelt and needs to be maintained by the City.

6           Q     Did Mayor McNichols respond to this homeowner?

7           A     Yes.

8           Q     And is that pages 26-3 and 26-4?

9           A     Yes.

10           MR. CASE: Your Honor, we offer Exhibit 26, pages 1  
11 through 4, as an ancient document and a business record of the  
12 City.

13           THE COURT: Where did you find these?

14           THE WITNESS: These are public documents in the Parks  
15 and Recreation library.

16           THE COURT: Any objection to 26?

17           MR. BROADWELL: Yes, Your Honor, we object. We don't  
18 believe they've been sufficiently authenticated, but also we  
19 believe that the weedy, vacant land that the Mayor was  
20 responding to is not the property being conveyed to DPS.  
21 Particularly important in this case is the -- if this is a  
22 legitimate document, we can't offer it, per se, unless it is  
23 dedicated parkland. The Mayor's reference in the letter refers  
24 to a greenbelt area internal to the Hampden Heights  
25 subdivision, not the subject property.

1 THE COURT: I'm sorry?

2 MR. BROADWELL: I was finished, Your Honor. We  
3 believe the letter refers to greenbelt dedicated parkland  
4 within the Hampden Heights subdivision, not the property  
5 proposed to be sold by the City to DPS.

6 THE COURT: Is it your position, Mr. Case, that this  
7 letter, which I haven't read yet, refers to the land at issue?

8 MR. CASE: Yes. It clearly is described in Mayor  
9 McNichols' letter. He talks about only having two lawn mowers  
10 to mow the grass in this enormous land area.

11 THE COURT: Well, so the objection has to do with  
12 whether this letter refers to the whole 90 acres or some part  
13 of the 90 acres separate and apart the from the 10.7 at issue  
14 in the case. Can you tell me whether this specifically  
15 includes the 10.7 acres in dispute or are we just talking in  
16 this letter about the area?

17 MR. CASE: No, the area that's being described here  
18 clearly includes Hampden Heights North Park. If you read it in  
19 context, starting at --

20 THE COURT: Okay. Well, I'll read it. 26 will be  
21 admitted. I'll note the City's objection.

22 (Plaintiff's Exhibit 26 admitted into evidence)

23 BY MR. CASE:

24 Q Ma'am, on the top of page 26-4, could you just read  
25 the first sentence that Mayor McNichols wrote there?

1           A        "We cannot offer it for sale as it is dedicated  
2 parkland."

3           Q        Thank you. Now then, was there a plan hatched in  
4 1987 to take this parkland and open space and turn it into a  
5 water park?

6           A        Yes.

7           Q        Did you find an exhibit that relates to that?

8           A        I did, and I think it's --

9           Q        Is it Exhibit Number 27?

10          A        I did, sorry.

11          Q        Is Exhibit 27 a Rocky Mountain News article from  
12 January 18, 1987, concerning a developer's proposal to put a  
13 water park in Hampden Heights North Park?

14          A        Yes. It reads "foes throw water on park proposal."

15          Q        Did the City Council ever approve that use of this  
16 park?

17          A        No.

18          Q        Ma'am, what will happen to this area if the DPS is  
19 allowed to build a two-story school in this floodplain? What's  
20 it going to look like compared to what it looks like now?

21          A        Well, visually it will certainly affect the views  
22 across the land and from adjacent homeowners. I think there  
23 are impacts of any kind of building that would be built in this  
24 land in terms of impacts on the hydrology of the land. If  
25 you're going to be bringing in -- again, this is a part of the

1 Cherry Creek alluvial recharge. Sandy soils is -- all that  
2 land is important in all the mass in terms of sort of  
3 recharging that ground water for Cherry Creek, and now we're  
4 talking about building on top of that, paving on top of that,  
5 bringing in irrigation water, if you're going to be doing  
6 playing fields. It is a -- to be build anything is an impact  
7 certainly on a more-fragile area like this and on a drainage  
8 way.

9 Q What do you mean when you say "recharge"?

10 A I mean water is able to -- and now, I mean, percolate  
11 through these sandy soils and go back into the Cherry Creek  
12 ground water. So it really has to do, again, with water  
13 quality and recharge with water going back into the drainage  
14 way.

15 Q So water from Cherry Creek seeps over into the area  
16 where DPS wants to build a school?

17 A No, I'm talking about rainwater coming down on the  
18 land.

19 Q All right.

20 A And/or if you then have storm water, there will be  
21 storm water from this site that will have to go somewhere from  
22 the building site.

23 Q All right. So now the water that falls from the sky  
24 is recharged through the sandy soils in this ground the City  
25 wants to give away?

1 A Yes.

2 Q And you would lose that effect of recharging, if a  
3 school is built?

4 A If anything is built, uh-huh.

5 THE COURT: Excuse me, counsel, we need to take a  
6 lunch break.

7 MR. CASE: All right. Thank you.

8 THE COURT: We'll pick it up again at 2:00. We'll be  
9 in recess until then. Thank you, all, very much.

10 (Recess at 12:13 p.m., recommencing at 2:09 p.m.)

11 THE COURT: Okay. This is the Friends of Denver  
12 Parks matter, 13-CV-32444. We have reconvened.

13 Ready to go?

14 MR. CASE: Yes, Your Honor. We would recall Susan  
15 Baird.

16 THE COURT: You're still under oath, ma'am.

17 MR. CASE: Judge, while she's taking her seat, I  
18 didn't move for the admission of Exhibit 16 or 27. I would  
19 want to do that now. There was a foundation for 16 through Mr.  
20 Longbrake and a foundation for 27 through Ms. Baird.

21 THE COURT: 27 is the news article and 16 is?

22 MR. CASE: The plat with the Realtor's notes in red.

23 THE COURT: Same objection, I assume, from the City?

24 MR. BROADWELL: Actually, no objection in this case,  
25 Your Honor.



1 THE COURT: Okay. How about from Denver Public  
2 Schools, any problem?

3 MR. DEHERRERA: No objection.

4 THE COURT: All right. 16 and 27 will also be  
5 admitted.

6 (Plaintiff's Exhibits 16 and 27 admitted into evidence)

7 BY MR. CASE:

8 Q Ms. Baird, do you understand you're still under oath?

9 A I do.

10 Q You were asked about Exhibit Number 25 and what the  
11 designation OSA meant.

12 A I was.

13 Q Have you looked at documents over the lunch hour that  
14 helped you remember what OSA means?

15 A It is; it stands for open space parks.

16 Q Is that also shown on Exhibit Number 19 in the legend  
17 there on the right?

18 A Yes.

19 Q Thank you. Now, as an expert in park planning, you  
20 were talking about the de-designation of this 10.7 acres. You  
21 mentioned something about that. Can you give us the thumbnail  
22 story of what happened?

23 A Well, in 2007, the City took time and expense to  
24 really study this property do a public process and the manager  
25 ultimately designated it as an official natural area.

1 Q Who was that manager?

2 A This is from my memory who that manager would have  
3 been. I'd have to go through -- that would have been Kim  
4 Bailey.

5 Q Kim Bailey?

6 A Uh-huh.

7 Q She was the director of Parks?

8 A She was the overall mayoral appointee, the manager of  
9 Parks and Recreation.

10 THE COURT: How do you the name?

11 THE WITNESS: K-I-M B-A-I-L-E-Y.

12 BY MR. CASE:

13 Q And she exercised her authority as the manager of the  
14 Division of Parks and Recreation to designate this 90-acre  
15 parcel?

16 A She did. The Parks and Recreation advisory board  
17 held two public hearings, and we also held public hearings in  
18 the park, and their recommendation to her was to designate.

19 THE COURT: What year was this; did you say?

20 THE WITNESS: 2007, I believe.

21 BY MR. CASE:

22 Q Now then, in 2011, was Mayor Hancock elected?

23 A I'm not good with dates. I know he's the mayor; I  
24 know he was elected.

25 Q All right. Did he --

1 A You tell me.

2 Q Did he appoint a new director of the Department of  
3 Parks and Recreation?

4 A Yes, he did.

5 Q Who was that?

6 A That was Ms. Lauri Dannemiller.

7 Q All right. Did Ms. Lauri Dannemiller, in the fall of  
8 the 2012, hold two public meetings with the Parks Advisory  
9 Board concerning this 90-acre parcel?

10 A She did.

11 Q What was the purpose of the meetings?

12 A Again, it was to hear public comment about the  
13 validity and direction of de-designating this property, which  
14 would be step one, and the ability for the City to swap that  
15 land for a school. And then the board took a vote at the  
16 December meeting with their recommendation to the manager.

17 Q What was the recommendation of the Parks Advisory  
18 Board to the manager?

19 A It was to keep the designation as a natural area,  
20 which is essentially saying keep it as a park.

21 Q What did Ms. Dannemiller do?

22 A Well, she had the authority to and she moved ahead  
23 and de-designated it.

24 Q The 10.7 acres?

25 A Yes.

1 Q Now, as an expert in park planning, do you agree with  
2 Lauri Dannemiller's decision to de-designate the 10.7 acres?

3 A No. I have to say I really did not and do not agree  
4 with that. I mean, not only does it sort of fly in the face of  
5 the Department and the City's own work that really established  
6 the value of this area. And when you're dealing with a natural  
7 area and a riparian area, one thing that to me was very  
8 artificial in the language that the manager used, and also the  
9 language I've seen since, is it talks about that ten acres as a  
10 stand-alone parcel, and it's not a stand-alone parcel. It's in  
11 a drainage way. It's a part of a wildlife corridor. It's a  
12 part of all that adjacent land. It's the same soils. It's the  
13 same seeds. It's the same wildlife. It's not -- it's very  
14 artificial to cut off one kind of part of the organism. It's a  
15 part and parcel of the whole; it's contiguous land.

16 Q Now, has the Denver public grown in the last 15  
17 years?

18 A Yes, it has.

19 Q From what to what?

20 A I know there's over 600,000 today. It has grown.

21 Q All right. As population increases, do we need less  
22 open space or more?

23 A No, in fact, the Trust for Public Lands recently did  
24 a study of Denver parks and open space and they looked at  
25 benefits, and their conclusions were that Denver does well, but

1 Denver could do better and should be continually acquiring more  
2 land.

3 Q Now, if the request for an injunction is denied here  
4 and this park is taken to build a building, will it be gone  
5 forever? Will we be able to get it back as open space later?

6 A I don't know how much later you're talking about, but  
7 once something is built, the land is pretty much gone.

8 MR. CASE: Thank you, ma'am. That concludes my  
9 examination, Your Honor.

10 THE COURT: Cross?

11 CROSS-EXAMINATION

12 BY MR. WHEELER:

13 Q Hi, Susan.

14 A Hi, Patrick.

15 Q Good to see you again. I want to show you one  
16 exhibit that's been previously entered as Exhibit F.

17 MR. WHEELER: May I approach the witness, Your Honor?

18 THE COURT: Yes.

19 BY MR. WHEELER:

20 Q I just want to confirm, first and foremost, that the  
21 area shown in orange is the property you've been testifying  
22 about here today.

23 A I've been testifying about this parcel land as the  
24 proposed school land in the greater context of the whole site.

25 Q Okay. I just wanted to be certain we're talking

1 about the same piece of land, because the maps otherwise shown  
2 have been a little sketchy. Right now on that property, would  
3 you agree that there are a variety of uses on that property?

4 A Yes. I would say the same use is on this property as  
5 on the adjacent property. Are you asking if there are  
6 different uses?

7 Q I just wanted to know, I mean, you acknowledged some  
8 things that were sort of park-related, including the natural  
9 areas. But is there other things on this property as well?

10 A Well, there's an abandoned parking lot that doesn't  
11 belong in parkland that should be removed. But otherwise I can  
12 see there's some informal trails, there's wildlife, there's a  
13 drainage way through there.

14 Q Does Parks maintain the drainage way or does another  
15 City agency?

16 A Well, Parks works in collaboration with Urban  
17 Drainage and Flood Control, you know, for all drainage ways in  
18 the city. Parks would be taking care of trash and trail  
19 maintenance in this part of the park. Also, the City  
20 naturalists would be dealing with wildlife in this part of the  
21 park.

22 Q Okay.

23 A Prairie dog control.

24 Q Do you have any knowledge about the use of this  
25 property in 1955?

1           A     I haven't even seen pictures. I'm assuming that  
2 really it was just all open land at that time.

3           Q     "Open land" meaning there was no parking lot, no  
4 Kennedy Golf Course?

5           A     Exactly.

6           Q     No trail?

7           A     I can't speak to the trails. I mean, there may have  
8 been wildlife trails there even then.

9           Q     Wildlife trails, but we're not talking about the  
10 Cherry Creek Trail.

11          A     No.

12          Q     Hampden Heights wasn't even there back then, was it?

13          A     No.

14          Q     This was just largely vastly wide open land?

15          A     That's correct.

16          Q     Have you ever seen an ordinance designating the  
17 property shown in Exhibit F as a park?

18          A     No, I have not.

19          Q     Do you have any reason to think it ever was formally  
20 designated by ordinance as a park?

21          A     I have no reason to believe that, although I should  
22 say that when we were moving to create a natural area here I  
23 did check the property book that the Parks and Recreation  
24 Department has, and they had the Hentzel Park ordinance and  
25 dedication there and the accompanying map included and showed

1 this triangle. It was not a legal survey; it was just a  
2 shaded-in map, like we had really sort of describing park  
3 properties, and I think at that time at we had no idea that  
4 that triangular piece didn't match the legal description, you  
5 know, in the ordinance.

6 We just from the very beginning, because already the  
7 Department was taking care of this too, felt it had already  
8 been sort of identified as a part of Hentzel.

9 Q Did you go to the park surveyor and --

10 A No.

11 Q -- inquire of him about whether or not it was  
12 designated as a park?

13 A No. And I should point out too also that, you know,  
14 as you know, that to designate something as a natural area it  
15 did not need to be a dedicated park in order to do that.

16 Q Well, that gets into my next point, because that is  
17 exactly the point -- I think you were previously provided with  
18 a copy of the ordinance for the natural area designation and  
19 you were asked to read two provisions; one, the definition of  
20 natural area and, one, the definition of City parkland. Do you  
21 still have that there in front of you?

22 A I do not.

23 MR. WHEELER: May I approach the witness, Your  
24 Honor?

25 THE COURT: Yes.



1 BY MR. WHEELER:

2 Q I just want to confirm that the whole natural area  
3 designation process is not as simple as just the definition of  
4 natural area and City parkland. As you just indicated, there  
5 could be other land owned by the City, or even owned by other  
6 governments, that could be designated as natural area; is that  
7 correct?

8 A That's correct.

9 Q So a natural area designation does not in and of  
10 itself create a designated park.

11 A No. I think that if you were talking about sort of  
12 differences of what natural areas are, there may be some  
13 natural areas -- again, if you remember, there are four  
14 categories of natural areas. Some may not even have public  
15 access, you know. It was really a designation to provide some  
16 protection, some significance to build awareness, and it  
17 prioritize what lands should be restored.

18 A But if you have natural areas or parks with natural  
19 areas in them and they function as a park, you know, they have  
20 trails, they have public access, they have an educational  
21 component perhaps, you know, then that was really looking at a  
22 natural area that was really in many ways a passive park.

23 Q But you're using the word "park" rather loosely, not  
24 necessarily legally, are you?

25 A I am, I think, legally in terms of the definition I'm

1 reading here.

2 Q Well, let's look at the definition here. The  
3 definition here also has something called City park. Can you  
4 read that?

5 A "Any land, waterways and water bodies owned, operated  
6 or controlled by any department, office, agency, board and  
7 other subsidiary of the City and County of Denver, except the  
8 Department of Parks and Recreation."

9 Q And then there's another definition for other  
10 governmental property. Can you read that?

11 A Sure. "Any land, waterways and water bodies owned,  
12 operated or controlled by any governing body, department,  
13 agency or political subdivision of the federal government and  
14 the state, if any, or of any county, municipality, school  
15 district, special district, authority and other public entity,  
16 except the City and County of Denver."

17 Q And these three categories, city parkland, city  
18 property and other governmental property are all areas that  
19 could be potentially designated under this process as natural  
20 area; is that correct?

21 A That's correct.

22 Q So just having a natural area designation on the area  
23 shown in Exhibit F did not necessarily make it a park; did it  
24 not?

25 A No, just says -- the labeling of it being a park

1 doesn't make it a natural area. It's what type of park, what  
2 kinds of activities, what kind of land is that.

3 Q Okay. You've acknowledged in your testimony that the  
4 manager of Parks and Recreation makes the final decision to  
5 approve a natural designation; is that correct?

6 THE COURT: Let me stop you there just to clarify  
7 something. The term manager of Parks and Recs has been used  
8 and the term director of Parks and Recs a been used. Same?

9 MR. WHEELER: The correct term is the manager of  
10 Parks and Recreation.

11 THE COURT: So there is no director?

12 MR. WHEELER: There are directors under or beneath  
13 her, but not the manager herself. She is the manager.

14 THE COURT: So Dannemiller is the manager or was,  
15 is/was?

16 THE WITNESS: She is.

17 MR. WHEELER: I'm sorry, Lauri Dannemiller, yes. She  
18 is currently the manager of Parks and Recreation.

19 THE COURT: All right. Go ahead.

20 BY MR. WHEELER:

21 Q Just to sort of distinguish, as you had indicated  
22 before, you had once been the director of the natural areas  
23 program, which is a subset of the Parks and Recreation; is that  
24 correct?

25 A I was just for four months the acting director of the

1 Natural Resources Division, of which natural areas was one  
2 component.

3 Q In your previous testimony, you acknowledged that the  
4 manager of Parks and Recs makes the final decision to approve a  
5 natural area designation; is that correct?

6 A Correct.

7 Q Okay. And is this what happened with the Hentzel  
8 natural area designation?

9 A Yes.

10 Q In other words, she signed off on this?

11 A Yes.

12 Q Does her -- was there any other approvals by, let's  
13 say, City Council?

14 A No.

15 Q Did the mayor sign off on this? Did you see things  
16 signed by the mayor on this?

17 A I can't tell you what process Ms. Bailey went  
18 through. You know, I know that it was recorded with the Clerk  
19 and Recorder's Office and, you know, created a proclamation.  
20 But the manager officially does submit it.

21 Q Do you know if the manager has the authority, on her  
22 own motion, to designate a piece of property as a park?

23 A No. I mean, to dedicate a park takes City Council  
24 action.

25 Q So the process of setting it out in the City charter

1 for designation requires City Council approval?

2 A For dedication of a park, yes.

3 Q The precise is designation, so I just wanted to --

4 A Is it? I thought it was the other.

5 Q You've recently talked about some of the care of the  
6 property before and about how pieces of the park were  
7 maintained, like parks like the Cherry Creek Trail and the  
8 Kennedy Golf Course; is that correct?

9 A Correct.

10 Q The trail and the golf course, as far as you know,  
11 are not being conveyed to the Denver Public Schools, is it?

12 A No. It's outside the boundary of the property.

13 Q Actually, one part of what's being conveyed to them  
14 is that parking lot that you seem to have some disdain for.

15 A I don't know historically if the parking lot had  
16 anything to do with the golf course or --

17 Q No, no. I'm asking you if the portion of the parking  
18 lot is one of the parts of the property that's being conveyed  
19 to the Denver Public Schools; is that not correct?

20 THE COURT: It is or is not?

21 MR. WHEELER: It is.

22 THE WITNESS: it is, isn't it? Yes. According to  
23 your map.

24 BY MR. WHEELER:

25 Q With respect the maintenance of the natural area,

1 that's done typically by the Natural Area Program within Parks;  
2 is that correct?

3 A The natural area staff, when I left three years ago,  
4 was being merged into the overall district park maintenance  
5 staff so that every district in the City would have that  
6 expertise to start looking at land in a more holistic way. So  
7 my understanding would be that that district there has staff  
8 trained to take care of natural areas on staff.

9 Q Some of those natural areas they maintain are outside  
10 of designated parks; is that correct?

11 A Correct. Some of those lands, as you noted, really  
12 do not function as a park.

13 Q You briefly mentioned at the beginning of your  
14 testimony that there was -- the area along Cherry Creek had  
15 been kind of known as a dumping area, dumping grounds, is I  
16 think the word you used; is that correct?

17 A That's correct.

18 Q In fact, isn't there almost a notorious amount of  
19 landfills along Cherry Creek?

20 A Landfills all along Cherry Creek, all along Sand  
21 Creek, you know, rivers were really used for dumping.

22 Q Would you say that most of that was done many years  
23 ago? Do you have any idea about when most of the dumping  
24 occurred?

25 A Well, it would have been -- I mean, I'm sure still

1 some illegal dumping takes place.

2 Q But I'm talking about sort of like land-filling type  
3 of activity.

4 A I don't know when that stopped, but that would have  
5 been some time ago, yes.

6 Q I want to show you what has already been attached to  
7 the City's response to the motion for preliminary injunction as  
8 Exhibit D.

9 MR. WHEELER: May I approach?

10 THE COURT: Yes.

11 MR. WHEELER: Your Honor?

12 THE COURT: I think I have one already.

13 BY MR. WHEELER:

14 Q Would it surprise you that the subject property  
15 itself that's shown in Exhibit F isn't on a landfill?

16 A You're talking about this piece?

17 Q That's correct.

18 A Because this is east of Havana. So a smaller piece  
19 of the landfill was there?

20 Q Yes.

21 A I'm not surprised.

22 THE COURT: Excuse me. Show me what you're holding  
23 up.

24 THE WITNESS: I'm holding up this exhibit and he's  
25 referring to this piece of the landfill.

1 BY MR. WHEELER:

2 Q That is the yellow area to the west of Havana.

3 A No, I'm not surprised.

4 Q So another use of the property in the past has been  
5 as a landfill; is that correct?

6 A For that portion of it, correct.

7 MR. WHEELER: I don't know at this time, Your Honor,  
8 since this is an attachment to our response, would be want us  
9 to make a motion to accept into evidence Exhibit D?

10 THE COURT: I think you should move its admission, if  
11 that's what you want.

12 MR. WHEELER: At this time I would move its  
13 admission.

14 MR. CASE: We object for inadequate foundation as to  
15 when this was a landfill and what kind of landfill and what  
16 might be there, but that may go to weight rather and  
17 admissibility.

18 MR. WHEELER: Well, the exhibit does come with a  
19 certification from the Department of Environmental Health that  
20 this is based on their records.

21 MR. CASE: I don't think it's relevant to the issues  
22 before the Court as to whether this is a park or not, or  
23 whether the City has a right to sell a park.

24 MR. WHEELER: Well, a lot of inferences have been  
25 made upon the uses of the park over time and we just want to



1 point out that there's been a lot of uses of this area over  
2 time.

3 THE COURT: Well, I'm prepared to admit Exhibit D,  
4 but is there any way you can -- says the map was generated  
5 6/10/13.

6 MR. WHEELER: Yes, Your Honor, we requested that the  
7 Department of Environmental Health, they keep records on where  
8 all the known landfills are within the City. And that is one  
9 of the -- that was lifted off of their GIS.

10 THE COURT: So we don't know when this was considered  
11 landfill, this one spot. But your position is that at some  
12 point in the past it was.

13 MR. WHEELER: Yes, Your Honor.

14 HE COURT: Exhibit D will be admitted over objection.

15 (Defendant's Exhibit D admitted into evidence)

16 BY MR. WHEELER:

17 Q Also, you had previously raised issue about the  
18 parking lot and how it got to be there. Do you know how the  
19 parking lot got to be there?

20 A No, I don't.

21 Q Do you know who Bruce Alexander is?

22 A Yes, I worked for him.

23 Q What was his position?

24 A He was manager of Parks and Recreation. You're  
25 talking about Bruce Alexander, Sr.?

1 Q Yes.

2 A Uh-huh.

3 Q During what period of time?

4 A It would be early 1990.

5 MR. WHEELER: I would ask to approach to show another  
6 exhibit.

7 THE COURT: Okay. What exhibit is this?

8 MR. WHEELER: This is Exhibit E that's also attached  
9 to the City's response.

10 THE COURT: Okay.

11 BY MR. WHEELER:

12 Q Could you just generally describe what this memo is?  
13 I mean, is this something that looks like it was issued by the  
14 Department of Parks and Recreation?

15 A It's a memo from Bruce Alexander to the director of  
16 asset management, Myrtle-Rose Greene, December 11, 1992, parcel  
17 known as Havana and Cornell. Would you like me to read that?

18 Q It's a short memo; if you would.

19 A It is our understanding with the --

20 MR. CASE: Your Honor, I'm going object. The exhibit  
21 hasn't been admitted and we oppose the admission of the  
22 exhibit.

23 BY MR. WHEELER:

24 Q Do you have any reason to believe that this is not a  
25 memo issued by Bruce Alexander as manager of the Parks and

1 Recreation?

2 A No.

3 Q Does this look like the types of memos you had seen  
4 in the past that were issued by the manager?

5 A Yes.

6 Q Is there anything in this thing that would give you  
7 any reason to have second thoughts about whether or not it was  
8 issued by Bruce Alexander?

9 A No. There are things in it that would give me some  
10 thoughts about the accuracy of it. When it says --

11 Q Well, let's wait on that for just a moment.

12 A Okay.

13 THE COURT: This is a certified --

14 THE WITNESS: It's certified.

15 THE COURT: -- document?

16 MR. WHEELER: Yes, Your Honor, this came out of the  
17 records of our real estate division, which is the asset  
18 management people for which Myrtle-Rose Greene used to be the  
19 director.

20 THE COURT: So what's the objection, Mr. Case?

21 MR. CASE: Well, it's hearsay and it's --

22 THE COURT: Isn't that what the certified document  
23 exception is specifically meant to cover, this kind of a thing?

24 MR. CASE: I don't think it's meant to cover an  
25 internal memo, which is offered for proof of the matter

1 asserted. What they're claiming is this proves that 10.7 acres  
2 was not a dedicated park, but that isn't what's attached to the  
3 exhibit. This is a diagram of the parking lot.

4 MR. WHEELER: Which is part of the property that's in  
5 question.

6 MR. CASE: So -- and it's also got hearsay within it  
7 from somebody else, John Stamm.

8 THE COURT: I think it's admissible and that the  
9 issue, from an evidentiary standpoint, in mind is one of  
10 weight. It's clear that this is a document relating to the  
11 parking lot. The fact that it says there was no dedicated park  
12 doesn't mean it's true.

13 MR. WHEELER: But a memo issued -- well, are we good  
14 to go?

15 THE COURT: I'll admit it. I don't know what she can  
16 say about it.

17 (Defendant's Exhibit E admitted into evidence)

18 BY MR. WHEELER:

19 Q Let me first, before you read it --

20 A Uh-huh.

21 Q I mean, if you received a memo from the manager of  
22 Parks and Recreation affirmatively stating something, would you  
23 not take that as a directive from your boss that that's what  
24 his position is about these matters?

25 A I would have to say that if I found my boss

1 inaccurate, I would correct him or her. I don't know if I  
2 would have known here on this -- looks like a memo primarily  
3 between he and Public Works and Park and Recreation referring  
4 to the parking lot.

5 Q Let me ask you then to go ahead and read the three  
6 paragraphs that are here.

7 A I should go ahead and do that?

8 "It is our understanding, with the  
9 concurrence of John Stoffel in at the City Attorney's  
10 Office, that the parcel known as Havana and Cornell  
11 is not a dedicated park. This is based on the fact  
12 that there is no park dedication ordinance, and the  
13 parcel is not used as a park or even was within the  
14 City and County of Denver when all parks were  
15 dedicated by charter. This conclusion was reached  
16 previously by John Stamm, the director of design  
17 engineering in 1980. At that time it was determined  
18 that the parcel was not dedicated and it was  
19 therefore appropriate to dedicate the southern part  
20 of the parcel to Girard Avenue right of way.

21 "To this point, the Parks and Recreation  
22 Department provides weed on an as-needed base. There  
23 is no active recreation taking place on this parcel."

24 Q What is attached on the second page of that memo?

25 A It's a diagram of the parking lot.

1 Q What is the label on that?

2 A Just says temporary construction easement area for  
3 Oppenheimer parking lot.

4 Q Does it show also Girard Avenue?

5 A It shows Girard Avenue and South Havana Street.

6 Q Would it surprise you that both South Havana and  
7 Girard at those locations are located in Parcel 31 or this  
8 Exhibit F parcel?

9 A They are.

10 Q I'm just interested. What is it that you said that  
11 you would disagreed with?

12 A Well, I don't think I would have even known this and  
13 even though this parcel -- it was in the -- correct me. It was  
14 in the 1960s that this was annexed as a part of the City? The  
15 City and County Denver did own this parcel as of 1936, and it  
16 seems to be implying that the parcel was not even within the  
17 City and County of Denver.

18 Q Well, I guess it doesn't say anything about the  
19 annexation. It says that the parcel was not used as a park  
20 when all the parks were dedicated by charter.

21 A It's the parenthesis piece I was noticing, are even  
22 within the City and County of Denver. They're saying that this  
23 parcel was not even within the City and County of Denver.

24 Q In 1955.

25 A It was owned by the City and County of Denver, but

1 not within.

2 Q I understand. But it was not within the City and  
3 County and -- do you have any evidence that it -- I thought you  
4 previously testified that in 1955, as far as you knew, this was  
5 just wide open land out there that you had no reason to know  
6 that it was a park.

7 A No. My comment was to the point that probably the  
8 manager, and perhaps Myrtle-Rose Greene, were not aware that  
9 the City -- it was not a part of the City in 1955, but the City  
10 in fact did own that land.

11 Q But I don't think he's disputing that. He said it's  
12 not used as a park and it was not in within the City in 1955.  
13 That's correct; is it not?

14 A Yes.

15 Q Okay. He's not stating what otherwise you stated.

16 THE COURT: My question, counsel, and maybe this goes  
17 to some of the issues you all have been discussing, is  
18 apparently Mr. Alexander says, quote, the parcel was not used  
19 as a park. Do we have any idea how he reached that conclusion?  
20 Are there any documents that he might have looked at that to  
21 reach that conclusion? He references a conclusion reached  
22 previously in 1980, 12 years earlier, by John Stamm. Would we  
23 have any document from John Stamm that would support what Mr.  
24 Alexander says?

25 MR. WHEELER: I do have a memo from John Stamm back

1 in 1980 that stated that this was not a designated park. But  
2 it does not say how he reached that conclusion. I assume he  
3 discussed this with the City Attorney's Office and with Parks  
4 Department.

5 THE WITNESS: Your Honor, could I add something?

6 THE COURT: Sure.

7 THE WITNESS: I would guess also in 1992 that Mr.  
8 Alexander wasn't really basing this on what was probably  
9 observed of that land. You know, neighbors lived there, there  
10 were informal hiking trails, people bicycled through, people  
11 bird watched, people were using the land because there was  
12 public access. Using that land all the way up through Babi Yar  
13 Park and along that drainage way for passive and somewhat  
14 active recreation.

15 BY MR. WHEELER:

16 Q Well, we're disagreeing with that. Lots of land  
17 that's not park is used for the very purposes you just  
18 described. Is that not correct?

19 A No, I can't --

20 THE COURT: We also don't know -- he says used not as  
21 a park. Not used as a park by Denver? Not used as a park by  
22 the citizens who live nearby? Go ahead.

23 BY MR. WHEELER:

24 Q But the point is just because of -- the things you  
25 describe are not wrong, but they don't necessarily -- are



1 restricted to parks. They occur in other areas as well in the  
2 City; do they not?

3 A I think there's a difference of land -- first of all,  
4 that Parks and Recreation Department was maintaining all this  
5 land at that time in the 1992. And again, people were using  
6 trails and using the area as a park. I'm trying to think of  
7 other land that's analogous because to me private land, there  
8 would not be public access to.

9 Q Can I give you an example right next to the very west  
10 end of Hentzel Park; Hentzel Park was acquired from Denver  
11 Water; was it not?

12 A Correct.

13 Q There was another portion that was kept by Denver  
14 Water; is that not correct?

15 A Which portion are you referring to?

16 Q The portion to the west of Hentzel Park, which  
17 includes currently the Cherry Creek High Line Trail and two  
18 bridges and lots of other parks amenities are built on it; is  
19 that not correct?

20 A Correct.

21 Q Do you regard that as a park?

22 A Well, yes. And the Parks and Recreation Department  
23 and the City has had a longstanding recreational agreement with  
24 Denver Water to treat that as a park.

25 Q But does that make it legally a park? Would that

1 make it a designated park under the City charter?

2 MR. CASE: Objection, calls for legal opinion.

3 MR. WHEELER: She's an expert. You qualified her.

4 THE COURT: She can answer, if she knows. What was  
5 the question again?

6 THE WITNESS: I don't understand how you could be  
7 talking about Denver Water land being a dedicated park as  
8 opposed to the City land. Your question has confused me,  
9 Patrick. You're talking about whether I think Denver Water  
10 land could be a designated park?

11 BY MR. WHEELER:

12 Q Well, I mean, it looks -- in a lot of ways that piece  
13 of land looks like a park; does it not?

14 A It does, and it functions as a park.

15 Q Is it really a park?

16 A And it is not. And Denver Water could -- it's Denver  
17 Water's land. I mean, I don't think that you can compare  
18 Denver-Water-owned land to City-owned land that's defined and  
19 protected under the charter.

20 Q But there's lots of other land that's owned by the  
21 City with these kind of activities up and down the Cherry Creek  
22 corridor that's not regarded as being designated parkland; is  
23 it?

24 A I agree. And I think, again, that that's problem  
25 this case sort of highlights is there is a number of pieces of

1 land that really have been pulled into the system, managed by  
2 Parks, and public exception and use and perception is that they  
3 are public parks for recreation or passive park use and they  
4 may not be dedicated land. And I think the public would be  
5 surprised to know there may be land along Cherry Creek or, you  
6 know, Platte River or other places that really does not have  
7 that protection of a City ordinance.

8 Q But the decision to designate it as a park is still a  
9 decision of the manager, the mayor and the City Council; is  
10 that not correct?

11 A Correct.

12 Q And in this case that has not happened.

13 A Correct.

14 THE COURT: Further cross?

15 MR. DEHERRERA: No, Your Honor.

16 THE COURT: Any redirect?

17 REDIRECT EXAMINATION

18 BY MR. CASE:

19 Q Ma'am, in your experience, is this the only time that  
20 you've ever heard of a manager of Parks de-designating a  
21 natural area?

22 MR. BROADWELL: Objection.

23 THE COURT: Overruled.

24 THE WITNESS: Yes.

25 BY MR. CASE:

1 Q Has it ever happened before, to your knowledge?

2 A No.

3 Q Wasn't the driving force to designate because the  
4 mayor wanted an office building downtown and he needed some  
5 land to trade for it?

6 A I don't feel if I can really answer that.

7 MR. CASE: Thank you.

8 THE COURT: Anything else?

9 MR. CASE: Not from the Plaintiffs.

10 THE COURT: All right, you may step down.

11 MR. CASE: Plaintiffs call Cynthia Johnstone.

12 CYNTHIA JOHNSTONE, PLAINTIFF'S WITNESS, SWORN

13 DIRECT EXAMINATION

14 BY MR. CASE:

15 Q Would you please introduce yourself to the Court.

16 A Yes. My name is Cynthia Johnstone. Last name is  
17 spelled J-O-H-N-S-T-O-N-E. I reside the 610 South Gilpin  
18 Street, Denver, Colorado, 80209.

19 Q Ma'am, were you a member of the Denver Parks Advisory  
20 Board from 2007 to 2009?

21 A It was 2006 to 2007.

22 Q I beg your pardon. Thank you. Did you have a role  
23 in designating the 90-acre natural area that we've been  
24 discussing here today?

25 A Yes, I did.

1 Q And what was your role?

2 A I was a representative for Council District 6 as a  
3 Parks and Rec advisory member, and sat on in the public  
4 meetings and participated in the final vote to designate it a  
5 natural area.

6 Q Did the Parks Advisory Board vote to designate it as  
7 a natural area?

8 A Yes, we did. It was unanimous.

9 Q And did the manager of Parks designate it as a  
10 natural area?

11 A Yes, she did.

12 Q And was that recorded with the Clerk's Office?

13 A I don't know.

14 Q Now then, was the public involved in those meetings  
15 concerning the designation?

16 A There was a public hearing.

17 Q Was there contact with the City Council and City  
18 Attorney regarding this process?

19 A For the designation?

20 Q Yes.

21 A Not that I'm aware of.

22 Q All right. Now, what was your understanding of  
23 whether this was a short-term project to make a park beautiful  
24 overnight or whether it was more of a long-term project?

25 A It was clearly presented to us that -- and I want to

1 support what Susan Baird said -- that there had been a deep  
2 study about the natural area, and that this was not going to be  
3 a short-term process; that it was based on capital in order to  
4 improve the natural area, but in the future -- and for future  
5 generations, that we would be able to preserve this natural  
6 area for the citizens of Denver.

7 Q Then in 2012, did you learn of a plan to trade part  
8 of this 90 acres for an office building downtown?

9 A Yes.

10 Q How did you find out about that?

11 A I'm a member of the Inter-Neighborhood Cooperation  
12 Parks and Rec Committee, and it was brought to the committee in  
13 October by DPS and the Denver Parks and Rec.

14 Q October of 2012?

15 A Yes.

16 Q When DPS and Parks and Rec presented this to you,  
17 were given to understand there was already an agreement to  
18 trade this ten acres for an office building downtown?

19 A I don't -- it was also predicated on whether the bond  
20 issue would pass. But it felt very much -- I felt very much  
21 that it was already in progress and planned, and it was just  
22 contingent on the bond issue passing.

23 Q What does INC stand for?

24 A The Inter-Neighborhood Cooperation.

25 Q What is the mission of that group?

1           A     The mission of the Inter-Neighborhood Corporation, or  
2 what I'm going to say is INC in the future, is -- the mission  
3 is to advocate for Denver citizens by bringing together,  
4 informing and empowering Denver neighborhood organizations to  
5 actively engage in addressing City issues. There are 92 RNOs  
6 as members of INC currently.

7           Q     What's an RNO?

8           A     I'm sorry. A registered neighborhood organization.

9           Q     So your members include delegates from 92  
10 neighborhood associations?

11          A     Yes.

12          Q     Now, did your membership vote on what position to  
13 take with respect to this proposed trade of a park or part of a  
14 park for an office building?

15          A     Yes, we did. The INC Parks and Rec Committee set  
16 forward a motion to the delegates, and in January we passed our  
17 motion.

18          Q     And did you then send a letter to City officials  
19 stating your position?

20          A     Yes, we did.

21          Q     And could you look at Exhibit 49, please.

22          A     Yes.

23          Q     What is Exhibit 49?

24          A     It's a letter to City Council.

25          Q     And what is that recommending?

1 MR. CASE: Your Honor, at this time we would offer  
2 Exhibit 49, consisting of two pages, 49-1 and 49-2.

3 MR. BROADWELL: No objection.

4 THE COURT: It's admitted.

5 (Plaintiff's Exhibit 49 admitted into evidence)

6 THE WITNESS: It talks about -- just a second. It  
7 asks the City to immediately introduce legislation to City  
8 Council to be signed by the mayor that would result in  
9 designation by ordinance of any such administratively  
10 designated parks and natural areas now and in future so that  
11 such parcels of land cannot be sold or leased without a vote of  
12 the people.

13 BY MR. CASE:

14 Q Why were you -- why was that important to your  
15 members from these Registered Neighborhood Organizations?

16 A It was important because we -- we felt that there was  
17 some question as to whether the charter was being followed, and  
18 was the park designated or not, and so we felt very strongly  
19 that there was enough confusion by the public that it needed to  
20 be clarified.

21 Q So that all parkland used by people of Denver would  
22 have the protection that it can't be sold or traded away  
23 without a vote of the public?

24 A Correct.

25 Q Did you ever get a letter back from City Council or



1 Mayor Hancock or Michael Sapp or any of these other people who  
2 got this letter?

3 A Not that I'm aware of.

4 Q So did you go to the City Council meeting on April 1  
5 of this year?

6 A A number of people did. I didn't. I did watch it on  
7 channel 8.

8 Q All right. So they passed an ordinance trading away  
9 this 10.7 acres?

10 A Yes.

11 Q And then after a bit, did you hear that petitions  
12 were being circulated to repeal that ordinance?

13 A Yes, we did.

14 Q Did you hear that the clerk had disallowed those  
15 petitions?

16 A I had heard that, yes.

17 Q And that the petitioners had been instructed by the  
18 clerk to sue the City, if they wanted to repeal this ordinance;  
19 had you heard that?

20 A Yes.

21 Q Last Saturday, June 8, did your members take a vote  
22 on whether to participate in this lawsuit?

23 A Yes, they did.

24 Q Before that vote did the mayor send a representative  
25 to talk to you?

1           A       I would like to refer to draft minutes from that  
2 meeting from the secretary, because I asked her for that  
3 information.

4           THE COURT:   What meeting are we talking about?

5           THE WITNESS:   We have a monthly INC delegate meeting.  
6 It occurs on the second Saturday of each month. I would like  
7 to read the motion. The motion is for INC to become a party to  
8 the lawsuit with a limiting liability of \$500 or less.  
9 Following the 2nd, there was a lot -- there was discussion. We  
10 had had a presentation about the Hentzel Park land swap and  
11 information was given about questions to the designation, and  
12 there was also previously the motion and the letter that we had  
13 already taken a position about the land swap. And so there was  
14 a lot of concerns about the lack of open space.

15           I would like to interject, if I may, that INC Parks  
16 Committee has a platform that was approved in, let's see, it  
17 was January 2, '08. And in platform that was approved by the  
18 delegates, the platform was based on four broad assumptions.  
19 There is a need to preserve open green space to which all  
20 citizens can have free and equal access, and there is a need to  
21 a implement community-based process for the development of park  
22 policy, there is a need to increase significantly the amount of  
23 urban land devoted to parkland, and there is a need to have a  
24 sustained and dedicated revenue source to ensure future Denver  
25 City parks.

1           So this is -- the vote that followed was not  
2 inconsistent with what we had been bringing to the delegates  
3 since 2011. But at the end of the discussion, before the vote  
4 was taken, Michael Sapp, who is the Mayor's neighborhood  
5 liaison, spoke. And he advised -- and this is according to  
6 this draft minutes -- he advised INC to think very carefully  
7 about passing this motion. This was perceived by some of the  
8 delegates as a threat that we should not join into the lawsuit.  
9 Subsequently, we had the vote and it was 19 yes, three no, and  
10 seven abstained.

11 BY MR. CASE:

12           Q     Do you think this is an important public issue,  
13 whether parks should be preserved?

14           A     I think it's an extremely important issue. First of  
15 all, because INC has a strong position on park and parkland.  
16 And that we feel that, if anything, we need more parkland, not  
17 less parkland. And giving up any parkland is not acceptable  
18 and it's just flat-out not acceptable.

19                     Second of all, we think it's a precedent setting and,  
20 thirdly, we believe -- I believe that there's a perception by  
21 the public, and this is very frustrating from the people that I  
22 talked to, is that when we say this is a park, the people do  
23 not understand designated, dedicated, not dedicated. If it's a  
24 park and they use it as a park, and especially if it's being  
25 maintained and it's got a name, we think it's a park. So I

1 think that there is a trust issue here. So I think it is  
2 something that needs to go to the people and let the people  
3 tell City what they feel about it. I mean, because I think in  
4 the charter it refers to doing that.

5 MR. CASE: Thank you, ma'am. That concludes my  
6 direct examination, Your Honor.

7 THE COURT: Cross.

8 MR. BROADWELL: Thank you.

9 CROSS-EXAMINATION

10 BY MR. BROADWELL:

11 Q Good afternoon, Ms. Johnstone. Just a few kind of  
12 clarifying questions to your testimony, kind of going from the  
13 last first.

14 A Okay.

15 Q Notwithstanding the resolution you were just citing  
16 from INC, they're not a formal party as we sit here today, are  
17 they? They haven't actually intervened in the lawsuit as we  
18 sit here today; is that correct?

19 A What do you mean by "intervened"?

20 Q You indicated that they voted to join in the lawsuit.

21 A Uh-huh.

22 Q As an attorney for the City, I haven't seen any  
23 indication that has happened, that they have actually joined as  
24 a party to this suit. Do you know if that's occurred or not?

25 A It happened Saturday. I don't know what legal

1 details need to be done in order to make that more clear.

2 Q Thank you. I guess we'll see. Another clarifying  
3 question: I understand -- what was your last year on the Parks  
4 and Recreation advisory board?

5 A It was 2007.

6 Q Okay. So in current times, as you have been watching  
7 this story of the land transaction between DPS and the City,  
8 Mr. Case asked you about whether you understood it was for  
9 trading the land in Southeast Denver for an office building  
10 downtown. Do you understand that it's more than just an office  
11 building? Are you aware of what the use of the building is  
12 proposed to be as part of the land exchange?

13 A Absolutely.

14 Q That is what?

15 A It's a women's shelter and victim advocate building.

16 Q Which had been a part of the public discussion over  
17 the last several months.

18 A I don't --

19 Q In terms of how people understand the land exchange,  
20 they understand that on the one hand there's an elementary  
21 school at stake, on the other hand, there's a domestic violence  
22 center proposed to be developed a short distance from this  
23 building over on Fox Street; is that right? Is that the basic  
24 way you understand it?

25 A That's what has been in the papers; that that's what

1 the swap is.

2 Q I'm just trying to clarify.

3 A I'm trying to understand. I think people have read  
4 different things but, yeah, that's -- what's been in the paper  
5 is that the land will be exchanged for a building on Fox  
6 Street. Right?

7 Q Yes. I'm just trying to clarify. It's not just an  
8 office building. It's going to be a domestic service center.

9 A Yes, I mean.

10 Q Thank you. Couple of questions about your testimony  
11 about being on Parks and Recreation advisory board when the  
12 original natural areas designation occurred.

13 A Yes

14 Q Do you recall the fact that when you all took that  
15 action, recommended that that occur, that the natural area that  
16 came to be known as the Hentzel Park natural area encompassed  
17 both literally acreage that was actually in Hentzel park as  
18 well as some area acreage that lay outside the boundaries of  
19 Hentzel Park; do you recall that?

20 A I don't have those details for sure. I just need --  
21 because it was pretty confusing the way we talked about it, but  
22 I knew what the area was that was going to be dedicated natural  
23 area, which included the area that we're talking about.

24 Q Okay. And the area we're talking about in terms of  
25 property to be conveyed to Denver Public Schools, you

1 understand that's not in Hentzel Park. It may have been in the  
2 natural area, but it's not in the formal area that's known as  
3 Hentzel park.

4 A Okay. That's why it was rather confusing.

5 Q Yes.

6 A Except that it's called Hentzel Park natural area,  
7 and so when we talked about it, we talked about Hentzel Park  
8 natural area.

9 Q But you said you don't recall the fact that the  
10 acreage in the natural area is actually larger than the acreage  
11 in Hentzel Park.

12 A Hentzel Park or Hentzel natural park?

13 Q That the area of the -- comprised of the natural area  
14 is larger than the area that is truly Hentzel Park.

15 A Yes.

16 Q That is an accurate statement, as you recall it?

17 A Yes.

18 Q Okay. Thank you. I think just one more thing. I  
19 want to refer you back to Plaintiff's Exhibit 49, the INC  
20 letter that was sent in January. Again, just to clarity, you  
21 read this once before. But the guts of the letter appears to  
22 be the second to last paragraph where what INC was asking is  
23 for the City Council and Mayor to introduce legislation which  
24 would result in designation by ordinance of such  
25 administratively designated parks and natural areas, so that

1 these parcels of land cannot be sold or leased without a vote  
2 of the people.

3 Now, was the -- sounds as if the intent of this was  
4 to say under the status quo you all were concerned that there  
5 were certain properties that may have been managed by Parks but  
6 were unprotected. They were able to be sold off, unless they  
7 were officially designated by ordinance. Is that an accurate  
8 interpretation of that?

9 A Yes, yes.

10 Q Are you aware that as a part of the real estate  
11 transaction with DPS, some additional land was indeed  
12 designated and added to Hentzel Park as parkland at the same  
13 time?

14 A Yes.

15 Q So some of that has been occurring, that additional  
16 parkland indeed in Denver has been designated officially by  
17 ordinance as parkland in recent months.

18 A Yes.

19 Q Which leads me to my concluding questions again,  
20 which is that, however, you have no information that the  
21 specific 10.7 acres that the City is proposing to go sell to  
22 DPS as ever been officially designated as a park by ordinance.

23 A No, I do not, but I do want to restate that being on  
24 the Parks and Rec advisory board in 2007, and when it was  
25 brought up, it was never said it is not designated. So, you



1 know, assumptions can always get you, but what one would assume  
2 if being asked to designate a natural area, one would assume  
3 that it was going to be then and forward going, I'm not sure --  
4 anyway, I'm going to stop there. But my assumption was, of  
5 course, it's designated. And again, I want to reiterate that I  
6 think the public gets very confused between designated,  
7 dedicated and not dedicated park. So there's some legal parts  
8 here, but I think that it's important to recognize that the  
9 people look at our open space in a completely different way  
10 than the lawyers do.

11 Q I understand. It's the legal parts that we're mainly  
12 here to talk about today.

13 A Absolutely.

14 Q Finally, as of December 31, 1955, do you have any  
15 information about the status or use of the property as of that  
16 date?

17 A No, I do not.

18 MR. BROADWELL: Thank you.

19 THE COURT: Anything else?

20 MR. CASE: No redirect, Your Honor.

21 THE COURT: Thank you, ma'am.

22 MR. CASE: Plaintiffs call Steve Waldstein.

23 STEVE WALDSTEIN, PLAINTIFF'S WITNESS, SWORN

24 THE COURT: Is it hot in here?

25 MR. CASE: Yes.

1 THE COURT: We've got some air-conditioning that  
2 might work today. Go ahead. Everybody is going to have to  
3 talk up a little bit.

4 DIRECT EXAMINATION

5 BY MR. CASE:

6 Q Would you please introduce yourself to the  
7 Court?

8 A Yes. My name is Steve Waldstein. I live at 3326  
9 South Geneva Street, Denver, 80231.

10 Q Spell your last name, please.

11 A W-A-L-D-S-T-E-I-N.

12 Q Do you own that home at 3326 South Geneva?

13 A Yes, I have for about 13 years.

14 Q When did you purchase it?

15 A Approximately 13 years ago. I don't remember the  
16 exact date.

17 Q Was open space a factor in purchasing the home?

18 A It was the largest single factor. When my wife and I  
19 and daughter were looking for a house, we looked at many  
20 houses, but decided against them because it felt not very  
21 private at all. And there was not much opportunity to spend  
22 time outside.

23 So when we saw this house, the thing we just fell in  
24 love with was, one, that it had a back gate that opened up  
25 right to open space, and that the open space was just, you

1 know, was just wonderful that we would just walk out our back  
2 gate and be on Cherry Creek or wander from there. We could  
3 walk all the way to the reservoir, if you wanted, Cherry Creek  
4 Reservoir. That you could go to the High Line Canal in the  
5 other direction. That was the my primary thing which made us  
6 decide to buy the house.

7 Q I'm showing you Exhibit 17. Could you look locate  
8 your house for us on Exhibit 17, please? You can just use the  
9 map up there.

10 A Could I also use the pointer? What am I doing wrong?

11 THE COURT: Press and point.

12 THE WITNESS: Just the red button?

13 THE COURT: Yes.

14 THE WITNESS: It isn't working. Okay. My house is  
15 -- it's right about there. The proposed school would be  
16 literally right outside my back gate.

17 BY MR. CASE:

18 Q Mr. Waldstein, if somebody had told you when you were  
19 going to buy your house that in the future they were going to  
20 take away this open space and build a school there, would you  
21 have bought your house?

22 A Absolutely not.

23 Q Why not?

24 A When we considered buying the house, one of the first  
25 things I was worried about was is the space back there going to

1 remain a park? So I talked to the real estate agent and the  
2 real estate agent said that -- he said he would do some  
3 research, and he researched the zoning maps and City maps and  
4 said that it's City parkland, so you're absolutely safe it's  
5 going to stay a park.

6 Q All right. Would you look at Exhibit Number 35-2,  
7 the sign at the edge of the park.

8 A I have seen that sign many times.

9 Q Did it indicate to you that the property you bought  
10 was adjacent to a City park?

11 A I mean, everything made it seem it was a park. The  
12 fact that there were tons of people wandering through there all  
13 the time doing park things, the fact that on all of the City  
14 maps that I could see on the Internet it was labeled as North  
15 Hampden Heights Park. There was just never any question that  
16 it was a park, so we felt that this was a safe place to live.

17 Q In the fall of 2012, did you learn of a plan to trade  
18 this part of that parkland, the part next to your house, for an  
19 office building or a building downtown?

20 A Yes, I did. And it was October, and there was a  
21 door-to-door attempt to deliver some notices, but that notice  
22 blew away so I never saw it at first. And then I heard from  
23 one of the neighbors and got ahold of one of the notices. And  
24 I was just really upset. I mean, our whole lifestyle had been  
25 focused around this open land. I mean, we'd been taking walks

1 there for, you know, taking walks, looking at birds, watching  
2 -- looking at all the animals. My daughter, who is now grown  
3 up, grew up in that area and, you know, she'd go off wandering  
4 and spend lots of time just having fun out there. It was a  
5 great place to grow up.

6           And then -- so when I found the -- when I found out  
7 about the notice, I started contacting the people that were  
8 listed on the notice to get more information, and made phone  
9 calls to the people sitting in the corner there, and I went to  
10 the public meeting that they had at the local school where -- I  
11 thought it was going to be a discussion about whether or not  
12 they were going to do the project, but it was very clear in the  
13 whole presentation that they already had decided to do the  
14 project. They were just letting us know at the last minute  
15 that in fact it had been going on for a very long time.

16           Q     When you say "the people back there in the corner,"  
17 who are you referring to?

18           A     It's Denver Public School employees. I don't  
19 remember their names.

20           Q     What was the outcome of the public hearing?

21           A     Well, that was not a public hearing yet. That was  
22 just an informational meeting where basically they showed us  
23 lots of slides and pictures. And one thing that really struck  
24 me was when they were showing all the pictures of the site,  
25 they looked for the absolute worst pictures you possibly could

1 get to make it look horrible.

2 THE COURT: To make it look what?

3 THE WITNESS: Horrible. And then I went to the  
4 public hearing at the -- what's it called? At the Parks  
5 Advisory Board. And I testified. And the Parks Advisory  
6 Board, you know, took seriously the process and wound up voting  
7 to not allow the sale. And then I again went to City Council  
8 and testified before City Council, and City Council voted to  
9 allow the sale. I also wrote letters to the editor, various  
10 papers and so on.

11 BY MR. CASE:

12 Q Right. Have you begun circulating a petition to  
13 repeal the ordinance that City Council passed on April 1?

14 A Yes, I've been spending a lot of my time over the  
15 last three weekends collecting signatures. I've collected 310  
16 signatures over the past three weeks, but now it's very hard to  
17 do it when we don't know whether the petitions will be accepted  
18 or not.

19 Q You're aware the Clerk and Recorder has told you  
20 you're -- or has told the circulators they're not allowed to  
21 circulate a petition.

22 A Yes, which of course got me very upset.

23 Q And that instead of circulating a petition, they  
24 would have to sue.

25 A Right. So, I mean, I joined this lawsuit as a

1 plaintiff because I felt we needed to go down both avenues at  
2 the same time.

3 Q Now, if the school is built, how is that going to  
4 affect your home and your family and the structure of your  
5 life?

6 A Well, I mean, you know, I mean, one, it means that --  
7 when we bought the house it was both the open space and it was  
8 it was a quiet neighborhood. It's a neighborhood of all cul-  
9 de-sacs, and it's very quiet. If there's a school literally I  
10 right behind back gate, I mean, it's that close, of course the  
11 quiet neighborhood is gone. It will not be quiet at all. It  
12 also means that I no longer can wander out and walk in that  
13 direction at all. So it will just change my lifestyle  
14 entirely.

15 And there's a definite monetary issue also. I  
16 refinanced my house back in January, and when the appraisal was  
17 done for the refinancing, one of the line items in the  
18 appraisal was the appraiser added the value of us being next to  
19 open space as \$20,000, and added that as part of the appraisal  
20 amount.

21 Q So you mentioned the -- when the school board and the  
22 City were showing pictures, they tried to show the ugliest  
23 pictures possible.

24 A Yes.

25 Q So what is this that we're looking at in Exhibit 46?

1 A This is right behind my house.

2 Q So where would your house be? Can you point to it?

3 A It's just off the picture, on the left.

4 Q All right. So what does it feel like when you get up  
5 on a winter morning and there's snow out there and you walk  
6 through your gate and it crunches under your feet when you walk  
7 through that?

8 A I mean, just my lifestyle. I don't know how to  
9 explain it otherwise. It's just the way I live my life. You  
10 know, I mean, before I go to work I often -- or after work I  
11 take walks out there. And, you know, watch all the animals.  
12 It's a lifestyle I chose to live. I feel like, you know, the  
13 City is taking away what -- the life I chose to live.

14 Q Was as citizen, was it your understanding that the  
15 City officials zoned the parks in trust for the benefit of the  
16 people?

17 A Absolutely.

18 Q Do you feel they've betrayed that trust?

19 A Absolutely. For one thing, I mean, like everyone  
20 else I assumed that a park is a park, that a park stays a park  
21 forever. You know, I had no idea of different classifications  
22 of parks and some are, you know, protected and some aren't.  
23 But I mean to me, you know, if the City is advertising it as a  
24 park, it's a park and it should stay a park.

25 Q Do you feel, as a citizen, that if this ordinance was



1 passed over your objection by the City Council that you have a  
2 right, as a citizen, to petition for its repeal?

3 A Absolutely.

4 MR. CASE: Thank you. That concludes my direct  
5 examination, Your Honor.

6 THE COURT: Cross-exam?

7 MR. BROADWELL: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. BROADWELL:

10 Q Good afternoon, Mr. Waldstein. If I missed it, I'm  
11 sorry. You purchased your home when?

12 A 13 years ago.

13 Q Around 2000?

14 A March of 2000, I think.

15 Q And in your conversations with the real estate agent  
16 or any of your own personal efforts, did you ever see or find  
17 or look for an ordinance that would have officially dedicated  
18 or designated the property behind your home as a park?

19 A No. That's not something any citizen would normally  
20 do. I mean, I looked at all the City websites and they made it  
21 clear it was a park.

22 Q Do you have any information about the use of the  
23 property as of December 31, 1955, long before you lived there?

24 A No, I was 4 years old.

25 Q That was the year I was born. Long time ago. Let's

1 see. Just a couple of other -- again, clarifying-type  
2 questions; if you will. As you follow this more actively and  
3 began to get engaged in the whole discussion about the land  
4 transaction, you mentioned the park -- I'm going to paraphrase  
5 your testimony. The Parks and Recreation advisory board voted  
6 to not allow the sale.

7 A Not allow the designation.

8 Q That's the point I wanted to clarify. You understand  
9 the vote they took that night was on the manager's proposal to  
10 de-designate the natural area.

11 A Yes, I do.

12 Q Not technically on the sale. Thanks for that  
13 clarification. Just a couple of questions about the petition  
14 process. Did I understand you correctly to say that even after  
15 the Clerk and Recorder disapproved the petition form and sent  
16 letters to the petitioner's committee, that some of you were  
17 circulating petitions anyway?

18 A Yes.

19 Q Notwithstanding her disapproval letter. And kind of  
20 related to that, I don't recall that your name was listed as  
21 one of the 25 members of the petitioners' committee, which by  
22 law originally submitted the petition forms, submitted the  
23 affidavits --

24 A I wasn't.

25 Q So you weren't a member of the petitioners'

1 committee, but you feel like your participation in this lawsuit  
2 today is your way of appealing what the clerk did.

3 A Yes.

4 MR. BROADWELL: Okay. Thank you, very much. That's  
5 all I have.

6 HE COURT: Anything else?

7 MR. DEHERRERA: No, Your Honor.

8 THE COURT: Mr. Case?

9 MR. CASE: No redirect.

10 THE COURT: Thank you.

11 MR. CASE: Our last witness will be Renee Lewis. May  
12 Mr. Waldstein be excused?

13 THE COURT: You may step down, sir. Let's take a  
14 break at this point. We'll take a break until quarter of 4:00.  
15 We'll be in recess.

16 (Recess at 3:25 p.m., recommencing at 3:50 p.m.)

17 THE COURT: All right. This is the Friends of Denver  
18 Parks matter, 13-CV-32444. Let's proceed.

19 MR. CASE: Thank you, Your Honor. We call Renee  
20 Lewis.

21 RENEE LEWIS, PLAINTIFF'S WITNESS, SWORN

22 DIRECT EXAMINATION

23 BY MR. CASE:

24 Q Would you please introduce yourself to the court.

25 A My name is Renee Lewis, and I live at 2770 South

1 Elmira Street, Unit 38, Denver, 80231.

2 Q Ma'am, do you have occasion to use the 90-acre  
3 natural area that we have been talking about here today?

4 A Yes, I live on the edge of the park there and I find  
5 it a place of great solace and go there frequently.

6 Q I'm showing you Exhibit 17. Can you use the pointer  
7 to show Judge Stern where you live.

8 A Let's see here. There's Elmira Street, and I live  
9 about in here.

10 Q How do you use this 90-acre natural area?

11 A Well, you know, I ride my bicycle, but I truly most  
12 enjoy just walking along the creek. It reminds me very much of  
13 my childhood. I was raised on a farm, 40-acre farm, and it was  
14 lined -- the boundaries were lined with a creek. So I, you  
15 know, I enjoy walking along the creek, but I also like to walk  
16 up to the land in question because that's where the prairie dog  
17 colony is. Especially this time of year, they have their pups  
18 and it's quite fascinating to go watch them and the little --  
19 their parents are quite excited about these young pups not  
20 behaving themselves and putting themselves in danger. So I get  
21 a lot of joy and it seems like they talk to you, you know,  
22 they're chirping. And actually it's their warning cries.

23 Q So could you look at Exhibit 30, please, and tell us  
24 what this is.

1           A     This is a photograph of a young prairie dog in the  
2 site here on this land in question.

3           Q     Did you take this photograph?

4           A     I did not, but I met a nurse over in Woodstream  
5 Village who is a photographer by hobby, and she has all the  
6 fancy lenses and stuff, and she had told me she had taken  
7 photographs. We were looking for photographs of the prairie  
8 dogs that were good quality, so she sent me this.

9           Q     Is this from that prairie dog colony in the 90-acre  
10 natural area?

11          A     Yes, that's what she told me, that they were the  
12 pups. And at this time of year there's purple flowers all over  
13 the fields, and she went there to take pictures of the pups and  
14 the purple flowers in the background.

15                   MR. CASE: Your Honor, we offer Exhibit 30.

16                   THE COURT: Any objection?

17                   MR. BROADWELL: No objection.

18                   THE COURT: All right. It's admitted.

19                   (Plaintiff's Exhibit 30 admitted into evidence)

20 BY MR. CASE:

21          Q     Have you seen owls in the woods along Cherry Creek?

22          A     Yes, I have. One particular incident I remember, and  
23 it taught me a lot, on Halloween night a great horned owl got  
24 up in a tree across from where we live. And apparently that's  
25 the time of year they have their mating calls, and he proceeded

1 to start hooting on Halloween night, which I think was very  
2 magical. Of course, there was no leaves on the tree so it kind  
3 of looked like a dead tree and this big great horned owl on  
4 Halloween night, and it was just fascinating. He proceeded to  
5 do that every day, all night long, for two weeks. It was quite  
6 interesting.

7 Q Could you look at Exhibit 29. Is this a great horned  
8 owl?

9 A Yes, sir

10 Q Did you take this photograph?

11 A No, I did not.

12 Q Same lady that took the prairie dog?

13 A Yes.

14 Q Now, does this photograph show the kind of owl that  
15 you saw in the wood up there by the creek?

16 A This is the kind of owl. This is a less-mature -- I  
17 saw a more mature owl.

18 MR. CASE: All right. Your Honor, we offer 29.

19 THE COURT: Any objection?

20 MR. BROADWELL: No objection.

21 THE COURT: It's admitted.

22 (Plaintiff's Exhibit 29 admitted into evidence)

23 BY MR. CASE:

24 Q Now then, in the fall of 2012, did you learn that the  
25 City planned to trade away this 10.7 acres to the south?

1           A     I did learn that. I've never received any  
2 notification of any kind from the City, but through articles in  
3 the Cherry Creek Chronicle, which comes to our mailboxes,  
4 Glendale Cherry Creek Chronicle, they started a series of  
5 articles about this transaction and that's how I learned about  
6 it.

7           Q     Did you go to public meetings?

8           A     Yes. I started going to the meetings and actually  
9 started organizing and letting neighbors know when the meetings  
10 were, and asking them to write letters and respond to this,  
11 which the neighbors all felt that that was not something they  
12 agreed with.

13          Q     Did you go to the Denver City Council meeting on  
14 April 1?

15          A     Yes, I did.

16          Q     Did you speak there?

17          A     Yes, I did.

18          Q     Did the Council pass the ordinance trading away this  
19 land anyway?

20          A     Yes, they did.

21          Q     After that City Council meeting, did you get together  
22 with some other people to try to organize a little bit to do  
23 something about this?

24          A     Yes. I had been organizing all along, so I connected  
25 with groups of people who I knew felt strongly about it, and we

1 formed a group called Friends of Denver Parks, and we  
2 incorporated that.

3 Q Is that a nonprofit corporation?

4 A Yes, it is.

5 Q Who are the members?

6 A Myself, my husband, David Hill, Shawn Smith and Judy  
7 Case.

8 Q Who is the president?

9 A I am the president.

10 Q Did that group start trying to circulate petitions to  
11 repeal ordinance 170?

12 A Yes, we did. I felt that when you make your appeals  
13 to a representative government and you don't have recourse from  
14 that venue, and we'd written letters and protested and spoke to  
15 all of these representatives, and just, you know, and got the  
16 impression it was a done deal. There was really no  
17 conversation to be had. They just wanted to inform us this was  
18 how it was going to be.

19 Not believing myself a victim of the system, I always  
20 know that there's recourse under the law, and I felt that that  
21 recourse would be direct democracy, which was taking it to the  
22 people, because I do know there is a lot of public interest in  
23 this issue.

24 Q So is Exhibit Number 6 the petition that you and the  
25 petitioners' committee submitted to the Clerk and Recorder to



1 circulate to repeal ordinance 170?

2 A Yes, sir, it is.

3 Q Did you receive a letter back from the Defendant,  
4 Debra Johnson, telling you that you didn't have the right to  
5 circulate petitions?

6 A Yes, we were told that the decision was made  
7 administratively and, therefore, if we had -- if it was a  
8 legislative decision, then we could petition. But since it was  
9 just an administrative task, so to say, that we as citizens did  
10 not have a right to appeal through a petition effort.

11 Q Are there two letters here from Debra Johnson,  
12 Exhibit 7 and Exhibit 9?

13 A Yes. This is the one I'm familiar with.

14 Q Looking at page 2 of Exhibit 9, did Debra Johnson  
15 make a statement there telling your group that you didn't have  
16 recourse with the petition, you needed to go to court? See  
17 where it says in Paragraph C on page 2 of Exhibit 9?

18 A Yes, I see Paragraph C.

19 Q Go down to the next to last sentence, the  
20 petitioners' committee.

21 A Oh, yeah.

22 Q Could you read that out loud, read those last two  
23 sentences?

24 A "No petition shall be circulated nor shall any  
25 signatures be procured until such affidavit, petition sample

1 and ballot title are approved by the Clerk and Recorder." Is  
2 that the one you're referring to?

3 Q That's one of the sentences. Did she tell --

4 A Above it says, "The petitioners' committee, if not  
5 satisfied with the decision of the Clerk and Recorder, may  
6 institute legal proceedings with the appropriate court."

7 Q After you got that letter, did you have me file this  
8 lawsuit?

9 A Yes, sir.

10 Q Now then, before this letter from Debra Johnson, had  
11 we had a couple of meetings with Mr. Broadwell?

12 A Yes, we did.

13 Q Do you recall him saying in those meetings that it  
14 was an administrative decision, not legislative, so we wouldn't  
15 be able to circulate petitions?

16 A Yes, I do.

17 Q After he told us that in early April, did it kind of  
18 set us back a bit?

19 A Yeah. We did, you know, we had to really look at  
20 administrative versus legislative and what that meant.

21 Q After that research was done, was a letter written to  
22 Debra Johnson by myself explaining our interpretation of the  
23 law?

24 A Which exhibit would that be?

25 Q Exhibit Number 8.

1 A Yes. This is a letter that I have seen.

2 Q All right. Was it a setback time-wise for the  
3 petitioners' committee to be told that we didn't have the right  
4 to circulate petitions?

5 A Yes, it was.

6 Q Are you here to ask the Court to enjoin Debra Johnson  
7 from preventing you from circulating petitions?

8 A Absolutely. This is part of direct democracy and if  
9 we feel that -- the public feels strongly and if you look at  
10 Denver City Charter 245, the spirit of the law -- obviously  
11 there's a reason why they require that this be given a vote to  
12 the people as it is a very vital issue what you do with our  
13 parks.

14 And people -- one of the things that did not ever  
15 happen is they didn't demonstrate to us some of the basics that  
16 they would have to demonstrate to the public in a voting  
17 scenario. They have to show why it's so darn important to have  
18 a school right there in that spot, you know, and they would  
19 have to show us that it wouldn't affect the environment, and  
20 they had done studies on traffic. They didn't have to do any  
21 of that. You know, they just told us that's the way it is.  
22 Mommy and daddy knows best.

23 Q Now then, are you asking the Court also for more time  
24 to circulate petitions because of the setback due to Ms.  
25 Johnson?

1 A Absolutely.

2 MR. CASE: Thank you, very much, ma'am. Appreciate  
3 you coming down. That concludes my direct examination, Your  
4 Honor.

5 THE COURT: Cross?

6 MR. BROADWELL: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. BROADWELL:

9 Q Ms. Lewis, did you hear the previous witness, Mr.  
10 Waldstein, testify that even though Clerk Johnson sent her  
11 disapproval letters, you all went ahead and proceeded to  
12 circulate petitions anyway for signatures; is that correct?

13 A Before what now?

14 Q After the Clerk sent her disapproval letter, you all  
15 on the petitioners' committee nevertheless proceeded to  
16 circulate petitions for signature.

17 A Yes, we are circulating petitions, yes. We are  
18 currently doing that now. And we went ahead and did that, yes.  
19 We had to have it printed, that was all delayed because we had  
20 to respond to these letters, but we ahead and had that printed,  
21 yes, and are circulating petitions as we speak.

22 Q So you don't interpret her letters as stopping you  
23 from doing that apparently.

24 A Well, she said we had to go to court, and I figured  
25 that we could get recourse under the law in the court system.

1 Q Do you have any explanation for why -- you mentioned  
2 that you're involved in the new nonprofit corporation Friends  
3 of Denver Parks, Inc., correct?

4 A Yes.

5 Q You were a member of the original petitioners'  
6 committee on the affidavit submitted to Clerk Johnson?

7 A I have been, yes.

8 Q Okay. Any explanation for why you didn't go to court  
9 in the name of the petitioners' committee as opposed to forming  
10 a new corporation?

11 MR. CASE: Objection, Your Honor, that's privileged,  
12 based on legal advice.

13 THE COURT: Okay. I'll give you the benefit of the  
14 doubt on that.

15 MR. BROADWELL: I'll withdraw the question.

16 THE COURT: Sustained.

17 MR. BROADWELL: Thank you, Your Honor. I have no  
18 further questions. Thanks.

19 THE COURT: Anything else with this witness?

20 MR. CASE: No, Your Honor.

21 THE COURT: Thank you, ma'am, you may step down.  
22 Anything else, Mr. Case?

23 MR. CASE: No, Your Honor, we rest.

24 THE COURT: Witness from the City or the school  
25 board, school district?

1 MR. BROADWELL: Speaking of the school board, our  
2 original plan was to have the City's witnesses come and talk a  
3 little bit more about the history of the property, but we do  
4 have a school board meeting starting in an hour, and I'm going  
5 to defer to the DPS attorneys to call -- at least two of their  
6 witnesses may be school board members.

7 MR. DEHERRERA: Your Honor, the Denver Public Schools  
8 calls school board member Anne Rowe.

9 ANNE ROWE, DEFENDANT'S WITNESS, SWORN

10 DIRECT EXAMINATION

11 BY MR. DEHERRERA:

12 Q Good afternoon.

13 A Good afternoon.

14 Q Please state your full name for the record.

15 A Anne Rowe, last name R-O-W-E. I live at 3220 South  
16 Monroe Street, 80210.

17 Q How long have you lived there, approximately?

18 A Twenty-two years.

19 Q What part of the city is that located in?

20 A Southeast Denver.

21 Q What is your occupation?

22 A My husband and I own a publishing company.

23 Q Are you an elected official?

24 A I am an elected official.

25 Q What is your elected position?

1           A     I'm a member of the Denver Public Schools Board of  
2 Education, and I represent District 1, which is Southeast  
3 either Denver.

4           Q     How long have you been serving in a position?

5           A     18 months.

6           Q     The property that we've been discussing today, is  
7 that located within your district?

8           A     It is.

9           Q     Are you familiar with that property?

10          A     I am.

11          Q     Have you spent time at the property outside your  
12 capacity as a school board member representing that district?

13          A     Outside as a school board member representing the  
14 district?

15          Q     Right. Have you spent time there?

16          A     I have been on the bike path and in Hentzel Park,  
17 yes.

18          Q     So you're familiar the areas we've been discussing?

19          A     Yes, and I am very familiar with the site because  
20 I've walked it personally three times now.

21          Q     Can you describe some of the educational challenges  
22 that the families in the area around this property are facing?

23          A     Sure. So if you look at southeast and particularly  
24 what we would call far southeast, so the furthest southeast  
25 within Denver Public Schools, and if you look particularly at

1 our elementary-aged and early childhood education age, so  
2 prekindergarten-aged students, we are currently in a situation  
3 where we suffer from overcrowding.

4 And to give you an idea, our surrounding elementary  
5 schools, those being Holm, Samuels, Bradley and Southmoor,  
6 three of them are over capacity and one of them is very near,  
7 if not, 100 percent capacity. Holm, which is the closest  
8 elementary school to the site that we're talking about,  
9 actually had to move its fifth grade students to a middle  
10 school on the same property, because of the overcrowding  
11 situations. Samuels currently has three mobile units, which  
12 they are using as well, as does Southmoor.

13 Q The overcrowding issue that you just described, is  
14 that something that you've been focusing or at least working on  
15 since your time on the school board?

16 A Yeah. Every year the district does what's called a  
17 strategic regional analysis, and it's an in-depth analysis of  
18 various aspects within the district, demographic, demographic  
19 changes, projected birth rates, projected growth rates, choice  
20 in, choice out, needs of kinds of schools.

21 And in the 2012 strategic regional analysis it was  
22 determined that Southeast Denver would need now, and would  
23 certainly need in the future, based on birth rates in that  
24 area, increased seats certainly in ECE, as well as elementary  
25 school. So it was -- the recommendation from the district at



1 that time was to recommend to build an elementary school in far  
2 Southeast Denver to provide those seats for those families and  
3 students.

4 Q Can you also talk about the impact on the early  
5 childhood education opportunities? I think you mentioned that.  
6 Can you explain that a little bit more for the Court?

7 A Yes. Even as of right now the elementary schools in  
8 area, many of them don't have their ECE classes at the  
9 elementary because they're at capacity. And so they're at an  
10 elementary center at night. What you used to be night  
11 fundamental academy. And so, as we look forward, we know that  
12 those seats in particular for the three- and four-year-olds are  
13 the seats we're desperately going to need, and particularly, as  
14 I said, in the far southeast area.

15 Q Can you tell us what the early childhood education  
16 program is designed to do in this area?

17 A Well, as in any area, I mean, data has shown  
18 consistently over time the opportunity and the access to  
19 quality early childhood education for students vastly impacts  
20 their progress, their ability to achieve their potential and  
21 their opportunity. And so we are committed, as a district, to  
22 increase the number of seats in early childhood education, and  
23 this would be part of that strategy.

24 Q Do you have any number or do you know how many  
25 potential early childhood education children are not able to

1 participate in the program because of the lack of space?

2 A You know, I don't off the top of my head, but I  
3 believe it's in the range of 150 to 200 children currently.

4 Q Can you tell us, are impacts on the performance of  
5 students in the elementary schools when their schools are over  
6 capacity?

7 A Well, I mean, we all know that being over capacity  
8 makes it much more challenging. And as a representative in  
9 that area, I have a chance to spend time in all of these  
10 schools and have -- when this came up in the fall, I mean,  
11 excuse me, in the spring of 2012, I particularly talked to the  
12 school leaders and representatives at the four elementary  
13 schools that I mentioned and they had heard of the possibility  
14 of a new elementary school, and they were very supportive of  
15 it.

16 MR. CASE: Objection, hearsay, Your Honor.

17 THE COURT: Want to respond, counsel?

18 MR. DEHERRERA: She's not offering the statement for  
19 the proof of the matter asserted. I don't think it's hearsay.

20 THE COURT: What's it being offered for?

21 MR. DEHERERA: Can you repeat?

22 THE COURT: I'll sustain the objection.

23 BY MR. DEHERRERA:

24 Q Can you tell us whether Denver Public Schools is  
25 losing students because of the over capacity issues in this far

1 southeast area?

2 A Yeah. Southeast Denver currently, and for a number  
3 of years most recently, has quite a large choice out group of  
4 folks. In other words, they're choicing out of either their  
5 local schools or out of Denver Public Schools. And I certainly  
6 think the capacity issue and overcrowding is one factor in them  
7 make that decision.

8 Q Can you describe why the Hampden Heights property  
9 that we've been discussing today was selected for a future  
10 elementary school?

11 A Right. Again, going -- starting with the strategic  
12 regional analysis, the growth that we are talking about in the  
13 area that's going to be served is certainly in the furthest  
14 southeast portion of the district. And so as discussions  
15 began, the potential to have the property that we're talking  
16 about at Hampden Heights serve as an elementary school was  
17 looked at. So, you know, over the course of this period in a  
18 number of meetings and briefings and public comments, that  
19 opportunity was talked about. And actually the location is a  
20 really, really good location to serve the students and families  
21 that we're looking at serving at this facility.

22 Q Is that because of its proximity to those families?

23 A Yes.

24 Q Have you spoken with members of your district, in  
25 particular members of the neighborhood surrounding this

1 property, about the proposed school?

2 A I have. I have had opportunity on a number of  
3 occasions. As was mentioned, I walked the neighborhood in  
4 October to distribute the information around the meeting we  
5 had, the public meeting at Holm Elementary in November. And  
6 then when we were having a community meeting to begin to  
7 brainstorm about the possibilities of the design, the unique  
8 opportunities with the outdoor features of the school, we had a  
9 public meeting as well. So I once again walked the  
10 neighborhood to let folks know about that. And at that time  
11 had a chance to talk as we were walking.

12 Also had a chance to present at several public  
13 meetings, talk to folks before, after and during those  
14 meetings, and I have also -- this issue has come up at the  
15 other elementary schools in the area when I go, whether it be  
16 to a PTA meeting or a CSC meeting or a public discussion. So  
17 over the last year I've had multiple conversations with folks  
18 in the region.

19 Q Can you describe the type of feedback that you've  
20 received or the type of discussion that you've had with these  
21 folks about the proposed school?

22 A Yeah. Had a lot of feedback, and much of it we've  
23 actually heard today. Since I've had a chance to interact with  
24 folks in this room and have discussions in this room about  
25 their concerns around Hentzel Park and other issues brought up

1 today. By the same token, I've also had to discussions, as I  
2 mentioned, with folks who are currently in the overcrowded  
3 schools about the great opportunity with this school. And also  
4 potential families looking for a school in that area.

5 So while there are certainly divergent opinions with  
6 regard to this, there are many families and students who I have  
7 had a chance interact with. Families, parents primarily,  
8 because these are young people, who are very excited about the  
9 opportunity that --

10 MR. CASE: Objection, hearsay, Your Honor.

11 THE COURT: Overruled. I'm going to let her talk  
12 about it. Go ahead.

13 THE WITNESS: I was pretty much done. But, you know,  
14 it's really important that we have these conversations and we  
15 hear all perspectives and our job is to create great  
16 educational environments for the students and families that  
17 attend Denver Public Schools.

18 MR. DEHERRERA: Thank you. I have no further  
19 questions.

20 THE COURT: City have any cross?

21 MR. BROADWELL: No.

22 MR. CASE: May I cross-examine, Your Honor?

23 THE COURT: Go ahead.

24 MR. CASE: Thank you.

25 CROSS-EXAMINATION

1 BY MR. CASE:

2 Q MS. Rowe, you were elected about the same time as  
3 Mayor Hancock?

4 A Few months later, yes.

5 Q And from the time you took office, he wanted a  
6 building for a domestic violence center?

7 MR. DEHERRERA: Objection, calls for speculation.

8 THE COURT: She can answer, if she knows.

9 THE WITNESS: I know it's something that the Mayor  
10 has supported, but I don't know about your timeframe.

11 BY MR. CASE:

12 Q Did he send representatives to talk to you and other  
13 members of the school board?

14 A I have not had a conversation directly with the Mayor  
15 or any of his representatives around the domestic violence  
16 center.

17 Q But you have had conversations about trading away  
18 this park, true?

19 A We've had conversations about the opportunity to  
20 potentially build a school on this land, in a land swap for the  
21 property at Fox Street, yes.

22 Q You've had -- you and other members of the board have  
23 had those discussions with members of the Mayor's office, true?

24 A No, I have not. Not directly with either the Mayor  
25 or members of the Mayor's office. I have talked to

1 representatives from City Council.

2 THE COURT: From what?

3 THE WITNESS: City Council.

4 BY MR. CASE:

5 Q Now, the school board voted on this on March 23,  
6 true?

7 A That's correct.

8 Q And on March 22, there were six members of the school  
9 board, including yourself, true?

10 A That's correct.

11 Q And there was one vacancy, true?

12 A Yes.

13 Q Of the six members on the board on March 22, three  
14 were in favor of entering into this land swap and three were  
15 opposed, true?

16 A That's correct.

17 Q But then the Mayor got to appoint that empty chair,  
18 didn't he?

19 A That's incorrect.

20 Q Who made the appointment for the vacancy?

21 A The school board did not come to consensus, and so  
22 the president of the school board made that appointment.

23 Q Right. So it was known in advance that the person  
24 appointed was going to vote in favor of the land swap, true?

25 A Incorrect.

1 MR. DEHERRERA: Objection, calls for speculation?

2 THE COURT: Overruled.

3 BY MR. CASE:

4 Q At that school board vote on March 23, you and I  
5 spoke, true?

6 A We did.

7 Q And you told me it isn't a question of whether this  
8 is going to happen, it's just a question of when, true?

9 A That is not true.

10 Q Now, you mention that the schools in Southeast Denver  
11 suffered from overcrowding.

12 A Yes.

13 Q Isn't it true that Hamilton Middle School is built  
14 for 1,000 students?

15 A At capacity, extreme capacity, yes.

16 Q Presently there are 750 students attending Hamilton  
17 of middle school age?

18 A Approximately, yes.

19 Q And that is why students from Holm, which is on the  
20 same campus, can go over to Hamilton for some of their fifth  
21 grade classes, because Hamilton has excess capacity, true?

22 A Currently.

23 Q Hamilton also has about six acres of vacant ground  
24 with fields and some unused land, true?

25 A I would not call it vacant ground.



1 Q Well, it's land where there are no buildings, true?

2 A There is land with no buildings.

3 Q Right. And it's not next to a five-lane, 45 mile an  
4 hour highway, is it?

5 A No.

6 Q The Hamilton home campus is not in a floodplain, is  
7 it?

8 A I don't know.

9 MR. DEHERRERA: Objection, Your Honor. Relevance to  
10 some of these questions.

11 THE COURT: Overruled.

12 BY MR. CASE:

13 Q Now then, you say that you and the school board are  
14 able to kind of predict the future in terms of what the  
15 demographics are going to be, so you can anticipate the needs  
16 of the community.

17 A Not me and the school board, no.

18 Q Experts that you rely on.

19 A Yes. There are demographers and other people who do  
20 really in-depth analysis, yes.

21 Q How far out do you project these needs? 20 years? 30  
22 years?

23 A Can go that far. Can't say exactly how far out that  
24 goes. But it does go into the future significantly.

25 Q Right. And these demographers have had this ability

1 for the last 20 years, true? That's their science. They can  
2 predict population growth and movement, true?

3 A That is their science, although we all know through  
4 technology and other techniques we're able to do a much more  
5 accurate and thorough job.

6 Q Right. So 20 years ago they could have anticipated  
7 the need for another school in Southeast Denver, true?

8 MR. DEHERRERA: Objection, calls for speculation.

9 THE COURT: The question was that the experts, the  
10 demographic experts the board school board relies on could have  
11 predicted at some point in the past --

12 MR. CASE: Yes.

13 THE COURT: -- the current needs?

14 MR. CASE: Yes.

15 THE COURT: You can answer, if you know it, ma'am.

16 THE WITNESS: I don't know the answer to that.

17 BY MR. CASE:

18 Q Right. So on the south side of Hampden, where Wal-  
19 Mart is, there are a huge number of new apartments in there,  
20 true?

21 A Yes.

22 Q That land was for sale within the last 20 years,  
23 true?

24 A Don't know.

25 Q Instead of the school board buying that land as a

1 location for a school, they let it be sold to a developer who  
2 put in high-density apartments, true?

3 A I do not believe DPS did that. The other thing you  
4 should know is the dramatic increase in students going to DPS  
5 over the last six years. We have increased by 12,000 students.  
6 And so we have over really short period of time, not 20 years,  
7 not ten, but five, , seen an extraordinary increase in  
8 students. And that's why we're having to develop new capacity.

9 Q You live near the Wellshire Golf Course, right?

10 A I do

11 Q Do you and your husband golf?

12 A We do.

13 Q Do you golf at Wellshire?

14 A We do.

15 MR. DEHERRERA: Objection, relevance, Your Honor.

16 MR. CASE: I'll establish it.

17 THE COURT: All right. I'll give you the benefit of  
18 the doubt. But I don't care what Denver school board could  
19 have done in years past or should have done in years past.

20 BY MR. CASE:

21 Q So then it would be okay with you if the school board  
22 traded with Denver and took ten acres out of the Wellshire Golf  
23 Course where you golf because you need a school. That would be  
24 all right with you?

25 A I can't even respond to that question because it

1 doesn't have details or information or any factual nature  
2 behind it.

3 Q Isn't Wellshire a public park?

4 A I don't know.

5 Q Do you believe that City officials have a  
6 responsibility to manage parks for the benefit of the people?

7 A Yes.

8 THE COURT: Counsel, I recognize it's cross-  
9 examination, but you're pretty far outside the scope of direct.

10 MR. CASE: That's my last question, Your Honor.  
11 Thank you.

12 THE COURT: Any other questions of this witness?

13 MR. DEHERRERA: Just one or two, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. DEHERRERA:

16 Q Mr. Case raised the issue about the land south of  
17 Hampden where there's a Wal-Mart; do you recall that?

18 A I do.

19 Q Do you know whether that land he was speaking about  
20 is within the City and County of Denver?

21 A I don't.

22 MR. DEHERRERA: No further questions.

23 THE COURT: Can you just tell me why you feel this is  
24 -- or if you feel this is the best site for a new elementary  
25 school and, if so, why?

1 THE WITNESS: Sure. I feel like it is -- it is the  
2 best site at this moment. And the reasons for that are  
3 location and the demand. And as we studied it, and you walk  
4 this site and even folks who were testifying earlier were  
5 talking about how wonderful it is when children are exposed to  
6 natural places, and there's a huge opportunity for education,  
7 and as you look at the possibility to have an elementary school  
8 in this unique environment, and you look at the possibility of  
9 various types of curriculum and education that you can  
10 incorporate, I think the potential for a true benefit to  
11 certainly these students, the neighborhood, and enhancing and  
12 getting more people into this park, is incredible.

13 So while I think it's very important to always be  
14 extraordinarily thoughtful around our open space, and we should  
15 care deeply, I actually think in this particular case, this can  
16 be looked at as an opportunity to do that, increasing the use  
17 of open space, providing great education environment. And if  
18 we're very thoughtful about it, which we should be, create a  
19 real win-win situation for the kids for the community.

20 THE COURT: All right. Another question I have is:  
21 There's been a number of references to the Hamilton school  
22 campus and having vacant land, available land, or a lot of open  
23 space. I assume the school board considered that, or not.

24 THE WITNESS: We didn't -- it was looked at. It was  
25 not considered. There are already two schools on that space.

1 And when you look at the amount of land that an elementary  
2 school needs, really going anywhere below ten acres is not  
3 useable.

4 So if you start to bring more students, if you have  
5 1,000 students at Hampden and you have 600 at Holm and you  
6 build another 600-student elementary school on that property,  
7 you start to overcrowd the common spaces, the interaction  
8 between the kids. And so, the configuration, while there is  
9 land in between, is appropriate for a middle school and an  
10 elementary on that site, and we have a number of those campuses  
11 in DPS. And that is one of them.

12 THE COURT: Thank you. Anything else from anybody as  
13 to this witness?

14 MR. DEHERRERA: No, Your Honor.

15 THE COURT: Thank you, ma'am. Next witness. Well, I  
16 guess, can we do one more witness quick?

17 MR. DEHERRERA: Yes, I believe we can.

18 THE COURT: Okay.

19 MR. DEHERRERA: Denver Public Schools would call  
20 school board member Happy Haynes.

21 ALLEGRA HAPPY HAYNES, DEFENDANT'S WITNESS, SWORN

22 DIRECT EXAMINATION

23 BY MR. DEHERRERA:

24 Q Good afternoon, would you please state your name for  
25 the record.

1 A My name is Allegra Happy Haynes.

2 Q Could you please provide us your address, please.

3 A I live at 2982 Glencoe Street in Denver, 80207.

4 Q Are you an elected official, Ms. Haynes?

5 A Yes, I am.

6 Q And what is your elected position?

7 THE COURT: Please use the microphone. You have a  
8 soft voice. Okay.

9 THE WITNESS: I am an at-large member of the Denver  
10 Board of Education.

11 BY MR. DEHERRERA:

12 Q How long have you served in that elected position?

13 A Approximately 18 months.

14 Q Have you served in any other prior roles with the  
15 Denver Public Schools?

16 A Yes, I was the chief community engagement officer for  
17 the District for five years, a little over five years.

18 Q Can you briefly describe what that role entailed?

19 A Yes. My role entailed helping the District with  
20 community outreach, with parents creating an office the parent  
21 engagement, and communicating with our community about schools  
22 and plans of the District.

23 Q Have you served in any other elected office?

24 A Yes, I have.

25 Q What are those?

1           A     I served for 13 years as a member of the Denver city  
2 Council representing Northeast Denver.

3           Q     With regard to your role as a school board member on  
4 the Denver Public School board, can you tell us about some of  
5 the important issues that you focus on for your constituents?

6           A     I think first and foremost is providing a quality  
7 education for all of our students and families. I think access  
8 particularly -- I think we discussed early childhood education.  
9 Earlier it's a real important issue for me to provide access to  
10 early childhood education, and in the interest of providing  
11 students who are ready for school, because that data shows that  
12 students who come to school prepared to their first day of  
13 kindergarten are far more likely to graduate. And we are  
14 struggling in the Denver Public Schools to increase our  
15 graduation rates and to ensure that our students are not only  
16 ready for college, but are ready for their first day of K  
17 through 12 education.

18          Q     Can you explain how overcrowding in schools impacts  
19 those issues that you've just described?

20          A     The overcrowding in schools results often in  
21 classrooms that are over capacity, that is, teachers who, you  
22 know, have students of many, many different levels of  
23 preparation, and so high classroom sizes are often the result  
24 of overcrowding. And we, in Denver Public Schools, have also  
25 experienced families that make choices to take their children



1 outside of the City, outside of our school district because  
2 they don't believe that the experience in an overcrowded school  
3 is a quality experience.

4 Q Are you familiar with the Hamilton Heights property  
5 and the proposed school that we've been talking about today?

6 A Yes, I am.

7 Q Can you describe sort of your familiarity with that  
8 property and the proposed school?

9 A Yes. As I member of the board, when the proposal was  
10 made as a part of the bond process in the spring of 2012, we  
11 had an occasion to take the board on a tour. Actually, to a  
12 number of the bond sites, so that wasn't the only one. But we  
13 had an opportunity to visit this site as a tour for the entire  
14 board.

15 Q During the process of discussing a new school, are  
16 there certain important factors that you believe should be  
17 considered when those new schools are being designed and  
18 discussed and located?

19 A Yes. I think the first thing, particularly with an  
20 elementary school, it's far more true with elementary schools  
21 than other schools, the school should be as near as possible to  
22 the students and families where the demand is. Many of our  
23 families like to have their elementary children as close to the  
24 elementary -- I mean where they live as possible.

25 I think the design, of course, is a school that will

1 provide the students with multiple opportunities to learn both  
2 inside the classroom and outside of the classroom, and it's one  
3 of the reasons why this particular site was very exciting to me  
4 because, as an outdoor enthusiast, I was excited about the  
5 opportunity for children to have direct experience with outdoor  
6 education in a natural environment. It's something that I have  
7 a particular interest in.

8 Q Can you explain that a little bit further, how that  
9 -- how integration of the surrounding area can be made a part  
10 of this new school and why that would be important?

11 A Yes. I would point out first that Denver has a long  
12 tradition of locating schools next to parks. And when I was on  
13 the City Council, quite a number of the schools in my district,  
14 including some that were built during my tenure, were  
15 intentionally built next to parks, or parks were intentionally  
16 developed next to the schools, because of the opportunities for  
17 children to have more recreation and more time outdoors. In  
18 this day and age where so many of our young children spend so  
19 much time indoors in front of screens of various types, we're  
20 doing everything we can to encourage more outdoor activity, and  
21 for kids to understand that being outdoors is a learning  
22 experience.

23 I was a member of the nutrition and fitness  
24 commission for Denver Public Schools, and one of the things we  
25 focused on dramatically was finding new opportunities for kids

1 to get outdoors, to plant gardens, to do some things that were  
2 not the traditional kinds of outdoor play areas that you see  
3 typically in many of our older schools. And so in our newer  
4 schools we have had the opportunity, in fact, in many even of  
5 our older schools, the schools have leaned towards more natural  
6 kinds of activities, outdoor activities. Many of our schools  
7 now have outdoor gardens and places where kids can go out and  
8 do their science right on the site.

9 Q As a school board member, you have a number of  
10 statutory responsibilities; is that correct?

11 A Pardon me?

12 Q Let me repeat. As a school board member, you have a  
13 number of statutory responsibilities; is that correct?

14 A Yes, I do.

15 Q One of those responsibilities is determining  
16 locations of new schools; is that correct?

17 A Yes, that's correct.

18 Q And when the school board is considering locations  
19 for a new school, can you describe the different considerations  
20 that you all have to weigh in finding the sites, the locations  
21 for new schools?

22 A Yes. I'd point out that the board members themselves  
23 are engaged in the actual exercise of finding sites. But I  
24 think part of the consideration is looking at whether or not  
25 multiple sites have been considered, whether the site is of

1 sufficient size, where it's located in proximity to the demand.  
2 We do take into consideration issues that have been raised here  
3 earlier today about safety and traffic and access, and so, you  
4 know, all of those things are part of the consideration.

5 Q Is it safe to say that when the school board is  
6 considering a site, there are pros and cons of each site?

7 A Yes. Unfortunately we don't have the luxury of just  
8 pointing at a map and saying this is the perfect place. We  
9 have to start with where is land available, when in our city in  
10 many areas, most areas of our city that are already well  
11 developed, finding a site for an elementary school which  
12 requires roughly ten acres in order to provide a full  
13 experience for our children is very, very, very challenging.

14 Q Sometimes that challenge requires placing schools  
15 next to major thoroughfares?

16 A Yes, that definitely happens. And there are a number  
17 of schools throughout our District that are located next to  
18 very high thoroughfare. The elementary school that I attended  
19 myself was built, I opened it, Barrett Elementary School, it  
20 sits right on the corner of 29th and Colorado Boulevard. But,  
21 you know, the consideration was it was close to where the kids  
22 that needed that school lived, and so the school board at that  
23 time made that decision. Similar to kinds of decisions that we  
24 sometimes have to make.

25 Q So it's a balancing of proximity to the students,

1 availability of land and other issues; is that correct?

2 A It is always a balancing of all of the interests and  
3 all of the issues, and the demographics and all of the factors.  
4 No decision that we ever make is perfect, and I think we all  
5 strive to make a decision that is balanced, considering all of  
6 those factors.

7 Q Now, speak to us for a moment about this particular  
8 property and why you believe this is the most appropriate  
9 property to locate this new school.

10 A Yes. Thank you. I think the most important factor  
11 is that it's nearest, and for me that is the strongest  
12 consideration, it's nearest the families in the area of the  
13 city where the greatest demand and the overcrowding exists. I  
14 think the four elementary schools that are in the area were  
15 mentioned earlier, so I think this site was the best for that  
16 reason.

17 Secondly, I found it very appealing that the site was  
18 already located next to an existing park, Hentzel Park, and  
19 while I understand many of the concerns that have been  
20 expressed about the open space and that potential loss there, I  
21 thought the balance was meeting the needs of children and  
22 families, and it was my honest hope that this -- because of the  
23 unique nature of this property and being in a natural area,  
24 that it would give our District probably the best opportunity  
25 to provide children with the kind of outdoor education and, you

1 know, to begin the -- our children have an opportunity to  
2 become the future stewards of our City and of our parks and of  
3 our open space, so I mean what better way than being there  
4 right adjacent to a natural area.

5 MR. DEHERRERA: Thank you, Your Honor. No further  
6 questions at this time.

7 THE COURT: Cross?

8 MR. CASE: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. CASE:

11 Q Ms. Haynes, I understand that you visited this site  
12 one time.

13 A Yes, this particular site. I have been by it many  
14 times.

15 Q Right, but you made one visit and that was with other  
16 members of the board.

17 A Yes, that's correct.

18 Q How long were you there?

19 A Maybe 20 minutes to a half hour.

20 Q Did you walk through the 90 acres or just stay on  
21 this site?

22 A We were only considering the purchase of ten acres,  
23 and so we -- as I mentioned earlier, we were on a tour of a  
24 number of bond sites throughout the day, so we only had 20  
25 minutes to half hour at each location. We did get out and walk

1 through the abandoned parking lot area, and so had an  
2 opportunity to view all of the maps and to see the entire  
3 property from that advantage point.

4 Q You say the main benefit for the children would be  
5 for the children who live in that area, right?

6 A Yes, in that southeast area, yes.

7 Q Those children are free to go to this park now,  
8 aren't they?

9 A Well, sir, we're purchasing the land for a school.

10 Q No, you were talking about the value of the outdoor  
11 experience for children.

12 A Outdoor education. A little bit different.

13 Q I understand. But children in this neighborhood now  
14 can wander and explore in that field by themselves.

15 A Of course, anyone can.

16 Q And you think that's a good experience for them?

17 A Of course.

18 Q Right. Let me put this exhibit up. This is a City  
19 exhibit. So correct me if I'm wrong, but the area that DPS is  
20 planning to acquire is this area; is that right?

21 A Yes, that's correct.

22 Q And you can't have a -- you can't have just an open  
23 campus with elementary children, can you?

24 A Most of our campuses have some perimeter, but that  
25 varies from school to school.

1 Q But I mean we have -- there are known sex offenders  
2 in this neighborhood, aren't there?

3 A I would have no idea about that, sir.

4 Q And one of the reasons you have fences around your  
5 elementary schools, like you do at Holm and Hamilton, is to  
6 keep unsavory people away from the children, true?

7 A That may be part of it. It's also to keep children  
8 in the area.

9 Q Right.

10 A To help supervise.

11 Q So the children who are attending this school, if  
12 it's built here, are going to be contained inside a six-foot  
13 perimeter chain link fence, true?

14 A I can't tell you that, sir. We have not built or  
15 designed the school yet.

16 Q Well, were you present at any of the meetings where  
17 they showed us the design plans and talked about the six-foot  
18 chain link fence they were planning to put up?

19 A I have seen some of the plans, and again these are  
20 all proposals.

21 Q Right. So the plan would be to have a six-foot  
22 hurricane fence right next to this turn in the bike path here  
23 that the site was -- and all way down here, true?

24 A I suppose so, yes.

25 Q Because you don't want the kids to be able run off



1 campus and get into the creek, right?

2 A No we would not run the kids running off to get into  
3 the creek. Although I would mention most of the time that the  
4 kids are outdoors, they would be supervised.

5 Q Now then, does your sister serve on the Parks  
6 Advisory Board?

7 A Yes, she does.

8 Q Who appointed her to that?

9 A I don't know. I presume the Mayor, but I don't  
10 remember who makes that appointment.

11 Q When did he appoint your sister to the Parks Advisory  
12 Board?

13 A Sir, I don't know. I don't know.

14 Q You voted in favor of this land swap deal on March  
15 23.

16 A Uh-huh.

17 Q Didn't you?

18 A Yes.

19 Q And it was a four to three vote, true?

20 A In March?

21 Q Yes.

22 A I don't recall the --

23 Q You voted with the majority in a four to three  
24 decision, true?

25 MR. DEHERRERA: Objection, asked and answered.

1 BY MR. CASE:

2 Q Wasn't it -- so your vote, in effect, was the  
3 deciding vote, true?

4 A Well, sir, how do you determine who's vote amongst a  
5 group of four is the deciding vote?

6 Q Well, let's put it this way: If you had voted  
7 against the land swap, it would have been four to three against  
8 and wouldn't have passed the board, true?

9 A Simple math says that, yes.

10 Q Right. And it was after you voted for the proposal  
11 that Mayor Hancock appointed your sister to the Parks Advisory  
12 Board, true?

13 A Sir, I just said I have no idea when the Mayor  
14 appointed my sister.

15 MR. CASE: Thank you. That's all I have, Your Honor.

16 THE COURT: Anything else with this witness?

17 MR. DEHERRERA: No, Your Honor.

18 THE COURT: You may step down, ma'am. Thank you,  
19 ma'am. All right. So we are going to pick this up again  
20 tomorrow, hopefully at 11:00.

21 Is that right?

22 MR. BROADWELL: Yes, Your Honor.

23 THE COURT: Okay. If you want to call my clerk to  
24 see how my 9:00 is going to see if we're going to be able to  
25 get started at 11:00, you're welcome to. My best guess is that

1 shouldn't take more than an hour and a half, so that's why I  
2 planned for two hours. Hopefully we'll be able to get some  
3 more evidence in this case tomorrow morning. Thank you all,  
4 very much. I appreciate your preparation and your  
5 professionalism. And it's a tough issue. We'll see what  
6 tomorrow brings.

7 Thank you, all. Have a good night. We're in recess.

8 (Proceedings adjourned at 4:51 p.m., recommencing in  
9 Volume II)

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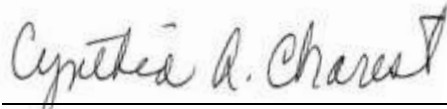
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CERTIFICATE

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.



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CYNTHIA A. CHAREST  
Digital Court Transcriber

DATED and SIGNED this 1st day of August 2013.