## Friends of Denver Parks et al. vs. City and County of Denver et al. Denver District Court Case No.: 2013CV032444

State of Colorado	)
	) ss
City and County of Denver	)

- 1. My name is Susan Barnes-Gelt. I am over the age of 18 years and competent to testify in all respects. This affidavit is based on my personal knowledge.
- 2. I am a resident of Denver, Colorado. I served on the Denver City Council from 1995-2003.

On August 19, 1996 I was present and voted at the city council meeting in which council passed a bill to amend Section 2.4.5 of the Denver City Charter. A transcript of that portion of the council meeting is attached to this affidavit as Appendix 1. Before the vote was taken, John Bennett, Staff Director of City Council, read a statement that described the intent of the bill. He said:

The amendment confirms that parks used as parks prior to 1955 are designated parks.

Council members including me were aware at the time of the vote that the city owned numerous parks that had been acquired before 1955 that had never been designated parks by ordinance. When I voted for the amendment, I understood that any park owned by the City and County of Denver, that was under the management of the Department of Parks and Recreation in 1996, and that had been used as a park before 1955, was confirmed by the amendment as a designated park. This would include the park known as Hampden Heights North Park ("HHNP") in southeast Denver. A copy of amended Charter §2.4.5 is attached as Appendix 2.

- 3. From 2005 until 2010 I served on the Denver New Zoning Code Task Force. Our purpose was to draft a comprehensive new zoning code for Denver. The new zoning code used an Official Map to designate the zoning classification of each parcel of land in the city. Three documents read together as a comprehensive whole make up the 2010 zoning code. These are: (1) Ordinance 333, Series of 2010, which is the ordinance that adopted the new zoning code; (2) the zoning code that explains zoning designations; and (3) the Official Map, which shows the zoning designation of each and every parcel of land in the city, and cites the ordinance which designated that parcel.
- 4. Appendix 3 attached to this affidavit is a copy of Ordinance 333, Series of 2010. Section 59-4 of Appendix 3, titled "Official Map," includes the following sentence:

"All land located within the City and County of Denver shown on the Official Map as being zoned to a zone district in the Denver Zoning Code is hereby rezoned as designated on the Official Map."

(Ordinance 333, Series of 2010, emphasis added).

- 5. Appendix 4 attached to this affidavit is a section of the Official Map. It shows the location of HHNP, west of S. Havana St. and north of E. Girard Avenue. It identifies the park by name as Hampden Heights North Park. It shows the designation of HHNP as "OS-A," which means "Open Space Public Parks District."
- 6. Appendix 5 attached to this affidavit is Section 9.3.2 of the Denver Zoning Code. In paragraph 9.3.2.1 it states:

The OS-A district is intended to protect and preserve public parks owned, operated or leased by the City and managed by the City's Department of Parks and Recreation ("DPR") for park purposes.

(Zoning Code §9.3.2.1, emphasis added)

- 7. As a member of the Denver New Zoning Code Task Force, I understood that all parks shown on the Official Map were designated parks protected by section 2.4.5 of the Charter. My understanding was that the parks shown on the Official Map, including HHNP, were to be protected and preserved by the city, managed by DPR, and could not be sold without a vote of the people.
- 8. Since this controversy began in November of 2012, I have conducted my own investigation of the status of HHNP. My investigation included interviewing current and former parks department employees, including Susan Baird, Ph.D., who served as a planning expert in the Denver Department of Parks and Recreation ("DPR") from 1990 until 2010. Dr. Baird testified at the hearing on preliminary injunction June 12, 2013. My investigation showed that DPR's own employees believed that HHNP was a park.
- 9. I also reviewed the transcript of the testimony of historian Charles Bonniwell at the preliminary injunction hearing. Mr. Bonniwell testified that HHNP was acquired by the city in 1936, and used by Denver citizens as a park between 1936 and 1955. Today I reviewed the affidavits of eyewitnesses Sandra Dennehy, Joan Biggs, and Carolyn Gallagher, all of whom testified that the site where construction of a new school is now underway is the same land they used as a park where they rode horses before 1955.
- 10. Based on my investigation of the history of HHNP, and my personal knowledge of its status as a Denver park in 1996 and under the 2010 zoning code, I can only conclude that Hampden Heights North Park is, and was, an officially designated city park subject to the protection of §2.4.5.
- 11. I am concerned that if DPS is allowed to continue building a school in the park while this case is litigated, even if the plaintiffs eventually prevail the court will be reluctant to order remediation of expensive improvements built by DPS. If Denver citizens are eventually allowed to vote on the issue, they will be reluctant to vote against a school that

is already built. For these reasons, I respectfully ask the court to grant an emergency injunction commanding DPS and the City to immediately stop all construction and all work on the property until further order of court.

12. I have thoroughly reviewed Game Plan Denver, the master plan for Denver Parks and Recreation, adopted as part of Denver's Comprehensive Plan in 2003, following a two-year public process. The Plan, a 50-year vision and strategic framework for transforming Denver into a City in a Park, is based on the values and priorities identified by Denver residents. The Plan demonstrates projected population growth in southeast Denver; the need for more – not less – parks and open space in the quadrant (underserved with parks and open space in 2000). Further, throughout the Game Plan, the area known as HHNP is identified as "Existing Parks and Natural Areas and Denver Parks Development (p.65).

Further, Affiant sayeth not.

Susan Barnes-Gelt

The foregoing Affidavit was acknowledged before me \_ 2014 by Susan Barnes-Gelt, known personally to me.

March 4.

Notary Public

My commission expires: Feb 2,2015

NOTARY PUBLIC STATE OF COLORADO

My Comm. Expires Feb. 2, 2015