

**EXHIBIT**

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DATE FILED: July 5, 2013

DATE FILED: July 2, 2013 3:00 PM

DISTRICT COURT, CITY AND COUNTY OF  
DENVER, STATE OF COLORADO  
City and County Building  
1437 Bannock Street, Room 256  
Denver, Colorado 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.

**▲ COURT USE ONLY ▲**

Case Number: 2013CV32444

Courtroom: 376

**ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION: C.R.C.P. 65**

A hearing was held on June 12, 2013, and June 13, 2013, on Plaintiffs' Motion For Preliminary Injunction: C.R.C.P. 65, as amended by Plaintiffs' First Amended Motion For Preliminary And Permanent Injunction Pursuant to C.R.C.P. Rule 65 ("Plaintiffs' Motion"). The Court, having reviewed Plaintiffs' Motion and all filings of the parties related thereto, having received evidence in the form of testimony and exhibits and having heard arguments of counsel, hereby FINDS as follows:

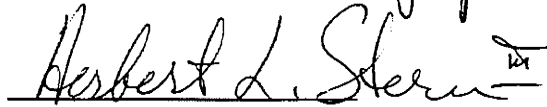
1. To the extent the Plaintiffs sought to enjoin the City from conveying the subject property to DPS on the theory that the conveyance requires voter approval under Denver Charter section 2.4.5, the Plaintiffs have not demonstrated a probability of success on the merits. The Plaintiffs did not establish that the property has ever been designated as a park by ordinance. Furthermore, the Plaintiffs did not demonstrate that the property was a "park belonging to the city as of December 31, 1955" to the extent voter approval would be required prior to conveyance of the property. See: *Hall v. Denver*, 115 Colo. 538, 177 P.2d 234 (Colo. 1946).

2. To the extent the Plaintiffs sought to enjoin the Clerk and Recorder from 'interfering' with their right to circulate referendum petitions, the Plaintiffs have not demonstrated a probability of the success on their claim that the Clerk erred in rejecting their petition forms. In particular, the Plaintiffs did not establish that the City ordinance approving the real estate contract with DPS (Ordinance No. 170, series of 2013) was legislative in nature and thus subject to referendum within the meaning of Art. V, Sec. 1(9) of the Colorado Constitution and the Denver Charter. See: *Vagneur v. City of Aspen*, 295 P.3d 493 (Colo. 2013).

3. Because the Plaintiffs have not demonstrated a probability of success on the merits of their claim as required by *Rathke v. MacFarlane*, 648 P.2d 648 (Colo. 1982), it is unnecessary to address the other standards governing preliminary injunctions.

Therefore, the Plaintiffs' Motion is hereby DENIED.

SO ORDERED this 5<sup>th</sup> day of July 2013.

A handwritten signature in cursive script that reads "Herbert L. Stern III". The signature is written in black ink and is positioned above a horizontal line.

Herbert L. Stern III

District Court Judge

**DISTRICT COURT  
DENVER COUNTY, COLORADO**

1437 Bannock Street, Room 256  
Denver, CO 80202

Plaintiff:

**FRIENDS OF DENVER PARKS INC., et al.**

V.

Defendant:

**CITY AND COUNTY OF DENVER, et al.**

For Plaintiffs:

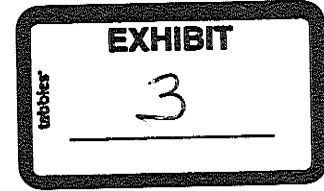
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▲ COURT USE ONLY ▲

Case Number:

**2013-CV-032444**

**Courtroom 376**

The matter came on for hearing on Wednesday, September 19, 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.

1 Well, in considering your respective arguments and  
2 the Romero case from the Court of Appeals, I'm going to --  
3 while I'm tempted, I'm going to deny the motion for injunction  
4 during pendency of appeal. I'm willing to concede that the  
5 Plaintiffs have some evidence to support their position that  
6 this land was used as a park. I think that -- and to that  
7 extent, I'll incorporate my previous comments when I denied a  
8 motion for a preliminary injunction, rather than reiterate all  
9 of that.

10 Taking that into account, taking the public interest  
11 issues into account and the amount of irreparable injury which  
12 I don't think references necessarily dollars, but also could be  
13 construed to be the degree or extent of irreparable injury to  
14 the Plaintiff, my belief is that they don't have it. They  
15 don't have it, because the higher courts are going to be ruling  
16 on this case, in my judgment, before piers get put down. So  
17 it's not irreparable injury to the Plaintiff, except to the  
18 extent that they are taxpayers and that their taxes will have  
19 been squandered by DPS potentially.

20 So I'm sorry to say, Mr. Case, while I recognize the  
21 depth of your feeling on this matter and the depth of your  
22 supporters, and while I have a great deal of sensitivity to  
23 your position, I think that the City and County of Denver and  
24 DPS have a stronger legal argument. And I am not going to deem  
25 DPS as to have confessed your motion for injunction, although

Colorado Court of Appeals 2 East 14th Avenue Denver, CO 80203	<b>EXHIBIT</b> <span style="font-size: 2em; font-family: cursive;">4</span>	DATE FILED: October 18, 2013 <b>COPIES MAILED TO</b> <b>COUNSEL OF RECORD</b> Tr. Ct. Judge    Tr. Ct. Clerk
Denver District Court 2013CV32444	AND _____	
<b>Plaintiffs-Appellants:</b>	ON _____	
Friends Of Denver Parks Inc, Steve Waldstein, and Zelda Hawkins,	BY _____	
<b>v.</b>	Court of Appeals Case Number: 2013CA1249	
<b>Defendants-Appellees:</b>		
City and County Of Denver, a municipal corporation; School District No 1 In The City and County Of Denver, a public entity; and Debra Johnson.		
<b>ORDER OF COURT</b>		

TO: THE PARTIES

Upon consideration of the motion for injunction pending appeal and the responses, the Court DENIES the motion. The Court, however, ORDERS that the case shall proceed on the following expedited basis:

1. The answer briefs remain due on November 7, 2013.
2. The reply brief shall be due 14 days after the filing of the answer briefs.

No extensions shall be granted for the filing of the briefs except upon a showing of exceptional circumstances. Any request for oral argument shall be filed within 7 days after the filing of the answer briefs. Any request for oral argument will delay resolution of the appeal, and counsel for the parties shall confer before making such a request. The appeal shall be set for disposition as soon as practicable after the reply brief is filed.

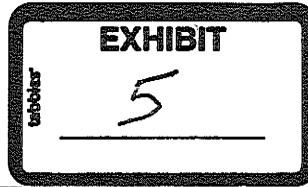
Upon consideration of the motion for supplementation of the record with the transcript of the district court's September 19, 2013 status conference and having

received no response, the Court GRANTS the motion. The supplemental record is now due in 14 days.

BY THE COURT

Bernard, J.  
Richman, J.  
Booras, J.

jb/3j



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Court of Appeals No. 13CA1249  
City and County of Denver District Court No. 13CV32444  
Honorable Herbert L. Stern, III, Judge

DATE FILED: December 26, 2013  
CASE NUMBER: 2013CA1249

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Friends of Denver Parks, Inc.; Renee Lewis; David Hill; Shawn Smith; John Case; Judy Case; Steve Waldstein; and Zelda Hawkins,

Plaintiffs-Appellants,

v.

City and County of Denver; Denver School District No. 1; and Debra Johnson, Clerk and Recorder for the City and County of Denver,

Defendants-Appellees.

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ORDER AFFIRMED

Division A

Opinion by JUDGE BERNARD  
Richman and Booras, JJ., concur

Announced December 26, 2013

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Benson & Case, LLP, John Case, Denver, Colorado, for Plaintiffs-Appellants

Michael Hickman, Molly Ferrer, Jerome DeHerrera, Denver, Colorado, for Defendant-Appellee Denver School District No. 1

Douglas J. Friednash, City Attorney, David W. Broadwell, Assistant City Attorney, Patrick A. Wheeler, Assistant City Attorney, Mitch T. Behr, Assistant City Attorney, Denver, Colorado, for Defendants-Appellees City and County of Denver and Debra Johnson

¶ 1 How does land in the city of Denver become a park? This appeal requires us to look at that question through two lenses: (1) Denver's charter; and (2) common law principles concerning the dedication of property to particular uses, such as parks. Once we have viewed the case through those lenses, we must then decide which one controls our analysis.

¶ 2 If a city's charter provides no guidance on a legal issue, courts look to the common law. Colorado, like many other states, recognizes a common law doctrine that governs the dedication of lands to public uses such as parks. If a city communicates an unequivocal intent to set aside land as a park by its conduct, this doctrine dedicates the land as a park. The city does not have to take formal action. In other words, *if* a city's charter does not expressly state or clearly imply otherwise, then the city may dedicate land as a park by its conduct.

¶ 3 This appeal requires us to decide whether the Denver city charter makes such an express statement or clear implication. We conclude that it does.

¶ 4 In this case, the city of Denver, the defendant, agreed to transfer a parcel of land, which we shall call "the southern parcel,"



to a school district so that the district could build a school on it. The city passed an ordinance to accomplish the transfer. Plaintiffs, an organization called Friends of Denver Parks, Inc., and some additional persons, believed that the southern parcel was a park, and they opposed the transfer. They took two courses of action.

¶ 5 First, plaintiffs tried to file a referendum petition with the city's clerk and recorder. They wanted to repeal the ordinance transferring the southern parcel, and they contended that the city's charter required the city to hold an election to determine whether the voters — as opposed to the city's government — would authorize the transfer. The clerk refused to accept the petition.

¶ 6 Second, plaintiffs filed a motion for a preliminary injunction to enjoin the city's transfer of the southern parcel to the school district. Plaintiffs contended that the southern parcel was a park, and they asked the court to prevent the city from transferring the southern parcel until the court could decide whether the city's charter authorized the city to transfer it to the school district. Plaintiffs also argued that the court should order the city's clerk to accept their referendum petition and to schedule an election to determine whether the city's voters would authorize the transfer.

¶ 7 The court denied both requests, and plaintiffs appealed. We affirm because we conclude that the pertinent law and the record support the trial court's determination that plaintiffs did not have a reasonable likelihood of success on the merits of the issues that they raised.

## I. Background

### A. Procedural History

¶ 8 This appeal concerns some undeveloped land that the city owns in southeastern Denver. This land is roughly triangular; South Havana Street and East Girard Avenue border its southern tip.

¶ 9 In the spring of 2013, the city decided to divide this land into two parcels. First, it agreed to trade the southern parcel that is the focus of this appeal, plus about \$700,000, to a school district in exchange for a building on a commercial plot in another part of town. The school district plans to build a school on the southern parcel. The city intends to use the school district's building on the commercial plot as a center to assist victims of domestic violence. (As is pertinent to this opinion, the positions of the city and the school district are congruent.)

¶ 10 Second, the city attached the northern parcel of the tract to Paul A. Hentzell Park, which is located to the north of the northern parcel.

¶ 11 The city council passed ordinances to effect the trade of the southern parcel to the school district and to attach the northern parcel to Paul A. Hentzell Park.

¶ 12 Plaintiffs submitted a referendum petition to the city's clerk and recorder. It requested that the city hold a vote to repeal the ordinance that approved the trade. The clerk rejected the petition. Plaintiffs obtained over 6,600 signatures and resubmitted the petition. The clerk rejected the petition again, adding that the law did not authorize plaintiffs to obtain the signatures.

¶ 13 Plaintiffs filed this lawsuit. They asserted two theories to support their claim that the city could not trade the southern parcel to the school district: (1) the city's conduct over the years had dedicated the southern parcel as a park under the common law; and (2) the city's charter requires that voters approve the transfer of a "park belonging to the city as of December 31, 1955."

¶ 14 The city replied that (1) although the southern parcel "belong[ed] to the city," it was not considered or treated as a "park"

as of December 31, 1955; and (2) the city's charter does not permit land to be dedicated as parks under the common law.

¶ 15 The trial court held three hearings on plaintiffs' request for a preliminary injunction. The first covered two days in mid-June 2013, and the plaintiffs and the city presented testimony and other evidence to the court.

¶ 16 The court held the second hearing at the end of June 2013. Plaintiffs and the city provided the court with legal argument. The court then orally denied plaintiffs' request for a preliminary injunction because it concluded that there was not a reasonable probability that they would succeed on the merits of their claims. The court issued a written order to that effect at the beginning of July 2013.

¶ 17 The trial court held a third hearing in September 2013, and it denied plaintiffs' request for a stay pending appeal. The court reaffirmed its decision to deny plaintiffs' request for a preliminary injunction.

¶ 18 A motions division of this court denied a stay pending appeal. We expedited the briefing in this appeal so that we could decide it

before the school district breaks ground on the southern parcel in early 2014 to begin the process of building the school.

#### B. The Evidence

¶ 19 Our review of the record indicates that the following facts the parties presented at the two-day June 2013 hearing are undisputed.

¶ 20 In 1936, the city acquired 36.45 acres of land through which Cherry Creek flows. The southern parcel that the city proposes to transfer to the school district is a 10.77-acre piece of this larger tract. The southern parcel is the southernmost piece of the original tract, and it abuts part of the eastern border of the Hampden Heights subdivision.

¶ 21 The city acquired the entire tract by deed. The deed does not restrict how the city may use the tract.

¶ 22 The city acquired the tract to control flooding along Cherry Creek, but the tract was not within the city limits when the city acquired it. The city later annexed the entire tract, and all the land that made up the tract is now within the city limits.

¶ 23 The city did not develop or otherwise use the southern parcel between 1936 and the late 1960s. During this time, some people

had walked or had ridden their horses across it for recreational purposes, some people had picnics on it, and some people had used part of it as a dump for trash.

¶ 24 The city has not passed any ordinances that designate the southern parcel as a park.

¶ 25 A developer built the Hampden Heights subdivision in the late 1960s. When a person was deciding whether to buy a house in the subdivision in 1976, a member of the city's planning department told him that the southern parcel was land in a park, and gave him a 1967 brochure that identified the southern parcel as a proposed "public open park." The city had published the brochure to reflect its revised comprehensive plan. The prospective purchaser decided to buy the house, relying on this statement.

¶ 26 In 1979, a resident of the Hampden Heights subdivision complained that the northern and southern parcels had become an eyesore. The resident wondered whether the city could maintain the parcels better or sell them to someone who would build a home there. The city's mayor responded in a letter that budget constraints limited the city's ability to maintain the parcels. But he added that the parcels would "eventually . . . be developed into a

park,” and the city could not sell them “because [they are] dedicated park land.”

¶ 27 In 1983, the city passed an ordinance that dedicated land north of the northern parcel as Paul H. Hentzell Park. This land was not part of the original tract that the city had obtained in 1936.

¶ 28 In 1992, the manager of the city’s parks and recreation department sent a memorandum to the city’s director of asset management. The parks manager stated that it was his “understanding, with the concurrence of . . . the [c]ity [a]ttorney . . . that the [southern parcel] . . . is not a dedicated park.” He stated that his understanding was “based on the fact that there is no park dedication ordinance and the [southern parcel] was not used as a park . . . when all parks were dedicated by charter.”

¶ 29 In 1997, the city passed an ordinance that defined “city park land” as any “land, waterways and water bodies, owned, operated, or controlled by the department of parks and recreation.” The department of parks and recreation controls and manages the southern parcel. City ordinance section 39-192(a) states that “the manager of [the department of] parks and recreation has the power

. . . to adopt rules and regulations for the designation and preservation of natural areas contained within . . . city park land.”

¶ 30 The manager of the parks and recreation department designated the southern parcel as a “natural area” in 2007. Under a Denver city ordinance, a designation of land as a “natural area” is not the same as designation of land as a park in the city’s charter.

¶ 31 A person who had worked for the parks and recreation department for twenty years thought that the department intended to restore the southern parcel’s native grasses and plants. To promote this goal, the city grazed goats on the southern parcel at one time to eat invasive weeds and to trample the seeds of native grasses into the soil.

¶ 32 But the manager also designated portions of the southern parcel as rights-of-way for city streets that abutted the parcel. And in the 1990s the city developed the two southernmost acres of the southern parcel at the intersection of South Havana Street and East Girard Avenue as a parking lot, which it leased to a private company. The city later stopped using and maintaining the parking lot, and it erected a gate to block the parking lot entrance.



¶ 33 As of the date of the June 2013 hearing, several maps on the city's website labeled the southern parcel as "Hampden Heights North Park" or that represented that the southern parcel was a park by the maps' color-coding. These maps include the city's floodplain map, zoning map, neighborhood map, police and fire map, land use map, parks and recreation map, and street map.

## II. Sufficiency of the Trial Court's Order

¶ 34 As a preliminary matter, plaintiffs argue that the trial court's order denying their preliminary injunction request does not contain adequate findings of fact and conclusions of law. We disagree.

¶ 35 C.R.C.P. 52 requires that "in granting or refusing interlocutory injunctions the court shall . . . set forth the findings of fact and conclusions of law which constitute the grounds of its action." Findings and conclusions may be either written or oral. *See Higgs v. Hennig*, 167 Colo. 358, 364-65, 447 P.2d 700, 703 (1968); *Esecson v. Bushnell*, 663 P.2d 258, 261 (Colo. App. 1983); *Nat'l State Bank of Boulder v. Burns*, 525 P.2d 504, 505-06 (Colo. App. 1974). Oral findings and conclusions that are contained in a transcript are adequate if they are "sufficiently comprehensive to

provide a basis for review.” *Hipps*, 167 Colo. at 364-65, 447 P.2d at 703.

¶ 36 The court announced its decision orally at the end of the late-June 2013 hearing. It then instructed the city to prepare a brief written order summarizing its decision. In early July 2013, the court signed and issued the written order that the city had submitted.

¶ 37 We conclude from reviewing the transcripts of the late June 2013 and September 2013 hearings that the court discussed all of plaintiffs’ contentions with both parties, and that it then expressly rejected them. The transcript is therefore “sufficiently comprehensive to provide a basis for review.” *Hipps*, 167 Colo. at 364-65, 447 P.2d at 703.

### III. Legal Principles That Govern Our Review

#### A. Standard of Review

¶ 38 A trial court’s decision to deny a request for a preliminary injunction is an appealable interlocutory order. C.A.R. 1(a)(3). “The granting or denial of a preliminary injunction lies within the sound discretion of the trial court and will not be reversed by an appellate court absent an abuse of discretion.” *Litinsky v. Querard*, 683 P.2d

816, 817 (Colo. App. 1984); *Am. Television & Commc'ns Corp. v. Manning*, 651 P.2d 440, 443-44 (Colo. App. 1982). A trial court abuses its discretion when its decision to grant or deny a preliminary injunction is based on an "erroneous application of the law" or is "otherwise manifestly arbitrary, unreasonable, or unfair." *Bloom v. Nat'l Collegiate Athletic Ass'n*, 93 P.3d 621, 623 (Colo. App. 2004). If evidence in the record supports the trial court's findings, we will conclude that the trial court did not abuse its discretion in granting or denying the motion, *id.*, but "[w]here the issue under review on appeal concerns only legal, as opposed to factual, questions, however, a [preliminary injunction ruling] is subject to independent review on appeal," *Evans v. Romer*, 854 P.2d 1270, 1274 (Colo. 1993); *Bd. of Cnty. Comm'rs v. Fixed Base Operators, Inc.*, 939 P.2d 464, 467 (Colo. App. 1997).

#### B. Preliminary Injunctions

¶ 39 The decision to grant or to deny a request for a preliminary injunction is not an adjudication of the parties' ultimate rights in a controversy, and our review of such a decision does not address these ultimate issues. *Litinsky*, 683 P.2d at 819; *Fixed Base Operators, Inc.*, 939 P.2d at 467. The purpose of a preliminary

injunction is to prevent irreparable harm pending the final determination of a cause. *City of Golden v. Simpson*, 83 P.3d 87, 96 (Colo. 2004). Injunctive relief against a branch of government “should be granted sparingly and with full conviction . . . of its urgent necessity.” *Fixed Base Operators, Inc.*, 939 P.2d at 467.

¶ 40 A party requesting a preliminary injunction must satisfy a six-part test. *Rathke v. McFarlane*, 648 P.2d 648, 653-54 (Colo. 1982)(setting forth six factors that must be met for a preliminary injunction to issue). The single factor that is pertinent to this appeal is whether plaintiffs showed that there was a reasonable probability that they would succeed on the merits of their contentions. *Id.*; *Bloom*, 93 P.3d at 628; *Iowa Nat’l Mut. Ins. Co. v. Cent. Mortg. & Inv. Co.*, 708 P.2d 480, 483 (Colo. App. 1985). The determination of whether there is a “reasonable probability of success on the merits” requires that the trial court “substantively evaluate the issues as it would during trial.” *Dallman v. Ritter*, 225 P.3d 610, 621 (Colo. 2010)(internal quotation marks omitted).

### C. Interpretation of the City’s Charter

¶ 41 A municipal charter is the equivalent of a statute or other legislation. *See Londoner v. City & Cnty. of Denver*, 52 Colo. 15, 32,

119 P. 156, 162 (1911)(equating “charter” with “statute”); *see also* Black’s Law Dictionary 250, 1448 (8th ed. 2009)(defining “statute” as a “law passed by a legislative body; specif., legislation enacted by any lawmaking body, including legislatures, administrative boards, and municipal courts”; and defining “charter” as an “instrument by which a municipality is incorporated, specifying . . . its highest laws”).

¶ 42 When we interpret a municipal charter, such as the one here, we apply the same rules that we use when interpreting a statute. *Leggett & Platt, Inc. v. Ostrom*, 251 P.3d 1135, 1141 (Colo. App. 2010). Our primary goal is to give effect to the charter’s intent, and we do so by looking to the charter’s plain language. We consider that language in the context of the entire charter, and “we must give effect to the ordinary meaning of the language.” *Id.* We must, if possible, read the charter as a unit, construing each provision “consistently and in harmony with the overall statutory design.” *Id.*

¶ 43 If we conclude that the language in a section of the charter is clear and that we can discern the city’s intent in enacting the section with certainty, then we do not resort to other rules of statutory interpretation. And we defer to the interpretation of the

municipal agency charged with administering the section “unless that interpretation is inconsistent with the legislative intent manifested in the text” of the charter. *Id.*

¶ 44 When statutory law and common law interact, we recognize a legislative body’s “authority to modify or abrogate common law, but [we] can only recognize such changes when they are clearly expressed.” *Vigil v. Franklin*, 103 P.3d 322, 327 (Colo. 2004). We construe such statutes strictly. *Id.* If a legislative body wants to “abrogate rights” that the common law provides, “it must manifest its intent either expressly or by clear implication.” *Id.* (quoting *Vaughan v. McMinn*, 945 P.2d 404, 408 (Colo. 1997)).

¶ 45 Our review of the trial court’s interpretation of a charter’s language is de novo. *Leggett & Platt, Inc.*, 251 P.3d at 1140.

#### D. Common Law Dedication of Land

¶ 46 “In Colorado a dedication of land to public use may be made either according to the common law or pursuant to statute.” *City & Cnty. Of Denver v. Publix Cab Co.*, 135 Colo. 132, 139, 308 P.2d 1016, 1019-20 (1957). Common law dedication occurs when the city’s “unambiguous actions” demonstrate its “unequivocal intent” to set the land aside for a particular public use. *State Dep’t of*

*Highways v. Town of Silverthorne*, 707 P.2d 1017, 1020 (Colo. App. 1985); accord *City of Northglenn v. City of Thornton*, 193 Colo. 536, 539, 569 P.2d 319, 321 (1977); *City of Denver v. Jacobson*, 17 Colo. 497, 500, 30 P. 246, 247 (1892); 11A Eugene McQuillin, *Municipal Corporations* § 33:32, at n. 6 (3d ed. rev. vol. 2009)(intent need not actually exist, but rather must appear to exist).

¶ 47 One of the public uses for which a city may dedicate land under the common law is as a park. See *McIntyre v. Bd. of Cnty. Comm'rs*, 15 Colo. App. 78, 61 P. 237 (1900)(recognizing the doctrine of common law park dedication); see also *Hall v. City & Cnty. of Denver*, 115 Colo. 538, 542, 177 P.2d 234, 236 (1946)(applying the doctrine). In *Hall*, our supreme court applied the rule of common law dedication to city-owned land. The court found that that there was no “common-law acceptance of an offer to dedicate” land as a park. 115 Colo. at 542, 177 P.2d at 236. In reaching this conclusion, the court relied on *Starr v. People*, 17 Colo. 458, 30 P. 64 (1892), which held that the public’s use of a road through private property did not turn the road into a public highway unless the property owner’s statements and conduct indicated that he intended such a result.

#### IV. Analysis

¶ 48 The city contends that two sections of its charter abrogate any common law rule that would limit a city's ability to transfer its real property. The city submits that Denver Charter section 2.4.5 sets forth the sole mechanism as of December 31, 1955, for (1) creating parks; and (2) transferring parks. It states:

Without the approval of a majority of those registered electors voting in an election held by the City and County of Denver, no park or portion of any park belonging to the City as of December 31, 1955, shall be sold or leased at any time, and no land acquired by the City after December 31, 1955, that is designated a park by ordinance shall be sold or leased at any time . . . . No land acquired by the City after December 31, 1955, shall be deemed a park unless specifically designated a park by ordinance.

¶ 49 The city further contends that, after December 31, 1955, if it has not designated land as a park under the mechanism established by section 2.4.5, then that plot of land is not a park. And, if the plot of land is not a park, then Denver Charter section 3.2.6 authorizes the city to sell or transfer it without following the requirements of section 2.4.5. Section 3.2.6 states:

The Council shall have the additional powers to approve or disapprove, by ordinance or



resolution, leases or other instruments selling or granting the use of City-owned property to other parties, and certain contracts, under the following conditions:

.....

(C) . . . . All contracts providing for the sale or conveyance of real property owned by the city . . . shall be authorized by the Denver City Council acting by ordinance or resolution.

¶ 50 Based on our de novo analysis of the city's contention, we agree. We therefore conclude, for the following reasons, that the trial court did not abuse its discretion when it determined that plaintiffs did not establish a reasonable likelihood of success on the merits of this issue. *See Bloom*, 93 P.3d at 623.

¶ 51 First, the city has not passed an ordinance dedicating the southern parcel as a park, and therefore the second part of section 2.4.5 does not apply.

¶ 52 Second, the record supplies little support for plaintiffs' contention that the southern parcel was a park on or before December 31, 1955. The only evidence that plaintiffs presented at the preliminary injunction hearing concerning the southern parcel's use during that period was that people had ridden their horses or had walked across the southern parcel, and that they sometimes

had picnics on it. There is little evidence in the record describing the city's conduct concerning the southern parcel between when it was acquired in 1936 and when the pertinent sections of the charter became effective on December 31, 1955. The record did not therefore provide a basis to support a determination by the trial court that the city's "unambiguous actions" established its "unequivocal intent" to dedicate the parcel as a park before December 31, 1955. *See City of Northglenn*, 193 Colo. at 539, 569 P.2d at 321; *Hall*, 115 Colo. at 542, 177 P.2d at 236; *Jacobson*, 17 Colo. at 500, 30 P. at 247; *Town of Silverthorne*, 707 P.2d at 1020.

¶ 53 Third, we conclude that the explicit language of the pertinent sections of the city's charter make clear that, as of December 31, 1955, the city intended (1) to eliminate the concept of common law dedication of parks; (2) for land that the city owned as of that date; (3) that had not already been dedicated as a park by such means.

¶ 54 After conducting our de novo review, applying the plain language of these provisions, and reading them together, *see Leggett & Platt, Inc.*, 251 P.3d at 1140-41, we conclude that the drafters of section 2.4.5 intended to draw two temporal boundaries. The first boundary concerns how city land can become a park.

Section 2.4.5 makes clear that it does not matter how city land became a park before December 31, 1955. But city land can only become a park after that date if the city designates it as a park by an ordinance.

¶ 55 The second boundary concerns how the city can sell or transfer parks. After December 31, 1955, the city can only sell or transfer parks if the city's voters approve the sale or the transfer.

¶ 56 Section 3.2.6 broadly states that the city, through "ordinance or resolution," "authorize[s]" all contracts for "the sale or conveyance of real property owned by the city." In other words, if property is not a park, then the city may transfer it without the approval of the city's voters.

¶ 57 When we read the plain language of sections 2.4.5 and 3.2.6 together, we conclude that the charter's drafters intended to draw a bright line. It did not matter to the drafters how land became a park before December 31, 1955. But the drafters intended to limit that process for all land that the city owned after that date. They stated that dedication by ordinance was the sole method by which city land could become a park.

¶ 58 The drafters further intended to limit how the city could sell or transfer parks that existed before December 31, 1955, and those that the city dedicated as parks by ordinance after that date. They stated that there was only one method to effect such a sale or transfer: approval by the city's voters. But the drafters also clearly stated that they did *not* intend to place that limitation on sales and transfers of city land that was not a park before December 31, 1955, and that the city had not dedicated as a park by ordinance after that date.

¶ 59 The city's interpretation of sections 2.4.5 and 3.2.6 is consistent with the clear legislative intent in the text of those sections. We therefore defer to the city's interpretation. *See Leggett & Platt, Inc.*, 251 P.3d at 1141.

¶ 60 In doing so, we construe these sections strictly to the extent that they abrogate the concept of common law dedication. But even analyzing those sections from this legally conservative vantage point, we conclude that the city has expressed, or at least clearly implied, such an intent. *See Vigil*, 103 P.3d at 327.

¶ 61 Fourth, even assuming for purposes of argument that the doctrine of common law dedication could apply to the southern

parcel after December 31, 1955, we conclude that the trial court did not abuse its discretion when it determined that plaintiffs did not establish that they were likely to succeed on the merits of this issue. The evidence in the record is conflicting whether the city intended to dedicate the southern parcel as a park.

¶ 62 On the one hand, evidence in the record supports plaintiffs' argument that the city intended to dedicate the southern parcel as a park. This proof includes

- the 1976 statement by a member of the city's planning department to a prospective purchaser of a house in the Hampden Heights subdivision that the southern parcel was a park;
- the mayor's 1979 statement that the city could not sell the northern and southern parcels because they were "dedicated park land"; and
- the maps on the city's website that, as of the date of the June 2013 hearing, labeled the southern parcel as "Hampden Heights North Park" or that represented the parcel as a park by color-coding.

¶ 63 On the other hand, other evidence supports the city's argument that the city did not unequivocally intend to dedicate the southern parcel as a park. This proof includes

- testimony that the city's purpose for purchasing the tract in 1936, of which the southern parcel is a part, was to control flooding along Cherry Creek, not to turn the tract into a park;
- the 1967 brochure that identified the southern parcel as a *proposed* "public open park," which indicates that the city did not consider the southern parcel to be a park when it printed the brochure;
- the mayor's 1979 statement that the northern and southern parcels would "eventually . . . be developed into a park," which indicates that the mayor thought that the parcels were not yet a park;
- the 1992 memorandum from the manager of the city's parks and recreation department that stated that both he and the city attorney "underst[ood]" that the southern parcel was not a park because (1) the city had not passed an ordinance dedicating the southern parcel as a park

and (2) the southern parcel had not been used as a park “when all parks were dedicated by charter”;

- the city’s development of two acres at the southern tip of the southern parcel as a parking lot that it leased to a private commercial entity, which indicates that the city did not consider the southern parcel to be a park; and
- the 2007 designation by the manager of the city’s parks and recreation department of the southern parcel as a “natural area” under a city ordinance, which is not the same as a designation of land as a park under the city’s charter.

¶ 64 The record thus does not clearly establish that the city, through its *unambiguous* actions, had demonstrated an *unequivocal* intent to dedicate the southern parcel as a park. *See City of Northglenn*, 193 Colo. at 539, 569 P.2d at 321; *Hall*, 115 Colo. at 542, 177 P.2d at 236; *Jacobson*, 17 Colo. at 500, 30 P. at 247; *Town of Silverthorne*, 707 P.2d at 1020.

#### V. Referendum Petition

¶ 65 Plaintiffs submitted their referendum petition to repeal the city’s ordinance that approved the transfer of the southern parcel to

the school district to the city's clerk and recorder. The clerk rejected plaintiffs' petition because (1) the approval of a real estate contract is an administrative action; and (2) she stated that she was not authorized to accept petitions concerning repeal of administrative actions.

¶ 66 Like Colorado's Constitution, Denver's charter reserves to its citizens the power of referendum for purposes of "requir[ing] that existing ordinances be referred to a vote of the electorate." Denver Charter § 8.3.1. Citizens initiate referendum proceedings by filing affidavits of five registered voters who will serve as the petitioner's committee with the county clerk. Denver Charter § 8.3.2(A). This committee is responsible for circulating and filing the referendum petition. *Id.* Before the committee can circulate the petition, the city's clerk and recorder must review it "for a determination of compliance with . . . any and all other applicable State or City and County laws." *Id.* at § 8.3.2(C). If the clerk rejects the petition, he or she must make written findings specifying the defects in the petition. *Id.*

¶ 67 The committee may challenge the clerk's decision in court. *Id.* And the court may determine whether the petition "exceeds the



proper sphere of legislation and instead attempts to exercise administrative or executive powers.” *Vagneur v. City of Aspen*, 2013 CO 13, ¶ 33 (internal quotation marks omitted); *City of Idaho Springs v. Blackwell*, 731 P.2d 1250, 1253 (Colo. 1987).

¶ 68 “Neither the referendum nor initiative powers guaranteed by the Colorado Constitution grant the people the right to petition for an election on administrative matters.” *Blackwell*, 731 P.2d at 1253; *accord Vagneur*, ¶ 36. Whether a proposed referendum is administrative or legislative in nature is a “case-by-case inquiry.” *Vagneur*, ¶ 48. “[G]overnment decisions to enter into a contract with a specific entity are not legislative decisions because they do not involve the adoption of generally applicable rules in the implementation of public policy.” *Id.* at ¶ 47. And “the sale . . . of a particular parcel of city-owned property” is not the adoption of a “city-wide zoning plan of general applicability.” *Id.* at ¶ 60.

¶ 69 Plaintiffs argue that their proposed referendum is legislative in nature because the ordinance that they seek to repeal constitutes a permanent change in land use policy and is a de facto zoning change. We are not persuaded. A single contract for the transfer of a single piece of land does not repeal or amend any parts of the

city's charter, and it is not binding on decisions that the city may make about other pieces of land. *See id.* at ¶ 60 (“We reject [the] suggestion that proposing a permanent change in use of a specific parcel of [c]ity-owned open space is equivalent to modifying a zoning plan and that such a proposed change in use is therefore legislative.”). The transfer in this case does not “involve the adoption of generally applicable rules in the implementation of public policy.” *Id.* at ¶ 47.

¶ 70 We conclude for the foregoing reasons that the trial court did not abuse its discretion when it concluded that plaintiffs had not established a reasonable likelihood of success on the merits of this issue. *See Bloom*, 93 P.3d at 623.

¶ 71 The order is affirmed.

JUDGE RICHMAN and JUDGE BOORAS concur.



(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.**

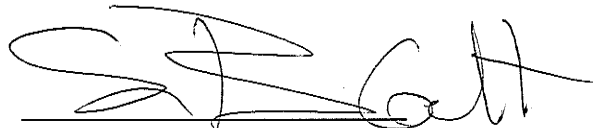
(Zoning Code §9.3.2.1, emphasis added)

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

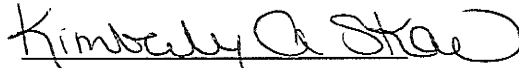
is already built. For these reasons, I respectfully ask the court to grant an emergency injunction commanding DPS and the City to immediately stop all construction and all work on the property until further order of court.

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 March 4,  
2014 by Susan Barnes-Gelt, known personally to me.

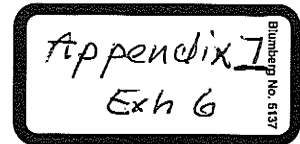
  
Notary Public

My commission expires: Feb 2, 2015

**KIMBERLY A. SKARI**  
**NOTARY PUBLIC**  
**STATE OF COLORADO**  
My Comm. Expires Feb. 2, 2015

Denver City Council Meeting: 8/19/1996

(Discussion regarding C.B. 677 Series of 1996 Amending Section A 4.5)



**John Bennett, Staff Director City Council:** Madam President, Council Bill 677 refers a charter amendment to the voters at the November 5<sup>th</sup> election. The amendment confirms that parks used as parks prior to 1955 are designated parks.

The amendment clears up confusion those results from a Grand County Court interpretation of current charter language on parks.

It confirms that parks designated as parks after 199... (Correction) 1955 are still designated as parks. It provides further that designation of pa... (Correction) it provides for further designation of parks in the future. If this amendment is passed, then, once a park is designated it cannot be sold without a vote of the electors.

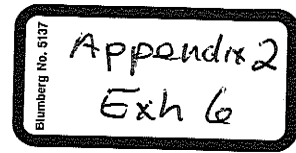
**President:** Thank you, John. The public hearing is open. We have no one signed up for the public hearing. At this point in time, are there questions of staff about this amendment? Seeing none, the public hearing is closed. Are there comments from members of Council? Seeing none, a roll call on Council Bill 677:

**Clerk:**

Barnes-Gelt: Aye  
Casey: Aye  
Davis: Aye  
Flobeck: Aye  
Foster: Aye  
Gallagher: Aye  
Haynes: Aye  
Kimmelman: Aye  
Martinez: Aye  
Ortega: Aye  
Thomas: Aye  
Madam President: Aye

Twelve Aye's.

**President:** Twelve Aye's. Council Bill 677 is adopted



Current Version of Section 2.4.5 of the City Charter:

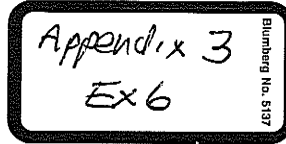
§ 2.4.5 Sale and leasing of parks.

Without the approval of a majority of those registered electors voting in an election held by the City and County of Denver, no park or portion of any park belonging to the City as of December 31, 1955, shall be sold or leased at any time, and no land acquired by the City after December 31, 1955, that is designated a park by ordinance shall be sold or leased at any time, provided, however, that property in parks may be leased for park purposes to concessionaires, to charitable or nonprofit organizations, or to governmental jurisdictions. All such leases shall require the approval of Council as provided for in Article III of this Charter. No land acquired by the City after December 31, 1955, shall be deemed a park unless specifically designated a park by ordinance.

*(Charter 1960, A4.5; amended May 17, 1955; amended May 17, 1983; amended August 19, 1996)*

BY AUTHORITY

ORDINANCE NO. 333  
SERIES OF 2010



COUNCIL BILL NO. 10-0431  
COMMITTEE OF REFERENCE:  
BLUEPRINT

A BILL

For an ordinance relating to Chapter 59 (Zoning), Denver Revised Municipal Code, enacting a new zoning code and official zoning map and preserving the former zoning code for use where land is not being re-zoned.

**WHEREAS**, the City adopted Ordinance No. 392, Series of 1956, enacting both an entirely new zoning code ("1956 Code") and new zoning map ("1956 Map") for the entire city; and

**WHEREAS**, that 1956 Code and 1956 Map reflected the contemporary best planning practices based on the then-current conditions and emerging trends of the mid-1950's, which included economic growth, population growth, increasing automobile use, and suburbanization; and

**WHEREAS**, over the intervening years, 1956 Code and 1956 Map have been amended in large and small ways, always with the intent to reflect contemporary best practices and changing conditions; and

**WHEREAS**, the resulting document is long, complex, and hard to use; it does not lend itself to modern standards of electronic communications and user-friendliness; and it does not encourage redevelopment that is sympathetic to neighborhood character or the types of redevelopment desired in emerging areas; and

**WHEREAS**, calls for a comprehensive overhaul of the 1956 Code and 1956 Map are long-standing and increasingly urgent, as evidenced by recommendations of the 1989 Comprehensive Plan; Denver Comprehensive Plan 2000; Blueprint Denver: An Integrated Land Use & Transportation Plan, adopted in 2002; and numerous neighborhood plans, small area plans, station area plans and other planning documents; and

**WHEREAS**, in early 2005, Mayor John Hickenlooper appointed a Zoning Code Task Force comprised of: representatives of City Council; registered neighborhood organizations; the historic preservation community; the development community, including the Board of Realtors, architects and planners; and a Citizen Advisory Group of citizens and property owners; and

**WHEREAS**, for nearly five years, the Zoning Code Task Force, with the assistance of zoning consultants, City staff, and the Citizen Advisory Group, has gone out into the community to listen to problems with the 1956 Code and 1956 Map, as amended, and to how people want their city



1 and neighborhood to look; has developed ideas and proposals, which were then taken back out  
2 for additional public feedback, debate and discussion; and

3 **WHEREAS**, the current law regarding amendments to the zoning code and official map is  
4 contained in Section 59-646 of the Denver Revised Municipal Code (DRMC), which declares, in  
5 part, that amendments to the zoning code and official map shall be made only to correct errors or  
6 to respond to changing conditions and only as reasonably necessary to promote public health,  
7 safety or general welfare; and

8 **WHEREAS**, City Council has determined that the need to correct errors and respond to changing  
9 conditions, as described in recitals above, should not be done by piecemeal amendment, but by  
10 adoption of an entirely new zoning code and official map; and

11 **WHEREAS**, the City Council has determined on the basis of evidence and testimony presented at  
12 the public hearing that the amendment set forth herein is in conformance with the Denver  
13 Comprehensive Plan 2000, is justified by changed or changing conditions, and is reasonably  
14 necessary to the promotion of the public health, safety and general welfare.

15 **NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF**  
16 **DENVER:**

17 **Section 1.** Chapter 59 (Zoning) of the DRMC shall be amended by deleting the current  
18 Chapter 59 in its entirety and enacting and adding a new Chapter 59 to read and be read as  
19 follows:

20 **Chapter 59**

21 **ZONING**

22 **Sec. 59-1. Zoning Code.**

23 The zoning code as filed with the Denver City Clerk on 20<sup>th</sup> day of May 2010 at City Clerk Filing  
24 No. 10-512-A, is hereby adopted as the official zoning code for the City and County of Denver  
25 ("Denver Zoning Code"). The Denver Zoning Code and all amendments thereto shall be  
26 maintained in and kept current by the Department of Community Planning and Development and  
27 shall be available to the public.

28 **Sec. 59-2. Former Chapter 59.**

29 (a) Chapter 59 of the Denver Revised Municipal Code as filed with the Denver City Clerk on 20<sup>th</sup>  
30 day of May 2010 at City Clerk Filing No. 10-512, ("Former Chapter 59"), shall remain in full force  
31 and effect for any land not re-zoned to zone districts in the Denver Zoning Code. No changes  
32 shall be enacted to the provisions of the Former Chapter 59 after June 25, 2010.

1 (b) For lands retaining their zoning designation under the Former Chapter 59, including land  
2 zoned Planned Unit Development (PUD), land zoned with waivers and conditions and land subject  
3 to a Planned Building Group Site Plan, all provisions of the Former Chapter 59, including  
4 procedures, shall apply.

5 **Sec. 59-3. Rezoning.**

6 (a) Any land rezoned after June 25, 2010 shall not be rezoned to zone districts in the Former  
7 Chapter 59, except that:

8 (1) Land retaining PUD zoning under the Former Chapter 59 may be re-zoned to new PUD  
9 under the Former Chapter 59;

10 (2) Land retaining a zoning designation with waivers and conditions under the Former Chapter  
11 59 may be rezoned under the Former Chapter 59, but only to the extent that the waivers  
12 and/or conditions may be eliminated or modified. The underlying zone district may not be  
13 changed to another zone district under the Former Chapter 59.

14 (b) Except as explicitly stated in 59-3(a), any land that remains zoned to zone districts in the  
15 Former Chapter 59 after June 25, 2010, if rezoned after June 25, 2010, may only be rezoned to  
16 zone districts in the Denver Zoning Code utilizing the procedures of the Denver Zoning Code.

17 **Sec 59-4. Official Map.**

18 (a) The digital maps created and maintained by the Department of Community Planning and  
19 Development and published by Technology Services' Geographic Information Systems Office  
20 delineating the boundaries of the various zone districts, together with all matters and things shown  
21 on such maps, are hereby adopted and approved, incorporated herein and made a part hereof  
22 and collectively shall constitute the official zoning map of the City and County of Denver ("Official  
23 Map"). The Official Map may be amended from time to time as provided in the Denver City Charter  
24 and the Former Chapter 59 or the Denver Zoning Code, as applicable. All amendments to the  
25 Official Map shall be maintained in and kept current by the Department of Community Planning  
26 and Development and made available to the public.

27 (b) All land located within the City and County of Denver shown on the Official Map as being  
28 zoned to a zone district in the Denver Zoning Code is hereby rezoned as designated on the  
29 Official Map. All land within the City and County of Denver not being rezoned to a zone district in  
30 the Denver Zoning Code shall retain its zoning under the Former Chapter 59 as shown on the  
31 Official Map, until and unless rezoned.

1           **Section 2.**

2           (a) The Denver Zoning Code, as enacted by Section 1 above, shall be effective June 25,  
3 2010, ("Effective Date") provided, however, that up to and including 4:00.00 pm, Mountain  
4 Standard Time, December 30, 2010, any person may apply for a zoning permit as required by  
5 Section 59-26(d) under the Former Chapter 59 or under the Denver Zoning Code.

6           (b) In order for an application for a zoning permit relating to land re-zoned to zone districts  
7 under the Denver Zoning Code to be processed under the provisions of the Former Chapter 59, a  
8 substantially complete application, including any applicable fees, must be filed prior to or at  
9 4:00.00 pm, Mountain Standard Time, December 30, 2010. For the purposes of this Section 2,  
10 "substantially complete application" shall mean an application that is submitted in the required  
11 form, including all information necessary to decide whether the application complies with the  
12 requirements of the Former Chapter 59, including all items or exhibits specified during any pre-  
13 application conference and is accompanied by the applicable application processing fee.

14           (c) Any application for a zoning permit relating to land re-zoned to zone districts in the  
15 Denver Zoning Code submitted under the Former Chapter 59 that is not approved by December  
16 30, 2011, shall be void. No extensions of time shall be granted.

17           (d) Any zoning permit to erect or alter a structure approved under the Former Chapter 59  
18 relating to land re-zoned to zone districts in the Denver Zoning Code shall be valid for a period of  
19 180 days from the date of approval after which period the zoning permit shall lapse and become  
20 void unless a building permit has been issued within the 180 day period. Once a building permit  
21 has been issued the zoning permit shall remain valid unless:

22           (i) The building permit is canceled; or

23           (ii) Construction has not started within 180 days of the issuance of the building permit; or

24           (iii) Once construction has started, there is a lapse in continuous and ongoing construction  
25 activity of more than 30 days. Continuous and ongoing construction activity means that  
26 regular construction activity is occurring on the site at least five days a week, weather  
27 permitting.

28 In the event one of the three above contingencies occurs, the building permit and the zoning  
29 permit shall be void. No extensions of time shall be granted. Once a zoning permit issued under  
30 the Former Chapter 59 becomes void, all new permits issued for the same property shall be  
31 issued pursuant to the Denver Zoning Code.

32           (e) Any special plan registered and recorded under the Former Chapter 59 relating to land  
33 re-zoned to zone districts in the Denver Zoning Code, not including any district plan for a Planned

1 Unit Development, shall be considered void if (i) a building permit has not been issued and if  
2 construction has not commenced within 18 months of recording of the special plan; or (ii) once  
3 construction has started there is any lapse in continuous and ongoing construction activity of more  
4 than 30 days. Continuous and ongoing construction activity means that regular construction  
5 activity is occurring on the site at least five days a week, weather permitting. Once such special  
6 plan registered and recorded under the Former Chapter 59 becomes void, all new permits and  
7 special plans issued for the same land shall be issued pursuant to the Denver Zoning Code.

8 **Section 3.** Notwithstanding anything herein, any land with legally vested rights may be  
9 developed in accordance with such vested rights.

10 **Section 4.** Administrative Alternatives.

11 (a) Upon written application for an administrative alternative to the Denver Zoning  
12 Code's building form standards, and only from June 25, 2010, until 4:00.00 pm, Mountain  
13 Standard Time, December 30, 2010, the Zoning Administrator may approve administrative  
14 alternatives to the building form standards in the Denver Zoning Code, provided the applicant  
15 demonstrates:

- 16 (1) The alternative building form standard has broad applicability; and
- 17 (2) The alternative building form standard affects the engineering of the building or  
18 the change would create greater compatibility with the existing context.

19 (b) The Zoning Administrator may request more information of the applicant before  
20 rendering a decision.

21 (c) The Zoning Administrator shall approve the proposed administrative alternative,  
22 approve it with conditions or deny the alternative. All final action shall be in writing. In making a  
23 final decision on the administrative alternative, the Zoning Administrator shall consult with, at a  
24 minimum, the Manager of Community Planning and Development, the Director of Development  
25 Services, the Manager of Plan Implementation and the City Attorney, or their designees.

26 (d) The decision of the Zoning Administrator may be appealed to the Board of  
27 Adjustment under the provisions of Section 12.4.8 of the Denver Zoning Code.

28 (e) The City Council may by ordinance extend the application of this Section 4 until June  
29 30, 2011.

1 COMMITTEE APPROVAL DATE: April 28, 2010.

2 MAYOR-COUNCIL DATE: May 18, 2010.

3 PASSED BY THE COUNCIL: June 21, 2010

4 Joanna Robb - PRESIDENT

5 APPROVED: John H. Dalrymple MAYOR JUNE 22, 2010

6 ATTEST: Stephanie Hally - CLERK AND RECORDER,  
7 EX-OFFICIO CLERK OF THE  
8 CITY AND COUNTY OF DENVER

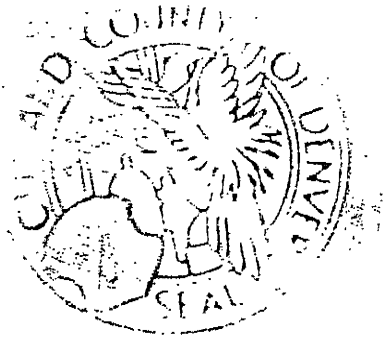
9 NOTICE PUBLISHED IN THE DAILY JOURNAL: May 28, 2010; June 25, 2010

10 PREPARED BY: Kerry A. Buckey, Assistant City Attorney DATE: May 20, 2010

11 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of  
12 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed  
13 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to §  
14 3.2.6 of the Charter.

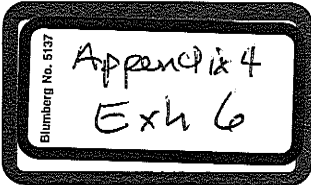
15 David R. Fine, City Attorney

16 BY: David R. Fine, Assistant City Attorney Date: June 20, 2010





Property Recreation & Culture Health & Safety Government Services



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### Zoning

Find your zoning and learn about the zoning code.

To download map data visit the Denver Open Data Catalog

8774 e eastman ave Search

**Zoning Code**  
**Zone District:** OS-A

**Expand for more information**  
**Neighborhood Context:** SPECIAL OPEN SPACE  
**Zone Description:** Open Space - Public Parks (OS-A)  
**Ordinance Year:** 2010  
**Ordinance:** 333

[Download Area Zoning Map](#)

Map data © 2014 Google

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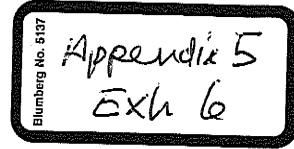
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property



## SECTION 9.3.2 DISTRICTS ESTABLISHED

To carry out the provisions of this Code, the following Zone Districts have been established in the Open Space Context and are applied to property as set forth on the Official Map.

### Open Space Context

- OS-A Open Space Public Parks District
- OS-B Open Space Recreation District
- OS-C Open Space Conservation District

#### 9.3.2.1 Purpose

The following paragraphs explain the general purpose and intent of the individual Zone Districts.

##### A. Open Space Public Parks District (OS-A)

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.

##### B. Open Space Recreation District (OS-B)

The OS-B district is intended to protect and promote open space and parks not otherwise owned, operated or leased by the City, and generally intended for active or passive recreation use. The district allows more building coverage and a variety of active recreational facilities than in the OS-C district.

##### C. Open Space Conservation District (OS-C)

To allow for conservation of open space and natural areas, regardless of ownership, which are not intended for development. Limited passive recreation is allowed, and only limited structures incidental to and supportive of the conservation purpose of the Zone District, such as visitor's/educational center, are allowed.

## SECTION 9.3.3 PRIMARY BUILDING FORM STANDARDS

#### 9.3.3.1 Primary Building Forms in the OS-A District

In the OS-A Zone District, the City Council shall have final approval authority over the form of certain building according to D.R.M.C., Chapter 39 (Parks). For all other buildings or structures, the Manager of Parks and Recreation shall determine all applicable building form standards.

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

State of Colorado                    )  
County of Denver                    ) ss



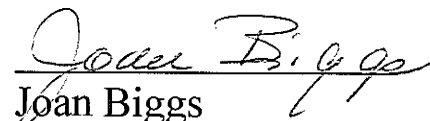
1. My name is Joan Biggs. I am over the age of 18 years and competent to testify in all respects. This affidavit is based on my personal knowledge.
2. I was born in 1926. I grew up in east Denver at 383 Birch St. I attended Steck Elementary, and Smiley Junior High. In 1933, when I was seven years old, my father walked my mother, me, and my brother down Colorado Boulevard to watch the Cherry Creek flood. It was more water than I ever saw in my life. My father joined the US Army in 1941 immediately after Pearl Harbor. I graduated from East High School in 1944, while my father was serving overseas. I attended the University of Denver for one year. I married in 1945.
3. Horseback riding was extremely popular in Denver when I grew up. When I was 12 or 13 I joined the Hottentot riding club. It was before World War II. An army reserve officer named Ralph "Cap" Bitler trained us in equestrian skills and took us on trail rides. Cap taught science at Morey Junior High School and mentored the Hottentots in his spare time. We called Cap's wife "Mommy B." There was a riding ring at Colorado Boulevard and Cherry Creek where we practiced.
4. The Hottentots started trail rides from our barn at 3<sup>rd</sup> and Steele St. We rode along Cherry Creek to the Sullivan Dam. There was lots of open space on both sides of Cherry Creek. Near the Sullivan Dam was a large open field north of the dam where we could gallop the horses and let them jump over fallen trees. We packed a lunch and sometimes ate in the open field. The trail rides to



Sullivan Dam took most of the day. There would be five to ten riders in our group of Hottentots. We did not have a name for the open field near Sullivan Dam, but we assumed it was a park because it was always open to the public, everybody used it as a park, and nobody asked us to leave.

5. In 1958 I started teaching horseback riding to children at the Flowing J&J Ranch, located near Syracuse and Iliff. I would take my students on horseback rides along the Highline Canal and Cherry Creek, the same places where I rode on trail rides as a member of the Hottentots. Havana St. was built around that time, but there were still many horseback riders using the bridle paths and the park west of Havana. Once there was a terrible hailstorm and I took my students and horses under the bridge where Havana goes over Cherry Creek.
6. On March 3, 2014 I visited the construction site at E. Girard Ave. and S. Havana St. Based on my own observations, I know that the location of the school construction zone at E. Girard Ave. and S. Havana St. was the same park where I rode horses as a young girl in the 1930's and 1940's, and where I took my students on trail rides from the Flowing J&J in the 1950's and 1960's. I am certain that the construction site was used as a public park before and after 1955.

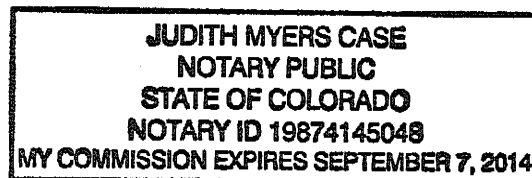
Further, Affiant sayeth not.

  
Joan Biggs

The foregoing Affidavit was acknowledged before me March 3, 2014  
\_\_\_\_\_ 2014 by Joan Biggs, known personally to me.

  
Notary Public

My commission expires:

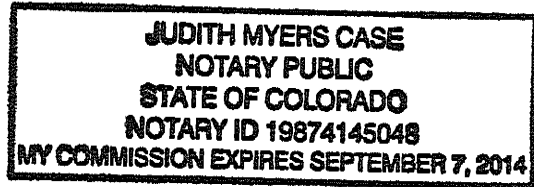




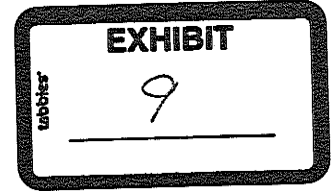
The foregoing Affidavit was acknowledged before me March 3, 2014  
2014 by Sandy Dennehy, known personally to me.

Judith Myers Case  
Notary Public

My commission expires:



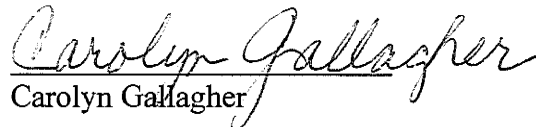
**Friends of Denver Parks et al. vs. City and County of Denver et al.  
Denver District Court Case No.: 2013CV032444**



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

1. My name is Carolyn Gallagher. I am over the age of 18 years and competent to testify in all respects. This affidavit is based on my personal knowledge.
  
2. My parents moved to southeast Denver in 1953, when I was 11 years old. We lived in a house near S. Dahlia St. and East Florida Ave. I attended elementary school at Ash Grove Elementary on S. Holly St. Many of my classmates rode horses to school and tethered the horses at a hitching rail outside the school.
  
3. Horseback riding was the most popular outdoor pastime in southeast Denver. My mother, my father, and my younger sister owned horses. My mother competed successfully in national three gaited and five gaited equestrian competitions. My father and sister competed together in the "Drive and Ride" event at the Denver Stock Show. My sister boarded her horse at the stables near S. Dahlia St. and E. Mississippi Ave. I used to walk to the stables. I rode my sister's horse when she was grounded by my parents. At other times I rented horses, using money I earned baby sitting. A place called Glacier's Barn near S. Holly St. and East Kentucky Ave. sponsored hayrides and square dances for pre-teens and teenagers that we enjoyed. The hayrides went along the bridle paths that followed Cherry Creek and the Highline Canal.
  
4. Before 1955 I rode in the parkland along Cherry Creek. The bridle paths followed the banks of Cherry Creek all the way to the spillway from Cherry Creek Dam. We rode horses along the bridle paths as far as the spillway. The hayrides came there too. There were usually many people using this park area for horseback riding, walking, picnicking, and children playing in the field and the creek. Nobody ever asked us to get off the property. We assumed it was public park land because it was open to the public and used as a park by lots of people. Recently in 2014 I walked along the bicycle trail next to Cherry Creek near Havana and Girard. I saw a construction zone, with a fence, earth moving equipment, and piles of dirt in the park where I rode horses and played with my friends 1953-1955. Based on my own observations, I am certain that the location of the school construction zone was used as a park before 1955.

Further, Affiant sayeth not.

  
Carolyn Gallagher

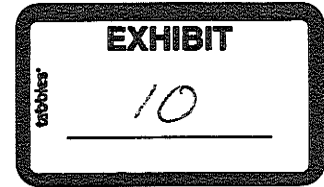
The foregoing Affidavit was acknowledged before me March 3, 2014  
2014 by Carolyn Gallagher, known personally to me.

Judith Myers Case  
Notary Public

My commission expires:

**JUDITH MYERS CASE  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 19874145048  
MY COMMISSION EXPIRES SEPTEMBER 7, 2014**

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



State of Colorado                    )  
  ) ss  
County of Douglas                    )

1. My name is Dave Norden. 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 was born in 1947. When I was seven or eight years old my father leased the Flowing M Cattle Ranch on E. Iliff and turned it into the Flowing J&J Ranch, which was a horse training, boarding and rental operation. My mother had bought a trick horse named Question Mark and gave him to me. He would bow, play dead, and rear up on his hind legs. Mark was like part of our family.
  
3. At the Flowing J&J we rented horses, boarded horses, and trained riders. After my father bought the Flowing J&J, I attended Sullivan Elementary School at Wabash and Iliff. My father picked me up from school in a horse drawn buckboard. We sometimes ate at the Hitching Post, a restaurant run by Ma & Pa Hatch where you could tie your horse to the hitching rail. It was a popular location for horse people. We enjoyed meeting other horse people at the Hitching Post. From Flowing J&J Ranch I rode Mark and other horses along the Highline Canal. I also rode Mark along the bridle path to Cherry Creek Dam. I went on trail rides with people from Flowing J&J to Cherry Creek Recreation Area. We swam and our horses swam in the reservoir. There was a large open area northwest of Cherry Creek Dam where people galloped horses, played rodeo, played tag on horses, and stopped to rest and talk.
  
4. In 1963 my father John Norden relocated the Flowing J&J to a new 20 acre location next to the Cherry Creek Meadows real estate development. I took over the barn at age 21. In approximately 1970 I changed the name to Norden Training Center. We boarded horses, gave riding lessons, and rented horses. I rode the bridle paths along the Highline Canal and Cherry Creek the same as I did when I was a boy. Even though there was a lot of residential real estate development in the 1960's, the city of Denver preserved the parks and bridle paths on both sides of Cherry Creek. Horses had the right of way on the bridle paths. The area was flood plain all the way to the spillway at the base of Cherry creek Dam. It was open to public use without restriction. In 1963 it was possible to ride along Cherry Creek from the Norden Training Center all the way to Parker. We always understood that the city of Denver owned the land and was going to preserve it as a park and wildlife area.
  
5. Based on my own observations, I know that the location of the school construction zone now located at E. Girard Ave. and S. Havana St. was used as a park before and after 1955.

Further, Affiant sayeth not.

Dave Norden

Dave Norden

William D. Norden

The foregoing Affidavit was acknowledged before me Lawrence J Kasinowski  
2014 by Dave Norden, known personally to me.

Lawrence J Kasinowski

Notary Public

My commission expires:

LAWRENCE JOSEPH KASINOWSKI  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20134069214  
MY COMMISSION EXPIRES NOVEMBER 14, 2017

1 Next witness?

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

4 THE COURT: Pardon?

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

8 THE COURT: Music to my ears.

9 MR. WHEELER: I kind of thought so.

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

12 MR. CASE: I do.

13 THE COURT: Let's go.

14 MR. CASE: Thank you.

15 I call Charles Bonniwell.

16 CHARLES BONNIWELL, PLAINTIFF'S WITNESS, SWORN

17 THE COURT: Make sure you speak up.

18 THE WITNESS: I will.

19 THE COURT: Big guy, soft voice.

20 DIRECT EXAMINATION

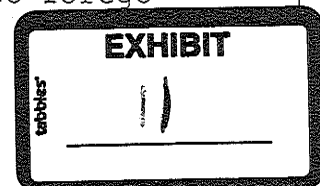
21 BY MR. CASE:

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

23 A Charles Clayant (phonetic) Bonniwell.

24 Q Where do you live --

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





1 last name.

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

3 BY MR. CASE:

4 Q Where do you live?

5 A 1313 Williams, Denver, Colorado.

6 Q What's your occupation?

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

9 Q The newspaper is?

10 A The Glendale Cherry Creek Chronicle.

11 Q How long have you published that newspaper?

12 A Since 1998.

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

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

18 THE COURT: I just couldn't resist.

19 Go ahead.

20 MR. CASE: Thank you, Your Honor..

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

22 BY MR. CASE:

23 Q So you mentioned you are a historian?

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

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

6 Q What is your educational background?

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

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

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

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

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

6 A Yes. Legal counsel to the planning commission.

7 Q When did you hold that office?

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

10 Q That was?

11 A 1905 -- 2005 through 2009.

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

15 A I do.

16 Q And the basis for that is?

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

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

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

24 BY MR. CASE:

25 Q And as attorney for the Glendale planning commission,

1 did you have to look up deeds?

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

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

11 THE COURT: Any objection?

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

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

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

1 Denver.

2 THE COURT: Well, go ahead.

3 MR. CASE: Thank you, Your Honor.

4 BY MR. CASE:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 A Sure, sure, sorry.

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

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

3 A Yes.

4 Q How do you know that?

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

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

9 A The History of Glendale.

10 THE COURT: This is your book?

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

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

18 BY MR. CASE:

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

20 A History of Glendale.

21 Q Who wrote it?

22 A Jack E. and Patricia A. Fletcher.

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

25 A It is.



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

3 A Sure. Page 90, second full paragraph.

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

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

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

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

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

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

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

8 Q Tell us where the stables were in Glendale.

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

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

17 A Colorado boulevard, correct.

18 Q And it's now --

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

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

25 THE COURT: Now it's Las Delicias?

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

3 BY MR. CASE:

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

6 A Yes.

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

9 A Yes, vaguely.

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

12 A Yes, that would be correct.

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

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

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

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

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

6 A Those are all true facts.

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

9 THE COURT: Cross?

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

11 CROSS-EXAMINATION

12 BY MR. BROADWELL:

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

16 A I can't tell.

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

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

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

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

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

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

7 A Sure.

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

12 A Absolutely not.

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

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

20 MR. BROADWELL: Thank you.

21 THE COURT: Used as a park before 1955?

22 THE WITNESS: Correct.

23 THE COURT: Anything else?

24 MR. CASE: No, Your Honor.

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

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

2 MR. DEHERRERA: No, Your Honor.

3 THE COURT: Thank you, sir.

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

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

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

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

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

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

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

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

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

12          MR. CASE: Judy Case.

13          THE COURT: Spell it.

14          MR. CASE: C-A-S-E.

15          THE COURT: Any relation?

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

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

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

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

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

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

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

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

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

24 THE COURT: Got you. Well, I can only what I can do.  
25 (Clerk and Court confer)



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

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

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

15 MR. CASE: Perfect.

16 MR. BROADWELL: Thank you, Your Honor.

17 MR. CASE: By when?

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

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

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

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

25 THE COURT: Right.

1 MR. CASE: Thank you.

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

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

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

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

19 MR. CASE: Thank you, Your Honor.

20 MR. BROADWELL: Thank you.

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

23

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CERTIFICATE

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

*Cynthia A. Charest*  
\_\_\_\_\_  
CYNTHIA A. CHAREST  
Digital Court Transcriber

DATED and SIGNED this 1st day of August 2013.

This ~~Deed~~ Made this sixth day of October in the year of our Lord one thousand nine hundred and thirty-six between

JAMES D. CANARY of the City and County of Denver and State of Colorado, of the first part, and CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado, of the second part;

Witnesseth, That the said parties of the first part, for and in consideration of the sum of Sixteen Hundred Fifty-eight (\$1658.00) DOLLARS, to the said parties of the first part in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell, convey and confirm, unto the said party of the second part, its successors and assigns forever, all the following described parcel of land, situate, lying and being in the City and County of Denver and State of Colorado, to-wit:

Parcel No. 31

That part of the East half (1/2) of the East half (1/2) of Section Thirty-four (34), Township Four (4) South, Range Sixty-seven (67) West of the 6th P.M., described as follows:

Commencing at the Southeast corner of the Northeast quarter (1/4) of the Southeast quarter of said Section Thirty-four (34); thence South along the East line of said Section Thirty-four (34) a distance of Four Hundred Twenty (420) feet to a point; thence northwesterly along a straight line to the northwest corner of the South half (1/2) of the Northeast quarter (1/4) of the Northeast quarter (1/4) of said Section; thence East along the North line of said South half (1/2) of the Southeast quarter (1/4) of the Northeast quarter (1/4) to the Northeast corner thereof; thence South along the East line of said Section to place of beginning, containing 36.45 acres more or less.

EXHIBIT  
12

Together with all and singular the hereditaments and appurtenances therunto belonging, or in anywise appertaining and the reversions and reversions, remainders and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, claim and demand whatsoever of the said parties of the first part, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances.

To Have and to Hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part, its successors and assigns forever. And the said parties of the first part, for themselves, their heirs, executors, and administrators, do covenant, grant, bargain and agree to and with the said party of the second part, its successors and assigns, that at the time of the encoding and delivery of these presents, they are well seized of the premises above conveyed, as of good, sure, perfect, absolute and indefensible estate of inheritance, in law, in fee simple, and, have good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments and incumbrances of whatever kind or nature soever.

and the above bargained premises in the quiet and peaceable possession of the said party of the second part, its successors and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, the said parties of the first part shall and will WARRANT AND FOREVER DEFEND.

In Witness Whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Signed, Sealed and Delivered in the Presence of  
*[Signature]* (SEAL)  
*[Signature]* (SEAL)  
*[Signature]* (SEAL)

COLORADO, County of Denver, 7<sup>th</sup> day of October, 1936  
James D. Canary

Notary Public seal  
Notary Public  
George Crane  
Notary Public  
Description O.K.  
G. Wall

DEED OF EASEMENT

EXECUTED BY AUTHORITY OF ORDINANCE No. 296, SERIES OF 1955

KNOW ALL MEN BY THESE PRESENTS:

THAT THE CITY AND COUNTY OF DENVER, A MUNICIPAL CORPORATION, DULY ORGANIZED AND EXISTING UNDER AND BY VIRTUE OF THE CONSTITUTION OF THE STATE OF COLORADO, HEREINAFTER CALLED THE "CITY", FOR AND IN CONSIDERATION OF ONE (\$1.00) DOLLAR AND OTHER GOOD AND VALUABLE CONSIDERATIONS IN HAND PAID, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, DOES HEREBY GRANT AND CONVEY TO THE DEPARTMENT OF HIGHWAYS OF THE STATE OF COLORADO, ITS SUCCESSORS AND ASSIGNS, AN EASEMENT AND RIGHT-OF-WAY FOR THE LOCATION, RELOCATION, CONSTRUCTION, RECONSTRUCTION, IMPROVEMENT AND MAINTENANCE OF A PORTION OF STATE HIGHWAY No. 70 AND EXTENSION OF HAVANA STREET SOUTH, RIGHTS OF WAY OVER, ALONG, UPON, AND ACROSS THE FOLLOWING DESCRIBED PORTIONS, TRACTS, OR PARCELS OF REAL PROPERTY:

#169 (A) A TRACT OR PARCEL OF LAND No. 2 REV.2 OF DEPARTMENT OF HIGHWAYS' PROJECT No. S 0055(2) CONTAINING 3.829 ACRES, MORE OR LESS, IN THE SE $\frac{1}{4}$  OF THE SE $\frac{1}{4}$  OF SECTION 27, TOWNSHIP 4 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, IN ARAPAHOE COUNTY, COLORADO, SAID TRACT OR PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

1. BEGINNING AT THE SE CORNER OF SECTION 27, T.4S., R.67W.; THENCE N. 0 $^{\circ}$  16' 30" W., ALONG THE EAST LINE OF SEC. 27, A DISTANCE OF 1196.5 FEET TO THE CENTERLINE OF PARKER ROAD, STATE HIGHWAY #83;
2. THENCE N. 43 $^{\circ}$  41' W., ALONG THE CENTER LINE OF PARKER ROAD STATE HIGHWAY #83, A DISTANCE OF 172.1 FEET, TO THE NORTH LINE OF THE SE $\frac{1}{4}$  OF THE SE $\frac{1}{4}$  OF SEC. 27;
3. THENCE WEST ALONG THE NORTH LINE OF THE SE $\frac{1}{4}$  OF THE SE $\frac{1}{4}$  OF SEC. 27, A DISTANCE OF 37.5 FEET;
4. THENCE S. 41 $^{\circ}$  35' W., ALONG THE NORTHWEST PROPERTY LINE, A DISTANCE OF 104.1 FEET;
5. THENCE S. 23 $^{\circ}$  38' 30" E., A DISTANCE OF 287.7 FEET;
6. THENCE S. 01 $^{\circ}$  12' W., A DISTANCE OF 700.0 FEET;
7. THENCE S. 10 $^{\circ}$  06' 30" E., A DISTANCE OF 102.0 FEET;
8. THENCE S. 01 $^{\circ}$  12' W. A DISTANCE OF 176.1 FEET TO THE SOUTH LINE OF SEC. 27;
9. THENCE S. 88 $^{\circ}$  25' E., ALONG THE SOUTH LINE OF SEC. 27, A DISTANCE OF 116.2 FEET MORE OR LESS, TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED TRACT CONTAINS 3.859 ACRES, MORE OR LESS, OF WHICH 0.239 ACRES ARE IN THE RIGHT OF WAY OF THE PRESENT ROAD.

(B) A TRACT OR PARCEL OF LAND No. 5 OF DEPARTMENT OF HIGHWAYS' PROJECT No. S 0055 (2) CONTAINING 10.718 ACRES, MORE OR LESS, IN THE E $\frac{1}{2}$  OF NE $\frac{1}{4}$  AND E $\frac{1}{2}$  OF SE $\frac{1}{4}$  OF SECTION 34, TOWNSHIP 4 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, IN ARAPAHOE COUNTY, COLORADO, SAID TRACT OR PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

7747 564

BEGINNING AT A POINT ON THE EAST LINE OF SECTION 34, T.49., R.67W., FROM WHICH POINT THE SE CORNER OF SAID SECTION 34 BEARS S 00° 25' 30" W A DISTANCE OF 1358.9 FEET;

1. THENCE N 00° 25' 30" E ALONG THE EAST LINE OF SECTION 34 A DISTANCE OF 2602.9 FEET TO THE NORTH PROPERTY LINE;
2. THENCE N 88° 46' 30" W ALONG THE NORTH PROPERTY LINE A DISTANCE OF 149.0 FEET;
3. THENCE S 01° 12' W A DISTANCE OF 2602.7 FEET;
4. THENCE S 7° 20' E A DISTANCE OF 101.1 FEET;
5. THENCE S 01° 12' W A DISTANCE OF 46.1 FEET TO THE SOUTH PROPERTY LINE;
6. THENCE S 28° 07' 30" E ALONG THE SOUTH PROPERTY LINE A DISTANCE OF 234.0 FEET;
7. THENCE ALONG THE ARC OF A CURVE TO THE LEFT WITH A RADIUS OF 1206.0 FEET A DISTANCE OF 114.4 FEET (THE CHORD OF WHICH ARC BEARS N 03° 55' E A DISTANCE OF 114.3 FEET);
8. THENCE N 01° 12' E A DISTANCE OF 135.9 FEET;
9. THENCE N 27° 22' E A DISTANCE OF 111.4 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED TRACT CONTAINS 10.718 ACRES, MORE OR LESS;

(C) A TRACT OR PARCEL OF LAND No. 7 OF DEPARTMENT OF HIGHWAYS' PROJECT No. S 0055(2) CONTAINING 3.056 ACRES, MORE OR LESS, IN THE E $\frac{1}{2}$  AND NW $\frac{1}{2}$  OF SECTION 3, TOWNSHIP 5 SOUTH, RANGE 67 WEST, OF THE SIXTH PRINCIPAL MERIDIAN, IN ARAPAHOE COUNTY, COLORADO, SAID TRACT OR PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH LINE OF SECTION 3, T.5S., R.67W., FROM WHICH POINT THE NE CORNER OF SAID SECTION 3 BEARS S 89° 51' E A DISTANCE OF 877.0 FEET;

1. THENCE N 89° 51' W ALONG THE NORTH LINE OF SECTION 3 A DISTANCE OF 2365.1 FEET TO THE WEST-PROPERTY LINE;
2. THENCE S 36° 57' E ALONG THE WEST PROPERTY LINE A DISTANCE OF 75.2 FEET;
3. THENCE S 89° 51' E A DISTANCE OF 1944.1 FEET;
4. THENCE ALONG THE ARC OF A CURVE TO THE LEFT WITH A RADIUS OF 1206.0 FEET A DISTANCE OF 382.0 FEET (THE CHORD OF WHICH ARC BEARS N 81° 04' 30" E A DISTANCE OF 380.4 FEET), MORE OR LESS, TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED TRACT CONTAINS 3.056 ACRES, MORE OR LESS, OF WHICH 0.115 ACRES ARE IN THE RIGHT OF WAY OF THE PRESENT ROAD;

(D) A TRACT OR PARCEL OF LAND No. 6-A OF DEPARTMENT OF HIGHWAYS PROJECT No. S 0055(2), CONTAINING 6.907 ACRES, MORE OR LESS, IN THE SE CORNER OF THE SE 1/4 OF SEC. 34, T.4S., R.67W., OF THE 6TH P.M., IN ARAPAHOE COUNTY, COLORADO, SAID TRACT OR PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SE CORNER OF SEC. 34, T.4S., R.67W.;

1. THENCE N 0° 25' 30" E., ALONG THE EAST LINE OF SEC. 34, A DISTANCE OF 900.6 FEET, TO THE NE PROPERTY LINE;
2. THENCE N 28° 07' 30" W, ALONG THE NE PROPERTY LINE, A DISTANCE OF 124.0 FEET;
3. THENCE ALONG THE ARC OF A CURVE TO THE RIGHT WITH A RADIUS OF 1206.0 FEET, A DISTANCE OF 1375.9 FEET (THE CHORD OF WHICH ARC BEARS S. 39° 19' W., A DISTANCE OF 1302.5 FEET) TO THE SOUTH LINE OF SEC. 34;
4. THENCE S. 89° 51' E, ALONG THE SOUTH LINE OF SEC. 34, A DISTANCE OF 877.0 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED TRACT CONTAINS 6.907 ACRES, MORE OR LESS.

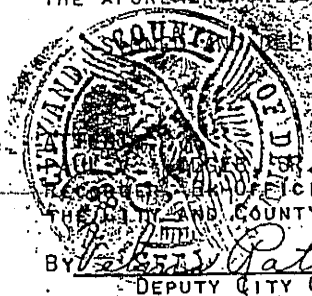
SUBJECT, HOWEVER, TO EACH OF THE FOLLOWING PROVISIONS:

1. UPON THE ABANDONMENT OR NON-USE OF SAID EASEMENT AND RIGHT-OF-WAY BY THE GRANTEE, ALL RIGHT, TITLE AND INTEREST HEREIN GRANTED SHALL IMMEDIATELY REVERT TO AND VEST IN THE CITY.

2. THE CITY EXPRESSLY MAKES NO WARRANTIES OR REPRESENTATIONS CONCERNING THE OWNERSHIP OR STATUS OF THE PROPERTY HEREINABOVE DESCRIBED.

3. THE CITY RESERVES THE RIGHT TO UTILIZE AND ENJOY THE ABOVE DESCRIBED PREMISES FOR ANY PURPOSE, PROVIDING THAT THE SAID UTILIZATION AND ENJOYMENT IS NOT INCONSISTENT AND DOES NOT INTERFERE WITH THE AFOREMENTIONED PURPOSES OF THIS EASEMENT.

DELIVERED THIS 15 DAY OF SEPTEMBER, 1955.



CITY AND COUNTY OF DENVER

BY Will F. Nicholson MAYOR

BY Velma R. Batterton DEPUTY CITY CLERK

BY [Signature] MANAGER, IMPROVEMENTS AND PARKS

STATE OF COLORADO )  
CITY AND ) ss.  
COUNTY OF DENVER )

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS 15TH DAY OF SEPTEMBER, 1955, BY WILL F. NICHOLSON AS MAYOR, AND BY R. BATTERTON AS MANAGER OF IMPROVEMENTS AND PARKS, AND BY VELMA R. BATTERTON AS DEPUTY CITY CLERK OF THE CITY AND COUNTY OF DENVER, A MUNICIPAL CORPORATION.

WITNESS MY HAND AND OFFICIAL SEAL.

[Signature]  
NOTARY PUBLIC

MY COMMISSION EXPIRES:  
OCTOBER 3, 1955



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*Room 170*

*481*

STATE OF ARIZONA  
CITY AND COUNTY  
OF COCHISE  
COUNTY CLERK'S OFFICE

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BOOK PAGE  
JULI V. HODGES, JR.  
CANTON, ARIZONA

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*Please return to  
Room 481 - etc.*



BY AUTHORITYORDINANCE NO. 296COUNCILMAN'S BILL NO. 219

SERIES OF 1955

INTRODUCED BY COUNCILMEN

DeLandHarringtonLowA B I L L

FOR AN ORDINANCE AUTHORIZING THE MANAGER OF IMPROVEMENTS AND PARKS, WITH THE APPROVAL OF THE MAYOR, TO GRANT AND CONVEY TO THE DEPARTMENT OF HIGHWAYS OF THE STATE OF COLORADO CERTAIN RIGHTS OF WAY AND EASEMENTS OVER TRACTS OR PARCELS OF LAND IN ARAPAHOE COUNTY, COLORADO, IN CONNECTION WITH DEPARTMENT OF HIGHWAYS PROJECT NO. S 0055(2).

BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:

Section 1. That to improve, and aid in the construction and maintenance of, public roads outside the limits of the City and County of Denver, for the purpose of establishing and improving the system of roads connecting the City and County of Denver and its parks and parkways outside such limits, the Manager of Improvements and Parks, with the approval of the Mayor, shall have power and he is hereby authorized to grant and convey to the Department of Highways of the State of Colorado, for the location, relocation, construction, reconstruction, improvement and maintenance of a portion of State Highway No. 70 rights of way over, along, upon, and across the following described portions, tracts, or parcels of real property:

A. A tract or parcel of land No. 2 Rev. 2 of Department of Highways' Project No. S 0055(2) containing 3.829 acres, more or less, in the SE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 27, Township 4 S., Range 67 W., of the 6th Principal Meridian, in Arapahoe County, Colorado said tract or parcel being more particularly described as follows:

Beginning at the SE corner of Section 27, T. 4S., R. 67W.;

1. Thence N.  $0^{\circ} 16' 30''$  W., along the east line of Sec. 27, a distance of 1196.5 feet to the centerline of Parker Road, State Highway #83;
2. Thence N.  $43^{\circ} 41' W.$ , along the center line of Parker Road State Highway #83, a distance of 172.1 feet, to the north line of the SE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 27;
3. Thence west along the north line of the SE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 27 a distance of 37.5 feet;
4. Thence S.  $41^{\circ} 35' W.$ , along the northwest property line, a distance of 104.1 feet;
5. Thence S.  $23^{\circ} 38' 30'' E.$ , a distance of 287.7 feet;
6. Thence S.  $01^{\circ} 12' W.$ , a distance of 700.0 feet;
7. Thence S.  $10^{\circ} 06' 30'' E.$ , a distance of 102.0 feet;
8. Thence S.  $01^{\circ} 12' W.$ , a distance of 176.1 feet to the south line of Sec. 27;
9. Thence S.  $88^{\circ} 25' E.$ , along the south line of Sec. 27, a distance of 116.2 feet more or less, to the point of beginning.

The above described tract contains 3.859 acres, more or less, of which 0.239 acres are in the right of way of the present road;

B. A tract or parcel of land No. 5 of Department of Highways' Project No. S 0055(2) containing 10.718 acres, more or less, in the E $\frac{1}{2}$  of NE $\frac{1}{4}$  and E $\frac{1}{2}$  of SE $\frac{1}{4}$  of Section 34, Township 4 South, Range 67 West of the Sixth Principal Meridian, in Arapahoe County, Colorado, said tract or parcel being more particularly described as follows:

Beginning at a point on the east line of Section 34, T. 4S., R. 67W., from which point the SE corner of said Section 34 bears S.  $00^{\circ} 25' 30'' W.$  a distance of 1358.9 feet;

1. Thence N.  $00^{\circ} 25' 30'' E.$  along the east line of Section 34 a distance of 2602.9 feet to the north property line;
2. Thence N.  $88^{\circ} 46' 30'' W.$  along the north property line a distance of 149.0 feet;
3. Thence S.  $01^{\circ} 12' W.$  a distance of 2602.7 feet;
4. Thence S.  $7^{\circ} 20' E.$  a distance of 101.1 feet;
5. Thence S.  $01^{\circ} 12' W.$  a distance of 46.1 feet to the south property line;

6. Thence S.  $28^{\circ} 07' 30''$  E, along the south property line a distance of 234.0 feet;

7. Thence along the arc of a curve to the left with a radius of 1206.0 feet a distance of 114.4 feet (the chord of which arc bears N.  $03^{\circ} 55'$  E a distance of 114.3 feet);

8. Thence N.  $01^{\circ} 12'$  E. a distance of 135.9 feet;

9. Thence N.  $27^{\circ} 22'$  E. a distance of 111.4 feet, more or less, to the point of beginning.

The above described tract contains 10,718 acres, more or less;

C. A tract or parcel of land No. 7 of Department of Highways' Project No. S 0055(2) containing 3.056 acres, more or less, in the  $E\frac{1}{2}$  and  $NW\frac{1}{4}$  of Section 3, Township 5 South, Range 67 West, of the Sixth Principal Meridian, in Arapahoe County, Colorado, said tract or parcel being more particularly described as follows:

Beginning at a point on the north line of Section 3, T. 5S., R. 67W., from which point the NE corner of said Section 3 bears S.  $89^{\circ} 51'$  E. a distance of 877.0 feet;

1. Thence N.  $89^{\circ} 51'$  W. along the north line of Section 3 a distance of 2365.1 feet to the west property line;

2. Thence S.  $36^{\circ} 57'$  E. along the west property line a distance of 75.2 feet;

3. Thence S.  $89^{\circ} 51'$  E. a distance of 1944.1 feet;

4. Thence along the arc of a curve to the left with a radius of 1206.0 feet a distance of 382.0 feet (the chord of which arc bears N.  $81^{\circ} 04' 30''$  E. a distance of 380.4 feet), more or less, to the point of beginning.

The above described tract contains 3.056 acres, more or less, of which 0.115 acres are in the right of way of the present road;

and

D. A tract or parcel of land No. 6-A of Department of Highways' Project No. S 0055(2), containing 6.907 acres, more or less, in the SE corner of the  $SE\frac{1}{4}$  of Sec. 34, T. 4S., R. 67W., of the 6th P.M., in Arapahoe County, Colorado, said tract or parcel being more particularly described as follows:

Beginning at the SE corner of Sec. 34, T. 4S., R. 67W.;

1. Thence N.  $0^{\circ} 25' 30''$  E., along the east line of Sec. 34, a distance of 900.6 feet, to the NE property line;

2. Thence N. 28° 07' 30" W., along the NE property line, a distance of 124.0 feet;

3. Thence along the arc of a curve to the right with a radius of 1206.0 feet a distance of 1375.9 feet (the chord of which arc bears S. 39° 19' W., a distance of 1302.5 feet) to the south line of Sec. 34;

4. Thence S. 89° 51' E., along the south line of Sec. 34, a distance of 877.0 feet, more or less, to the point of beginning.

The above described tract contains 6.907 acres, more or less;

Section 2. The Council finds this Ordinance is necessary for the immediate preservation of the public health and public safety, and determines that it shall take effect immediately upon its final passage and publication.

PASSED by the Council September 6 1955

E. J. [Signature] - President  
APPROVED: Will Fluhorn - Mayor 7/Sept 1955

ATTEST: PAUL V. HODGES, JR. - Clerk and Recorder,  
Ex-Officio Clerk of the  
City and County of Denver

By: George Maudsue - Deputy City Clerk

PUBLISHED IN The Daily Journal Sept 3 1955 and Sept 10 1955

APPROVED: John C. Banks - City Attorney

APPROVED: [Signature] - Manager of Improvements  
and Parks



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

**EXHIBIT**

**15**

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 abut 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           A       Yes. I've already addressed that as increasing  
2 congestion.

3           MR. DEHERRERA: Thank you, Your Honor. No further  
4 questions.

5           MR. CASE: No redirect.

6           THE COURT: You may step down, sir.

7           All right, it's 11:00. Let's take a break until  
8 11:20, and then we'll go until noon and pick it up after lunch.  
9 So we'll be in recess.

10           (Recess at 11:03 a.m., recommencing at 11:27 a.m.)

11           THE COURT: This is 13-CV-32444. We have reconvened  
12 with all counsel and parties present.

13           Go ahead, next witness.

14           MR. CASE: Plaintiffs call Susan Baird.

15           SUSAN BAIRD, PLAINTIFF'S WITNESS, SWORN

16           THE WITNESS: I have to get settled.

17                               DIRECT EXAMINATION

18 BY MR. CASE:

19           Q       Thank you. Could you introduce yourself to the  
20 court, please.

21           A       My name is Susan Edwards Baird, and that's B-A-I-R-D.  
22 I live the 2365 Eudora in Denver.

23           THE COURT: Eudora, did you say, or South Eudora?

24           THE WITNESS: Eudora Street, North Eudora, Denver  
25 80207.

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

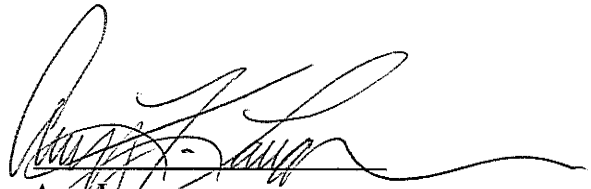


State of Colorado )  
 ) ss  
City and County of Denver )

1. My name is Amy Laugesen. 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 grew up in the Hampden Heights East neighborhood of southeast Denver during the 1970s and 1980s. Between 1975 and 1981 I played with friends in the park to the east of the neighborhood along Cherry Creek where the creek goes under Havana. We didn't have a name for the park, we just knew it was open for our use. There was a well groomed park in the neighborhood; however, we preferred creatively exploring/ playing in this natural park. We caught crawdads in the creek and found rocks and other interesting things in the large open field next to the creek. We saw wildlife in the park, including foxes, coyotes, prairie dogs, rabbits, ducks, geese, and hawks. We listened to the sounds of the birds. We took off our shoes and enjoyed the sensation on our feet of walking barefoot in the sand of the creek bed. We walked along the twists and turns of Cherry Creek to where it went under the bridge at Havana St. Sometimes on summer days we lay on our backs in the park and looked up at the sky, watching clouds sail overhead, feeling the breeze on our faces. We liked breathing fresh air, and being in a peaceful natural environment away from automobiles and loud noise. Sometimes we played tag, hide and seek, and other games in the park. It was a safe place for children to play and explore without adult supervision.
3. In 1981, my parents gave me a horse named Tic Tac that I boarded at the Norden Training Center north of Hampden Heights. Between 1981 and 1984 I rode Tic Tac along Cherry Creek into the park to the east of the neighborhood. The large open field area of the park was beautiful to ride in. On some occasions I rode Tic Tac along the bicycle trail from the park to my parents' home on S. Fulton Court. I often rode Tic Tac along the Cherry Creek bridle path under the bridge at Havana St. to the area near the spillway below Cherry Creek Dam. The bridle path along the banks of Cherry Creek was always open, and was used by many horseback riders, walkers, joggers, and cyclists. On one or two occasions I rode Tic Tac all the way to the Cherry Creek recreation area at Cherry Creek Reservoir.
4. At all times that I know of before I left for college in 1986, the park to the east of the Hampden Heights neighborhood was open, unfenced, and used by the public as a park without objection.



Further, Affiant sayeth not.

  
Amy Laugesen

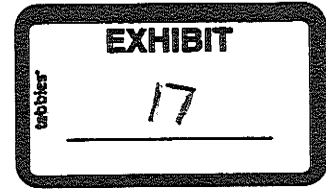
The foregoing Affidavit was acknowledged before me March 5 2014  
by Amy Laugesen, known personally to me.

  
Notary Public

My commission expires:

**JUDITH MYERS CASE  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 19874145048  
MY COMMISSION EXPIRES SEPTEMBER 7, 2014**

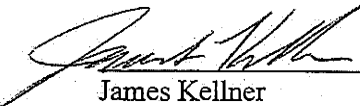
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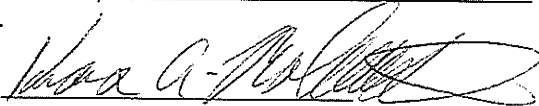
State of Colorado                    )  
  ) ss  
County of Douglas                    )

1. My name is James Kellner. 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 was employed more than 30 years by the Denver Department of Parks and Recreation ("DPR"). I retired in 2009. For at least 10 years I was the Superintendent of the Southeast Parks District. The District headquarters are located at E. Yale Ave. and S. Havana St. The District includes numerous parks, including Paul A. Hentzell Park, Hampden Heights North Park ("HHNP"), Hampden Heights Park, and the parkways that connect them, all of which were my direct responsibility to manage, protect and preserve for future generations.
3. HHNP and Hentzell form a 90 acre natural area that is unique in the Denver parks system. People can see all forms of native wildlife, including foxes, coyotes, rabbits, squirrels, occasionally deer, muskrats, raccoons, skunks, hawks, ducks, geese, herons, hummingbirds, and numerous other species. The native prairie grasses in Hentzell and Hampden Heights North are rare and the wildflowers are beautiful. The parks have always been used by horseback riders, cyclists, walkers, joggers, and children playing.
4. During the 1990's DPR completed the network of bicycle trails through HHNP that connect with other parks and the Cherry Creek Reservoir. The trail network includes bridges over Cherry Creek and the ditches that flow into it.
5. One morning in 1993 I found construction equipment at the south end of HHNP next to E. Girard Ave. I asked workers what they were doing. They told me they were paving a parking lot for the Oppenheimer company. I called my boss and protested that this was parkland and could not be leased out. My boss told me it was a done deal and we had no say. Several years later Oppenheimer abandoned the parking lot and it was included in the natural area designation with Hentzell in 2007.
6. The entire time that I worked for DPR, Southeast District, I understood that HHNP was a city park. It was on the list of parks that I was responsible for managing and preserving for future generations. In my opinion, based on my direct personal knowledge of the park's status for thirty years, the claim that HHNP is not a park and that it can be sold without a vote of the people is incorrect.

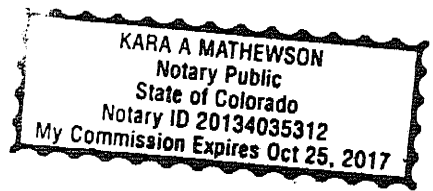
Further, Affiant sayeth not.

  
James Kellner

The foregoing Affidavit was acknowledged before me MARCH 5<sup>th</sup>  
2014 by James Kellner, known personally to me.

  
Notary Public

My commission expires: 10/25/17



1 as if we have in the unbroken chain of definitive  
2 promises and representations made by City officials  
3 through the years.

4 And, you know, in our opening we said the fact that  
5 it's called Hampden Heights North Park came as news to us until  
6 we started studying the maps ourselves and we believe that's on  
7 a Google map that's been overlaid with some City information.

8 We don't think there are -- that the moral question you're  
9 raising was raised I think more dramatically than the facts of  
10 this case. It's not as if we have official city maps or an  
11 unbroken chain of assurances that nail it quite as much as  
12 you're describing in this particular case.

13 But you said you didn't want me to give the legal  
14 answer, but unfortunately kind of have to lapse into that a  
15 little bit. As a municipal attorney for 33 years, I can't tell  
16 you how many times I've had to answer for something somebody  
17 said 15 years ago. Right? And this happens a lot in local  
18 government. So and so told me 15, 20 years ago.

19 THE COURT: And the law says basically we're sorry  
20 that that person made that representation, and we're sorry that  
21 you relied on it.

22 MR. BROADWELL: And I lapse into Civics 101, which is  
23 where government of law is not man; that you have to look to  
24 the official record, you have to look to the laws of the city  
25 in terms of the representations made by any individual