

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO City and County Building 1437 Bannock Street, Room 256 Denver, Colorado 80202</p>	<p style="text-align: center;">▲ COURT USE ONLY▲</p> <hr/> <p>Case Number: 2013CV32444 Courtroom: 376</p>
<p>Plaintiff: : FRIENDS OF DENVER PARKS, INC., a Colorado non-profit corporation; and STEVE WALDSTEIN, an individual; ZELDA HAWKINS, an individual; MEMBERS OF THE PETITIONERS COMMITTEE TO REPEAL DENVER ORDINANCE 170, consisting of JOHN CASE, JUDITH M. CASE, RENEE LEWIS, DAVID HILL, AND SHAWN SMITH, 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.</p>	
<p>Attorneys for the Defendant City and County of Denver D. SCOTT MARTINEZ Denver City Attorney DAVID W. BROADWELL, Atty. No. 12177 PATRICK A. WHEELER, Atty. No. 14538 MITCH T. BEHR, Atty. No. 38452 Assistant City Attorneys Denver City Attorney's Office 1437 Bannock Street, Room 353 Denver, Colorado 80202 Telephone: (720) 865-8600 Facsimile: (720) 865-8796</p> <p>Attorneys for Defendant School District No. 1 Jerome A. DeHerrera, Atty. No. 35893 Michael Hickman Atty. No. 30610 Molly H. Ferrer Atty. No. 37857 Denver Public Schools 900 Grant Street, Room 401 Denver, CO 80203 Telephone: (720) 423-3393 Facsimile: (720) 423-3892</p>	
<p style="text-align: center;">DEFENDANTS' JOINT BRIEF IN OPPOSITION TO PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT</p>	

In accordance with C.R.C.P. 56(c) and 121, Sec. 115(1), Defendants City and County of Denver (“City”) and School District No. 1 a/k/a Denver Public Schools (“DPS”), by and through their respective attorneys, submit this joint brief in opposition to Plaintiffs Cross-Motion for Summary Judgment.

Introduction

On July 5, 2013, this court denied Plaintiffs motion for a preliminary injunction upon a finding that the Plaintiffs failed to prove a reasonable probability of success on the merits of their claim that City officials violated Section 2.4.5 of the Denver charter by approving the sale of the School Site to DPS without first seeking voter approval. On December 26, 2013, the Colorado Court of Appeals affirmed the decision of this court, and went on to provide a template for efficiently resolving the remaining issues in this case. *Friends of Denver Parks v. City and County of Denver*, ___ P.3d ___ (Colo. App. 2013); available at 2013 WL 6814985.¹ In particular, the court of appeals agreed with the Defendants’ fundamental position in this case—under charter Sec. 2.4.5, after December 31, 1955, city-owned property cannot become a “park” by way of “common law dedication.” Accordingly, only if city-owned property has obtained the status of a “park” through statutory or common law dedication as of 1955, or by ordinance specifically designating the property as a park after 1955, will the voter-approval requirements of section 2.4.5 apply to any sale of the property.

¹ As of the date of submission of this responsive brief, the Plaintiffs’ Petition for Writ of *Certiorari* on their original appeal was still pending in the Colorado Supreme Court. However, on March 14, 2013, the Supreme Court denied the Plaintiffs’ Motion for an Emergency Injunction seeking to halt the construction of the elementary school during the pendency of the appeal.

Even with an additional nine months to develop their case, Plaintiffs still have not proffered sufficient evidence to prove as a matter of law that the School Site was a park belonging to the city as of 1955, or that it was subsequently designated as a park by ordinance. Therefore their cross-motion for summary judgment should be denied.

Undisputed Facts

As the City and DPS argued in their own motion for summary judgment, there is no genuine issue as to any material fact that would require a trial in this case; the remaining issues can be resolved as a matter of law based upon the briefs and affidavits. Plaintiffs' cross-motion propounds a number of "undisputed facts" with which the Defendants agree except where noted below. (To the extent Defendants disagree with Plaintiffs' characterization of an "undisputed fact," these disagreements are immaterial to the resolution of the legal issues in this case.)

1. Appendix 3, attached to the Affidavit of Susan Barnes-Gelt, is a true copy of Ordinance 333, Series of 2010.
2. Section 59-4 of Ordinance 333, titled "Official Map," includes the following sentence:

"All land located within the City and County of Denver shown on the Official Map as being zoned to a zone district in the Denver Zoning Code is hereby rezoned as designated on the Official Map."
3. Appendix 5, attached to the Affidavit of Susan Barnes-Gelt, is a true copy of section 9.3.2 of the Denver Zoning Code June 25, 2010.
4. Paragraph 9.3.2.1 of Section 9.3.2 of the Denver Zoning Code, states in pertinent part:

"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."

(Defendants agree this is an accurate excerpt from the zoning code, but argue that this excerpt must be understood in the context of the entire section of the zoning code regulating the OS-A zone district, attached hereto as Exhibit B.)

5. Appendix 4, attached to the Affidavit of Susan Barnes-Gelt, is a true copy of a section of the Official Map promulgated with Ordinance 333, Series of 2010, that includes Hampden Heights North Park (“HHNP”). *(Defendants disagree that the Appendix reflects the “Official Map” adopted by Ordinance No. 333.)*

6. The Official Map identifies HHNP by name as “Hampden Heights North Park.” *(Defendants disagree that the City’s official zoning map identifies the school site as Hampden Heights North Park.)*

7. The Official Map designates HHNP as zoning district OS-A. *(Defendants agree that the school site has been zoned OS-A since 2010.)*

8. OS-A means Open Space Public Parks District.

9. Ordinance 333, Series of 2010, the Denver Zoning Code June 25, 2010, and the Official Map, read together as a whole, designate HHNP as a city park managed by the City’s Department of Parks and Recreation (“DPR”) for park purposes. *(Defendants disagree with this legal conclusion, propounded by Plaintiffs in their cross-motion in the guise of an “undisputed fact.”)*

10. On May 30, 2013 the Plaintiffs recorded a Notice of Lis Pendens that includes the parkland where DPS started construction.

11. On July 10, 2013 the City transferred approximately 11 acres of HHNP to DPS by Quitclaim Deed.

The following additional undisputed facts have emerged in this case on the basis of the affidavits and other documents offered by the Plaintiffs:

12. Charter Section 2.4.5 was last amended in 1996. The sum total of the recorded legislative history explaining the purpose of the referred charter amendment was this statement by City Council Staff Director John Bennett the night the Council referred the measure to the ballot:

“The amendment confirms that parks used as parks prior to 1955 are designated parks. The amendment clears up confusion that results from a Grand County court interpretation of current charter language on parks. It confirms that parks designated as parks after . . . 1955 are still designated as parks. 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 voter approval.”

The “Grand County court decision” to which this statement refers occurred in a 1994 district court case interpreting previous charter language to mean that the Winter Park ski area, although treated as a mountain park by the City since 1940, was not protected from sale or leasing because it had never been designated as a park by ordinance.²

13. Eyewitness testimonials by affiants who used the school site and the surrounding lands for horseback riding, picnicking, and other informal recreational activities *circa* 1955 confirm the aerial photographic evidence presented to the court at the preliminary injunction hearing. The land was an “open field” northwest of the old Kenwood Dam (a.k.a. the Sullivan Dam) on Cherry Creek. None of the 1955 eyewitnesses report seeing any fences, signage, or other improvements to the land identifying it as a city park. None of the 1955 eyewitnesses report seeing any city personnel managing or maintaining the land as a city park. Instead, all of the

² Between 1983 and 1996, the relevant charter language restricting the sale or leasing of City parks stated: “No land now owned or hereafter acquired by the City and County shall be deemed a park unless specifically designated a park by ordinance.”

eyewitnesses testify that they simply “assumed” the land was a park because it was open and available for public use without objection by the City.

Standard of Review

“Summary judgment is appropriate when the pleadings and supporting documents clearly demonstrate that no issues of material fact exist and the moving party is entitled to judgment as a matter of law. The nonmoving party is entitled to the benefit of all favorable inferences that may be drawn from the undisputed facts, and all doubts as to the existence of a triable issue of fact must be resolved against the moving party.” *A. C. Excavating v. Yacht Club II Homeowners’ Assn.*, 114 P.3d 862, 865 (Colo. 2005) (internal citations omitted). Again, Defendants are not claiming that there are any disputed facts requiring a denial of the cross-motion for summary judgment. Instead, the cross-motion should be denied simply because Plaintiffs have not proven that they are entitled to summary judgment as a matter of law.

Argument

A. The Plaintiffs have not shown that the school site was a “park belonging to the City as of December 31, 1955” within the meaning of charter Sec. 2.4.5.

The Defendants have never disputed that charter Sec. 2.4.5 requires voter approval for sale of any park belonging to the City as of 1955, regardless of whether the property in question was expressly dedicated as a park by deed, plat, or ordinance, or whether the property was deemed a park under a theory of “common law dedication.” The court of appeals did an exhaustive job of cataloguing the reported decisions in Colorado which stand for the proposition that, in order for the principle of “common law dedication” to apply, the intent by the property owner to dedicate land for a particular public purpose must be clear and unambiguous, and mere use of the property for a particular purpose is not enough to effect a dedication. *Friends of*

Denver Parks, at *6-9. Of the cases cited by the Court of Appeals, some address the act of “dedication” in the sense of dedication of *private* property for public use. On the other hand, other reported decisions cited by the court address situations where property is already owned by a *public* entity and the dispute centers on whether or not the public entity, through its own actions, has “dedicated” its own property to a particular public use. The best example of the latter is *City and County of Denver v. Publix Cab Co.*, 308 P.2d 1016, (Colo. 1957). In that case, the cab company successfully argued that traffic circulation areas in and around the terminal at the old Stapleton International Airport had been converted to public streets via a common law dedication by the City, notwithstanding the City’s protestations that the property was merely held in a proprietary capacity. “Here we have a dedication by *acts and conduct* of the City.” (Emphasis original.) *Id.* at 1020. The court concluded, “We hold that the concourse . . . has, *by the course of action adopted by the City*, been dedicated to public use and is a public place and thoroughfare” (Emphasis supplied.) *Id.* at 1020. The Plaintiffs have produced no evidence in support of their cross-motion for summary judgment to prove any affirmative “acts or conduct” by the City that would have rendered the school site a “park belonging to the City as of December 31, 1955” within the meaning of Charter § 2.4.5.

Likewise, the case of *Hall v. City and County of Denver*, 177 P.2d 234 (Colo. 1946) centers on the question of whether property initially owned by the City for one purpose (a court house) had been “dedicated” for another purpose (a park) through the overt actions of the city. In sharp contrast to the rural, open and unimproved character of the School Site *circa* 1955, the disputed property in *Hall* was truly improved by the City and used for over ten years as a city

park.³ However, the court nevertheless found insufficient evidence of common law dedication of the property as a park, and held that the property could be sold for commercial development notwithstanding the strictures on sale of park land set forth in Denver's charter.

B. Eye witness testimony by the persons who used the school site for recreational purposes in 1955 does not prove a common law dedication of the site as a park.

According to the testimonials of the 1955 eyewitnesses, the School Site and surrounding lands comprised an "open field" where they engaged in informal, private recreational activities such as horseback riding and picnicking in the mid-1950s. None of the affiants, however, offer evidence that the City did anything at that time to identify, improve or operate the land as a park as of December 31, 1955. Nor did the affiants offer any evidence that the City invited residents to use the land for any purpose. Indeed, the affiants' testimony establishes that they did not even know who owned the land.

The court of appeals acknowledged that there was undisputed evidence as to the use of the property *circa* 1955 presented at the hearing on the original motion for a preliminary injunction. *Friends of Denver Parks*, at *7. Now the Plaintiffs have brought forth additional testimony saying the same thing. However, mere use of the property for recreational purposes by members of the public is insufficient, as a matter of law, to prove that there has been a common law dedication of park land. Instead, there must be proof of clear and unambiguous "acts and conduct" by the City itself to establish such a dedication. *City and County of Denver v.*

³ The dissenting opinion in *Hall* described the property thus: "Its central location and accessibility, its shade trees, public benches and comfortable seats, its fountains and flowers, gladdened the hearts of lovers of the beautiful and the weary in quest of brief respite. . . . that beautiful spot, which bears every outward appearance of a park, was used by the people as such. Moreover, with relation to the rest of the city it is situated where in many cities a comparable park, the boast of residents and the toast of visitors, is maintained." *Id.* at 240.

Publix Cab Co.; Hall v. City and County of Denver, supra. Such evidence is conspicuously absent in this case.

C. Recital in 1955 ordinance approving conveyance of right-of-way easement for Havana Street does not provide unambiguous evidence that the school site was a park as of December 31, 1955.

The Petitioners have not yet proffered any evidence of any official enactments, maps, park lists, or other affirmative acts or conduct of the City that would prove that the City unequivocally intended to dedicate the School Site as a park as of December 31, 1955. As discussed in the court of appeals decision, the School Site is a remnant of a larger parcel from which other public and private uses, including public streets, have been carved since the parcel was originally acquired in 1936 for drainage and flood control purposes. *Friends of Denver Parks*, at *2-3.

In their cross-motion for summary judgment, the Plaintiffs refer the court to a lone recital in a City ordinance approving the conveyance of a right-of-way easement to the Colorado Department of Highways in 1955 for the construction of South Havana Street, which lies immediately adjacent to the School Site. The recital states that the conveyance of the easement was “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.”

Plaintiffs assert, in conclusory fashion, that the establishment of the Havana Street right-of-way adjacent to the land that would become the School Site, given the recital in the ordinance, is proof that the School Site itself was considered to be a park in 1955. The recital does not support this assertion. The recital is silent on exactly which extraterritorial “parks and parkways” Denver intended to connect to the City as a result of the conveyance of the easement

for Havana Street. In sum, this recital does not, in the words of the court of appeals, “establish that the city, through its unambiguous actions, had demonstrated an unequivocal intent” to dedicate the School Site as a park in 1955. *Friends of Denver Parks*, at *9. .

D. Assertions of post-1955 witnesses in regard to their subjective understanding that the school site was a park are legally irrelevant.

As the court of appeals correctly held, the plain language of Charter sec. 2.4.5 indicates that, for city-owned property to be considered a park through a theory of common law dedication, such that sale of the property would trigger a requirement for voter approval, the property must have been a “park belonging to the city as of December 31, 1955.” *Friends of Denver Parks*, at *8. Therefore, the affidavits attached to the cross-motion from persons testifying to various ways the City used, treated, or maintained the property *after* 1955 are irrelevant for purposes of proving that the property had been dedicated as a park as of 1955.

E. The legislative history of charter sec. 2.4.5 does nothing to support Plaintiffs’ remaining claims in this case.

Plaintiffs assert in their cross-motion that the meager legislative history explaining the purpose of charter Section 2.4.5 somehow supports their theory that the sale of the School Site falls within the scope of that charter section. On the contrary, resort to the legislative history is not warranted, nor is it particularly helpful to the Plaintiffs’ case.

First, as the Court of Appeals recognized, “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.” *Friends of Denver Parks*, at *7. When the language of a law is clear, the court need not look to legislative history or resort to

other rules of statutory construction at all. *In re People v. Paul Lesley Voth*, 312 P.3d 144 (Colo. 2013).

Second, the Plaintiffs assign undue meaning to a single statement on the record made by City Council Staff Director John Bennett: “The amendment confirms that parks used as parks prior to 1955 are designated parks.” (Emphasis added.) This statement adds nothing to the understanding of charter Section 2.4.5 for two obvious reasons: (A) the statement is inconsistent with what the plain language of Section 2.4.5 actually says. (B) the statement is a tautology in that it repeats the word “park” over and over again, begging the question of how city-owned property may have become a “park” in the first place *circa* 1955.

In a similar vein, Plaintiffs distort the testimony of the City’s current Manager of Parks and Recreation, Lauri Dannemiller, in their supplemental brief. Over the objections of counsel for the City, counsel for the Plaintiffs repeatedly asked Ms. Dannemiller to give her interpretation of the legal applicability of charter Sec. 2.4.5 to properties owned by the City *circa* 1955.⁴ Ms. Dannemiller ultimately explained her understanding of the 1996 charter amendment as follows: “the process that took place with the charter amendment thus designated parks that were owned, managed by the City’s public improvement department at that time.” See Plaintiffs’ Supplemental Brief, p. 3. Like Mr. Bennett’s statement in 1996, Ms. Dannemiller’s testimony begs the ultimate question of what factors would define any particular city-owned property to be a “park” *circa* 1955. However, she understood as did the court of appeals that the language in charter Section 2.4.5 protecting any “park belonging to the City as of December 31,

⁴“A lay witness can provide opinion testimony regarding an ultimate issue to be decided by the trier of fact under certain circumstances. See CRE 701, 704 . . . However, a witness may not testify that a particular legal standard has or has not been met. The question that elicits the opinion testimony must be phrased to ask for a factual rather than a legal opinion.” *People v. Beilke*, 232 P.3d 146 (Colo. App. 2009).

1955” must be tested according to whether the City had taken any overt action to identify or “manage” the property as a park as of that date.

F. Plaintiffs new argument that the 2010 city-wide zoning ordinance and map designated the School Site as a park within the meaning of charter Sec. 2.4.5 should be rejected as a matter of law.

Until recently, Plaintiffs’ assertion that the voter-approval requirements in charter Section 2.4.5 must be interpreted to apply to the School Site has relied almost exclusively on a theory of common law dedication. At the preliminary injunction hearing in June of 2013, the Plaintiffs offered no evidence or argument that the City had designated the School Site as a park by ordinance within the meaning Sec. 2.4.5. Neither the Revised Third Amended Complaint nor any prior version of the complaint specifically pled the theory that the OS-A zone district classification constituted a park “designation” by ordinance. The School Site and other nearby City-owned properties were zoned OS-A nearly three years before the commencement of this action, and the ordinances and maps associated with the zoning have been a matter of public information for years.

The Plaintiffs’ newly-minted theory that the School Site was designated a park by virtue of the City’s 2010 zoning ordinance fails as a matter of law for numerous reasons.

Fundamentally, municipal authority to adopt zoning laws serves an entirely different purpose than the authority to limit the disposition of municipally-owned property. The Denver City Council’s power to enact zoning ordinances derives from a completely different section of the charter, a section which expressly describes the zoning power as being “regulatory” in nature.⁵ Denver and other municipalities enact zoning as “a valid exercise of the police power,”

⁵ Denver charter Section 3.2.9 (A) states: “*Grant of power.* For the purpose of promoting health, safety, morals or the general welfare of the community, the Council of the City and County of Denver is hereby empowered to

primarily to regulate the development and use of private property. *Wright v. City of Littleton*, 483 P.2d 953, 955 (Colo. 1971). Simply put, an ordinance imposing land use regulations on the city in general is entirely different from an ordinance limiting the sale or leasing of a particular parcel of city-owned property.

The conclusion that the assignment of the OS-A zone district category to the School Site is not tantamount to a park “designation” within the meaning of charter Sec. 2.4.5 is supported by several additional arguments.

As the Court of Appeals noted, on the same night the City approved the ordinance conveying the school site to DPS, the Council adopted a second ordinance officially designating adjacent city-owned property (also zoned OS-A) as an addition to nearby Hentzell Park. *Friends of Denver Parks* at *4 (See Exhibit 1, Appendix 4, attached to Plaintiffs’ Cross-Motion, illustrating the way all city-owned property in the vicinity of the School Site is depicted in the OS-A zone district). Thus, the Council evinced by its own actions that it did not consider the remainder parcel, by virtue of the fact that it was already zoned OS-A, to be officially designated as a park. Instead, a distinct and separate legislative enactment was necessary to effect such a designation. The City’s interpretation of its own Charter, treating zoning as being ineffectual as a park designation within the meaning of Section 2.4.5, should be given deference by this Court. *Mile High Enterprises v. Dee*, 558 P.2d 568, 571 (Colo. 1977).

While it is true that the language in the Zoning Code indicates that the purpose of the OS-A district is to “protect and preserve public parks owned, operated or leased by the City,” Denver’s Manager of Parks manages a wide variety of properties, including both designated and undesignated parks within the meaning of Charter section 2.4.5, as well as other open space

regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population and the location and use of buildings, structures and land for trade, industry, residence or other purposes.”

lands and recreational facilities. In the vicinity of the School Site, as well as elsewhere in the City, the 2010 zoning map assigns the OS-A classification to lands that have been officially designated as parks within the meaning of the Charter as well as lands which have never received such a designation. See Affidavit of Lauri Dannemiller, Manager of Parks and Recreation, attached hereto as Exhibit A.

The Zoning Code defines the term “city park” to include, not just properties that have been formally dedicated as such within the meaning of Charter section 2.4.5, but instead any “area of land owned or leased by the City and operated or managed by the Denver Department of Parks and Recreation.” (Emphasis supplied.) Sec. 11.12.3.3 (B)(2), Denver Zoning Code (2010). See Exhibit B. Thus, by the express language of the Code, the OS-A zoning classification applies not only to legally dedicated and designated parks but also to any other lands that are simply “managed” by the parks department.

Further proof that the assignment of the OS-A classification to city-owned property was not tantamount to the formal designation of park property within the meaning of Charter Section 2.4.5 is provided by the fact that, since 2010, the City has re-zoned land from the OS-A classification to other zoning classifications. For example, a parcel that had never been formally designated as park land was removed from the OS-A classification and sold to the Denver Children’s Museum without a vote of the people. See: Affidavit of Lauri Dannemiller, Exhibit A.

Finally, in their recent pleadings the Plaintiffs have attempted to support their arguments concerning the intent of the 2010 Zoning Code with an affidavit filed by a former city council member, Susan Barnes-Gelt, expressing her personal recollections about the intent of the legislation and the assignment of the OS-A zone district to the schools site and other city-owned properties. Plaintiffs’ Exhibit 1. Subsequent recollections by a former member of a legislative

body are not considered a part of the legislative records and are generally inadmissible to prove legislative intent. *Colorado Department of Social Services v. Board of County Commissioners of the County of Pueblo*, 697 P.2d 1, 21 (Colo. 1985).

In sum, the Plaintiffs cannot prevail, as a matter of law, on their new theory that the 2010 Zoning Code designated the school site as a park within the meaning of Charter section 2.4.5.

G. Even if the Plaintiffs were to prevail on their cross-motion for summary judgment, they would not be entitled to a remedy that would require the Defendants to restore the school site to its previous condition.

After this court's original order denying Plaintiffs' motion for a preliminary injunction and the affirmation of that order in the Colorado Court of Appeals, DPS commenced construction of the elementary school in order to relieve over-crowding in nearby schools and meet the pressing need for additional early childhood education services in southeast Denver. Plaintiffs take umbrage at the fact that construction of the school has proceeded notwithstanding the pendency of this suit, perhaps assuming that the Defendants should have behaved as if their original motion for preliminary injunction had been granted even when it had not.

The Plaintiffs in their cross-motion for summary judgment ask the court to enter an order "requiring removal of the unlawful structures and restoration of (the school site) to its natural state." However, Plaintiffs have not alleged a factual or legal basis that would entitle them to this relief. Defendants certainly acknowledge the principle that, "Contracts executed by municipal corporations are void when there is a failure to comply with the mandatory provisions of the applicable statutes or charters." *Cherry Creek Aviation, Inc. v. City of Steamboat Springs*, 958 P.2d 515, 519 (Colo. App. 1996). However, Plaintiffs have never cited any authority for the mandatory injunctive relief they are seeking.

From the beginning of this case, Plaintiffs have incorrectly assumed that if they are successful on their claim that the School Site was a park, they are entitled to the site being restored to its “natural state.” As an aside, this property was never in its “natural state,” as a substantial portion of the property had been paved for a private parking lot. More to the point, however, Plaintiffs’ argument is based on the false premise that a “park” is the equivalent of undeveloped/natural open space. As the Court of Appeals recognized, 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. *Friends of Denver Parks*, at *3. At the time the School Site was conveyed to DPS, it was no longer a designated natural area. Even if Plaintiffs establish the School Site is a dedicated “park” within the meaning of charter Section 2.4.5, the City could lawfully develop the land. For example, the City could build a recreation center, a swimming pool, or any number of improvements that would alter the land. Furthermore, even assuming *arguendo* that the Plaintiffs could prevail on their claim that Section 2.4.5 was violated when the City approved the conveyance of the school site to DPS, the violation could be cured by asking the voters to ratify the transaction. Plaintiffs simply have no right (regardless of the outcome of this case) to preserve the School Site as open space with a prairie dog colony and natural grasses.

CONCLUSION

Because the Plaintiffs have not and cannot prove that they are entitled to judgment on the remaining issues in this case as a matter of law, Defendants respectfully request that the Plaintiffs’ cross-motion for summary judgment be denied.

Respectfully submitted this 8th day of April, 2014.

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In accordance with C.R.C.P. 121§1-29(9), a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the Court upon request.

CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2014, the foregoing **DEFENDANTS' JOINT BRIEF IN OPPOSITION TO PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT** was served by ICCES to the following:

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/s/ Carmelita Martinez
Denver City Attorney's Office



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Defendant: CITY AND COUNTY OF DENVER, a municipal corporation; and SCHOOL DISTRICT NO. 1 IN THE CITY AND COUNTY OF DENVER.

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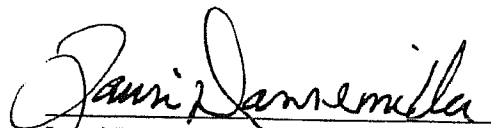
Case Number: 2013CV32444
Courtroom: 376

**AFFIDAVIT OF LAURI DANNEMILLER, MANAGER OF THE
DEPARTMENT OF PARKS AND RECREATION
FOR THE CITY AND COUNTY OF DENVER**

I, Lauri Dannemiller, state as follows:

1. I hereby swear that I am above the age of eighteen and am otherwise fully competent to testify as to the statements made in this affidavit.
2. I am appointed by the Mayor of the City and County of Denver to serve under Section 2.4.2 of the City Charter as the Manager of the Department of Parks and Recreation.
3. In my role as the Manager of Parks and Recreation, I am familiar with the properties that come under my Department's management and maintenance.
4. My Department manages and maintains a large variety of properties which include designated parks and undesignated parks along with other City-owned and -leased land that is currently neither designated or undesignated park property.
5. Based on my knowledge of the City's Zoning Map, I can affirm that properties zoned OS-A (Open Space Public Parks District) include designated parks and undesignated parks along with some other City-owned and -leased land that is currently neither designated or undesignated park property.
6. I am also aware of situations where City-owned property that was not a designated park but zoned OS-A was lawfully sold to a third party without a vote of the people of Denver. One example is Gates-Crescent Park, which was not designated as a park at that time, a portion of which was sold to the Children's Museum in order to allow for the expansion of the Museum's facilities. The City Council rezoned the property sold to the Children's Museum from OS-A to the same mixed-use zoning classification as the rest of the Children's Museum property.

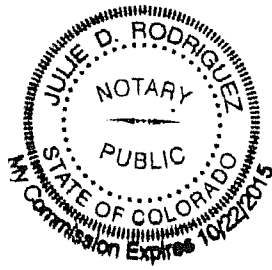
SO STATED this 25 day of March, 2014.



Lauri Dannemiller
Manager
Department of Parks and Recreation
City and County of Denver

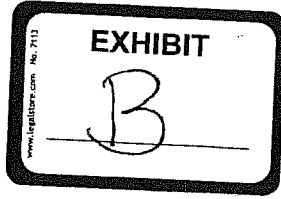
The foregoing affidavit was subscribed and sworn before me by Lauri Dannemiller this 25th day of March, 2014 in the City and County of Denver, State of Colorado.

Witness my seal and signature.



Julie D Rodriguez
Notary Public

My Commission Expires:
10/22/15



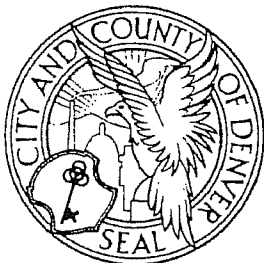
CITY AND COUNTY OF DENVER
STATE OF COLORADO

Certification

I, **Debra Johnson**, Clerk and Recorder,
Ex-Officio Clerk of the City and County of Denver,
do hereby certify that the attached is a true and correct copy of

Division 9.3-Open Space of the Denver Zoning Code pertaining to context OS-A, OS-B, and OS-C which is in full force and effect on this date, in the records of the City Clerk of the City and County of Denver.

I hereunto have set my hand and affixed the Seal of the
City and County of Denver, State of Colorado.
This 8th day of April, A.D. 2014



Clerk and Recorder, Ex-Officio
Clerk of the City and County of Denver

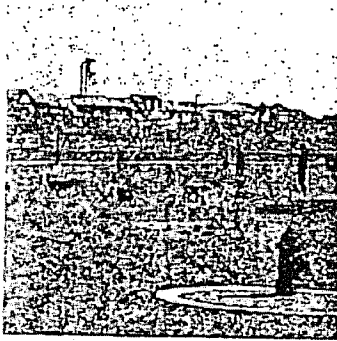
Deputy


David Johnson



DIVISION 9.3 OPEN SPACE CONTEXT (OS-A, OS-B, OS-C)

SECTION 9.3.1 OPEN SPACE CONTEXT DESCRIPTION



General Character: The Open Space Context consists of all forms of public and private parks and open spaces. The context accommodates sites ranging from very active to completely passive, and from those embedded in a neighborhood to sites that are large enough to stand alone. Active sites may include high use areas such as ball fields, while passive areas focus on resource protection, trails, walking and biking.

Street, Block, and Access Patterns: The Open Space Context can be widely varied, ranging from active parks with extensive access to environmentally sensitive areas where only limited access is appropriate.

Building Placement and Location: Buildings in the Open Space Context are typically placed where access is highest, and are often located away from view of the general public.

Building Height: Buildings are typically low in scale, although some open space areas with active recreational uses support large-scale facilities.

Mobility: Priority is given to pedestrians and bicyclists. The automobile is accommodated through fringe parking areas. The Open Space Context has varying levels of access to the multi-modal transit system.

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.

9.3.3.2 Primary Building Forms in OS-B and OS-C

Building form standards are applicable in the OS-B and OS-C Zone Districts, as set forth below.

HEIGHT	OS-B, OS-C
Stories (max)	3
Feet, pitched or flat roof (max)	40'

SITING	OS-B, OS-C
SETBACKS	
Primary Street (min)	20'
Side Street (min)	20'
Side, interior (min)	20'
Rear (min)	20'
PARKING	
Primary Street Setback (min)	30'
Side Street Setback (min)	10'
Setback Adjacent Protected District (min)	5'

DESIGN ELEMENTS	OS-B, OS-C
Required Entrance, Primary Street	No

9.3.3.3 Design Standards

A. OS-A Zone District

Design and development standards governing structures in the OS-A Zone District, including but not limited to landscaping, parking, and signage, shall be determined by either the City Council according to their authority in D.R.M.C., Chapter 39 (Parks) or by the Manager of Parks and Recreation.

B. Setback Exceptions

In the OS-B and OS-C Zone Districts, where a zone lot has street frontage on a Parkway designated under D.R.M.C., Chapter 49, the greater of the following street setbacks shall apply:

1. The street setback required by the applicable building form standards in this Code; or
2. The required Parkway setback established under D.R.M.C., Chapter 49.

SECTION 9.3.4 USES AND REQUIRED MINIMUM PARKING

9.3.4.1 Applicability

A. OS-A Zone District

Permitted uses, number of uses and applicable use limitations, in the OS-A Zone District, shall be determined by the manager of Parks and Recreation.

B. OS-B, -C Zone Districts

1. This Section 9.3.4 sets forth the land uses allowed, the required zoning procedure and the required minimum parking for the OS-B, -C Zone Districts.
2. Uses not listed are prohibited, unless the Zoning Administrator specifically permits the unlisted use according to Section 12.4.6, Code Interpretations and Determination of Unlisted Uses.
3. For number of primary and accessory uses allowed per Zone Lot, see Section 1.2.3.5, Number of Structures and Uses Allowed per Zone Lot.

9.3.4.2 Organization

A. Organized by Primary, Accessory and Temporary Uses

The Use and Parking Table first presents all primary uses, then all accessory uses, and finally all temporary uses. Primary uses are arranged hierarchically within the table by use classification, category of primary uses, and then by specific use type. Accessory uses are organized by whether such use is accessory to a primary residential use or to a primary nonresidential use. Temporary uses are presented alphabetically ordered in the last division of the table.

B. Primary Use Classifications, Categories & Specific Use Types

1. Primary Use Classifications

All primary land uses in the Use and Parking Table are organized into one of the following five general land use classifications:

- a. Residential Uses
- b. Civic, Public & Institutional Uses
- c. Commercial Sales, Service & Repair Uses
- d. Industrial, Manufacturing & Wholesale Uses
- e. Agriculture

2. Primary Use Categories & Specific Use Types

Primary uses are further organized into use categories and specific use types listed under each general primary land use classification. The Use and Parking Table is organized into the above five general land use classifications, use categories and specific use types.

3. Classifications & Categories Are Mutually Exclusive

The general land use classifications and use categories listed in the Use and Parking Table are intended to be mutually exclusive; that is, a use classified into one use category, such as "lodging accommodations," cannot be classified in a different use category, such as "group living," unless otherwise expressly allowed by this Code.

9.3.4.3 Explanation of Table Abbreviations

A. General Explanation of Table Cell Entries

In each of the table cells, the entry will indicate first whether use limitations apply to the specific use, and then separated by a hyphen, the type of zoning review required prior to establishment of the use under this Code. For example, as described in more detail below, a cell entry

"L-ZPIN" means, first, the use is subject to use limitations (the "L"), and, second, that the use is subject to zoning permit review with information notice (the "ZPIN") prior to its establishment.

B. Permitted, Limited, Not Permitted

1. Permitted Use - No Use Limitations Apply ("P")

A "P" in a table cell indicates that the use is permitted in the respective Zone District, and is not subject to use limitations.

2. Permitted Use - Subject to Use Limitations ("L")

"L" in a table cell indicates the use is permitted in the Zone District subject to compliance with the use limitations referenced in the last column of the use table ("Applicable Use Limitations").

3. Uses Not Permitted ("NP")

"NP" in a table cell indicates that the use is not permitted in the specific Zone District.

C. Zoning Procedure

1. Use Subject to Zoning Permit Review ("ZP")

"ZP" in a table cell indicates that the use is permitted in the respective Zone District only if reviewed and approved according to the requirements in Section 12.4.1, Zoning Permit Review.

2. Use Subject to Zoning Permit Review with Informational Notice ("ZPIN")

"ZPIN" in a table cell indicates that the use is permitted in the respective Zone District only if reviewed and approved according to the public notice and procedural requirements in Section 12.4.2, Zoning Permit Review with Informational Notice. Such uses shall comply with any applicable use limitations noted in the last column of the use table ("Applicable Use Limitations"), as well as the review criteria stated in Section 12.4.2, Zoning Permit Review with Informational Notice.

3. Use Subject to Zoning Permit with Special Exception Review ("ZPSE")

"ZPSE" in a table cell indicates that use is generally appropriate in the neighborhood context and zoning district, yet may have the potential for limited impacts on adjacent properties or on the established character of the neighborhood context or zoning district. "ZPSE" uses are subject to a Board of Adjustments public hearing according to Section 12.4.9, Zoning Permit with Special Exception Review, which grants the Board of Adjustment the authority to impose conditions on the specified use to mitigate any potential impacts. Such uses shall comply with any applicable use limitations noted in the last column of the use table ("Applicable Use Limitations"), as well as the review criteria stated in Section 12.4.9, Zoning Permit with Special Exception Review.

4. Uses Where More Than One Zoning Procedure Is Indicated

Where a table cell shows more than one zoning procedure applies to a use, for example "L-ZP/ZPIN", the referenced use limitation (last table column) will indicate which zoning procedure applies in a specific case. For example, a table cell may indicate "L-ZPIN/ZPSE" for a use. This means that the ZPIN zoning procedure will apply, unless the applicable use limitation specifies the ZPSE zoning procedure is triggered (e.g., by proximity to a Protected District).

9.3.4.4 Enclosure of Uses

All primary, accessory and temporary uses must be established, operated and maintained within a completely enclosed structure, unless otherwise specifically allowed by this Code. The Use and Parking Tables in Articles 3-9 indicate when a use may be established, operated or maintained outside a completely enclosed structure by including an asterisk "*" next to the specific use type. For example, the asterisk following the "Telecommunication Tower*" use type in the tables indicates that a telecommunication tower land use need not be enclosed.

9.3.4.5 District Specific Standards

KEY: P = Permitted Use without Limitations L = Permitted Use with Limitations NP = Not Permitted Use ZP = Zoning Permit Review
 ZPIN = Subject to Zoning Permit Review with Informational Notice ZPSE = Subject to Zoning Permit with Special-Exception Review
 * = Need Not be Enclosed

USE CATEGORY	SPECIFIC USE TYPE • Vehicle Parking Requirement - # of spaces per unit of measurement • Bicycle Parking Requirement - # of spaces per unit of measurement (% required spaces in indoor facility; % required spaces in fixed facility)				APPLICABLE USE LIMITATIONS
		OS-A	OS-B	OS-C	
RESIDENTIAL PRIMARY USE CLASSIFICATION					
Household Living	Dwelling, Single Unit	See Section 9.3.4.1 for permitted uses	NP	NP	
	Dwelling, Two Unit		NP	NP	
	Dwelling, Multi-Unit		NP	NP	
	Dwelling, Mixed Use		NP	NP	
	Dwelling, Live / Work		NP	NP	
Group Living	Assisted Living Facility		NP	NP	
	Community Corrections Facility		NP	NP	
	Nursing Home, Hospice		NP	NP	
	Residence for Older Adults		NP	NP	
	Residential Care Use, Small or Large		NP	NP	
	Rooming and Boarding House		NP	NP	
	Shelter for the Homeless	NP	NP		
Student Housing	NP	NP			
CIVIC, PUBLIC, INSTITUTIONAL PRIMARY USE CLASSIFICATION					
Basic Utilities	Utility, Major Impact* • Vehicle: .5/ 1,000 s.f. GFA • Bicycle: No requirement	See Section 9.3.4.1 for permitted uses	L-ZPSE	L-ZPSE	§ 11.3.1
	Utility, Minor Impact* • Vehicle: .5/ 1,000 s.f. GFA • Bicycle: No requirement		L-ZP	NP	§ 11.3.2
Community/ Public Services	Community Center • Vehicle: .5 / 1,000 s.f. GFA • Bicycle: No requirement	See Section 9.3.4.1	L-ZP	NP	§ 11.3.3
	Day Care Center • Vehicle: 1/ 1,000 s.f. GFA • Bicycle: 1/ 10,000 s.f. GFA (0/100)		P-ZP	NP	
	Postal Facility, Neighborhood • Vehicle: 2.5/ 1,000 s.f. GFA • Bicycle: 1/ 10,000 s.f. GFA (60/40)		NP	NP	
	Postal Processing Center • Vehicle: 1/ 1,000 s.f. GFA • Bicycle: 1/10,000 s.f. GFA (60/40)		NP	NP	
	Public Safety Facility • Vehicle: 1/ 1,000 s.f. GFA • Bicycle: 1/ 10,000 s.f. GFA (0/100)		P-ZP	NP	
	Hospital		NP	NP	
Correctional Institution	NP	NP			

Article 9. Special Contexts and Districts
 Division 9.3 Open Space Context

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USE CATEGORY	SPECIFIC USE TYPE • Vehicle Parking Requirement - # of spaces per unit of measurement • Bicycle Parking Requirement - # of spaces per unit of measurement (% required spaces in indoor facility/% required spaces in fixed facility)				APPLICABLE USE LIMITATIONS
		OS-A	OS-B	OS-C	
Cultural/Special Purpose/Public Parks & Open Space	Cemetery • No requirement	See Section 9.3.4.1	L-ZP	NP	§ 9.3.5.1; § 9.3.5.2
	Library • Vehicle: 1/ 1,000 s.f. GFA • Bicycle: 1/ 10,000 s.f. GFA (0/100)		L-ZP	NP	§ 9.3.5.2
	Museum • Vehicle: 1/ 1,000 s.f. GFA • Bicycle: 1/ 10,000 s.f. GFA (0/100)		L-ZP	NP	§ 9.3.5.2
Education	City Park	P-ZP	NP	NP	
	Open Space - Recreation • Vehicle: 0.5/ 1,000 s.f. GFA • No Requirement	See Section 9.3.4.1	L-ZP	NP	§ 9.3.5.2
	Open Space - Conservation • No requirement		P-ZP	P-ZP	
	Elementary or Secondary School • Vehicle: 1/ 1,000 s.f. GFA • Bicycle: 1/ 10,000 s.f. GFA (0/100)		L-ZP	NP	§ 11.3.6
	University or College		NP	NP	
Vocational or Professional School	NP		NP		
Public and Religious Assembly	All Types • Vehicle: 0.5/ 1,000 s.f. GFA • No Requirement		P-ZP	NP	

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USE CATEGORY	SPECIFIC USE TYPE • Vehicle Parking Requirement - # of spaces per unit of measurement • Bicycle Parking Requirement - # of spaces per unit of measurement (% required spaces in indoor facility, % required spaces in fixed facility)				APPLICABLE USE LIMITATIONS
		OS-A	OS-B	OS-C	
COMMERCIAL USES, SERVICES, REPAIR, PRIMARY USES, CLASSIFICATION					
Adult Business	All Types		NP	NP	See Section 9.4.4, Use Overlay Districts, for adult business use allowance in the UO-1 District.
Arts, Recreation & Entertainment	Arts, Recreation and Entertainment Services, Indoor • Vehicle: 2.5/ 1,000 s.f. GFA • Bicycle: 1/ 10,000 s.f. GFA (60/40)	See Section 9.3.4.1	L-ZP	NP	§ 9.3.5.3
	Arts, Recreation and Entertainment Services, Outdoor* • Vehicle: 2.5/ 1,000 s.f. GFA • Bicycle: 1/ 10,000 s.f. GFA (60/40)		L-ZPSE	NP	§ 9.3.5.3; §11.4.2
	Sports and/or Entertainment Arena or Stadium* • Vehicle: 1/ 1,000 s.f. GFA • Bicycle: 1/ 10,000 s.f. GFA (0/100)		L-ZPSE	NP	§9.3.5.4
Nonresidential Uses in Existing Business Structures in Residential Zones			Not Applicable		
Parking of Vehicles	Parking, Garage • No requirement		P-ZP	NP	
	Parking, Surface* • No requirement		NP	NP	
Eating & Drinking Establishments	All Types		NP	NP	

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USE CATEGORY	SPECIFIC USE TYPE - Vehicle Parking Requirement # of spaces per unit of measurement - Bicycle Parking Requirement # of spaces per unit of measurement (% required spaces in indoor facility/% required spaces in fixed facility)	APPLICABLE USE LIMITATIONS		
		OS-A	OS-B	OS-C
Manufacturing and Production	Manufacturing, Fabrication & Assembly -- Custom		NP	NP
	Manufacturing, Fabrication & Assembly -- General		NP	NP
	Manufacturing, Fabrication & Assembly -- Heavy		NP	NP
Mining & Extraction and Energy Producing Systems	Oil, Gas -- Production, Drilling*		NP	NP
	Sand or Gravel Quarry*		NP	NP
Transportation Facilities	Wind Energy Conversion Systems* No Parking Requirements		L-ZP	NP 9.11.5.8
	Airport*		NP	NP
	Helipad, Helistop, Heliport*		NP	NP
	Railroad Facilities*		NP	NP
	Railway Right-of-Way* -No requirement		P-ZP	P-ZP
	Terminal, Station or and Service Facility for Passenger Transit System		NP	NP
	Terminal, Freight, Air Courier Services		NP	NP
Waste Related Services	Automobile Parts Recycling Business		NP	NP
	Junkyard*		NP	NP
	Recycling Center		NP	NP
	Recycling Collection Station		NP	NP
	Recycling Plant, Scrap Processor		NP	NP
Wholesale, Storage, Warehouse & Distribution	Solid Waste Facility		NP	NP
	Automobile Towing Service Storage Yard*		NP	NP
	Mini-storage Facility		NP	NP
	Vehicle Storage, Commercial*		NP	NP
	Wholesale Trade or Storage, General		NP	NP
	Wholesale Trade or Storage, Light		NP	NP

See Section 9.3.4.1

Article 9, Special Contexts and Districts
 Division 9.3 Open Space Context

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		OS-A	OS-B	OS-C	
INDUSTRIAL, MANUFACTURING, WHOLESALE, TRADING USE CLASSIFICATION					
Communications and Information	Antennas Not Attached to a Tower* • No Parking Requirements	See Section 9.3.4.1	L-ZP	NP	§ 11.5.2
	Communication Services		NP	NP	
	Telecommunications Towers* • No requirement		L-ZP/ ZPIN/ ZPSE	NP	§ 11.5.2
	Telecommunications Tower - Alternative Structure • No requirement		L-ZP/L- ZPIN	NP	§ 11.5.2
	Telecommunication Facilities – All Others* • No requirement		L-ZPIN	NP	§ 11.5.2
Industrial Services	Contractors, Special Trade - General		NP	NP	
	Contractors, Special Trade - Heavy/Contractor Yard*		NP	NP	
	Food Preparation and Sales, Commercial		NP	NP	
	Laboratory, Research, Development and Technological Services		NP	NP	
Manufacturing and Production	Service/Repair, Commercial		NP	NP	
	Manufacturing, Fabrication & Assembly -- Custom	NP	NP		
	Manufacturing, Fabrication & Assembly -- General	NP	NP		
Mining & Extraction and Energy Producing Systems	Manufacturing, Fabrication & Assembly -- Heavy	NP	NP		
	Oil, Gas -- Production, Drilling* Sand or Gravel Quarry*	NP	NP		
Transportation Facilities	Wind Energy Conversion Systems* No Parking Requirements	L-ZP	NP	§ 11.5.8	
	Airport*	NP	NP		
	Helipad, Heli-stop, Heliport*	NP	NP		
	Railroad Facilities*	NP	NP		
	Railway Right-of-Way* • No requirement	P-ZP	P-ZP		
	Terminal, Station or and Service Facility for Passenger Transit System	NP	NP		
	Terminal, Freight, Air Courier Services	NP	NP		

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		OS-A	OS-B	OS-C	
Waste Related Services	Automobile Parts Recycling Business	See Section 9.3.4.1	NP	NP	
	Junkyard*		NP	NP	
	Recycling Center		NP	NP	
	Recycling Collection Station		NP	NP	
	Recycling Plant, Scrap Processor		NP	NP	
	Solid Waste Facility		NP	NP	
Wholesale, Storage, Warehouse & Distribution	Automobile Towing Service Storage Yard*	See Section 9.3.4.1	NP	NP	
	Mini-storage Facility		NP	NP	
	Vehicle Storage, Commercial*		NP	NP	
	Wholesale Trade or Storage, General		NP	NP	
	Wholesale Trade or Storage, Light		NP	NP	
AGRICULTURE PRIMARY USE CLASSIFICATION					
Agriculture	Aquaculture* - Vehicle: 0.5 / 1,000 s.f. GFA - Bicycle: No requirement	See Section 9.3.4.1	L-ZP	NP	§11.6.1
	Garden, Urban* - Vehicle: 0.5 / 1,000 s.f. GFA - Bicycle: No Requirement		L-ZP	NP	§11.6.2
	Husbandry, Animal* - Vehicle: 0.5 / 1,000 s.f. GFA - Bicycle: No Requirement		L-ZP	NP	§9.3.5.5
	Husbandry, Plant* - Vehicle: 0.5 / 1,000 s.f. GFA - Bicycle: No Requirement		P-ZP	NP	
	Plant Nursery* - Vehicle: 0.5 / 1,000 s.f. GFA - Bicycle: No Requirement		L-ZP	NP	§9.3.5.6

Article 9. Special Contexts and Districts
 Division 9.3 Open Space Context

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		OS-A	OS-B	OS-C	
ACCESSORY TO PRIMARY RESIDENTIAL USES SUBCLASSIFICATION					
Accessory to Primary Residential Uses (Parking is Not Required for Accessory Uses Unless Specifically Stated in this Table or in an Applicable Use Limitation)	Accessory Dwelling Unit	See Section 9.3.4.1	NP	NP	
	Domestic Employee		NP	NP	
	Garden*		NP	NP	
	Keeping of Household Animals*		NP	NP	
	Keeping and Off-Street Parking of Vehicles, Motorcycles, Trailers & Recreational Vehicles*		NP	NP	
	Kennel or Exercise Run*		NP	NP	
	Limited Commercial Sales, Services Accessory to Multi-Unit Dwelling Use		NP	NP	
	Second Kitchen Accessory to Single Unit Dwelling Use		NP	NP	
	Vehicle Storage, Repair and Maintenance*		NP	NP	
	Wind Energy Conversion Systems*		Not Applicable - See Allowed Primary Uses		
	Yard or Garage Sales*		NP	NP	
	Unlisted Accessory Uses		na		
HOME OCCUPATIONS ACCESSORY TO PRIMARY RESIDENTIAL USES SUBCLASSIFICATION					
Home Occupations	Child Care Home, Large	See Section 9.3.4.1	NP	NP	
	All Other Types		NP	NP	
	Unlisted Home Occupations		NP	NP	

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USE CATEGORY	SPECIFIC USE TYPE - Vehicle Parking Requirement - # of spaces per unit of measurement - Bicycle Parking Requirement - # of spaces per unit of measurement (% required spaces in indoor facility) (% required spaces in fixed facility)	OS			APPLICABLE USE LIMITATIONS
		OS-A	OS-B	OS-C	
ACCESSORY TO PRIMARY NONRESIDENTIAL USES (CLASSIFICATION)					
Accessory to Primary Nonresidential Uses	Amusement Devices Accessory to Eating/Drinking Establishments, College/University and Theater Uses		NP	NP	
	Automobile Rental Services Accessory to Certain Retail Uses*		NP	NP	
	Book or gift store; media recording and production facilities accessory to public libraries, museums, places of religious assembly, colleges or universities		L	NP	§ 11.7; § 11.10.4
	Car Wash Bay Accessory to Automobile Services		NP	NP	
	College accessory to a Place for Religious Assembly		NP	NP	
	Conference Facilities Accessory to Hotel Use		NP	NP	
	Drive Through Facility Accessory to Eating/Drinking Establishments and to Retail Sales, Service, and Repair Uses*		NP	NP	
	Garden*		L	L	§ 11.7; § 11.10.9
	Keeping of Animals		L/L-ZP/ L-ZPIN	L/L-ZP/ L-ZPIN	§ 11.7; § 11.10.10
	Nonresidential Uses in Existing Business Structures in Residential Zones - Accessory Uses		Not Applicable		
	Occasional Sales, Services Accessory to Places of Religious Assembly*		L	NP	§ 11.7; § 11.10.11
	Outdoor Eating and Serving Area Accessory to Eating/Drinking Establishment Use*		NP	NP	
	Outdoor Entertainment Accessory to an Eating/Drinking Establishment Use*		NP	NP	
	Outdoor Retail Sale and Display*		NP	NP	
	Outdoor Storage*		NP	NP	
	Rental or Sales of Adult Material Accessory to a Permitted Bookstore Retail Sales Use		NP	NP	
Unlisted Accessory Uses		L - Applicable to all Zone Districts		§ 11.7; § 11.10.1	

See Section 9.3.4.1

Article 9. Special Contexts and Districts
 Division 9.3 Open Space Context

KEY: P = Permitted Use without Limitations L = Permitted Use with Limitations NP = Not Permitted Use ZP = Zoning Permit Review
 ZPIN = Subject to Zoning Permit Review with Informational Notice ZPSE = Subject to Zoning Permit with Special Exception Review
 * = Need Not be Enclosed

USE CATEGORY	SPECIFIC USE TYPE - Vehicle Parking Requirement - # of spaces per unit of measurement - Bicycle Parking Requirement - # of spaces per unit of measurement (% required spaces in indoor facility/% required spaces in fixed facility)				APPLICABLE USE LIMITATIONS
		OS-A	OS-B	OS-C	
	Ambulance Service - Temporary		NP Not Applicable - See Allowed Primary Uses	NP	
Temporary Uses	Amusement / Entertainment - Temporary*	See Section 9.3.4.1	L-ZP	NP	§11.11.3
	Bazaar, Carnival, Circus or Special Event*		L-ZP	NP	§11.11.4
	Building or yard for construction materials*		L-ZP	NP	§11.11.5
	Concrete, Asphalt, and Rock Crushing Facility*		L-ZP	NP	§11.11.6
	Fence for Demolition or Construction Work		L-ZP	NP	§11.11.7
	Health Care Center		NP	NP	
	Noncommercial Concrete Batching Plant*		L-ZP	NP	§11.11.9
	Outdoor Retail Sales - Pedestrian / Transit Mall*		NP	NP	
	Outdoor Retail Sales*		NP	NP	
	Outdoor Sales, Seasonal*		L-ZP	NP	§11.11.12
	Parking Lot Designated for a Special Event*		L-ZP	NP	§11.11.13
	Retail Food Establishment, Mobile*		L-ZP	NP	§11.11.14
	Temporary Construction Office		L-ZP	NP	§11.11.15
	Temporary Office - Real Estate Sales		NP	NP	
	Tent for Religious Services		L-ZP	NP	§11.11.17
Unlisted Temporary Uses	L-ZP	L-ZP	§11.11.1		

SECTION 9.3.5 APPLICABLE USE LIMITATIONS

9.3.5.1 Cemetery

Cemeteries are allowed subject to compliance with the following limitations:

- A. A cemetery may include a crematorium. Any such crematorium shall be a minimum of 500 feet from a Residential Zone District.

9.3.5.2 Cultural/Special Purpose/Public Parks & Open Space Uses in the OS-B District

In the OS-B Zone District, all permitted cultural/special purpose/public parks and open space uses shall comply with the following limitations:

- A. Accessory uses and structures permitted by-right are limited to:
 - 1. Swimming pools and customary associated buildings;
 - 2. Tennis, basketball, or other similar playing courts;
 - 3. Buildings or structures intended to house management or maintenance offices, or maintenance or other equipment and supplies related to permitted open space and recreational use;
 - 4. Playground or picnic shelters/areas; and
 - 5. Water features and public art.
- B. All outdoor lighting shall be extinguished when outdoor facilities are not in use or by 10:00 p.m. on Sundays through Thursdays or 11 p.m. on Fridays and Saturdays, whichever is earlier.
- C. No portion of any recreation facility that is not in a completely enclosed structure (e.g., basketball or racquet sport courts) shall be located nearer than 50 feet from the boundary of a Single Unit (SU) or Two Unit (TU) Zone District.
- D. Any other type of accessory structure or use may be allowed only if the Zoning Administrator finds the proposed structure or use meets the general criteria for Accessory Uses stated in Section 11.7, Accessory Use Limitations and finds that the proposed structure or use will not adversely affect properties adjoining the OS-B Zone District. See Section 12.4.6, Code Interpretations and Determination of Uses, for the applicable procedure to determine unlisted uses.

9.3.5.3 Arts, Entertainment and Recreation Uses in the OS-B District

In the OS-B Zone District, all permitted arts, entertainment and recreation uses shall comply with the following limitations:

- A. Accessory uses and structures permitted by-right are limited to:
 - 1. Swimming pools and customary associated buildings;
 - 2. Tennis, basketball, or other similar playing court;
 - 3. Buildings or structures intended to house management or maintenance offices, or maintenance or other equipment and supplies related to permitted open space and recreational use;
 - 4. Playground or picnic shelters/areas; and
 - 5. Water features and public art.
- B. All outdoor lighting shall be extinguished when outdoor facilities are not in use or by 10 p.m. on Sundays through Thursdays or 11 p.m. on Fridays and Saturdays, whichever is earlier.

- C. No portion of any recreation facility that is not in a completely enclosed structure (e.g., basketball or racquet sport courts) shall be located nearer than 50 feet from the boundary of a Single Unit (SU) or Two Unit (TU) Zone District. All distance and spacing requirements shall be measured according to the rule of measurement found in Section 13.1.6.
- D. Any other type of accessory structure or use may be allowed only if the Zoning Administrator finds the proposed structure or use meets the general criteria for Accessory Uses stated in Division 11.7, Accessory Use Limitations, and finds that the proposed structure or use will not adversely affect properties adjoining the Open Space Zone District. See Section 12.4.6, Code Interpretations and Determination of Unlisted Uses for the applicable procedure to determine unlisted uses.

9.3.5.4 Sports and/or Entertainment Arena or Stadium

Sports and/or Entertainment Arena or Stadium uses shall comply with the following limitations:

- A. All sports and/or entertainment arena or stadium uses shall be a minimum of 500 feet from a Residential Zone District. All distance and spacing requirements shall be measured according to the rule of measurement found in Section 13.1.6, Measurement of Separation or Distance.
- B. The minimum spacing requirement may be reduced by the Zoning Administrator if the applicant proves by a preponderance of the evidence that an analysis of the proposed use, its traffic generation, and other external effects indicates a smaller separation will have no significant effect on the nearby residential district.

9.3.5.5 Husbandry, Animal

In the OS-B Zone District, this use is limited to the raising and/or grazing of livestock animals and any confinements for such animals, provided such use is located at least 500 feet from a Residential Zone District.

9.3.5.6 Plant Nursery

This use shall be located at least 500 feet from a Residential Zone District.

Karen E. Corner

From: ICCES Courtesy Notices <DoNotReply@judicial.state.co.us>
Sent: Tuesday, April 08, 2014 1:36 PM
To: Karen E. Corner
Subject: E-Service: 2013CV032444 - Friends Of Denver Parks Inc Et Al V. C And C Of Denver Et Al

Alert For: John Case
Served By: David Broadwell

Court: Denver County - District
Case Caption: Friends Of Denver Parks Inc Et Al V. C And C Of Denver Et Al
Case Number: 2013CV032444
Division: Division 376
Filing ID: 8038E4725E904
Date Served: April 8, 2014

You have been served the following document(s):

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Document Type: Brief
Document Title: DEFENDANTS' JOINT BRIEF IN OPPOSITION TO PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT

Document ID: 4EB927237C57D
Document Type: Filing Other
Document Title: Exhibit A-Affidavit of Lauri Dannemiller

Document ID: 428B8E3741E19
Document Type: Filing Other
Document Title: Exhibit B-Certified Denver Zoning Code.

View details online at
<https://www.jbits.courts.state.co.us/icces/web/filingInformation/filingInfo.htm?fid=8038E4725E904>.

For questions about this case, please contact the court. For assistance with ICCES, call the ICCES Customer Support Center at 1-855-CO-ICCES or e-mail iccessupport@judicial.state.co.us.

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