DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO 1437 Bannock Street, Denver, CO 80202	
Plaintiffs: FRIENDS OF DENVER PARKS, INC., et al. v. Defendants: CITY AND COUNTY OF DENVER, and SCHOOL DISTRICT NO.1 IN THE CITY AND COUNTY OF DENVER	DATE FILED: May 2, 2014 CASE NUMBER: 2013CV32444 **COURT USE ONLY▲** Case No: 13CV32444 Courtroom: 376

COURT'S ORDER RE: DEFENDANTS' JOINT MOTION AND PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT

THIS MATTER is before the Court on Defendants' Joint Motion for Summary Judgment ("Defendants' Motion") filed February 18, 2014 and Plaintiffs' Cross-Motion for Summary Judgment filed March 11, 2014. The Court, being fully advised, finds and orders as follows:

I. BACKGROUND

In the spring of 2013, Defendant City and County of Denver ("the City") decided to trade an eleven-acre parcel of land ("the Property") in southeast Denver and $700,000 to Defendant School District No. 1 ("School District") in exchange for a commercial building. The School District intends to build an elementary school, and the City intends to develop a center to assist victims of domestic violence. Plaintiffs assert the Property is a park and its sale requires a vote of the people.

The Denver Charter §2.4.5 ("the Charter"), enacted in 1955 and amended in 1996, provides:

> 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...

§ 3.2.6 (C) of the Charter provides:

> Sale or conveyance of city-owned real property. The Mayor of the City and County of Denver shall be and is hereby authorized to initiate actions to effect the sale or conveyance of real property owned by the City upon such terms as in the Mayor's judgment shall appear proper. All contracts providing for the sale or conveyance of real property owned by the city, or amendments to such contracts, before their execution by city officials, shall be authorized by the Denver City Council acting by ordinance or resolution.

In 1936, the City acquired, by a non-restrictive deed, 36.45 acres of land, which included the Property. The land, which was initially acquired for flood control purposes, was not within City limits until its annexation in 1965. The City never designated the Property as a park, before 1955, nor was it dedicated as a park by plat. Lists of City parks dated 1951 and 1956 do not include the Property.

Plaintiffs filed their complaint May 29, 2013, seeking declaratory relief and a permanent injunction to preserve the land as a park. After three days of hearings, the Court denied Plaintiffs' request for a Preliminary Injunction on July 5, 2013. The Court of Appeals affirmed the decision. *Friends of Denver Parks v. City and Cnty. of Denver, et al.*, No. 13CA1249, 2013 WL6814958 (Colo. App. December 26, 2013). Trial on the Permanent Injunction is scheduled for May 19, 2014.

Defendants seek summary judgment, because the unequivocal facts establish: (1) the Property was not a park as of 1955; and, (2) the Property was never "designated" as a park by ordinance, as required, after 1955.

Plaintiffs argue that the Court should deny Defendants' Motion and grant their cross-motion, as there are no genuine issues of material fact that: (1) the Property was a Common Law Dedicated Park by 1955; and/or, (2) the City formally designated the Property as a park in 2010.

As to 2010 events, a former Denver City Councilwoman Susan Barnes-Gelt stated that she voted to amend the Charter in 1996, and at that time she understood the Property was a park. (Plaintiffs' Response Ex. 1). In 2010, Ms. Barnes-Gelt asserts this was confirmed by Denver Ordinance 333, Series 2010 which states: "*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.*" (Plaintiffs' Cross-Motion for Summary Judgment, Ex. 1, App. 3)(emphasis added). The Official Map promulgated with Ordinance 333 shows the region, including the Property, zoned as park land protected and managed by the city. *Id.*

II. STANDARD

Summary judgment is appropriate when the pleadings and supporting documents indicate that there are no genuine issues as to any material fact, such that the movant is entitled to summary judgment as a matter of law. C.R.C.P. 56(c); *Rocky Mountain Festivals, Inc. v. Parsons Corp.*, 242 P.3d 1067, 1074 (Colo. 2010); *Brodeur v. Am. Home Assurance Co.*, 169 P.3d 139, 146 (Colo. 2007). Once the movant has met this burden, the burden shifts to the opposing party to establish that a triable issue of fact exists. *Snook v. Joyce Homes, Inc.*, 215 P.3d 1210, 1218 (Colo. App. 2009). In reviewing the movant's motion, the opposing party is entitled to all favorable inferences that are reasonably drawn from the undisputed facts. *In re Tonko*, 154 P.3d 397, 402 (Colo. 2007). Any doubt as to inferences that may be drawn must be resolved in favor of the opposing party. *Id.*

III. DISCUSSION

Pursuant to the Charter, the City may not sell or transfer any land that was a park as of 1955, without a vote of the people. Neither may the City sell or transfer any land, without a public vote, if after 1955, the City formally designated the property as a park by ordinance. Neither party asserts that the Property was formally designated as a park, prior to 1955. "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.*, 308 P.2d 1016, 1019-20 (Colo. 1957).

The Charter abrogated the Common Law Dedication of Parks. *Friends of Denver Parks v. City & Cnty. of Denver*, No. 13CA1249, 2013 WL6814958, at 6-7 (Colo. App. 2013). Therefore, the Property could only be a park if it were Common Law Dedicated as one before 1955, or it was formally designated later as such by the City. "Common law dedication occurs when the city's 'unambiguous actions' demonstrate its 'unequivocal intent' to set the land aside for a particular public use." *Friends of Denver Parks*, No. 13CA1249, 2013 WL6814958, at 6. Public use of land as a park, without an overt act by the city to dedicate the land, does not convert the land to a park in a legal sense. *Hall v. City & Cnty. of Denver*, 177 P.2d 234, 236 (Colo. 1946).

a. Property designation before 1955

Plaintiffs also assert that their preliminary hearing testimony and other evidence establishes, and will further establish, that the Property has been used for recreational purposes since 1938 and that area residents relied on the Property's alleged park status when members purchased their homes. Regretfully, the issue is not whether or when the public believed the land was a park or whether homes were purchased based on a belief that the land was a park. Rather, the issue is, whether the City's *unambiguous* actions demonstrated that it *unequivocally* intended to dedicate the Property as a park on or before 1955. *Friends of Denver Parks*, No. 13CA1249, 2013 WL6814958, at 6.

Plaintiffs contend that evidence before and after 1955 demonstrates the City's intention to dedicate the property as a park. The Court accepts all of Plaintiff's pre-1955 evidence as true, including but not limited to: (1) the public rode horses through the Property; (2) people freely picnicked on the Property; (3) the public regarded the Property as a recreational area. Plaintiffs' evidence falls well short of establishing unambiguous actions by the City demonstrating an unequivocal intent to dedicate the Property as a park, prior to 1955.

In addition, these post-1955 "facts" are accepted as true: (1) traditionally, the public has viewed the land as a park and recreated on it; (2) the Property was labelled as a park on some City maps; (3) in 1979, the mayor referred to the Property as "dedicated park land;" (4) City signs on the Property state park rules to be followed; and, (5) the City maintained the Property and built bicycle trails on it. Considering, viewing, or otherwise referencing the Property as a park falls short of unambiguous actions demonstrating an unequivocal intention to dedicate the Property to that purpose. Thus, even considering these facts, the Court cannot find that the Property was Common Law Dedicated as a Park.

In making this ruling, the Court understands that Plaintiffs feel blindsided by a less than transparent City administration.

b. Property designation after 1955

Plaintiffs assert that the City designated the Property as a park in 2010 when it enacted Denver Ordinance 333, Series 2010, which referred to a map showing that the Property was rezoned as "designated." On the map, the color of the Property formally denoted it as park land. Defendants state that, at the same proceeding, a different ordinance was enacted, "designating" a different parcel of land as a park. Ordinance 333, Series 2010 unambiguously used the word "designate" to mean show, not to officially demarcate the Property as a park within the meaning of the Charter. Therefore, the Court finds that the Property did not become "designated" as a park in 2010.

IV. CONCLUSION

The Court finds that there are no genuine issues of material fact, therefore, the matter is ripe for summary judgment. The Court rules as follows:

1. Defendants' Joint Motion for Summary Judgment is GRANTED.

2. Plaintiffs' Cross-Motion for Summary Judgment is DENIED.

3. In light of the ruling, Plaintiffs' Motion for Leave to File Fourth Amended Complaint filed March 6, 2014 and any other pending motions are MOOT.

4. The trial on May 19, 2014 is hereby VACATED.

5. This is a final Order pursuant to C.R.C.P. 54(b).

DATED this 2nd day of May 2014

BY THE COURT:

Herbert L. Stern III

Herbert L. Stern, III
District Court Judge

CC: Counsel of Record by e-filing