

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 John Case. I am over the age of 18 years and competent to testify in all respects. This affidavit is based on my personal knowledge of a document produced by the Defendant DPS in response to Requests for Production of Documents in this litigation. The document is Bates stamped DPS 004921 and titled "Memorandum of Understanding Between Denver Public Schools and City and County of Denver."
2. The Memorandum of Understanding ("MOU") is dated December 31, 2011. It is attached to this Affidavit as Exhibit 3. In the MOU, the Defendants specifically refer to Hampden Heights North Park as "Denver owned Parks land."
3. The MOU constitutes an admission by both defendants that HHNP was in fact a park.
4. The MOU, when considered with the Rule 30(b)(6) deposition testimony of Defendants, and with the affidavits previously submitted to the Court, and the testimony of witnesses at hearing June 12 and 13, 2013, demonstrates that there are disputed issues of material fact whether Hampden Heights North Park was designated by the City as a park.

Further, Affiant sayeth not.



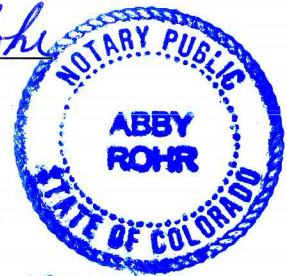
John Case

The foregoing Affidavit was acknowledged before me on May 23, 2014 by John Case, known personally to me.



Notary Public

My commission expires: March 9, 2015





MEMORANDUM OF UNDERSTANDING
BETWEEN DENVER PUBLIC SCHOOLS AND CITY & COUNTY OF DENVER

This Memorandum of Understanding ("MOU"), dated 31 December 2011, is between Denver Public Schools ("DPS") and the City & County of Denver ("City"), collectively known as the "Parties". Given DPS' interest in building a school and the City's regional interest in both educational and recreational opportunities at the land located at the Northwest corner of Havana Street and Girard Avenue, commonly referred to as "Hampton Heights" ~~(confirm appropriate description)~~, the Parties agree to the following recitals in order to facilitate next steps.

The Parties recognize their shared goals of providing outstanding educational and recreational opportunities for the students and citizens in Southeast Denver and believe this MOU, when all requirements are met, will assist in providing the opportunity for DPS to increase needed school capacity in a region where the elementary schools are currently overcrowded as well as a provide a future option for the City to expand recreational opportunities.

The Parties understand the following:

- 1) DPS preference is to acquire between 8.00 and the ~~{11.0070}~~ acres of City of Denver-owned Parks land located at the Northwest corner of Havana Street and Girard Avenue. The acquisition would be in the form of a purchase-and-sale agreement. Actual school and recreation center acreage shall be set as part of the master planning of the site as part of the Design Development phase of the school/recreation center planning effort. Intent will be to define specific legal descriptions for each project component once school and future recreation center building footprints are set. ~~If preferred (due to projected joint use of the site over time), DPS is open to a long term land lease or use agreement subject to the inclusion of appropriate provisions for safeguarding taxpayer-funded assets constructed on the site.~~
- 2) DPS intends to develop a school facility on the site, subject to the successful passage of a general obligation bond which would provide the requisite funding for construction of the school facility.
- 3) DPS understands that the City would like, at some point, to also locate a recreation center on this site. DPS will create a site design that allows for shared access to and use of common recreational facilities (including the school gymnasium), and future development of a recreation center when the City has determined they are ready to move forward with such a project.
Access to selected shared facilities could be made available as soon as construction is completed.
- 4) As consideration for the land purchase, DPS will contribute site improvements currently valued at a minimum of \$2 million including:
 - a) Overall site design incorporating space and layout for a to-be-determined City-owned and developed recreation center on the site.
 - b) Design and construction of a vehicular/pedestrian bridge at Dartmouth and Havana allowing access to the site (current estimated value of \$1.5 million).
 - c) Design and construction of parking that can be jointly used by the school and for public recreation access.
 - d) Design and construction of a suitably-sized gymnasium that can support school needs and be used for City-managed recreational activities during non-school hours (estimated incremental cost over standard elementary school gym of [\$500,000]).

e) Design and construction of a school kitchen and cafeteria with access allowing for potential use to support City-managed recreational activities during non-school hours.

e)f) Design and construction appropriately required utility and storm water stub-ins to accommodate future recreation center development.

6)5) A facility-use agreement will be negotiated by the Parties during the construction process allowing for sharing of common facilities, and division of incremental operating costs or revenues.

7)6) The Parties will work jointly, and provide their respective full support, in working with Colorado Department of Transportation ("CDOT") to expedite approval of site access improvements.

8)7) DPS would like to execute this MOU no later than [December 31, 2011]. Following execution of this MOU, the Parties agree to work to develop and execute a purchase-and-sale or long-term land use agreement by [June 30, 2012] with closing contingent upon voter approval of a DPS General Obligation Bond in November 2012, and other required approvals of the DPS Board of Education and the Denver City Council.

This MOU represents the intent of the administrations of DPS and the City & County of Denver to work in good faith toward the Parties' shared goals stated herein, including making recommendations to the DPS Board of Education and Denver City Council in furtherance thereof. However, this MOU shall not be construed as a binding agreement upon either DPS or the City of Denver to the extent DPS Board of Education or Denver City Council approval is required to effectuate any goal stated herein, or any necessary part thereof toward any goal stated herein, and should only be construed as a recital of understandings to further the good faith relationship and intent of the Parties toward the recitals made in this MOU.

By their signatures below, both parties acknowledge the content in this document:

David Suppes, Chief Operating Officer

Denver Public Schools

[Name, Title]

City of Denver