

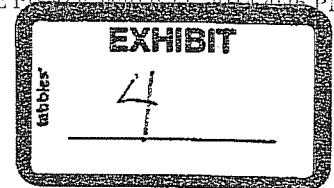
APPENDIX 4

Affidavits of Park Users submitted to Trial Court

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

DATE FILED: March 11, 2014 4:16 PM

State of Colorado)
County of Denver) ss

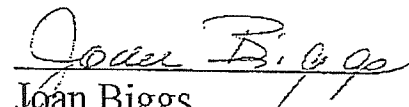


1. My name is Joan Biggs. I am over the age of 18 years and competent to testify in all respects. This affidavit is based on my personal knowledge.
2. I was born in 1926. I grew up in east Denver at 383 Birch St. I attended Steck Elementary, and Smiley Junior High. In 1933, when I was seven years old, 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 3rd 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.

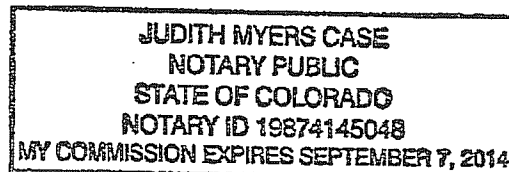
Further, Affiant sayeth not.


Joan Biggs

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

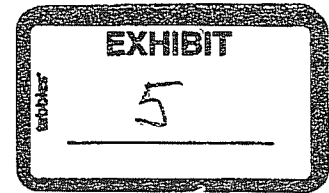

Notary Public

My commission expires:



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 Arapahoe)



1. My name is Sandra Dennehy. 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 1939. I am the daughter of Gerald and Janet Phipps. My father was the owner of Phipps Construction, the Denver Bears minor league baseball team, and the Denver Broncos professional football team. Our family had a house on S. Adams St. in the Belcaro neighborhood west of Colorado Blvd. When I was a child, Colorado Boulevard was one lane in each direction. It was the only paved street in the area. All of the other roads were gravel. My two sisters and I loved horses. We rented horses at Bert's Boulevard Stables near Colorado Blvd. and East Kentucky and went on trail rides along the bridle paths next to Cherry Creek. When we were younger, an adult from the stables would lead the trail ride and supervise us. After I turned 12, I could ride without adult supervision. The trail rides stopped at the Sullivan Dam, which was just north of the Cherry Creek Dam.
3. Horseback riding was an extremely popular outdoor activity in Denver. When we went on trail rides along Cherry Creek, I saw numerous people riding horses, riding bicycles, walking, and playing where we rode. Sometimes there would be as many as twenty people in a group on horseback. There was a large open area northwest of the Sullivan Dam where we liked to ride horses, have picnics, and play games. Nobody ever asked us to leave or get off the property. We assumed it was a park available for public use and we used it as a park. Recently I visited this open area where I used to ride and see other people riding. Part of the open area had been turned into a construction zone for what I have been told will be a new school. I could see piles of dirt in the park where I rode horses and played with my friends in the years 1946-1955. Based on my own observations, I am certain that the location of the school construction zone was used as a park before 1955.

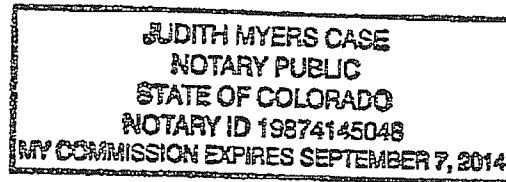
Further, Affiant sayeth not.

A handwritten signature in cursive script, appearing to read "Sandra Dennehy". Below the signature, the name "Sandra Dennehy" is printed in a small, sans-serif font.

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

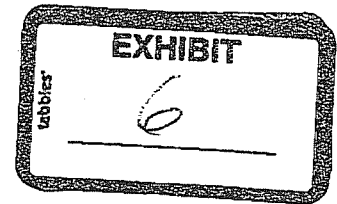
Judith Myers Case
Notary Public

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
Carolyn Gallagher

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

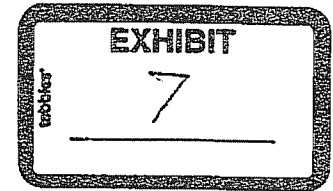
Judith Myers Case
Notary Public

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

within D. Norden

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

Lawrence J Kasinowski

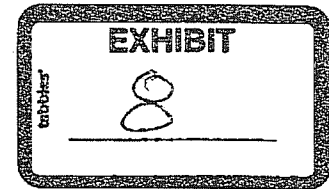
Notary Public

My commission expires:

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

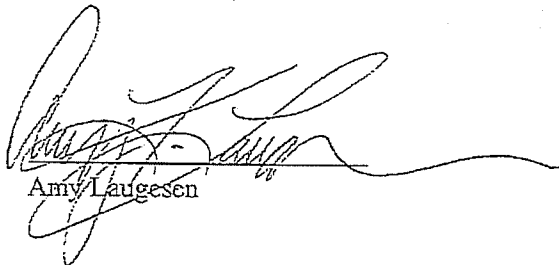
Friends of Denver Parks et al. vs. City and County of Denver et al.
Denver District Court Case No.: 2013CV032444

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

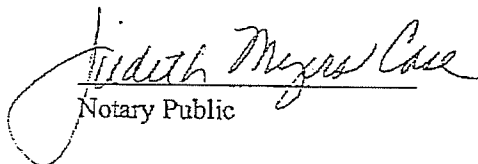


1. My name is Amy Laugesen. I am over the age of 18 years and competent to testify in all respects. This affidavit is based on my personal knowledge.
2. I grew up in the Hampden Heights East neighborhood of southeast Denver during the 1970s and 1980s. Between 1975 and 1981 I played with friends in the 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 bridge path under the bridge at Havana St. to the area near the spillway below Cherry Creek Dam. The bridge 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.

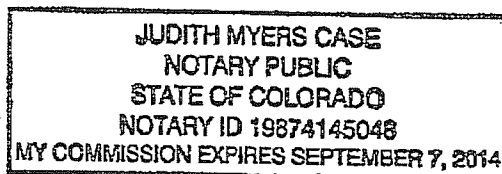
Further, Affiant sayeth not.


Amy Laugesen

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

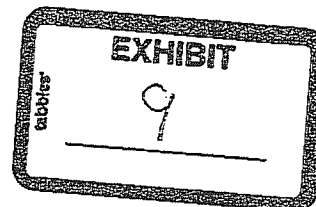

Notary Public

My commission expires:



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 Arapahoe)



1. My name is Dawn Mayo. 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 1960. My parents owned land near S. Wabash and E. Iliff in southeast Denyer. My father was a farrier. My brother and two sisters and I each owned our own horse. Each of us was responsible for training and caring for our own horse. We loved to ride along the Highline Canal and along Cherry Creek. We used to ride the creek all the way to the bridge at Havana. The horses had to work hard walking in the sandy creek bottom, so it was good training for them, and if a horse bucked one of us off, the sand was a soft place to land. When it rained, we would hang out with the horses under the bridge. Cherry Creek and Highline Canal were popular bridle trails and I often saw groups of other riders there.
3. On Christmas day after the blizzard of 1982, a friend of mine was stranded at her apartment near Havana and Dartmouth. I rode my horse through the deep snow, along the Cherry Creek bridle path, under the bridge at Havana, to my friend's apartment. She met me in the parking lot, got up on the back of my horse, and rode with me to my house, where we spent Christmas together.
4. It was common knowledge that the land along Cherry Creek and the Highline canal was public parkland, open to the public and unfenced. It was not a groomed park with planted grass and sprinklers. It was left in its natural state, even while large tracts of land around Cherry Creek were developed into apartments and housing subdivisions. My sister Debbie owned a trick pony that she trained to bow and lay down and play dead. One day we saw a work crew paving an asphalt bicycle trail next to the bridle path along the Highline Canal. We were upset they were paving along the canal. To interrupt the paving, Debbie made her trick pony lay down in front of the paving machine.
5. There is a large open field along the west side of Cherry Creek near the bridge at Havana. This field is part of the park area where I rode in the 1960's, 1970's, and 1980's. On March 8, 2014, I visited the area. Part of the park was all dug up, with large piles of dirt and construction fencing. The construction site is in the same park where I rode horses.

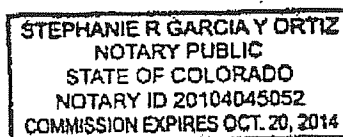
Further, Affiant sayeth not.

A handwritten signature in cursive script that reads "Dawn Mayo".
Dawn Mayo

The foregoing Affidavit was acknowledged before me MARCH 11th, 2014 by Dawn Mayo, known personally to me.

A handwritten signature in cursive script that reads "Stephanie R Garcia y Ortiz".
Notary Public

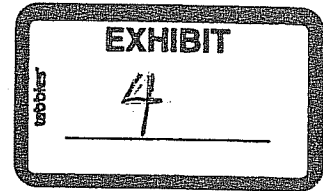
My commission expires: 10/20/14



APPENDIX 5

Affidavits of former city employees and officials submitted to
Trial Court


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



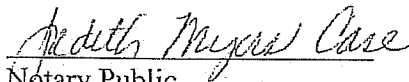
State of Colorado)
) ss
County of Denver)

1. My name is John Bennett. 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 by the City and County of Denver from August 17, 1970 until I retired in 2005. For 22 years of my 35 year career in city government, I worked for City Council. I served as Executive Director of City Council for 17 years, from January 16, 1988 until January 31, 2005. My duties as Executive Director included supervising the staff that administered the Council (they did payroll, prepared agendas, processed bills), and supervising the staff that assisted Council committees. My duties as Executive Director also included analyzing budgets, and I drafted and researched legislation.
3. At the Denver City Council meeting August 19, 1996 I read the introduction to Council Bill 677. This was an ordinance that referred to Denver voters a proposed amendment to section A4.5 of the Denver City Charter. My job was to explain to council members what the intent of the Charter amendment was. I knew what the intent of the Charter amendment was from attending city council committee meetings and speaking with assistant city attorney Don Wilson, who drafted the Charter amendment.
4. The intent of the Charter Amendment was exactly what I told city council in the transcript attached as Appendix 1. First, the amendment confirmed that parks used as parks prior to 1955 are designated parks. The amendment was necessary to clear up confusion that resulted from a decision of the District Court of Grand County, which is attached as Appendix 2. The amendment also provided for designation of parks after 1955 by ordinance. Finally, the amendment provided that once a park is designated, it cannot be sold without a vote of the electors.

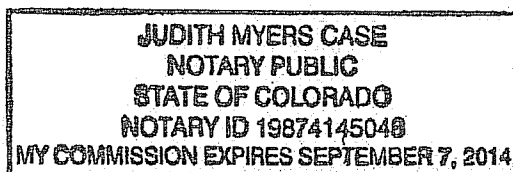
Further, Affiant sayeth not.


John Bennett

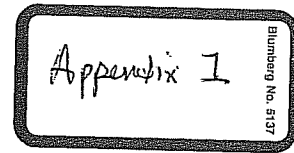
The foregoing Affidavit was acknowledged before me March 30, 2014
2014 by John Bennett, known personally to me.


Notary Public

My commission expires:



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 5th 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

DENVER CITY
ATTORNEY'S OFFICE

DISTRICT COURT, GRAND COUNTY, COLORADO

Case No. 94CV156

DEC 6 9 58 AM '95

19577
O-35
P. 290

SUMMARY JUDGMENT

Appendix 2

Bimberg No. 517

WINTER PARK RECREATIONAL ASSOCIATION,

Plaintiff,

v.

CITY AND COUNTY OF DENVER,

Defendant.

THIS MATTER is before the Court to rule on cross motions for summary judgment. Having reviewed the parties' motions and Joint Stipulation of Facts, and being advised of the record in this case, the Court grants Plaintiff's Motion for Summary Judgment for the reasons stated below.

Plaintiff commenced this action under C.R.C.P. 57 to obtain a declaration that real property belonging to Defendant described in the Complaint as the City Land, and which is the subject of a sale agreement between the parties, is not a park that Defendant is prohibited from selling under Section A4.5 of the City Charter of the City and County of Denver, which states: "[n]o portion of any designated park belonging to the city shall be sold." Section A4.5 also states: "All designated parks existing at the time this provision is enacted shall continue to be designated as parks. No land now owned or hereafter acquired by the city and county shall be deemed a park unless specifically designated a park by ordinance."

Under the plain language of the City Charter, land owned by Defendant is a park only if so designated by ordinance either before or after the effective date of Section A4.5, and only the sale of land so designated is prohibited. There is no dispute that the City Land has never been designated a park by ordinance. Therefore, the City Land is not a designated park that Defendant is barred from selling under Section A4.5. Because there are no genuine issues of material fact, the entry of summary judgment declaring that the City Land is not a designated park under A4.5 is proper. Ginter v. Palmer & Co., 585 P.2d 583 (Colo. 1978).


Post-it Fax Note	7671	Date	12/12/95	# of pages	2
To	Don Wilson	From	Maria Kayser		
Co.	PLEASE	Co.			
Phone	CALL ME	Phone #			
Fax #		Fax #			

NOW, THEREFORE, it is

ORDERED that Plaintiff's Motion for Summary Judgment is granted, and summary judgment shall enter declaring the City Land is not a designated park that Defendant is prohibited from selling under Section A4.5 of the City Charter of the City and County of Denver.

DATED this 6th day of December, 1995.

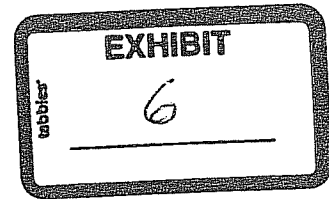
BY THE COURT:



Joel S. Thompson
District Court Judge

DISTRICT COURT, COUNTY OF GRAND, COLORADO

Case No. 94CV156



AFFIDAVIT OF NEIL SPERANDEO

WINTER PARK RECREATIONAL ASSOCIATION,

Plaintiff,

v.

CITY AND COUNTY OF DENVER,

Defendant.

I, Neil Sperandeo, being of lawful age and duly sworn, hereby state as follows:

1. My name is Neil Sperandeo and I am employed by the City and County of Denver as the Director of Long Range Planning for the Department of Parks and Recreation.

2. I oversee all regulatory and planning functions for the Department which are not funded on a project-specific basis.

3. I have extensive knowledge of the City's park system.

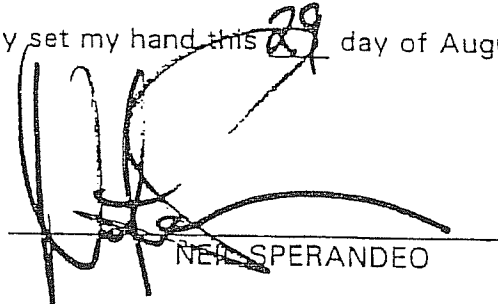
4. A majority of the City's parks were acquired prior to 1955, including Washington Park, City Park, Cheeseman Park, and the Mountain Parks.

5. It is my interpretation and understanding of the Denver Charter that parks existing prior to 1955 are designated parks, and that there was no requirement that they be designated by ordinance. The Department has consistently enforced this interpretation, which is in accord with the 1955 and 1983 Charter amendments to §A4.5.

6. The City Land has always been considered by the Department to be a park within the Mountain Parks system. It is presently included in the inventory of the Mountain Parks, and appears as such on Mountain Parks maps.

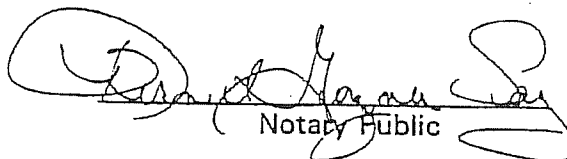
7. The Denver parks system consists of 206 parks encompassing 4,000 acres. There are an additional 14,000 acres in the Denver Mountain Parks system. To execute ordinances for all parks existing before 1955 would require an inordinate expenditure of money, time and effort on behalf of the Department. In addition, a reading of the Charter requiring such ordinances would significantly impair the status of these parks prior to the time ordinances could be executed.

IN WITNESS WHEREOF, I hereby set my hand this 29 day of August, 1995.


NEIL SPERANDEO

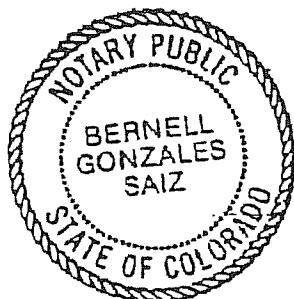
STATE OF COLORADO)
) ss
CITY AND COUNTY OF DENVER)

Subscribed and sworn to before me by Neil Sperandeo this 29th day of August, 1995.

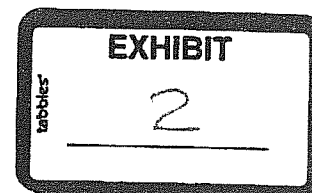

Notary Public

My Commission Expires Oct. 28, 1996

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
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.

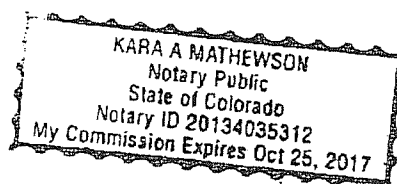
Further, Affiant sayeth not.


James Kellner

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

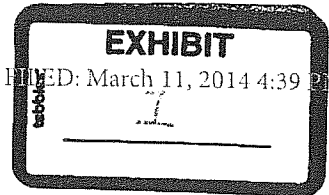

Notary Public

My commission expires: 10/25/17



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

DATE FILED: March 11, 2014 4:39 PM



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

1. My name is Susan Barnes-Gelt. I am over the age of 18 years and competent to testify in all respects. This affidavit is based on my personal knowledge.

2. I am a resident of Denver, Colorado. I served on the Denver City Council from 1995-2003.

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

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

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

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

4. Appendix 3 attached to this affidavit is a copy of Ordinance 333, Series of 2010. Section 59-4 of Appendix 3, titled "Official Map," includes the following sentence:

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

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

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

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

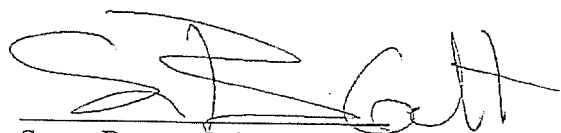
(Zoning Code §9.3.2.1, emphasis added)

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

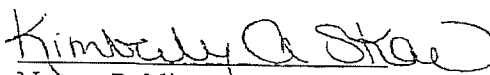
is already built. For these reasons, I respectfully ask the court to grant an emergency injunction commanding DPS and the City to immediately stop all construction and all work on the property until further order of court.

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

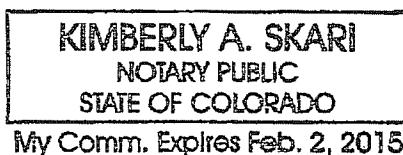
Further, Affiant sayeth not.


Susan Barnes-Gelt

The foregoing Affidavit was acknowledged before me March 4,
2014 by Susan Barnes-Gelt, known personally to me.

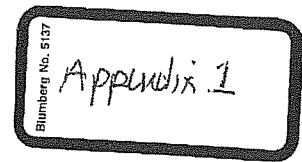

Notary Public

My commission 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 5th 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