



2004-2005 SANTA CLARA COUNTY CIVIL GRAND JURY REPORT

Transfer of Dedicated Parkland within the City of Palo Alto

Summary

The 2004-2005 Santa Clara County Civil Grand Jury (Grand Jury) received a complaint that the City of Palo Alto (City) has not followed the Palo Alto City Charter (Charter). The complainant alleged that dedicated parkland was transferred to the Palo Alto Unified School District (PAUSD) for its exclusive use without the approval of the electorate.

The Grand Jury inquiry resulted in three findings and three recommendations. In summary, the Grand Jury recommends that:

- Agreements for joint use of dedicated parkland must explicitly specify the terms of use and the provisions for access by the general public;
- The City should only transfer, dispose of, abandon or discontinue use of parkland after an affirmative vote of the electorate as required by the Charter; and
- Any construction, reconstruction or development adjacent to City parkland should be designed and implemented to comply with a certified site survey.

Background

In 1965, the City adopted Article VIII—"Parks" as part of its Charter. This article codifies provisions that "all lands owned or controlled by the City which are, or will be, used for park, playground, recreation or conservation purposes shall be dedicated for such purposes by ordinance." The Charter further directs that "no land... dedicated for park purposes shall be sold or otherwise disposed of, nor shall its use be abandoned or discontinued, except pursuant to a majority vote of the electorate. Any election and related procedures under Article VIII shall conform to the provisions set forth in general law, as it existed January 1, 1965, except that the council may call such election by majority vote." In the above, "council" refers to the Palo Alto City Council (Council).

The Charter also states that "no substantial building, construction, reconstruction or development upon or with respect to any lands so dedicated shall be made except pursuant to ordinance subject to referendum."

Complaints were received from residents regarding their inability to use tennis courts located on dedicated parkland due to agreements between the Council and the PAUSD.

Complaints were also received which indicated that dedicated City parkland was exchanged in a land-swap agreement between the City and the PAUSD without benefit of voter approval in substantial violation of requirements of the Charter.

The Grand Jury undertook this inquiry to determine if dedicated parkland was:

- Transferred or disposed of without a vote of the electorate;
- Closed to use by the general public; or
- Illegally encroached upon by the PAUSD.

Based on these complaints, the Grand Jury conducted interviews with 1) the Palo Alto City Manager; 2) the Manager of the City of Palo Alto Real Property Division; 3) the Director of the City of Palo Alto Arts, Culture, Human Services, Parks and Golf, Recreation, Open Space and Sciences Division; and 4) the PAUSD Director of Facilities Development as a representative of the Superintendent of the PAUSD. The Grand Jury also toured the Terman Middle School site, Terman Park site, Rinconada Park site, and the Walter Hays Elementary School site.

Discussion

Terman Middle School and Terman Park

In the early 1980s, the PAUSD closed Terman Middle School because of declining enrollment and sold approximately 20 acres of the school property to the City. The City used approximately four acres for new housing, used approximately eight acres of former playgrounds as a dedicated public park, and leased the remaining eight acres and some of the former school buildings to nonprofit organizations.

During the 1990s, the PAUSD enrollment decline reversed, which prompted the PAUSD to look for a new middle school site to handle the increase in student population in Palo Alto and surrounding areas. The PAUSD began talks with the City of Palo Alto to re-acquire a portion of the old Terman Middle School site. In August 2002, the City and the PAUSD entered into an agreement for the Terman Middle School site. Under this agreement, the PAUSD re-acquired ownership of the approximately eight acres of land and buildings which had not been dedicated as parkland. These were acquired in exchange for similar acreage at the PAUSD Cubberley High School site. The other approximately eight acres of Terman Park remained as dedicated parkland owned by the City; this land contains the Terman Park tennis and basketball courts and playing fields.

The City and the PAUSD are permitted to assist each other under California Education Code Sections 17051(a) and 35275 and California Government Code Section 6500, which authorize and empower public school districts and municipalities to cooperate with each other. They may enter into agreements with each other "for the purpose of organizing, promoting and conducting programs of community recreation and education for children and adults of the state."

By agreement, the PAUSD was issued a City permit under Title 22 of the Palo Alto Municipal Code for use of portions of Terman Park during certain hours. (The purpose of Title 22 is to implement Article VIII of the Charter governing lands used for parks.) In this

agreement, Terman Middle School was given "first call" for the use of the tennis courts and playing fields between the hours of 7:30 a.m. and 3:30 p.m. on days when the school is in regular session. The PAUSD was also made responsible for leaving the tennis courts and playing fields free of litter and in good condition at the end of each school day. The PAUSD was restricted from routinely excluding members of the public from any dedicated courts, fields or parkland. However, the PAUSD was given the right to take reasonable actions to protect both its "first call" on the courts and fields, as well as the safety of the students. The public retained unrestricted access to those portions of Terman Park not being used by Terman Middle School. As long as the public access to Terman Park is not excluded, this does not appear to constitute a violation of Article VIII of the Charter. An interview with Terman Middle School staff confirmed that the general public is not excluded or barred from using the tennis courts during school hours. Due to the PAUSD's concern for student safety, the sole requirement is that people requesting access to a tennis or basketball court or playing field must register at the school office. Unless there is a conflict with a physical education class or with lunch/recess activities, the tennis courts, basketball courts and playing fields are open to the public.

On June 25, 2003, at a meeting of the Palo Alto School/City Liaison Committee, the Palo Alto City Attorney stated that the PAUSD "could not routinely exclude members of the public from any dedicated playing field or parkland." The City Attorney defined "routinely exclude" as a "blanket rule regardless of use that says someone could not be there. If the District was making use of the fields, however, it had priority and could ask non-students or others to leave." The agreement also stated that no permanent fence or other barriers to the public access could be constructed.

On July 14, 2003, members of the Council discussed and agreed that members of the public wishing to use Terman Park facilities could sign in at the school office before accessing the park facilities and could check on the availability of fields or courts at that time.

Palo Alto residents and other members of the public raised opposition to the restrictions imposed by the Terman Park Joint Use Agreement (Joint Use Agreement) between the City and the PAUSD. Major points of disagreement included challenging the right of the PAUSD to restrict access to the courts and fields, to schedule use of the courts and fields, and to expand and reconfigure two of the four tennis courts into basketball courts. Despite the concerns of the neighbors and citizens who spoke at the Council meeting, the Council enacted Ordinance 4796 (Park Ordinance), which approved and adopted a plan for improvements and for restricted access at Terman Park.

On July 22, 2003, at a meeting of the City of Palo Alto Parks and Recreation Commission, the Joint Use Agreement of Terman Park by the City and the PAUSD was approved. This vote was to adopt the Council resolution and to work with the PAUSD to create a temporary sign-in system and signage that will provide public access to the facilities during the school day, within the parameters of the Joint Use Agreement and the Park Ordinance.

The process for defining and implementing the Joint Use Agreement appears to have evolved in an *ad hoc* fashion.

Walter Hays Elementary School and Rinconada Park

The Grand Jury also investigated another potential Charter violation. In March 1998, the City Surveyor discovered that the PAUSD portable school buildings at Walter Hays Elementary School were located within the boundaries of Rinconada Park (Rinconada) which is dedicated parkland owned by the City. The encroached area was 8,405 square feet (0.193 acres).

In April 1998, a letter from the City Manager to the PAUSD Superintendent proposed a resolution to the encroachment. According to that resolution, the PAUSD was to acknowledge that it had inadvertently encroached, that the encroachments would be removed by September 1, 2002, and that, during the period of encroachment, the PAUSD would hold the City harmless and would pay consequential litigations costs. In May 1998, the PAUSD Board of Education agreed to the terms, and the Agreement was signed at the end of May. In January 2001, a two-year extension to the deadline for rectifying the encroachment was approved by the City Manager. A land-swap proposal was offered by the PAUSD in March 2002. Land between the City and the PAUSD would be exchanged in lieu of removing the encroachment. In November 2003, the City Parks and Recreation Commission recommended that the Council refer the exchange of minor portions of parkland to the voters as an amendment to the Charter.

In July 2004, the PAUSD Deputy Superintendent sent a letter to the City supporting the City Policy and Services Committee recommendation to have a vote of the electorate, per the Charter, in November 2005. The PAUSD offered to pay one-half the estimated \$100,000 cost of the election. The PAUSD provided information projecting the cost to relocate the portable classrooms, which are provided with plumbing because they are used for kindergarten classes. The PAUSD estimated that the cost of partial demolition, removal, relocation, and restoration of the buildings to serviceable condition would be approximately \$300,000.

City staff recommended that the Council accept the PAUSD offer and listed several reasons for these recommendations. Staff was respectful of the fact that dedicated parkland is an issue of such importance to Palo Alto citizens that governing provisions were incorporated into the Charter by voter initiative. The PAUSD legally obligated itself to correct the encroachment on Rinconada parkland by September 1, 2002, as well as to indemnify the City for all legal costs related to rectifying the encroachment. However, the cost for the PAUSD to relocate the encroaching structures was very high at that time. Both the PAUSD and the City were attempting to absorb significant financial impacts of the continuing general economic recession and the restricted State budgets. City staff indicated that the PAUSD would have every incentive to actively support the ballot measure, given the fact that if the measure were defeated it would be obligated to remedy the encroachment.

The Council did not approve the staff recommendation and directed staff to return with an ordinance to provide a land exchange with the PAUSD instead of holding an election. The Council indicated that the City preferred to exchange land by way of an Ordinance, which would apply only to this particular land exchange, and which would not interfere, change or modify the Charter or dedicated parkland provisions.

On November 8, 2004, the Council voted 6-2 to hold a public hearing to consider the exchange of Rinconada parkland property for unused, adjacent, PAUSD Walter Hays Elementary School property instead of authorizing and holding a vote of the electorate.

On December 13, 2004, City staff recommended to the Council: 1) a resolution overruling any protests and authorizing the exchange of land between the City and the PAUSD for the purpose of adjusting the boundary between Rinconada and Walter Hays Elementary School; 2) an ordinance adjusting the boundary of Rinconada Park; and, 3) an agreement for the exchange of real property pursuant to California Government Code Section 38440, et seq. The Council approved these recommendations by a 5-3 vote and also indicated that this procedure is in "actual and substantial compliance" with the Charter and State laws.

At question is the applicability of California Government Code Section 38441, which allows a city council to convey minor portions of dedicated parkland for equal or greater area or value of privately owned property contiguous to the park. There is disagreement on this point between the current City Attorney and the previous City Attorney. On the one hand, the current City Attorney's opinion is that the Charter "did refer" to the General Law, which had an exemption under which the City had proceeded. He said that "testimony by the draftsman of a Charter was not relevant. What was relevant was the language in the Charter and the Government Code." He also noted that comments by the previous City Attorney "were interesting for 1990, but might not reflect on the current situation."

On the other hand, in 1991, the previous City Attorney said, "the City Charter contained a reference to a California Government Code provision which purported to allow an exchange of minor portions of dedicated parkland for contiguous property." However, his view was that, "those provisions of state law were not a part of the Charter and, therefore, not applicable." Once dedicated, he did not believe "the City Council had the authority to undedicate through any means without a vote of the people."

Conclusions

The Grand Jury concluded its inquiry with three findings and three recommendations.

Finding 1

An agreement was authorized under proper authority of the Council for the joint use of dedicated City park property with the PAUSD allowing exclusive use of the four tennis courts contiguous to Terman Middle School and playing fields during certain hours of the school day. Subsequently, the City authorized the expansion and reconfiguration of two of those tennis courts into basketball courts. The process for defining and implementing the Joint Use Agreement appears to have evolved in an *ad hoc* fashion.

Recommendation 1

It is recommended that the City create, adopt, and enforce a City policy that any agreements to share dedicated parkland must explicitly specify the terms of use and the conditions for access by the general public. Further, the agreement should include public posting of such use and access regulations at entrances to the shared parkland.

Finding 2

Dedicated Rinconada parkland was transferred to the PAUSD by Council Ordinance instead of by a vote of the electorate as required by the Charter.

Recommendation 2

The City should adhere to its Charter requiring an affirmative vote by the electorate for any transfer, disposal, abandonment or discontinuance of use of City parkland. Alternatively, that provision of the Charter could be modified by a vote of the electorate as prescribed by the Charter.

Finding 3

The PAUSD located and constructed buildings on dedicated City parkland at Rinconada Park, causing an illegal encroachment.

Recommendation 3

Any construction, reconstruction or development adjacent to dedicated City parkland should be designed and implemented to conform with a certified site survey to prevent any future encroachments.

PASSED and ADOPTED by the Santa Clara County Civil Grand Jury on this 10th day of March, 2005.

Michael A. Smith
Foreperson

References

Documents

1. City of Palo Alto Charter, Article VIII, Parks
2. California Government Code, Sections 38440 – 38461
3. City of Palo Alto Municipal Code, Title 22.08.210 – 22.08.212, and 22.08.370
4. City of Palo Alto City Manager Report (CMR) CMR:311:03, Adoption of a Park Improvement Ordinance for Construction of School Use Improvements of Tennis Courts, Paths and Driveways Areas, and Use of Terman Park Athletic Fields and Tennis Courts Associated with the Palo Alto Unified School District (PAUSD) School Re-Opening, June 9, 2003
5. City of Palo Alto Report from City Attorney #030619 sm0053286, 19 June 2003
6. PAUSD School/City Liaison Committee Meeting Minutes, 25 June 2003
7. City of Palo Alto Parks and Recreation Commission Meeting Minutes, 26 Aug. 2003
8. City of Palo Alto Parks and Recreation Commission Meeting Minutes, 13 Nov. 2003
9. Agreement Between the City of Palo Alto and the Palo Alto Unified School District of Santa Clara County Concerning the Maintenance and Capital Improvements of Certain District-Owned Athletic Fields and Tennis and Basketball Courts Jointly Used by School Students and the General Public, 28 June 2003
10. City of Palo Alto CMR:330:04, Recommendation of the Policy and Services Committee Regarding Encroachment by Palo Alto Unified School District Walter Hays School on Rinconada Park, 12 July 2004
11. City of Palo Alto CMR: 506:04, Approval of a Resolution and Adoption of an ordinance Authorizing the Exchange of Land Between The City of Palo Alto Unified School District for the Purpose of Adjusting the Boundary Between Walter Hays School and Rinconada Park, 13 Dec. 2004
12. City of Palo Alto Resolution 8492, 13 Dec. 2004
13. Photographs of Terman Middle School and Park, 23 Sept. 2004
14. Aerial Photographs of Terman Park and Rinconada Park
15. Palo Alto Daily News, 15 Dec. 2004, "City Council Votes For Outright Land Swapping"
16. City of Palo Alto website: <www.city.palo-alto.ca.us> (Last viewed on 27 Jan. 2005)

Interviews

1. Palo Alto City Manager, Manager of Real Property, and Director of Arts, Culture, Human Services, Parks and Golf, Recreation, Open Space and Sciences Division, Personal Interview, 28 Oct. 2004
2. PAUSD Facilities Director and PAUSD Officials, Personal Interview, 10 Jan. 2004
3. Terman Middle School staff, Personal Interview, 10 Jan. 2005

Site Visits

1. Terman Middle School, 23 Sept. 2004 and 10 Jan. 2005
2. Rinconada Park, 10 Nov. 2004