

Preservation of Jointly Operated Playgrounds

Jointly Operated Playgrounds (JOPs) are small neighborhood playground spaces under the joint jurisdiction of the Department of Parks and Recreation (DPR) and the Department of Education (DOE). There are about 260 JOPs in New York City, with a large number on the Upper East Side and in East Harlem. They are irreplaceable neighborhood areas of recreation for children and their parents, as well as for people, young and older, who like to play basketball or handball.

As long as the DPR has co-jurisdiction over these spaces, they have legal protection because they don't have a zoning designation and thus no development rights associated with them. Any change in their zoning status would require City Council approval through ULURP, and alienation of parkland through State legislation, with full compensation in the establishment or investment in comparable parkland. While the city has historically recognized the co-jurisdiction of the DPR and the DOE over these small parks, the current city administration has shifted its position in regard to the proposed 700-foot tall AvalonBay development on the north side of East 96th Street between 1st and 2nd Avenues. This block has a heavily utilized JOP named the Marx Brothers Park. All of its signage points to the DPR as the city agency that has effective jurisdiction.

Because the city's new position is that the DPR does not have co-jurisdiction and is merely managing this park for the DOE, and that the DOE and the Education Construction Fund have sole jurisdiction, the city claims it may assign a zoning designation, with its air rights, to this JOP. It has done exactly that, and transferred those extremely valuable air rights to AvalonBay with the proviso that the developer finance the renovation of two schools. While the plan for this massive development would retain some open space in a new location, that space has no comparable legally protected status, and doubtful neighborhood use value. Although the city did seek alienation through State legislation before it changed its legal position, it has not provided compensatory and legally protected parkland that State legislation requires. The result is that the community will lose its protected parkland. Communities with JOPs should not have to choose between parks and schools, and the city should not finance school renovation through loss of JOPs.

Last year, Carnegie Hill Neighbors, Friends of the Upper East Side, and the Municipal Arts Society initiated legal action in State Court challenging the city's position regarding the legal status of the Marx Brothers Park. CIVITAS joined this legal action in January, 2018. It is a costly effort. At this stage of the proceeding, all legal papers, including a powerful affidavit by former Parks Commissioner Adrien Benepe, have been filed. Last July, the trial judge set a date for oral argument in early December, but has just postponed that date until February 7 in recognition of the importance of this case.

On the policy front, the City Council's Parks Committee held a hearing in November concerning the status of JOPs. CIVITAS presented a statement, as did our litigation partners, along with the Trust for Public Land, and New Yorkers For Parks. That Committee was surprised to learn of the change in the city's position, and may be open to considering Council legislation to assure protection of JOPs. CIVITAS plans to work with our civic partners to launch a campaign that would bring public attention to this problem, and to build a coalition supportive of JOPs protection. CIVITAS would like to hire an intern to map and photograph these spaces with a view to producing a report with graphics that describes the immense neighborhood value of these JOPs.

To date, CIVITAS has raised over \$32,000 in extra contributions to a special account to support this important litigation. Whether the state court judge's decision is favorable or not, the litigation may continue. Contributions to this special fund would be welcome for this purpose, as well as for building community support.

● Jointly Operated Playgrounds



Source: Municipal Art Society