



class size matters

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January 24, 2007

The Honorable Michael R. Bloomberg
City Hall
New York, NY 10007

Cc: City Comptroller William Thompson, Manhattan Borough President Scott Stringer, City Council Speaker Christine Quinn, City Council Members Melissa Mark-Viverito, Helen Foster, Robert Jackson and John Liu, Deputy Mayor Edward Skyler, Parks Commissioner Adrian Benepe, and Attorney General Andrew Cuomo.

Re: Randall's Island Fields Proposal

Dear Mayor Bloomberg:

The Parks Department has proposed entering into a no-bid contract with the Randall's Island Sports Foundation, which in turn would grant a consortium of 20 private schools exclusive access to 66% of the newly constructed and refurbished fields on the Island during after school hours for the next twenty years.

In return, these schools would pay \$2.62 million per year, that will cover part of the costs of this project. We ask you to abandon this unprecedented and ill-conceived plan to essentially privatize public land.

Instead, you and City Council should allocate sufficient public funds to construct and maintain athletic fields to meet the needs of all citizens without resorting to their access being sold to private entities.

Our opposition is further based on the following objections:

- The proposed payments by the private schools would amount to less than half of the cost of these fields. Moreover, the City Council has already appropriated \$76 million for this project. With a budget city surplus last year of almost \$5 billion, and another billion dollar surplus expected this year, there is no need for taking such a drastic step that would effectively exclude public schoolchildren from having equitable access to these fields.

- The process that would grant this no-bid contract violates mandated local and governmental review of major concessions, as outlined in regulations adopted by City Planning as well as the City Charter.
- There are troubling conflicts of interest between the Randall's Island Sports Foundation and the Parks Department, as pointed out by an audit of the State Comptroller's office in 2002 and again in 2004. These reports called into question the propriety of any contract entered into between these parties, given the overlapping governance and finances of these two organizations. There are also potential conflicts between the Foundation and the private schools that will be granted priority access to these fields.
- The creation of a separate and unequal permitting process, whereby certain private schools are invited to buy access through a long term contract places our public school children -- especially middle and high school athletes -- at an unfair disadvantage. More than one million children currently attend city public schools; many of whom desperately need greater access to after school sports and the fields that would make this possible. Their opportunities to do so should not be curtailed.
- The current situation whereby your Administration seeks to alienate parkland unilaterally through its control of the Franchise and Concessions Review Committee is contrary to the historic and legal rights of the public to have access to public lands.

Below we present detailed arguments in support of our objections, as well as our remedies to the current situation.

I. Background

On November 3rd, over 55 people responded to the call of City Council Parks Chair Helen Foster to testify on the proposed no-bid contract to renovate and expand the fields on Randall's Island.

The City originally proposed granting twenty private schools a concession for exclusive use of 50 fields – about 80% of the fields on the island -- during prime after school hours for 30 years, roughly three fields per school. In return, each school would pay about \$143,000 annually.¹ Subsequently, this proposal was amended to account for about 66% of the fields on the island for 20 years.

No public schools, parochial schools or private schools outside of the twenty chosen by the Randall's Island Sports Foundation would be able to participate. This concession has received sharp criticism from a variety of sources, including public school parents, community residents, Manhattan Borough President Stringer, the City Comptroller and others. (For a comprehensive survey of news accounts, public testimony and history of the controversy, see East Harlem Preservation's website.)²

Contrary to what has been written in the press and elsewhere, the private school payments amount to less than half of the cost of this project. The present value of the annual payments by the private schools is only \$33.2 million, while these fields are projected to cost between \$70 and \$ 80 million. Moreover, there is the considerable cost of maintaining them, which the city is expected to cover.

Finally, in the FY 07 budget, the City Council already appropriated \$76 million to be spent on the Park Department's plan for Randall's Island. The RFP and bid request for this project have already been submitted by the city's Economic Development Corporation. With a city budget surplus of \$5 billion in FY '07, and an expected surplus in FY '08 of over \$1 billion, there is no need for the limited amount of the funds that the private schools will offer in exchange for their exclusive use of these fields during prime hours.

II. The process to grant this major concession requires local governmental review

The Randall's Island field concession will remove from the public the most valuable access to what is currently public parkland. ***There is no precedent in the history of the City to give exclusive, long-term access to such large portions of public land to the members of a private entity.***

Most disturbing is how this concession would be granted without the consent or review of local residents, the local Community Board, Community Education Council, City Council Member, or anyone other than the four Mayoral appointees on the Franchise and Concessions Review Committee (FCRC), for a period that will last for many years past your time in office.

The problem with the FCRC is not, as your administration has claimed, that its procedures are too onerous. On the contrary, the FCRC has only weak safeguards against abuse and these are now being exploited to advance an aggressive program of privatization of public assets.

A review of the City Charter and other City procedures makes it clear that these fields should be considered a "major concession" and thus required to follow the Uniform Land Use Review Process:

- The proposed contract between the City, Randall's Island Sports Foundation and 20 private schools for the fields is a concession. That point was established by the City's attorneys and is accepted by all parties. Section 362 of the City Charter reads: *"Concession: shall mean grant by an agency for the private use of city-owned property for which the city receives compensation other than in the form of a fee to cover administrative costs..."*³
- The Charter, under section 374, requires "major concessions" to be subject to the Uniform Land Use Review Procedure (ULURP) per section 197-c and 197-d, but leaves it up to City Planning to define what constitutes a major concession.
- The City Planning Department has issued formal rules for what constitutes a major concession under rule 7-02 g: *"an open use which occupies over 30,000 square feet of a separate parcel of parkland."*⁴ The total area of the fields under question in this instance exceeds 2 million square feet – almost 100 times as large.
- There is an exclusion from ULURP for athletic facilities under rule 7-03 (b) but only if they *"would be available to the general public on a non-discriminatory basis"*. Clearly, this is not the case with the Randall's Island proposal, as the general public would be explicitly excluded from using most of these fields during after school hours.

- There is also a permitted exclusion in 7-03 for a land use that “continues a currently existing use”. But this section does not apply because of the amount of additional land being converted to fields exceeds the legal threshold. Under section 7-03 (d): the exclusion may not apply if the concession will “*include modifications which when added to the existing concession, cause any threshold of Section 7-02 to be exceeded*”.
- Under ULURP, the local Community Board and Borough President are required to review any major concession prior to consideration by the City Planning Commission. The City Council could also elect to vote on whether the concession should be approved. None of this has occurred in this case.

By not classifying the Randall’s Island fields contract as a major concession as indicated by the rules adopted by City Planning, the Parks Department is improperly evading the public review process required by the Charter and usurping the rights explicitly given to the local Community Board and City Council. Even the most recent proposal, which calls for reviews of the concession every five years by the Parks Department, offers no avenue for local input from parents, Community Education Councils, Community Boards or any other interested parties.

III) The Randall’s Island Sports Foundation is exerting undue influence on the granting of the concession, especially when conflict of interest concerns are considered.

Due to the failure of the City to properly fund the development and maintenance of Randall’s Island, the RISF has taken an expanded role in the administration of the island in recent years. This expanded role has led to several problems, including potential conflict of interests, reduction in transparency, and the usurpation of the rights of the branches of government and the public itself.

Consider the facts pertaining to the conflict of interest situation surfacing now as a result of the Randall’s Island field contract:

- The Executive Director of the Randall’s Island Parks Foundation also holds the position of Randall’s and Wards Island Administrator in the Department of Parks and Recreation, and receives separate stipends from both the city and the foundation.
- An audit by the office of the State Comptroller in 2002⁵ and again in a follow-up report in 2003 criticized this arrangement. ⁶ The auditors pointed out that were conflicts of interest inherent in such a relationship, especially if there were ever going to be a contractual relationship between Parks and the RISF, just as has occurred in this case: “***Such an action could be viewed as questionable given the dual roles, which are as a Park administrator, and also as an employee of Randall’s Island.***”
- Nevertheless, despite the audit’s recommendations, the Parks Department refused to separate its governance and finances from the RISF. Indeed, the fact that the Parks Commissioner sits on the board of the RISF, and that all the staff of the Foundation have offices and emails identifying themselves as Parks Department employees makes the potential for conflicts of interest in this no-bid contract between the Parks Department and the RISF particularly acute.

- For its proposed sub-contract, the RISF assembled the set of twenty elite private schools and negotiated the price to be paid for their priority access. Parks spokesman Warner Johnston was clear on the role of RISF: “They are the ones who are entering into negotiation with the private schools, they have the relationship with those private schools, and they are taking the lead on putting together this agreement.”⁷
- No competitive bidding or request for proposal process was employed despite City Charter requirements that “the FCRC adopt rules establishing procedures for granting concessions through public bidding or by other means designed to ensure a competitive and fair process.”
- No other private, parochial or public schools were approached about participating, despite the fact that other schools may be capable of funding their contribution to the concession through use of discretionary funds, PTA funds or corporate sponsorship.
- Despite the fact that sources at the Parks Department and the RISF claim that no public schools were interested, we have received numerous messages in recent weeks from public school staff, coaches, students, and parents who report that indeed they would be interested in participating, and that their sports programs are currently hampered because of a lack of adequate fields. The Community Education Council from District 4 passed a resolution against the contract, pointing out that there are only eight ball fields now being shared among the 58 public schools located in East Harlem.
- According to Richard J. Davis, Chair of the board of the RISF, no other sources of funding for the athletic fields were pursued. While a capital fundraising drive was considered, asking the private schools for funding was deemed to be the “easiest” approach.
- The RISF’s desire to provide the best access to private schools has no rational basis. While the RISF has refused to provide information on the extent to which their trustees have connections with private schools, a cursory review reveals that a number of them are parents at the particular schools that will benefit from the proposed contract – which points out the potential for conflict of interest in this aspect of the contract as well.

The implication of these facts is clear: the Parks Department administrator who answers to the Board of Trustees of the RISF would be expected to favor that organization and its board in any negotiation. The RISF, whose board has ties to private schools, also suffers from potential conflicts of interest when negotiating with private schools on behalf of the City. The Parks Department, by turning over negotiations to the RISF, has removed due process and protections of the public interest from the granting of this concession. No wonder the private schools are near to securing a concession for twenty years preferential access to Randall’s Island fields at advantageous terms – amounting to less than one dollar per day per student, on average.

The proposed no-bid contract as it is written neither maximizes revenue to the city nor ensures equitable access to these fields by the members of the public. Thus, it is difficult if not impossible to see how such an arrangement should be approved by any rational governmental process.

Conservancies can provide a valuable service to the public but they have no status whatsoever under the City Charter. No matter what role is ceded to these organizations by their partners in government, their existence in no way absolves the Parks Department of its obligation to “obtain competitive bids” and follow the other points of due process as required by the City Charter.

The creation of this new path, whereby certain private schools are invited by RISF to contract for permits on a long-term basis, creates a separate and unequal system. There is no basis to categorically exclude public schools from this new method for obtaining permits, especially given the fact that many schools already have funding for after school sports and transportation, but lack the fields that would make these programs fully successful. Especially given the prospect of our schools will likely receive up to \$5 billion in additional funds in coming years as a result of the Campaign for Fiscal Equity case, to essentially lock out public schools for the next twenty years is unwise and contrary to good public policy.

Even more importantly, the current situation whereby your Administration seeks to alienate public parkland unilaterally is contrary to very basic tenets of our democracy. The no-bid contract allowing a private "Aquatic Entertainment Complex" to be built on 26 acres of Randall's Island through the FCRC process is another egregious instance of abuse.

What the City Council hearing on the Randall's Island proposal made clear is that this proposal is only the most extreme example of a larger problem that has had no forum. At the hearings, testimony was presented on similar alienation/privatization schemes pertaining to Washington Square Park, Union Square Park, and the Brooklyn Bridge Park.

IV. Recommendations

With regard to the proposed Randall's Island contract, we believe the following measures should be taken:

- \$76 million in capital funds for the renovation and expansion of these fields has already been approved by the City Council. The city should move forward with the plans to renovate and create new fields on the island with these funds. The proposed contract with the private schools should be immediately abandoned, and there should be discussions as to how to improve public transportation to the Island, so that public school children and other city residents may achieve better access to these fields.
- Public schools, parochial schools and community groups should be ensured equitable rights to these fields. A concerted survey of public schools to determine what their need for athletic fields should be undertaken. If some of our schools suffer financial impediments in terms of transportation, equipment, or staffing, then the Department of Education along with the City Council should address this in their CFE funding plan.
- In the future, if any concession is granted, it should be competitively bid via the request for proposal process or open bidding as required by the City Charter. All entities should be invited to compete for the concession.
- If any concession is large enough to be defined as “major” by the regulations, as was the case with the one proposed, the ULURP process should be initiated.

- Until the RISF disentangles itself in terms of finances and governance from the Parks Department, it should be excluded from participating in any further contracts, including administering or soliciting proposals, putting the concession to bid or negotiating the final contract.
- If private schools are to receive any concession, then contractual language must not indemnify them from litigation. Given the civil right implications of creating two separate but unequal paths for granting access to athletic fields, the risk of litigation is high. The City must not be obligated to defend the private schools if private citizens or another branch of government should sue them as part of an effort to modify or reverse the granting of the concession.

As the Randall's Island fields proposal is just one of series of controversial privatization schemes, we also put forward the following recommendations regarding the future granting of concessions and franchises:

- Rather than weaken the procedure for public review by the FCRC, as your Administration has proposed, it should be strengthened. Under the City Charter, the procedures for granting franchises are considerably more rigorous and specific than for granting concessions. Procedures should be modified to make concessions subject to a similarly comprehensive process.
- The latitude that has at times been abused to allow a city agency to decide for itself what constitutes a major concession should be clearly addressed. The City Charter should be modified so that the City Planning Department must rule on this issue.
- All major concessions involving privatization of public land in any form should have to be reviewed and approved by the City Council, as well as the State Legislature.
- The City Council should enhance the transparency of the entire FCRC process, including making sufficient periods of review and public comment a matter of law.
- City and State law should be clarified to make explicit that alienation includes the de facto removal of land from public access.
- Conservancies and foundations should be barred from any involvement in the administration of the competitive bidding process for franchises and concessions.
- Parks Conservancies should conduct their affairs at an arms-length from city agencies. The salaries of Conservancy employees should be entirely paid for by the private organization and not by the city – and they should have their offices in separate locations.
- The structure and board membership of Conservancies should be re-evaluated to ensure that they represent the interests of the public at large to the greatest extent possible—and that all the constituencies that need and deserve equitable access to public land and our city parks are represented in full. Otherwise, their charitable mission and activities may rightly be called into question.

We ask that you reconsider this ill-advised and unilateral proposal, by imagining how you would feel if you were a public school parent whose child – and even grandchild – might be excluded from a public park because a group of private schools had been better able to pay for their access. This contract violates all standards of fairness, inclusiveness and transparency; and should immediately be withdrawn.

Sincerely,

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Patrick J. Sullivan
District 2 Chair, Class Size Matters

David Bloomfield,
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¹ Patrick Arden, NY Metro, October 11, 2006,

(http://ny.metro.us/metro/local/article/City_has_park_plan_for_private_schools/5042.html)

² East Harlem Preservation, <http://www.eastharlempreservation.com>

³ New York City Charter (<http://www.nyc.gov/html/charter/downloads/pdf/citycharter2004.pdf>)

⁴ "Rules of the Granting of Major Concessions", NYC Department of City Planning

(<http://www.nyc.gov/html/dcp/html/luproc/conrule.shtml>)

⁵ "Oversight of Public-Private Partnerships", Office of NY State Comptrollers, June 12, 2002;

(<http://nysosc3.osc.state.ny.us/audits/allaudits/093002/00n16.pdf>)

⁶ "Letter from Frank Houston, Audit Director, Office of NY State Comptroller, April 26, 2004

(<http://www.osc.state.ny.us/audits/allaudits/093004/03f55.pdf>)

⁷ Patrick Arden, NY Metro Nov 3rd, 2006,

(http://ny.metro.us/metro/local/article/Randalls_plan_on_hold/5530.html)