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SUBJECT: Park Land Dedication Status of Green Water Treatment Plant Land (and its intake structures) Site

TO: Council Member George Humphrey
Barney L. Knight, Acting City Manager

FROM: Diana L. Granger, Acting Deputy City Attorney

DATE: March 7, 1989

ISSUE

You requested a legal opinion regarding the status of the Green Water Treatment Plant (and its intake structures) site, specifically, whether that site is dedicated park land.

BRIEF RESPONSE

Ordinance No. 850502-U dedicated the "intake structures" located south of West First Street as park land upon the cessation or termination of the present use of the structures; however, the Green Water Treatment Plant (located north of West First Street) was not dedicated as park land under that or any succeeding ordinance (to date). If the Green Water Treatment Plant is dedicated as park land by the City Council in the future, the Water and Wastewater Utility will have to be compensated for the property because it was acquired with Water and Wastewater Utility funds and is currently listed under the Water and Wastewater Utility's property inventory.

DISCUSSION

The City of Austin originally acquired the Green Water Treatment Plant site with Water and Wastewater funds around 1925 and 1926. Those deeds do not designate/dedicate any of the property as park land. Since around 1923, this site has been utilized for the Green Water Treatment Plant and the site is currently included in the property inventory of the Water and Wastewater Utility.

By Ordinance No. 850502-U, the City Council ordained that certain tracts of land would "immediately become park land upon the termination or cessation of their existing uses." One of the tracts is the "Green Water Plant and/or the Seaholm Power Plant water intake structures south of West First Street." (emphasis mine)

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This description, taken together with the surveyor's description of this property in Exhibit "B" to the Ordinance, clearly reflect that the dedicated park land designation applies only to the property on which the intake structures are located. (A copy of the field notes is attached for your information.)

Ordinance No. 890126-P, which adopted the Town Lake Comprehensive Plan, sets out the use regulations for certain areas within the Town Lake Corridor. Section 13-2-228.1(a) defines "Cultural Park" to mean "dedicated park land in Town Lake Park planned for the location of cultural facilities (such as museums, botanical gardens, and performance areas." One of the areas classified as Cultural Parks is the "Seaholm Power Plant and the Green Water Treatment Plant (and its intake structures), when the current use of the respective plants ceases, and when dedicated as park land."

As discussed above, only the intake structures (which are located south of the plants) for the Green Water Treatment Plant "automatically" become dedicated park land when the use of the intake structures as such ceases. The sites of the Seaholm Power Plant and the Green water Treatment Plant (excluding the intake structures) could be dedicated as park land by the City Council, if, and when, the City Council deems to so act. If such a park land dedication is effected at some point in the future, then these sites would automatically be classified as "Cultural Park" area, under the definition and terms of Ordinance No. 890126-P. This ordinance is intended to include land already dedicated as park land as well as "land dedicated for park purposes after the effective date of this ordinance." (emphasis mine)

If it was the City Council's intent to dedicate the Seaholm Power Plant site and/or the Green Water Treatment Plant site (exclusive of the intake structures) as park land through Ordinance No. 850502-U, the language of the ordinance did not accomplish that goal. The City Council can amend the ordinance to establish either plant site proper as dedicated park land, at such time as the existing use(s) cease or terminate, if the City Council wishes to immediately designate the future park land use of either site. Otherwise, the future uses of the sites (whether or not as park land) can be determined at a later date by this or a succeeding City Council.

If one assumes that the Green Water Treatment Plant site will at some point in the future be dedicated as park land, the uses which are permitted for Cultural Parks' areas, which includes "the location of cultural facilities (such as museums, botanical gardens, and performance areas)," could be construed to include a Civic Center Project (which would allow for civic cultural functions to be held on the site). The list of examples for "cultural facilities" within Ordinance No. 890126-P does not appear to be a delimitation of the types of facilities which can be constructed in a Cultural Park area. However, the City Council, guided by the Boards and Commissions which provided input for Ordinance No. 890126-P, is in a better position to make such a determination.

Austin, Texas City Attorney Opinions

If the City Council makes a decision to utilize the Green Water Treatment Plant site for a purpose unrelated to the Water and Wastewater Utility's functions, the Water and Wastewater Utility fund must be compensated for the value of that property by the General Fund if the property becomes a "General Fund" property whose revenues are to be attributed to the General Revenue Fund.