

## OBAMA CENTER AND HISTORICAL AND ENVIRONMENTAL REVIEWS UPDATES

JPAC main pages on the matters, with links:

[http://www.hydepark.org/parks/jpac/Newsletters/Obama\\_Center\\_Reviews\\_Updates.pdf](http://www.hydepark.org/parks/jpac/Newsletters/Obama_Center_Reviews_Updates.pdf) **(this page)**

<http://www.hydepark.org/parks/jpac/ObamaPLibrary.pdf> THIS HAS THE OUTSIDE LINKS INCL. ADV. GROUPS.

[http://www.hydepark.org/parks/jpac/Section\\_106\\_OPCMobilityHistoricReview\\_2017.htm](http://www.hydepark.org/parks/jpac/Section_106_OPCMobilityHistoricReview_2017.htm)

For Federal reviews <https://tinyurl.com/JPIImprovements-> will include recreation and more reviews soon.

See also <https://go.obama.org/>

**Modified 2-28-2019** GMO. This page is periodically updated online. NEPA start and links to comment p.5, terms of proposed/passed **Ordinance** of agreement and link to city release p.6-9, 11+. Lawsuit throughout. How does public trust apply?, 2015 RFP bids posted-- p 9+.

**February 2019 rulings are on p. 14.**

**September 17. NEPA Environmental Review of proposed Jackson Park changes public information meeting.** This introductory session at South Shore Cultural Center featured a short video on the NEPA and Section 06 reviews and an opportunity to talk with US Park Service, Highway Administration and others and to file comment cards. **There will be a 30-day comment period and a public hearing in fall 2018.**

**Assessment will be made in late 2018 or early 2019. Dates were not given. The 106 Assessment is being prepared and will be distributed. The website and comment link for both is**

<https://tinyurl.com/JPIImprovements>. (Recreation comments will open in a few weeks). Recipients of emailed comments are Morgan Elmer of the National Parks Service ([morgan.elmer@nps.gov](mailto:morgan.elmer@nps.gov)) and Abby Monroe of the city ([abby.monroe@cityofchicago.org](mailto:abby.monroe@cityofchicago.org).)

Considerations (Potential impacts and remediations) being covered (as applicable) in the NEPA review are Social and economic issues, cultural resources, recreation, special lands, traffic congestion, environmental justice, air quality, needs analysis, natural resources, water quality and resources, ground water resources, flood plains, wetlands, and tribal interest. The assessment will **not** determine whether, for example, roads may be closed. The baseline for evaluation is the current status, while that of the Section 106 review is effects with proposed changes.

**Maps did show a National Parks Service recommendation that OPC recreational space (and because a ball field is to be displaced in Jackson Park) (because this park on the National Register that received federal funds in the 1980s must replace there or elsewhere any recreational space that is eliminated) be placed at the east end of the Midway- this can be passive.** The Park District and CDOT said at the spring 106 meeting that would not be the location if the community/advisory council does not want it—MPAC passed a resolution opposing this so this matter needs to be clarified.

**FOR MORE SEPTEMBER 2018 UPDATES SKIP TO SEPTEMBER 2018 UPDATES starting on page 5.**

### AUGUST 2018

OBAMA CENTER. The Section 106 and other reviews of historic and environmental effects and impacts of proposed changes, and any ameliorations/mitigations that will be required in a Memorandum of Agreement for the OPC to proceed, and for the road changes to proceed, will not be completed until early next year. The final Historic Properties Inventory is still scheduled to be released this summer. Next up in late summer/early fall is a meeting (“3<sup>rd</sup>”) that includes a report on “impacts” and on preferred alternatives for lost recreational land/fields. This fall will see: the “4<sup>th</sup>” Section 106 historic properties Consulting Parties meeting (JPAC is included), the final Memorandum on that, and the environmental (NEPA) finding that will be subject of a public meeting in late 2018. The final federal finding is due in early 2019. There are varying views about how the review process should go, and the assumptions under which it operates, and involved is lots of material, staff time, thought, and likely negotiation, not to mention the volumes of comments and testimony to be sorted. Conclusions and reaction to some or all--will likely be, or viewed as subjective.

Meanwhile: (1) The city is preparing a complete, updated lease contract/ ordinance specifying the site and 2 terms of use for OPC operation--this should go before City Council at the end of summer or early fall and is expected to factor into the lawsuit re: siting and use of park land for the OPC. (2) In response to the review and other delays, the official groundbreaking and start are now pushed back by the OPC to some time in 2019. Michael Strautmanis of the Foundation is quoted in the Tribune that they “knew there were some things that were not in our control. We insist on going through the process with integrity and without rushing.” They have pledged that no tree removal or work on their intended 19.3 acre site (which is north of 62<sup>nd</sup> St.) will happen until all reviews and approvals are received.

The timelines of the city’s final ordinance and the Protect Our Parks lawsuit vs. City of Chicago and Chicago Park District before U.S. District Judge John Blakey

- January 2015 City Council passed an ordinance allowing the city to enter into agreement to transfer a parcel in Jackson Park for subsequent transfer. It was not specific, for example not authorizing an agreement with a user or of course what such terms could be. Also, much including the proposed footprint changed afterwards. The state also passed an enabling amendment to the parks law.
- May 2018 a lawsuit was filed by Protect Our Parks organization.
- May 17 the Chicago Plan Commission heard and approved the OPC, road changes, a replacement track and more but did not include the specifics mentioned above.  
May 22 the Zoning Committee, and May 23 City Council approved the same as the Plan Commission, the new turf track, road changes and more including preliminary (“Local Partner” declaration of what it wants to do was, inter alia, said needed for the federal reviews continuing although, but, one speculates, not necessarily to their conclusion.
- In May, the judge set a status hearing for the lawsuit for July.  
City and park district filed requests stating grounds (May 30 and later) for extension to file (Rule 12(b) motions to dismiss. June 4, without dissent from the plaintiffs, the judge set July 9 for defendants filing and July 30 to file responses to motions to dismiss, August 6 for plaintiffs to respond and August 9 for a motion hearing.
- July 28 the defendants asked to push back this schedule until a complete ordinance is passed-- “after an ordinance governing significant aspects of the Obama Presidential Center’s Operation in Jackson Park is introduced to the City Council and the City Council chooses to enact it. The ordinance would provide the necessary legislative authorization for the City to enter into an agreement with the Foundation addressing how the foundation will be permitted to use the site, and would also approve the terms of the agreement, which would be attached and included into the ordinance.” They argued in effect that the lawsuit cannot be resolved until and unless there is an action- a law implementing what the lawsuit seeks to stop and that no damage will be done to the plaintiffs because no work can proceed on the site until after the ordinance and an agreement with the OP Foundation is in effect. (A complication is that work in the new track site the site would start before that redefinition of site is officially made—work has since started, see below.) July 9 the court granted defendants’ motion to strike August 9 hearing and set the status hearing (including for case management dates) as August 28, 9:45 a.m. at the Dirksen Courthouse, 219 S. Dearborn, room 1203. Dates of course may change.
- August 14 – hearing on plaintiffs’ motion to delay or stop work and construction on the track site and move up hearings. (See outcome in next section on the Track and Field- holds/stays on trial and on track and field construction were lifted.)  
The plaintiffs late filed for Correction of the Record regarding justification for work proceeding on the replacement track—this is presumably one of the subjects of the September 20 hearing.
- Status check schedule was set date for hearing (after the city has passed an ordinance, according to the judge), next full hearing date including on each party’s motion for summary dismissal, is October 24.

- However, a court hearing was held **September 20, 9:45 a.m.** Dirksen Courthouse, 219 S. Dearborn, room 1203. **The same day, the two ordinances (see below in SEPTEMBER 2018 UPDATES) were presented by Mayor Emanuel in city council for presumed vote October 31. Judge Blakey ruled that the next hearing will be October 24,** presumably before ordinances are passed. He said he was disappointed the city maintained that there is not a connection between need for the new field and **3** land of the present needed for the Obama Center. However, the city pointed to the worn and inadequate condition of the present field that will have to be replaced in any case, the sooner the better. The stay on work continues at least until the October 24 hearing and discovery can continue.

**Meanwhile the city and park district ceased work on the track after meeting with the federal reviewers and the alderman and also put into the proposed ordinances on Obama Center site, lease and operation agreement and on the road closures a pledge to do no more site work until the federal review are completed.**

**Track and Field south of 62<sup>nd</sup> St. and UPARR replacement designation for recreational space.**

**(10/12) NOTE ON UPARR and proposes move of designated recreation parcel likely to the Midway.**

The change needed according to the National Park Service is **recreational space in the OPC site—which is “passive use”, not any lost “baseball field.” Therefore the move of designated space from Jackson Park** (almost all of which is designated UPARR recreational space because the park got federal funds under the then federal UPARR program) would be for **passive use- it must be a space of comparable significance and quality—JP and the Midway are part of a common National Register designation** (and may become part of Boulevard System National Register landmark nominated designation working its way up). The site must be upgraded to standards such as drainage, but need not be more than passive recreation because the OPC space is such. **But such designation would give another layer of protection and triggering and a possibility of funds for site upgrades including realizations of the Midway Framework Plan.** The city, PD, and NPS are holding stakeholder meetings and will begin a public process when the NPS designation is expected, possibly by the end of October—this process asks what the surrounding communities want, and **four possibilities are being suggested for the site between Stony Island (next to JP) and the railroad**—passive (as now, maybe including temporary informal soccer fields), children’s nature play space, intensive and innovative ADA and beyond playground, and active sports fields. The groups that have looked at is so far including a public meeting for the Midway PAC, have preferred the passive or the children’s play or both (perhaps with celebration of the Women’s Bench and square and something at the train station to celebrate the many roles of this railroad. There was no interest in having the intensive play space or active fields. **For Jackson Park, fields for the present have been assigned, the park district intends to build at least one new ball field by Hayes,** and various proposals are in process for more remote parkland with ball field in Woodlawn, but this would aside from the UPARR replacement because not serving adjacent community and park community and not a comparable- quality existing parkland.

**The JP track and space and replacement. (written in September).** Work was started the 4<sup>th</sup> weekend of July on a new, updated artificial track and field on the northeast corner of 63<sup>rd</sup> and Stony Island. Arrangements have been made with the sports teams that had been using the ball fields on that site—they’ve been using these all summer. The replacement track and field (but not the displaced ball fields) will be paid for by the Obama Foundation. The present track and field is presently in the OPC proposed site. The new site is proposed by the city to be not part of that site (see above). Plans were in motion (and are hard to stop without penalties and higher costs et al) before the review and approval processes were set back, so that summer break could be used to get a new track in place by fall for the teams and public to use without disruption. That exact and tight timetable had long been public. After the track and field work began and trees cut down, the plaintiffs to the lawsuit filed to stop the work and the judge granted a stay on work. Note that denies into next year to the sports teams and public their much improved field vs. worn obsolete (and those familiar with it **4**

dangerous) present field and left a very visible part of the park messy and fenced.

The judge on August 14 did not grant plaintiff's motion but did not lift the temporary hold on construction and said he would see the parties back after the city passed the OPC ordinance and lease agreement and lifted hold on suit-- the parties can move forward with discovery, subpoenas, et al including how Jackson Park became the site for OPC, for the larger lawsuit. Not addressed were arguments that damage was done by trees removal (said to be 40, of which 11 were dead or dying and numerous Norway maples) and possible damage to historic remains or their becoming less accessible (note- the track is mostly above ground and historic inventory so far indicates what's underground does not have historic value sufficient of excavation). Statement in letter to the Sun-Times by CPD Director of Planning and Construction August 16 2018.

The Chicago Sun-Times editorial's assertion that the Chicago Park District jumped the starter's pistol in Jackson Park disregards the public process leading to the construction of the new track and field. The Chicago Park District held numerous public hearings over the past year to gather community input and roll out plans to relocate the Jackson Park track and field. In fact, the District held nine public meetings as part of the South Lakefront Planning Process during which the project was discussed. The Park District also attended additional meetings organized by community stakeholders to keep residents informed of the projects timeline.

During these meetings, representative restated plans to complete the track and field in time to accommodate the local schools' fall sports schedules. At no time did the Park District representatives indicate the project would be delayed, as evidenced by the Lakefront Protection application filed in January approved in May, giving the district authority to proceed. Prior to filing the application, the district also mailed notices to all property owners within 500 feet of the site.

As recently as April 11, Park District representatives presented information about the Jackson Park track and field, including a schedule to start construction this summer. Plans for the project were heard and approved by the Chicago Plan Commission and documents relating to the track and field, including a tree removal diagram were posted on the City's website in May. Contrary to the Sun-times accusations, the Chicago Park District is not violating any federal processes, as this is a local project and is not subject to federal review.

Despite the Editorial Board's criticism, this process is neither premature nor bad form. The Chicago Park District operated transparently and in a manner that demonstrates responsibility and respect for the community being served.

More about the track and to think about: First, this is an opportunity to get a renewed and larger, better, safer multi-sport field. It may not be completely ideal because the field will be wider and accommodate more sports and amenities but the site is a bit narrower creating a squeeze on layout partly to save trees around the perimeter (excepting numerous dead and dying ashes such as along Stony Island). Some replacement and new trees are in the drawings, but numerous trees in the center are lost. We should insist at the least that net lost trees be replaced promptly within the park. A possible ball field east of Cornell Drive has not been resolved yet. Another ball field needs to find a replacement site outside of Jackson Park, according to a federal review finding from the Urban Parks/National Parks Service. That will doubtless be part of the quest to assemble new parkland in Woodlawn that could also make up some acreage or green space lost to the OPC in Jackson Park. (But see in Sept. Updates that this seems to be excluded, at least in the agreement with the OPC.) Midway PAC has resolved that it does not want a ball field on the Midway. See "law professor weighs public trust" p 9>

**In other news, the Foundation** and the hired Lakeside Alliance general contractor and the hiring and training consultant firm and newly hired monitor are taking first steps in recruiting, training and developing a subcontracting and career workforce team that meet the promised high local and minority standards. Lakefront Alliance is now sited at Black United Fund of Illinois, 1750 E. 71<sup>st</sup> St. <http://www.lakesidealliance.com>. And, as reported in its just released Annual Report, the Foundation has started and participated in community, antiviolence, and civic leadership training initiatives and issued a broad commitment of promises document. **5**

Nevertheless a coalition seeks a community benefits agreement enforced by city ordinance that includes 30 percent affordable/low income set aside in new housing, a tax freeze, rent increase regulation, independent monitoring of jobs for OPC and other development, support for schools, a community investment fund, and means of addressing forces and practices, and lack of services, hurting communities.

**SEPTEMBER 2018 UPDATES** (The Foundation issues regular updates.) President Obama visited the Foundation offices to reassure community stakeholders and donors and to deal with matters below.

In late August –early September the city and park district, in concert with Alderman Hairston, engaged in meetings with federal review agencies including on September 11. In light of concerns of the agencies, in conjunction with CDOT denial of permit to proceed, and doubtless other, strategic reasons including a filing by the lawsuit plaintiffs for a Correction to Record on the track replacement work, the city and park district agreed to halt work on the site including the new track site, and place in the proposed ordinance that work would not proceed until after the federal reviews.

This does leave the teams and youth deprived of an improved track and field and ball fields (although teams are using other ball fields) for an indefinite time and with the site untidy including about 40 trees removed (11 having been dead). It might have been better in hindsight to have left the replacement track site alone for the present.

In October the Foundation introduced more community initiatives and Michelle Obama launched the Global Girls Alliance.

**September 17**, the stay on work was announced, along with the reaching of agreement with the Foundation on terms of the Ordinance and intent to file the Ordinance on Obama Center site, use, and lease and Ordinance on the road closures in City Council September 20. (See below.)

September 20 was also set for the next hearing on the lawsuit.

**September 17** the NEPA review introductory meeting was held at South Shore Cultural Center with over 125 in attendance. This featured a short video on the NEPA and Section 06 reviews and an opportunity to talk with US Park Service, Highway Administration and others and to file comment cards. **There will be a 30-day comment period and a public hearing after UPARR clarifies the replacement designation--in fall 2018.? Assessment will be made in late 2018 or early 2019. Dates were not given. The 106 Assessment is being prepared and will be distributed. The website and comment link for both is <https://tinyurl.com/JPIimprovements>. Recipients of emailed comments are Morgan Elmer of the National Parks Service ([morgan.elmer@nps.gov](mailto:morgan.elmer@nps.gov)) and Abby Monroe of the city ([abby.monroe@cityofchicago.org](mailto:abby.monroe@cityofchicago.org).)**

Considerations (Potential impacts and remediations) being covered (as applicable) in the NEPA review are Social and economic issues, cultural resources, recreation, special lands, traffic congestion, environmental justice, air quality, needs analysis, natural resources, water quality and resources, ground water resources, flood plains, wetlands, and tribal interest. The baseline for review is current state vs. 106 baseline of effects of changes. The assessment will **not** determine whether, for example, roads may be closed.

**Maps did show a National Parks Service recommendation that because a ball field is displaced in Jackson Park** (because this park on the National Register that received federal funds for recreation in the 1980s) **and part of the designated recreational space in Jackson Park by the OPC will be lost, the OPC site designation be moved to the east end of the Midway. This designation is for passive use.** The Park District and CDOT said at the spring 106 meeting that would **not** be the location of a “ball field” if the community/advisory council does not want it—MPAC passed a resolution opposing this so this matter needs to be clarified. It seemed but is still not clear that the Midway, a “comparable quality” space that is adjacent and next to JP- actually being a joint NT historic designation- has to be the site. Options: from passive to active. **6**

**September 18**, terms of the Obama Center master use agreement Ordinance and ordinance for vacation of Cornell Drive 59<sup>th</sup> to 62<sup>nd</sup> were revealed to the press (also the Foundation now felt free to give its response to the lawsuit). The ordinances were introduced Sept. 20 at City by the CPD and Mayor Emanuel. Master Agreement, Use Agreement and Environmental Agreement between the Obama Foundation and the City of Chicago. (READ city release in – [www.hydepark.org/parks/ipac/092018\\_TwoOrdinancesCCRepresentNextStepstoOPC.pdf](http://www.hydepark.org/parks/ipac/092018_TwoOrdinancesCCRepresentNextStepstoOPC.pdf).)

The March 2015 ordinance is amended to move the site north, as well as east to include Cornell Drive. The Foundation receives a 99-year lease (that can be extended or revoked at the end), in compliance with the state legislation. Note that the other 11 Museums in the Parks that have a perpetual lease. The Foundation pays \$10 and agrees to pay for and maintain at its expense the landscape and upkeep. (As of Oct. 11 language includes that the take from parking goes to maintain the Center site.)

The Museum and Foundation do not get an annual taxpayer operating subsidy from the park district as distinct from the other Museums in the Parks.

The city will own the land and buildings. It receives ownership and control of the land and buildings upon completion of the Center.

The Foundation needs to sign a separate agreement with Chicago Public Library.

The Foundation will maintain the site and buildings at its cost following park district standards.

The Foundation must show it has both the funds for construction and a sustainable endowment for operations and its other responsibilities.

Federal reviews must be complete before work can commence.

Cornell Drive will not be closed until after the related roadway improvements are done, not before 2020.

The center must offer free admission 52 days a year and the open space must be available to the public during Jackson Park hours.

The Foundation will have the right to hold private events up to 12 days a year, but no political fundraisers will be allowed.

Minimum MBW hiring and contract standards are set, although are lower than in the Commitment document by the Foundation.

There will not be replacement parkland (at least via this document) outside Jackson Park (but see under UPARR).

(Added in October language that is at least a placeholder regarding monitoring land values etc. that could trigger measures to help owners and renters stay in their homes.)

With the agreement with the City, the Foundation felt free to state its position on the lawsuit. It said that public trust doctrine is not violated, because the site falls under public ownership and control with public purpose and access. David Simas, before the Tribune editorial board: "While this will be built with private funds, at the end of the construction, the building will be turned over to the city of Chicago and its people. The city will own the building, the Obama Foundation will not... These amenities will be amenities of the people of Chicago and for the people of Chicago." Opponents of the project as expected disagree, is privatization, does not serve a public purpose, appear to hold that partnerships and leases are inadmissible in public parks despite numerous such, and point to those terms they say make it a sweetheart for the Foundation. More continues below.

**September 20.** Mayor Emanuel introduced the two proposed ordinances. The ordinance will be voted on October 31.

**October 11** The ordinance(s) was **expanded and advanced (by unanimous vote) by the committee on housing and real estate. New language seeks protections for "nearby" homeowners and (rental?) residents although without specifics.** As part of the agreements, according to the Tribune, the city will monitor property owners and other indicators of demographic et al changes near the site. If the changes are significant, that will trigger measure so people can stay in their homes. It is not specified whether there will be triggers and what the measures will be, but it does provide a legal door for measures. Members of the coalition seeking a CBA spoke that this is severely insufficient. The Department of Planning said it takes the need for **7**

protections seriously. Many others spoke for about two hours in favor of the Center and benefits they expect from it, and the need for help to these and similar communities.

**The Plan Use Agreement Ordinance lease-like terms** include allowed use for 99 years (renewable) for \$10, land will be returned and remain with the city upon completion, there will be no operating subsidy to the Foundation or Museum,

the Foundation will have to prove it can both build and maintain an endowment for maintenance and sustainability, the Foundation must maintain the buildings and grounds and must apply any surplus from the parking garage to that, must keep public access with a few days or special (non-political) events, and 52 free days a year for the museum. An agreement must be reached with the Chicago Public Library for the branch. The city will pay for up to \$75,000 for environmental assessment. The ordinance also covers the proposed road changes (note- this includes closing of parking on one side, not both, of Hayes Drive).

**The City Council Transportation Committee considers on Oct. 25 10 am rm 201A.**

**Lawsuit continued: At the September 20 hearing, Judge Blakey ruled that the next hearing will be on October 24,** presumably before ordinances are passed. He said he was disappointed the city maintained that there is not a connection between need for the new field and land of the present needed for the Obama Center. However, the city pointed to the worn and inadequate condition of the present field that will have to be replaced in any case, the sooner the better. The stay on work continues at least until the **October 24** hearing, and discovery can continue. **Next update page 12+.**

## **MORE OCTOBER 2018 UPDATES**

**Original final bids released.** In response to subpoena of 9-28 the Foundation got consent of the 4 original bidders for the OPL/C to release their bids (less personal financial information re potential donors. The Foundation did so October 19. For an article on it (cannot vouch for fairness) see <https://chicago.suntimes.com/news/obama-foundation-under-pressure-releases-secret-u-of-chicago-bid/>. More : Oct. 20 p1 Tribune article. Read the bids at <https://obama.org/updates/rfp-responses-release/> Analysis: our OPC main page- <http://www.hydepark.org/parks/jpac/ObamaPLibrary.htm> . And the Foundation apparently has solidified its relationship with the NARA.

Updates from Obama Foundation- October 2018:

**Recap of Housing and Real Estate Committee Meeting [Oct. 11]-** from Obama Foundation:

“On Thursday, we presented the Foundation's Use Agreement and related documents for the Obama Presidential Center to the city's Housing and Real Estate Committee. Nearly thirty community members came out to express their support, and after nearly three hours of presentation, public comment, and discussion, the Committee voted unanimously in favor of advancing our Use Agreement to City Council. My sincerest thank you to all those who showed up at City Hall and waited hours to speak. It means a lot to us, and we are very excited to keep this momentum going. The City Council will vote on the Use Agreement and related documents on October 31.” Find the ordinance text in <https://go.obama.org/> look for the page.

Lakeside Alliance Updates. Lakeside Alliance—the group that includes four African-American-owned construction firms that will oversee the building of the Obama Presidential Center—held a career and training opportunities fair at Malcolm X College last night that was a big success! More than 80 people came out to learn more about pre-apprenticeship programs, job readiness training, manufacturing training, and more. Check out a snap from this event below.

Lakeside will also be opening a resource center at 1750 E. 71st Street [**open house**] **October 29**. Local residents will be able to meet members of the Lakeside team and learn about job opportunities for the Center's construction while also meeting representatives of training agencies who can share insights on how to

access Chicago-wide opportunities in the construction industry.

The Foundation and the Obama's will host the 2<sup>nd</sup> Global Summit Nov. 18-19. People can sign up for livestream. Michele launched Global Girls Initiative.

The Foundation filed its 1<sup>st</sup> quarter report but it reveals little about donors. There were a number of large donors, some new.

We all know about Jackson Park Watch. A new group supporting the Center is <https://www.sosiden4hope.org>.

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(The following Tribune article on public trust doctrine can be read by itself in pdf –

[http://www.hydepark.org/parks/jpac/Tribune\\_Strahilevitz\\_Oct\\_18\\_why\\_the\\_law\\_favors\\_the\\_Obama\\_Presidential\\_Center.pdf](http://www.hydepark.org/parks/jpac/Tribune_Strahilevitz_Oct_18_why_the_law_favors_the_Obama_Presidential_Center.pdf).

Chicago Tribune, October 18, 2018

Why the law favors the Obama Presidential Center

By Lior Strahilevitz

(Tribune note: Lior Strahilevitz is the Sidley Austin Professor of Law at the University of Chicago. Sidley Austin does legal work for the Obama Foundation. The author has never done legal work for the foundation.)

On Nov. 4, 2008, hundreds of thousands of Americans gathered near the shores of Lake Michigan to watch Barack Obama, Chicago's favorite son, thank his supporters for helping him become the first African-American president of the United States. Maybe you were there or perhaps you watched on television. The mood was electric that night, though tinged with concern about the scope of the challenges the new leader would soon face.

Almost a decade later, our city and state have developed a plan for a more enduring commemoration on the lakefront, working hand-in-hand with the now former-President Obama and the foundation that bears his name. Jackson Park would host the Obama Presidential Center, a museum and library that will house mementos and informative displays commemorating a historic presidency. On Oct. 11, the City Council's Committee on Housing and Real Estate unanimously approved a proposed ordinance to green light the center. Yet a lawsuit by Protect Our Parks threatens to halt construction before it starts.

The lawsuit's central claim is that public trust doctrine prevents the city from permitting the construction of the presidential center on the lakefront. It's a weak argument. For 16 years I have taught and written about real estate law as a professor at the University of Chicago. The public trust doctrine is a subject I have always relished teaching my students about, in part because that doctrine and Chicago's history are so intertwined. After all, the United States Supreme Court invoked the doctrine to spare our lakefront after corrupt state legislators sold it off to a private railroad company in 1869. The Supreme Court voided the arrangement because it did not serve the public's interest. The question now before the courts is whether the Obama Presidential Center deserves the same fate.

The key modern legal precedent is a 2003 decision of the Illinois Supreme Court. In that case, the court considered the legality of an agreement between the Chicago Bears and the government involving Soldier Field's renovation. Under that deal, the Bears secured until 2053 the exclusive rights to use Soldier Field during football season. An organization called Friends of the Parks challenged the agreement, arguing that a for-profit entity, the Bears, rather than the public, were the main beneficiaries of the deal, which meant it violated the public trust doctrine. The Illinois Supreme Court rejected those claims. While conceding that the Bears would benefit financially from the renovation, and that only those who could afford Bears tickets would be able to access Soldier Field during the season, the court emphasized that the stadium would be used "for athletic, artistic, and cultural events" that would entertain and educate the public.

If the lakefront's renovated Soldier Field produces enough public benefits to satisfy the public trust doctrine, it is hard to imagine how a museum examining the Obama presidency would fail to do so. The nonprofit presidential center will include a museum, meeting spaces, venues for lectures and concerts, a Chicago Public Library branch and athletic facilities open to all. The grounds will include a playground, a sledding hill and a picnic area. The center stacks up very well against the Shedd Aquarium and the Field Museum, let alone Soldier Field and Navy Pier, all of which were built on public trust lands.

So what is Protect Our Parks thinking? Most likely, they were emboldened by the Lucas Museum of Narrative Art saga, where plaintiffs who probably would have lost on appeal managed to slow down the construction process enough to persuade an exasperated George Lucas to take his money and museum to Los Angeles. The Lucas ruling shouldn't have much impact on the presidential center litigation—it was a ruling by a federal trial court judge on a motion to dismiss, and it's the Illinois state courts, not the federal courts, whose judgment about the public trust doctrine's contours are decisive.

But when we put the Lucas and Obama museums side by side, the comparison starkly favors the presidential center. The Lucas Museum was going to own and control the newly constructed buildings for up to 297 years, whereas the Obama Foundation has agreed to transfer ownership over the presidential center building to the city as soon as construction is complete. And even the biggest fans of "Star Wars" have to recognize Chicago's greater interest in having its children learn Barack and Michelle Obama's story.

If the Lucas Museum presented a close call under the public trust doctrine, the Obama Presidential Center should win in a landslide. Unfortunately, skillful lawyers can sometimes gum up the works with flimsy arguments that pervert important doctrines. The sooner the district court reaches the merits, the better.

**Lawsuit update and details. October 24, Dec 5 hearings cancelled- just written's on city motion to dismiss.** As reported in the October 25 Tribune, Judge Blakey said both sides seem to want a quick resolution. The city, for example, can file for a summary dismissal after the city passes its ordinance October 31. In response to plaintiff's request for a schedule through May, Judge Blakey said the case won't drag on: "Lingering's not gonna happen." However, discovery can continue and a trial date, if set, would likely be at the end of the year. The defendants argued that the OPC does not and there was no scheme to violate, evade, negate or circumvent state law, and that the campus will be public parkland, the taxpayers will not pay for this or give any operating subsidy—indeed the city cannot since it lacks the power to tax for it under the Museum Act, and the Park District cannot because it will not own or control the OPC or the land. Re: the argument that is "not a Library", records will be available at the OPC online, artifacts will be on display, there will be a relationship with National Archive and Records (NARA), and the Center was never envisioned or sold as just a presidential research library or repository. Also, it is not "irreplaceable lakefront land" [although it is subject to review by the Chicago Plan Commission under the Lakefront Protection Ordinance as is every other improvement within a (mile?) of the lakefront, such as to Mt. Carmel High School] and already has a facility not related to lakefront land and uses, the track and field used inter alia by a public high school. They argued the OPC is "consistent with [public trust] because, among other reasons, the people's representatives in the Illinois General Assembly through the Museum Act have expressly authorized presidential centers on public parkland." And they argue the two principal funders of the lawsuit are suffering no violation of their rights because of the OPC's construction and have no claim of "fractional beneficial interest" in the site different from that of all other 12 million Illinois or other city residents as no taxpayer money is being spent.

**(Oct. 11 Approval of ordinance by Real Estate and Housing Committee- see p. 8.)**

**October 25- The City Council Transportation and Public Way Committee unanimously approved the OPC Ordinance.** This involves park district land- closure of Cornell Dr., eastbound Midway east of Stony, Hays Dr. changes, and adjustments of land between the city and the park district and the Foundation. The foundation hails this as reconnecting Jackson Park and enhancing safety including for kids. Among the many who spoke for the change were disabilities persons and activists. The widening of Lake Shore Drive, not owned by the park district, needs to be approved separately. The changes would be phased. See more in the October 31 Council approval, below. The extensive public process was outlined by Commissioner Scheinfeld, thanking Alderman Hairston.

So this is for Cornell, Midway Pl., Stony Island, and Hays (with barriers) and various signal and intersection changes and enhancements including all five underpasses (including the two near 67<sup>th</sup> which have been understood as largely for the golf course proposal) in all \$172-4 M in state funding. The Stony Island changes include 100 foot right of way, 2 lanes in each direction with a median /left turn lanes, parking and drop off and signal consolidation or addition at Midway, 62<sup>nd</sup>, 63<sup>rd</sup>, 64<sup>th</sup>, and 67<sup>th</sup>. Hays will have 2 lanes in each direction, reconfigured/redirected intersections and signals, and calming barriers. Park trails will be modified to conform to changes and park mobility and access are top priority, including the Midway, Marquette, and nb Cornell at 67<sup>th</sup> closures. Cornell Drive will not close until substantial portions of the other work is done, leaving a crack open for less than full closure of Cornell if things aren't working out. She explained that the widening of Lake Shore Drive is a key part of making his work. Three years are given to do the work. She also said the department is eager to demonstrate exceeding standards (indeed creating pipelines of opportunity and benefits) for women and minority contracting and hiring. (Standards differ considerably depending on who owns each roadway and funds each part.) Financing will be with a combination of state (already in the state budget) and federal funds.

Overall, some aldermen asked questions about certain contractors who don't hire locally unless law requires it, about feasibility of the complex road interweaving, and about the need for more investment in South Side communities. Several from the disabilities community and parks persons such as natural areas Jackson Park steward (who also leads tours and groups) spoke in favor of the road changes especially, and overall. **11**

**October 31 the full City Council unanimously (48-0) approved the ordinances.** It was considered out of published agenda order and without discussion. The Mayor read a letter of support and released a video, and a letter of appreciation from the President Obama noting the opportunity to give to the “city that has given us so much.” (These are likely to be posted by the City). This is the 3<sup>rd</sup> time in 4 years the Council has passed an ordinance on the matter. Mayor Emanuel said, “We should all take note of what this vote will mean to the city of Chicago. It’s been a long process, I got a little older.”

**The Documents** (ordinance now posted online in <https://chicago.legistar.com/>- an easy link name is being sought; appended docs that were circulated in draft: Lease Agreement, Master Agreement, Environmental, UPARR Grant Agreement Amendments, Mitigation Agreements.

**Highlights:** Changes site to as of May 3 2017 and does the following once federal reviews are done. Leases 19.3 acres to OF for \$10 for set time (renewable) if the Foundation can show it can raise the money to build and endowment to operate the Center and maintain the site. City will refund up to \$75,000 for any environmental remediation but there is a clause that seems to leave final amount open. No operating subsidy. The city will continue to own the land and receives the buildings and facilities once built. It Guarantees public use and access during park hours with certain exceptions and sets limits on prices but much of the operations and rentals/permitting control will be by OPC. The city will “monitor” changes in property values and demographic changes that could trigger protections for existing residents. (Commissioner David Reifman told the Sun-Times these include, as down payments) expected provisions including required conditions of community benefit and wealth in the 63<sup>rd</sup> St. RFP, leveraging city land, and a new program for affordable housing and the aforementioned goals (passed at the City Council meeting that day) that includes Woodlawn as a pilot.

**Also approved were the road changes** to accommodate the Center and that involve park district land. (Widening Lake Shore Drive will have to be passed separately.) See the details above under October 25 Transp. Committee approval.

In this ordinance, the city will vacate 3.74 acres of city right of way, 1.62 acres of park land will be dedicated as public way largely make Stony Island right of way 100 feet. CDOT touted the changes as significant improvements to public safety, traffic management, and amenities including for pedestrians and bike walkers. “The investments we are planning will be a comprehensive improvements for people driving, people on the bus, people walking, biking or using the park for recreational purpose... We’ve come up with a set of investments to the whole transportation network that will accommodate capacity diverted from closure of a section of Cornell Drive as well as improve a number of roadway network issues that exist today,” Rebekah Schienfeld is quoted in the Sun-Times.

An independent agreement will have to be signed with Chicago Public Library for the public branch, provisional terms have been released, but closing will likely wait on the OPC being fully approved including with federal reviews and determination on the lawsuit.

Friends of the Parks and its leaders issued denunciatory statements wanting the whole process to start over and community input be done over and demanding that the Obama Foundation fund all the changes and improvements to Jackson Park (including a new fieldhouse) in the revision of the South Lakefront Plan that FOTP (among others) demanded in the first place, claiming it’s all because the changes wouldn’t happen if there were not to be the Center in a park.

**The coalition/alliance seeking a Community Benefits Agreement launched a petition drive** October 23, as the city committees and Council were gearing up to pass the OPC ordinances with no CBA. Note that the sought agreement would not be just with the Obama Foundation but with at least the University of Chicago regarding development on South Campus and to be enforced by the city. They seek voters signatures in 1 5<sup>th</sup> Ward and 3 20<sup>th</sup> Ward precincts for an advisory ballot referendum in the February municipal election. It needs the equivalent of 8 percent of votes cast in the November 6 election. Closing date for the petitions is November 10, which must be filed by November 26.

A letter on the lawsuit from Mary Anton and South Side Neighbors 4 Hope ([www.sosiden4hope.org](http://www.sosiden4hope.org)) as published by Chicago Sun-Times (online Oct 24 2018).

It is not clear to us what groups such as Protect Our Parks expect to gain in their efforts to delay the Obama Presidential Center project in Jackson Park. Save an isolated and sadly underutilized piece of Frederick Law Olmsted's Jackson Park legacy from rebirth? Delay completion of a multi-purpose track that serves school children and South Side sports teams? Save a 6-lane highway at the expense of the safety and tranquility of park users? Deny pride of place to South Side children, knowing that the first African-American president chose their neighborhoods to share his history and support their future? Deny the potential of new jobs, businesses and homes to long-neglected neighborhoods?

The four-year-old OPC bids are history. If anything, they show the independence of the Obamas and the Obama Foundation in combining proposal ideas with four subsequent years of public outreach and engagement, to develop an OPC independent of the National Archives and Records Administration and University of Chicago management, but broadly collaborative with government, institutional, and community partners.

The Obamas selected a design team that includes a creative husband and wife duo with a deep and respectful understanding of Olmsted's legacy and a South Side, African-American woman architect. Their design intimately focuses on serving people from all socio-economic backgrounds and from all local and global communities, on a site that extensively promotes education and nature, consistent with Olmsted's original goals. The Jackson Park location creates a hub radiating connectivity and opportunity to South Shore, Woodlawn, Washington Park, and communities further to the south and west.

The Chicago Department of Transportation road reconfigurations anticipate the future population growth of the South Side and create the opportunity for bikers, runners and walkers to traverse the lakefront from South Shore to the northern boundary of Chicago, away from vehicular traffic.

The subpoenaing of the bid documents does little to promote the opposition's lawsuit. The OPC is a gift that will benefit people in every community, of every class, race and educational background. So we ask again: What does Protect Our Parks gain and Chicago lose?

**February 2019 rulings are on p. 14**

## February 19, 27 2019 Obama Presidential Center. Protect Our Parks lawsuit rulings.

Press and other reports differ significantly. This is what our team (which includes lawyers) have gleaned either or both from attending and from the 21-page ruling in Federal District Court February 19, 2019. GMO

Judge John Robert Blakey ruled that the lawsuit may proceed, but to a fast conclusion, by trial or not. This ruling was NOT on the merits of the case but on a city and park district motion to dismiss and to determine which counts the plaintiffs have standing to formally pursue, in a six-week schedule that includes disposition of discovery, motions et al, briefings, and ruling on whether the case goes to trial.

The case rests upon proving whether public trust doctrine was violated and whether due process and public input were by various means circumvented or ignored- including whether there was deception, or bait and switch, and whether the land was conveyed to a private entity, or gives disadvantageous terms to the public.

Counts 1 and 6 were dismissed; Counts 3-5 are essentially state matters, so not at issue in the motion to dismiss by local agencies and not mentioned in the ruling. Count 2 can proceed.

Count 1- dismissed. This count alleged aesthetic and environmental injuries/damages to individuals. The judge said that there is no evidence that these two persons actually used the park, so no case.

Count 2- standing was granted to proceed through the next stage This count alleges collusion, deception and other crimes and misdemeanors and lack of public process resulting in taking land, especially lakefront parkland (thus from taxpayers without just compensation) and of using taxpayer money without due process by the Illinois legislature vote and votes by city bodies including the Plan Commission and City Council. (Plaintiffs may be asked to show evidence on each point including whether the land is being privatized, whether that is permissible and properly compensated for, all the way to how hearings and public meetings do not amount to proper input or were ignored). The judge also said in a footnote regarding the road changes that plaintiffs claim that the "city is using tax payer funds for environmental remediation and road work and that is illegal," environmental remediation and road work are not illegal use of taxpayer money.

Count 6- dismissed. This count alleges that the Presidential Center advances or could be used for political

purposes, violating the plaintiffs First Amendment rights and tax law, regardless of what is said in the OPC Agreement covering uses. The judge called this "multiple levels of wild factual speculation" and said that if these issues cropped up after the Center is open, the plaintiffs could re-file.

Overall, he said that if "public trust' doctrine is to have any meaning or validity at all...at least taxpayers who are the beneficiaries of that doctrine must have the right and standing to enforce it."

At a February 27 court date for case management and ruling on discovery and evidentiary disputes, the judge will set a 45-day period for finalizing discovery, and also set a tight six-week schedule for final briefings and ruling on whether there will be a trial. (These may be coterminous.) A main dispute for February 27 is over how much and what kinds of records and information the city and park district are required to furnish-- plaintiff's say the defendants are stonewalling with only the records of the big votes necessary while the defendants say the requests are for a fishing expedition into internal operations. The judge said previously that much of what is requested could be obtained through **14**

search engines. The judge had thrown out both sides list of information sought and asked for a joint, agreed upon list by 5 p.m. Tuesday.

There is no doubt, however, that the continuation of the case will at least result in delay, often the minimum object of lawsuits.

**At a February 27 court date for case management and ruling on discovery** and evidentiary disputes, the judge set a 45-day period for finalizing discovery, and also set a tight six-week schedule for final briefings and ruling on whether there will be a trial. March 7 document viewing, Apr 19 discovery closed, May 3 judgments, 17 replies, 24 final responses, May 30 hearing.

**Judge Blakey largely restricted, and set up management for remaining discovery-- documents the city needs to furnish.** The types of documents approved to be furnished concern projected costs, environmental and traffic studies and projected financial benefits to the OPC. He directed the city to appoint an official to be read to plaintiff and be deposed on these. (The judge had previously noted that material on most of the issues was already on line and could be "googled.") When pressed on exactly which documents were sought, the judge said he would micromanage the process and set March 7 for the next hearing on discovery. It became evident (see below) to our readers that much of the material sought was already provided or readily available, or doesn't exist, or is inadmissible, including thoughts and conversations of officials and staff and amounts to a fishing expedition. Specifics as parsed by JPAC's team that includes lawyers: Eleven categories of evidence discovery were ruled upon.

Discovery 1. The conversations of legislators who passed the state OPC legislation including with the Mayor. The Judge said the legislation there was ample public record and it is illegal to question staff about subjective conversations; he would not let them ask private thoughts of every alderman and legislator. The Judge asked if city could appoint someone to read the public documents to Protect Our Parks (POP) and explain them to POP. There is a 30v6 called the limited scope request which applies to this ruling.

Discovery 2, 3, and 4. Moot due to Judge's ruling last week.

Discovery 5. POP request for Traffic study costs, road changes cost, environmental site cleanup costs. City lawyers explained that everything they had was already turned over. The Judge ordered them to check for any more. If there is nothing new, then so be it.

Discovery 6. Financial Benefits to OPC for itself.

POP said OPC could get rich from naming rights, meetings, museum fees etc.

City said the Use Agreement gave the city control as with agreements with other Museums in the Parks, that the Use Agreement has all questions asked in discovery 6 answered and called the recitation "speculations" about potential benefits. Judge Blakey said that IF there were any documents about benefits to OPC that were not in the Use agreement, to please share with the POP. And to appoint someone to read over the Use Agreement with POP and explain it.

Discovery 7. Fair Market Value and Fair Rental Value of the OPC site. POP said the terms are actual an OPC windfall because of low rent. City said the ownership of land goes to City and no Appraisal of the rental value exists. The Judge said that if there is no appraisal or rental value, then city can't produce it for discovery.

Discovery 8. POP requests all Soil analysis and remediation costs. City says they have given POP all that they have. The Judge says check again and see if there any other cost reports and share them. If there are no more then city can't share more.

Discovery 9. Moot from previous week's ruling. Discovery 10- POP says the site may be on Lake Michigan (Lakefront public trust) submerged land, says it does not trust the city Historic Map. The Judge asked POP if they have other maps. They said they have writings. The Judge said bring them all to me and I will rule on them.

Discovery 1. Moot- previously ruled. Rule 56-D pertains--the Judge had denied without prejudice the previous motion to dismiss.

## SCHEDULE OF COMING COURT EVENTS

March 7- judge will see all documents one by one and make decision.

April 19- Discovery Closed.

May 3 - judgment on all motions

May 17- initial plaintiff and Defense replies to all motions and cross replies

May 24th -Final replies to all cross replies and motions.

May 30th -the Hearing.