



**NEW YORKERS
FOR PARKS**

THE ARTHUR ROSS
CENTER FOR PARKS
AND OPEN SPACES

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August 28, 2017

The Honorable Andrew M. Cuomo
Governor of the State of New York
NYS Capitol Building
Albany, NY 12224

Dear Governor Cuomo:

We write to urge you to veto bills S.6721 and A.8419 that would alienate Marx Brothers Playground located on East 96th Street between 1st and 2nd Avenues in Manhattan. We are deeply concerned that these bills set a very dangerous precedent for New York City parkland, and leave not just this particular playground but all parkland in New York City at risk of private development.

Background:

New Yorkers for Parks is an independent parks advocacy organization that serves as a watchdog for the people of New York and their parks – ensuring greener, cleaner, and safer parks for all New Yorkers, as well as equity and transparency in parks and open space decision making, development, and maintenance. For over 100 years, NY4P has protected and advocated for the city's parks and open spaces, a role that is particularly critical when alienation of New York's parkland is under consideration. In a city as densely built and populated as New York, parkland alienation should be done cautiously, sparingly, and in close coordination with the community of park users and neighbors who stand to lose the most by the proposed action.

It is our understanding that Marx Brothers Playground has been in continuous operation for nearly 60 years as a Jointly Operated Playground (JOP) under the management of the NYC Department of Parks and Recreation (NYCDPR). NYCDPR has continually maintained this playground and made significant capital investments throughout its history. Though it is not technically 'mapped parkland,' it has been used as a park for a significant amount of time under the continuous management of NYCDPR. In our professional view this gives it 'implied parkland' status and renders it therefore subject to the Public Trust Doctrine which requires that state legislative approval be given before parkland, whether mapped or implied, can be taken via alienation.

Surrounding Neighborhoods – Research and Findings:

According to our own published research, in the East Side Open Space Index and the East Harlem Open Space Index, NY4P found that the area surrounding Marx Brothers Playground fell short against almost every benchmark of open space, including amount of open space and access. The playground is immediately adjacent to City

Council District 5, which came in 47th out of 51 in our City Council District Profiles, making it one of the most park-poor in the city. The park is also located on the southernmost edge of City Council District 8, which overall scored better on measures of open space. District 8 contains hundreds of acres of parkland concentrated in Randall's Island Park, which is not accessible to the part of East Harlem in which Marx Brothers Playground is located.

We also urge you to consider the health implications of removing mature trees and active recreational space in this densely populated neighborhood, even temporarily. According to the New York City Community Health Profile of 2015, East Harlem has the sixth highest asthma hospitalization rate among children age 5 to 14 in the city, and the fifth highest rate for adults, more than twice the citywide rate. It also has higher than average rates of obesity and diabetes compared to the rest of the city.

Even the proposed 5 to 6 year 'temporary' alienation of Marx Brothers would be problematic. It would mean stripping a critical recreational resource from a community that is already suffering the impacts of insufficient open space. Furthermore, we would argue that a multi-year alienation of parkland is hardly 'temporary'.

NY4P Concerns with proposed Marx Brothers Alienation:

This proposed alienation raises many concerns for us but the fundamental concerns are as follows:

- **Precedent** – NY4P is not arguing against the need for affordable housing, schools or other public purposes that are vital to the health of the city. However, these uses do not justify the alienation of public parkland as clearly set out in the Public Trust Doctrine. The bills before you could set a dangerous precedent for the protection of parkland, and in particular, JOPs in NYC. There is a reason that alienation of parkland is complicated and arduous, with many public process thresholds – it is designed to protect the taking of a critical public asset for private and/or other public purposes.
- **Ownership** – It is our understanding that ECF intends to retain ownership over all portions of the development site. Even if control of the new playground is given over to the Department of Education (DOE) and NYCDPR, the park still remains under threat of development as there appear to be no plans to map the park ensuring it the long-term protections granted under the Public Trust Doctrine. Without the mapping of equivalent parkland in this proposed alienation there is no guarantee that this parcel will remain parkland in perpetuity.
- **Value of the Mitigation** – To our knowledge there has been no public accounting of the fair market value of the air rights the developer is receiving from the alienation of the park site. In a real estate market as robust as New York City, we know that air rights are extremely valuable and we believe the City should capture that value as a part of the mitigation. We have not seen clear indication that the City plans to hold the developer to this standard. We encourage the City

to have a transparent, public process to determine whether the proposed mitigation is fair and appropriate, given the immense development value of a parcel of that size.

- **Parkland Replacement** – It is our understanding that a strict acre-for-acre parkland replacement has been proposed in this alienation. We are extremely concerned that the proposed increased residential and student density proposed directly onsite will add tremendous usership and maintenance pressure on an already-small playground in a part of the city that is sorely lacking for open space.

In sum, we feel that these concerns must be satisfactorily addressed and vetted publicly before further steps are taken that would set an egregious precedent for the alienation of parkland for private or non-park public uses. The benefits to the public, especially members of the affected communities, are paramount in assessing the merits of this alienation legislation. We respectfully ask that you veto this bill and work with the two affected communities and the City towards a better outcome.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lynn B. Kelly', with a long horizontal flourish extending to the right.

Lynn B. Kelly
Executive Director