

AUDIT REPORT



CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BUREAU OF FINANCIAL AUDIT
WILLIAM C. THOMPSON, JR., COMPTROLLER

Audit Report on the Administration of The 59th Street Recreation Center Open-Space Improvements and Fiduciary Account by the Department of Parks and Recreation

FM06-127A

June 26, 2007



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
1 CENTRE STREET
NEW YORK, N.Y. 10007-2341

WILLIAM C. THOMPSON, JR.
COMPTROLLER

To the Citizens of the City of New York

Ladies and Gentlemen:

In accordance with the responsibilities of the Comptroller contained in Chapter 5, §93, of the New York City Charter, my office has audited the administration of the 59th Street Recreation Center Open-Space Improvements and Fiduciary Account by the Department of Parks and Recreation (Parks).

The 59th Street Recreation Center fiduciary account is an interest-bearing account established to deposit a contribution of \$2.7 million from a local developer. The contribution along with additional funding is to be used by Parks to make open-space improvements at the center. We audit City accounts such as this to ensure that public funds held in trust for a particular purpose are accounted for and used as intended.

The results of our audit, which are presented in this report, have been discussed with Parks officials, and their comments have been considered in preparing this report. Their complete written response is attached to this report.

I trust that this report contains information that is of interest to you. If you have any questions concerning this report, please e-mail my audit bureau at audit@Comptroller.nyc.gov or telephone my office at 212-669-3747.

Very truly yours,

A handwritten signature in cursive script that reads "William C. Thompson, Jr.".

William C. Thompson, Jr.

WCT/fh

Report: FM06-127A
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*The City of New York
Office of the Comptroller
Bureau of Financial Audit*

**Audit Report on the
Administration of the 59th Street Recreation Center
Open-Space Improvements and Fiduciary Account by the
Department of Parks and Recreation**

FM06-127A

AUDIT REPORT IN BRIEF

This audit determined whether the Department of Parks and Recreation (Parks) complied with the terms of the fiduciary agreement and the “Modification to the Restrictive Declaration.” A restrictive declaration is an agreement between the City and a party in which specific conditions are placed on a property’s future use and development.

The West 59th Street Recreation Center (Center) at 59th Street and West End Avenue is one of 15 City-operated recreational facilities in Manhattan that have been serving the public since 1906. The Center consists of two buildings and offers services including an indoor pool, a fitness room and gymnasium, and various after-school programs, such as basketball, cheerleading, and a climbers club.

In March 1993, a restrictive declaration was drafted by the Department of City Planning (City Planning) requiring a developer to make open-space improvements at the Center. The project did not advance until 1997, by which time Parks had decided against the open-space improvements originally called for and was looking into making larger scale alternative improvements to the Center. Subsequently, the declaration was modified on July 27, 2000, requiring the developer to contribute \$2.7 million to a fiduciary account rather than make the improvements. The modification also required that Parks, the local City Council member, and Community Boards 4 and 7 were to coordinate in revising the scope of open-space improvements that Parks would be responsible for making at the Center.

As of June 30, 2006, the City’s Financial Management System reported a fiduciary account balance of approximately \$3.3 million—the original contribution of \$2.7 million plus interest earned.

Audit Findings and Conclusions

Although the fiduciary funds were accounted for in compliance with the terms outlined in the fiduciary agreement, Parks did not comply with the intent of the modification to the restrictive declaration, namely, to ensure the timely completion of open-space improvements at the 59th Street Recreation Center.

As of September 28, 2006, nearly 13 years after the restrictive declaration was drafted and 6 years after its modification, open-space improvements at the Center had not yet started. The open-space improvements were significantly delayed because, between 1993 and 1999, Parks failed to interact with the developer to ensure that improvements were completed as required by the restrictive declaration. During that time, Parks used City funds to make some of the improvements that should have been completed by the developer. Subsequently, Parks decided that the original scope of improvements no longer met the needs of the community and sought to modify the restrictive declaration.

The declaration's modification required the developer to pay \$2.7 million into a fiduciary account administered by Parks and required Parks to develop a revised scope of open-space improvements in consultation with the local City Council member, Community Boards 4 and 7, and users of the recreation center. It also permitted Parks to seek additional funding for multiple improvements to be included in the revised scope of open-space improvements. However, if additional funds could not be obtained through the adopted City Expense and Capital Budget for Fiscal Year 2003, Parks was to proceed with an alternative scope of work determined, together with the same consultative parties that primarily or exclusively used the fiduciary funds.

Parks officials state that they now have a plan for open-space improvements agreed upon by the consultative parties; have secured the additional funding to begin the open-space improvements; and towards the latter part of Fiscal Year 2007, anticipate spending approximately \$6 million (which includes the \$2.7 million of fiduciary account funds) on improvements at the Center. The open-space improvements will include construction of a multi-purpose room and expansion of the fitness center over the site of the outdoor pool.

Audit Recommendations

We make one recommendation:

Parks should immediately comply with the terms of the modification to the restrictive declaration that requires Parks to expend the fiduciary account's \$2.7 million for open-space improvements to the Center. In this regard, Parks should develop a written plan for carrying out the specific improvements to be made. The plan should include project start and completion dates, critical construction milestones (excavation, foundation, construction, etc.), and the costs associated with each milestone.

INTRODUCTION

Background

The Department of Parks and Recreation (Parks) operates a municipal park system that covers more than 28,000 acres of parkland and includes playgrounds, ball playing fields, tennis courts, swimming pools and recreation centers. The West 59th Street Recreation Center (Center) at 59th Street and West End Avenue is one of 15 City-operated recreational facilities in Manhattan that have been serving the public since 1906. The Center consists of two buildings and offers services including an indoor pool, a fitness room and gymnasium and various after-school programs such as basketball, cheerleading, and a climbers club.

In March 1993, a restrictive declaration was drafted by the Department of City Planning (City Planning) requiring a developer to make open-space improvements at the Center. A restrictive declaration is an agreement between the City and a party in which specific conditions are placed on a property's future use and development. The restrictive declaration was precipitated by a City Planning study that concluded that the developer's request for a zoning variance to develop a property on West End Avenue "would have a significant impact on open space resources."¹

The 1993 declaration compelled the developer to make improvements at the Center—restoration of a deteriorated outdoor swimming pool, renovation of locker rooms, and repair and replacement of a filtration pump. The improvements were to be completed before the developer could apply for a certificate-of-occupancy. The project did not advance until 1997, by which time Parks had decided against rehabilitation of the outdoor pool and was looking into making larger scale alternative improvements at the Center. To do so, Parks would need to have all parties (Parks, City Planning, and the developer) agree to modify the terms of the restrictive declaration. Subsequently, on July 27, 2000, the declaration was modified, requiring the developer to contribute \$2.7 million to a fiduciary account rather than complete the initial improvements, and requiring that Parks, the local City Council member, and Community Board 4 and 7 develop a scope of work for open-space improvements that would use the developer's cash contribution and other sources of funding.

Since the fiduciary account was established, the account has been funded by the original contribution of \$2.7 million plus the interest earned on this amount only. For the period July 1, 2000, through June 30, 2006, \$656,457 in interest has accumulated in the account. As of June 30, 2006, the City's Financial Management System reported a fund balance of approximately \$3.3 million.

Fiduciary accounts are used to record financial resources held and administered in trust by the City of New York. The principal and income of these accounts are intended to benefit individuals, private organizations, or other non-City-government entities. The New York City

¹ The zoning variance was first requested by ABC West End Avenue Properties to facilitate residential construction and studio expansion on a site on the west side of West End Avenue between 64th and 66th Street. Tishman Speyer subsequently purchased the rights to the residential construction from ABC.

Comptroller's Office, in conjunction with the City's Office of Management and Budget, establishes fiduciary accounts at the request of various organizations, including City agencies and public corporations.

Objective

Our audit objectives were to determine whether the Department of Parks and Recreation complied with the terms of the fiduciary agreement and the "Modification to the Restrictive Declaration."

Scope and Methodology

The audit period covered March 31, 1993, to August 31, 2006. To achieve the audit objectives, we reviewed the fiduciary agreement and Comptroller's Directive #27, "Fiduciary Accounts Procedures for Requesting, Controlling and Monitoring." We obtained and reviewed the restrictive declaration and modification to understand their requirements and the purpose for establishing the fiduciary account. In addition, we reviewed Parks and City Planning documents (i.e., correspondence, memos, electronic mail, design proposals) to understand the chronology of events relating to the Center improvements. We also obtained the City's Capital Commitment Plan for Fiscal Years 2002 through 2006 to analyze the Parks capital funding commitment for Center improvements.

We interviewed Parks and City Planning officials about the history of the declaration and its modification. We also interviewed, by telephone, the developer's former senior director regarding the developer's financial and capital obligations for improving the Center. To further document our understanding of the events that occurred from 1993 to the present, we created a timeline of events.

To verify the fiduciary account balance and ascertain whether the amount deposited was the amount indicated in the modification, we obtained reports from the City's Financial Management System and compared them to the terms outlined in the modification.

Finally, we conducted observations of the Center on May 11, 2006, May 18, 2006, and September 28, 2006, and took photographs to determine whether any improvements were made in accordance with the declaration or its modification.

This audit was conducted in accordance with generally accepted government auditing standards (GAGAS) and included tests of records and other auditing procedures considered necessary. This audit was performed in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

Discussion of Audit Results

The matters covered in this report were discussed with Parks officials during and at the conclusion of this audit. A preliminary draft report was sent to Parks officials and discussed at an exit conference held on November 6, 2006. On December 29, 2006, we submitted a draft report to Parks officials with a request for comments. A written response was received on January 16, 2007.

In their response, Parks officials agreed with the audit's recommendation to comply immediately with the terms of the modification to the restrictive declaration requiring Parks to spend the \$2.7 million in the fiduciary account for open space improvements at the recreation center. However, Parks officials stated that our "findings regarding the restrictive declaration are misleading."

The full text of the Parks response is included as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

Although the fiduciary funds were accounted for in compliance with the terms outlined in the fiduciary agreement, Parks did not comply with the intent of the modification to the restrictive declaration, namely, to ensure the timely completion of open-space improvements at the 59th Street Recreation Center.

\$2.7 Million in Open-Space Improvements Not Completed

As of September 28, 2006, nearly 13 years after the restrictive declaration was drafted and 6 years after its modification, open-space improvements at the Center had not yet started. The open-space improvements were significantly delayed because, between 1993 and 1999, Parks failed to interact with the developer to ensure that improvements were completed as required by the restrictive declaration. During that time, Parks used City funds to make some of the required improvements that should have been completed by the developer. Subsequently, Parks decided that the original scope of improvements no longer met the needs of the community and sought to modify the restrictive declaration.

On March 3, 1999, Parks informed the developer of its intention to revise the terms of the restrictive declaration. Parks subsequently issued a “Notice of Uncontrollable Circumstances” to City Planning on May 5, 2000 stating that “Parks has recently decided not to proceed with the restoration of the outdoor pool and instead to advance a proposal to construct a gymnasium on the site of the outdoor pool.” (Parks estimated the cost of the gymnasium and an associated indoor pool to be \$6 million.) These developments led to the declaration’s modification that required the developer to pay \$2.7 million into a fiduciary account administered by Parks and required Parks to develop a revised scope of open-space improvements in consultation with the local City Council member, Community Boards 4 and 7, and users of the recreation center. It also permitted Parks to seek additional funding for multiple improvements to be included in the revised scope of open-space improvements. However, if additional funds could not be obtained through the adopted City Expense and Capital Budget for Fiscal Year 2003, Parks was to proceed with an alternative scope of work, determined together with the same consultative parties that primarily or exclusively used the fiduciary funds.

Although the modification imposed a strict deadline for obtaining additional funding, the consultative parties decided not to develop the alternative open-space improvements until additional funding was in place to allow for a larger scope of renovations. The delays have had the unfortunate effect of severely limiting the public’s recreational opportunities while additional funding was sought to renovate the facility.² (See Attachment for photographs of the Center’s current conditions.)

Nonetheless, Parks officials state that they now have a plan for open-space improvements agreed upon by the consultative parties; have secured the additional funding to begin the open-

² According to a June 16, 2006 *New York Post* article, the existing outdoor pool is “abandoned with weeds; a virtual mini-forest growing in it.” Our own observation of the Center and its pool confirmed the deplorable conditions (see Attachment).

space improvements; and towards the latter part of Fiscal Year 2007 anticipate spending approximately \$6 million (which includes the \$2.7 million of fiduciary account funds) on improvements at the Center. The open-space improvements will include construction of a multi-purpose room and expansion of the fitness center over the site of the outdoor pool.

Recommendation

Parks should immediately comply with the terms of the modification to the restrictive declaration that requires Parks to expend the fiduciary account's \$2.7 million for open-space improvements to the Center. In this regard, Parks should develop a written plan for carrying out the specific improvements to be made. The plan should include project start and completion dates, critical construction milestones (i.e., excavation, foundation, construction, etc.) and the associated costs with each milestone.

Parks Response: "Parks agrees with your recommendation. . . . However, Parks feels that your findings regarding the restrictive declaration are misleading. You [*sic*] conclusions state, '*The open-space improvements were significantly delayed because between 1993 and 1999 Parks failed to interact with the developer to ensure that improvements were completed as required by the restrictive declaration.*' In fact, the developer had no obligation to Parks until building permits were secured for advancement of the private development at 101 West End Avenue. The trigger for the builder's obligation therefore occurred in 2000."

Auditor Comment: Parks's position that the developer had no obligation until 2000 is incorrect. According to a May 28, 1993 letter from the developer to Parks, the developer expressed concern that his obligation to complete the agreed-upon improvements might be uncertain since that obligation was predicated upon the completion of a portion of the improvements by Parks. In that letter, the developer requested that "should unforeseen problems arise at any point, the Parks Department will use its best efforts in working with the developer and other involved City Agencies to resolve such problems in a timely manner." The fact that Parks completed a portion of the improvements prevented the developer from fulfilling his obligation as prescribed in the restrictive declaration. At that point, the responsibility fell upon Parks to modify the restrictive declaration. However, Parks took seven years to modify the restrictive declaration. Therefore, the trigger for the developer's obligation occurred after the signing of the restrictive declaration.

Nevertheless, as stated in its response, Parks is committed to implementing the open-space improvements at the Center by securing additional funds and by using the \$2.7 million in the fiduciary account. Parks anticipates construction to begin 2007 and projects a completion date of December 2008 or January 2009.

Photographs of 59th Street Recreation Center

Picture #1 – A trailer is currently parked in what used to be an outdoor swimming pool



Picture #2 – Weeds and cracked flooring of outdoor swimming pool



Photographs of 59th Street Recreation Center

Picture #3 – Condition of lockers in women’s locker room



Picture #4 – Ceiling of women’s locker room





City of New York
Parks & Recreation

Adrian Benepe
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January 16, 2007

Mr. Michael Morgese
Assistant Director
Office of The Comptroller
1 Centre Street
New York, NY 10007-2341

Dear Mr. Morgese,

Thank you for forwarding your draft report (FM06-127A) on Parks' Administration of the 59th Street Recreation Center Open-Space Improvements and Fiduciary Account in advance of its public release.

Parks agrees with your recommendation to "... *immediately comply with the terms of the modification to the restrictive declaration that requires Parks to expend the fiduciary account's \$2.7 million for open space improvements to the Center.*" Attached is our Agency Implementation Plan (AIP).

Since 2002, Parks has worked with elected officials and the community to develop a restoration plan that leverages the funding from the original development to provide an exciting new facility for residents of the West Side, one that would not have been possible had we relied solely on the restrictive declaration. As the attached letter from Council Member Brewer indicates, the community appreciates the efforts we made to achieve their goals and visions.

However, Parks feels that your findings regarding the restrictive declaration are misleading. Your conclusions state, "*The open-space improvements were significantly delayed because between 1993 and 1999 Parks failed to interact with the developer to ensure that improvements were completed as required by the restrictive declaration.*" In fact, the developer had no obligation to Parks until building permits were secured for the advancement of the private development at 101 West End Avenue. The trigger for the builder's obligation therefore occurred in 2000.

Parks and Recreation is committed to moving forward with this project and providing a better facility to the public.

Sincerely,

A handwritten signature in cursive script that reads "Frank D'Ercola". The signature is written in black ink and is positioned above the printed name and title.

Frank D'Ercola
Deputy Chief Fiscal Officer

c: L. Kavanagh, First Deputy Commissioner, DPR
D. Stark, Chief Fiscal Officer, DPR

AUDIT IMPLEMENTATION PLAN
Audit Title: Audit Report on the Administration of the 59th Street Recreation Center
Open Space Improvements and Fiduciary Account by
The Department of Parks and Recreation
Office of the City Comptroller
Audit No. FM06-127A
Date: January 16, 2007

Findings	Recommendations/Agency Response	Corrective Action Plan/Date Implemented
<p>1) Although the fiduciary funds were accounted for in compliance with the terms outlined in the fiduciary agreement, Parks did not comply with the intent of the modification to the restrictive declaration, namely, to insure the timely completion of open-space improvements at the 59th Street Recreation Center.</p>	<p>Parks and Recreation should:</p> <p>1) Immediately comply with the terms of the modification to the restrictive declaration that requires Parks to expend the fiduciary account's \$2.7 million for the open space improvements to the Center. In this regard, Parks should develop a written plan for carrying out the specific improvements to be made. The plan should include project start and completion dates, critical construction milestones (excavation, foundation, construction, etc.), and the cost associated with each milestone.</p> <p>Agency Response: DPR agreed.</p>	<p>1) Although Parks agrees with the recommendation, DPR feels that the findings are misleading. The findings indicate that 13 years have elapsed and "...the open space improvements were significantly delayed because between 1993 and 1999 Parks failed to interact with the developer to ensure that improvements were completed as required by the restrictive declaration". The developer had no obligation to Parks until building permits were actually secured for the advancement of the private development of 101 West End Avenue. The trigger for the builder's obligation occurred in 2000. However, Parks is proceeding with the construction.</p> <p>a) Construction Begins Date Implemented: 2007 (projected)</p> <p>b) Construction Completed Date Implemented: December 2008/January 2009 (projected)</p>



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January 16, 2007

Honorable William Thompson
Comptroller, City of New York
1 Centre Street
New York, NY 10007

Dear Comptroller Thompson:

I write regarding the recent draft audit of the 59th Street Recreation Center, a facility operated by the Department of Parks and Recreation. I have spoken to John Graham of your staff regarding this issue and now write to update you.

For some years, I have been working with the Parks Department, Community Board 7 and Friends of the 59th Street Recreation Center to develop a renovation plan for the site, and we have finally agreed on an exciting design. Former Council Member Ronnie Eldridge helped to secure initial funding for the renovation from a developer, and that money was placed in an escrow account. I have worked with Congressman Nadler, Borough President Stringer, Community Boards 4 and 7, and the City Council to secure millions more in funding in order to create a renovation that is appropriate to the community's future needs.

I wish to emphasize that the Parks Department has not delayed in appropriating any funding. We have worked, as a community, to raise additional funding to complement the funds in the aforementioned, Department of City Planning monitored, escrow account. It is our goal to build a facility that is at once modern, while preserving the historic boathouse and providing a variety of recreational opportunities for West Siders and all New Yorkers.

Thank you for your attention to this issue. Again, the Parks Department staff has worked with us to support the community plan for the 59th Street Recreation Center, and we now have the funding to construct the plan. The additional funding has taken us a few extra years to secure, and thus the delay in spending the escrow money.

Sincerely,

A handwritten signature in black ink that reads "Gale A. Brewer".

Gale A. Brewer