

July 1, 2010

Re: Case No. 10-WBI-0427-1: Work at Lower Kinnear Park

Dear ***:

Thank you for reporting your concerns regarding the construction activity at Lower Kinnear Park, and doing so by utilizing the City's Whistleblower Protection Code.

When the Seattle Ethics and Elections Commission ("SEEC") receives a Whistleblower report, the Executive Director first determines whether there is reason to believe that "improper governmental action" has occurred. "Improper governmental action" is defined as a violation of federal, state or local laws; an abuse of authority; the creation of a substantial or specific danger to the public health or safety; or a gross waste of public funds. If, after an initial staff inquiry, there is reason to believe that improper conduct may have occurred, SEEC staff open an investigation.

Based on our inquiry, detailed below, we do not have a reasonable belief that improper governmental conduct has occurred. Therefore we will not be pursuing the matter further.

BACKGROUND

Kinnear Park is a 14.1 acre City Park, designated as a Historical Landmark on the west slope of Queen Anne hill. The park has two levels known as Upper Kinnear and Lower Kinnear. Upper Kinnear Park combines a vista high above Elliot Bay and Puget Sound, a children's play area and a large grass lawn. Lower Kinnear extends down the west slope of Queen Anne ending just short of Elliott Avenue West.

Lower Kinnear Park is accessible by a trail from the upper portion or by an entrance located off West Roy Street where there is a tennis court. Lower Kinnear Park stretches across the face of the hill and is predominantly tree covered. Until recently, this woodsy area was the site of homeless encampments and significant recurring drug-related activity. Neighborhood groups, the Seattle Police Department ("SPD"), the Parks Department ("Parks"), and other organizations have been working to clear the park of homeless encampments and drug-related activity. At this time, most public usage of the Park occurs at the upper viewpoint.

Kinnear Park is managed by the Seattle Parks Department Parks Resources South/Central West group. The group manager is Ms. Cheryl Fraser, and Ms. Cynthia Thurman is the crew chief overseeing maintenance of Kinnear Park.

As part of a community-wide effort to restore Kinnear Park, a citizen's group known as FolkPark has brought together various community interests and after a year's work produced an ambitious \$1.2M park master plan. In April 2010, the group unveiled the design and

immediately began seeking grants and other sources of funding. The ultimate mission is to re-establish Kinnear as a safe welcoming public space and to sustain the existing urban forest and native plantings.¹

In the fall of 2008, Parks Department crew chief, Ms. Cynthia Thurman, decided to repair a decades-old path used as park access by Parks maintenance staff and SPD. The path was wide enough to accommodate (barely) one vehicle. The access began at Roy Street, continuing into the park past the tennis court to a turn-around area that historically was a picnic lawn. This area, known for high drug trafficking and use as well as an area of homeless encampments, was accessed by Parks to collect garbage associated with the illegal park use and by SPD.

The job required leveling and gravelling both the access route and the turn-around point, installing a four foot Eco-block wall to prevent any slope erosion caused by rain or tennis court run off, installation of a drain and some shoring of the downhill side with large poles. Total cost was estimated by Ms. Thurman to be less than \$5,000. Ms. Thurman did not consult her department's Planning and Development staff (normally in charge of park projects), Parks engineering staff (to ascertain if the Eco-block wall needed to have engineering approval), the Department of Neighborhoods Landmark Preservation Board staff (regarding permissible changes to the Landmark Park), or the Department of Planning and Development (regarding slope and other environmental issues).

After the job was finished, Parks's Planning and Development staff received complaints. The Parks Department response has been to educate Ms. Thurman, a newer crew chief, on the required steps to be taken when restoration or repairs are done in parks.

The Eco-block wall is not in keeping with the character of a Landmark Park and will be removed, likely coinciding with the FolkPark restoration. The cost to remove the wall is unknown, though the materials, poles and Eco-blocks will be reused.

DISCUSSION

Our initial inquiry focused on the costs associated with the construction of the Eco-block wall, which will need to be removed in the near future. We also inquired into whether, due to topography, the project created a substantial danger to public safety and, when constructed, whether a permit was required and obtained in compliance with the City's Department of Planning and Development (DPD) rules.

During our inquiry we spoke to City employees familiar with the project, including the crew chief, who oversaw the construction, and the Parks Resource manager who approved the installation. We also spoke with Parks engineering and senior landscaping professionals, the Parks liaison to the community based FolkPark organization, permit specialists in the Department of Planning and Development (DPD) and landmark preservation board staff.

¹ Staff of the City's Landmark Preservation Board is currently working on the City ordinance which will change the landmark designation from the entire Park to protect specific structures and areas which have historic significance. This process is one necessary step for the FolkPark plan, once funded and approved by the City, to move forward. Additionally, City employees acting as community liaisons in Neighborhoods and Parks continue to work with the group to insure compliance with City policies, codes and ordinances.

To find improper governmental action as a result of “a gross waste of public funds” requires us to find an unreasonable economic loss to the City. Here the installation of the Eco-block wall, along with the widening of the access path, cost roughly \$5,000. The removal will cost far less than the installation, and the parts will be reused in other projects. The access path appears to serve a public purpose. Based on this we do not find the expenditures to constitute a gross waste of public funds.

Improper governmental conduct also encompasses actions by employees that violate a city ordinance. The area in Kinnear Park improved by the Parks Resources crew is in an Environmental Critical Area (ECA). City ordinance requires all work in an ECA to be permitted by DPD unless specifically exempted by ordinance. City ordinance exempts from the permitting requirements project undertaken by a City department that result in a benefit to the public. SMC 25.09.045. The refurbishing of the access path to allow safe access for citizens, police officers and Parks crews qualifies as a benefit to the public and as it was performed by Parks staff, is exempt from the permit requirement.

SEEC staff also made inquiries into whether changes in the access path created a substantial danger, since it is in an area designated at steep slope by DPD. Parks Engineering was not consulted before the Eco-block wall was constructed as is required by Parks Department procedures. They are now fully aware of the wall and the new drainage system. Parks engineering professionals have determined that the wall placement on the slope and its construction do not pose a specific safety threat. Engineering staff are monitoring the wall and drainage and will continue this monitoring until its removal. We find that the wall and grading do not pose a substantial danger to the public.

CONCLUSION

Though a reasonable person may certainly question the need for the improvements undertaken by the Parks Department Parks Resources crew chief given the on-going planning for the future of the park, we do not find reason to believe that the improvement of the access path constitutes improper governmental action. Given this finding, we will be closing our inquiry.

Thank you for stepping forward and bringing this to the attention of the Ethics and Elections Commission. If you have any further question or comments please do not hesitate to call.

Sincerely,

Kate M. Flack
SEEC Staff

cc: Mr. Robb Courtney, Seattle Parks Department, Dir. Parks
Mr. Kevin Stoops, Parks Department, Dir. of Planning and Development
Ms. Cheryl Fraser, Mgr. Parks Resources South/CW
Ms Cynthia Thurman, Parks Resources South/CW, Crew Chief, Kinnear Park