A.R. LEVY PLAYGROUND

WEST SIDE CIVIC IMPROVEMENT ASSOCIATION

October 5, 1966
(rec Oct. 10)

Alfred H. Barr
Museum of Modern Art
11 West 53rd Street
New York City

Re: Adele Rosenwald Levy Memorial

Dear Mr. Barr:

A growing number of residents on the West Side are disturbed about plans of the Adele R. Levy Park Committee to proceed with construction of the proposed Memorial in Riverside Park, despite the opposition of thousands of residents, the Riverside Parks and Playgrounds Committee, Community Planning Board No. 7, The West Side Civic Improvement Association, The Riverside Democrats, the Park Association of New York, and the Sierra Club (Eastern chapter).

We are writing each member of the Adele R. Levy Park Committee to request that an interim committee be appointed to work out a compromise solution that will permit construction of a Memorial, while not encroaching on the landscaped areas of the Park. It is our opinion that serious consideration should be given to an alternative site, utilizing a new design.

The Bloomingdale Conservation District's Recreation Program, which has been carried out for the past few summers in the lowest level of Riverside Park, has proved popular, and their need for improved outdoor and indoor recreation space deserves thoughtful consideration. Redesign of this lowest level, which now consists of a large, bare asphalt area, would make it more useful, attractive, and accessible from the middle level.

A second site more recently proposed is the central mall of Douglas Houses, a two-acre depressed grass area fenced off from use by anyone. A year-round facility here would serve a much larger segment of the community, revitalize a drab and unattractive area and overcome tow inherent disadvantages of the Park site: its remoteness, and the harsh winter inds off the Hudson River. The Douglas site lies in the center of a comprehensive renewal area, close to three public schools, a public library, a new police station, and the Children's Aid Society, which was founded by Adele Levy.

SECRETARY: MRS. KENNETH R. HUGGINS, 315 WEST 106TH STREET, NEW YORK, N. Y. 10025

The recently completed Plaza in the center of Riis Houses, so generously financed by the Vincent Astro Foundation, illustrates how successfully a drab project can be transformed into something of which the community can be proud. We believe this approach, combined with an indoor facility, would focus and bind the Bloomingdale Community together in a unque and beautful manner.

So far, three representatives of the executive committee, Mrs. Max Ascoli, Mrs. Nathan Straus, and Mr. Victor Weingarten, have refused to accept either alternative outlined above, or to explore other possibilities. They are determined to proceed with the present plan despite its lack of community support. To do so will deeply and irreparably divide this community [redacted] We regret that the time and architectural fees spent will be lost; however, this could be made up by a reduction in cost of the new design.

We hope you will designate someone to meet with representatives of this community and the City to work out a constructive and imaginative solution to the recreation needs of the people on the West Side. We can promise you widespread and enthusiastic support for such a solution.

Yours sincerely,

Elsa Barnouw

Elsa Barnouw, Director, Gardens Nursery School and Kindergarten

Barry Benepe

Barry Benepe, Chairman, Parks Committee, Community Planning Board No. 7

Sarah Burke

Sarah Burke, President, Parents' Committee

Julia North Chelmenski

Julia North Chelmenski, Candidate for the Assembley, 69th Dist., (R)

Rabbi Daniel L. Davis

Frederick Fried, Author and Historian

Archie A. Gourgey, Vice Pres., Riverside Parks &Playgrounds Comm.

Thomas A. Hopkins, Pres., Morningside Republican Club

Lawrence S. Huntington, Pres., West Side Civic Improvement Ass'n

James Latimore

Saul Levitt, Playwright (Andersonville Trial)

Sheldon Oliensis, Pres., Park Association of New York

Henry Hope Reed, Jr. Curator, Central Park

Dr. Sophie Robison, Prof. Emeritus, Columbia School of Social Work

Shirley Anne Siegal, Ass't Attorney General, Author of "The Law of Open Space"

ADELE LEVY MEMORIAL PLAYGROUND

mercy Park South
rk, N. Y. 10003
, 1966

TO MEMBERS OF T ITTEE:

Dear Member:

Mrs. Straus has he enclosed
copy of a lette from the
Mayor. As you letter itself
is May 31st, wh eek period
after the Mayor

The Mayor has now up to
the City to de ld the Park.
I am sure you Park Com-
mittee must no

Ascoli

P.S. If you ha u be good
enough t s. Herman),
or Mrs. gan) or
Mrs. Tho cCarthy).

NEW SUIT ATTACKS LEVY MEMORIAL

West Side Residents Allege Improper Use of Park

N.Y. Times Oct 6, 1966

The controversy over the Adele R. Levy Memorial, a playground designed by Louis Kahn, the architect, and Isamu Noguchi, the sculptor, for the upper slope of Riverside Park, is back in the courts.

Opponents of the project disclosed that they had instituted a new action to stop the city from proceeding with a contract to build the project, alleging improper use of park land. This was announced at a news conference on Riverside Drive at West 103d Street, directly overlooking the park.

Mayor Robert F. Wagner signed contracts last December before leaving office for construction of the $1.1-million project, half of which would be provided by the city to match funds raised privately in memory of Mrs. Levy, a founder of the Citizens Committee for Children, who died in 1960.

Local residents who preferred to keep the park in its present form obtained a judgment in April upsetting the contract on the ground that the total funds provided failed to meet the lowest contract bid.

Additional Funds Raised

The Adele R. Levy Park Committee subsequently raised additional funds. Residents of the Bloomingdale section of the upper West Side in the vicinity of the park agreed to back a new court action when they heard that the city was ready to sign a new contract for the construction.

Barry Benepe, a city planner and chairman of the parks committee of Community Planning Board No. 7, which covers the Bloomingdale section, showed at the news conference a plan to use a site three blocks eas, within the bounds of Frederick Douglass Houses, a city housing development.

Some opponents, he added, would not object to the memorial and recreation center if the site were farther down the slope.

But a spokesman for the memorial committee said that the design was for the particular site and could not be used elsewhere. He said the committee's position remained unchanged since a letter to that effect on Sept. 14 from Mrs. Max Ascoli, a sister of the late Mrs. Levy and a member of the executive committee of the memorial committee. In it she wrote the opponents of the plan that none of the suggested alternatives appeared acceptable.

Papers Served on City

The Department of Parks said yesterday that the new suit in State Supreme Court would be

ADELE LEVY MEMORIAL PLAYGROUND

Mrs. Max Ascoli, the particular site and could not be used elsewhere. He said the committee's position remained unchanged since a letter to that effect on Sept. 14 from Mrs. Max Ascoli, a sister of the late Mrs. Levy and a member of the executive committee of the memorial committee. In it she wrote the opponents of the plan that none of the suggested alternatives appeared acceptable.

Papers Served on City

The Department of Parks said yesterday that the new suit in State Supreme Court would be handled by the Corporation Counsel's office. The Corporation Counsel's office acknowledged service of the papers but withheld comment.

On April 28, after the city was enjoined from building the project, Mrs. Ascoli accused the city of bad faith and said the Adele R. Levy Park Committee would return more than $600,000 in gifts raised for it. She said that Parks Commissioner Thomas P. F. Hoving "has secretly tried to strengthen the opposition" to the park.

Later, however, thec ommitt and the city resumed preparations to proceed with the memorial. In her letter of Sept. 14, Mrs. Ascoli quoted Mayor Lindsay as saying that "the Adele R. Levy Park was too far down the pipeline" to be abandoned by his administration. She added that she had told the Mayor of her group's dissatisfaction with any of the proposed alternatives.

A Parks Department spokesman said that the phrase about the project being "too far down the pipeline" represented Commissioner Hoving's position—that he accepted it as a city commitment rather than pushing for its adoption. The spokesman confirmed that preparations were under way for letting a new contract to build the memorial.

EDUCATION

VS. East Coast

INE MORRIS

ew York Times

Woodward and a few other stars.

Dressed in a red and white sports jacket he bought in Las Vegas, he presented such non-casual fashions as a dress and jacket paved with sequins in a harlequin design, sunburst-pleated chiffons fanning out asymetrically

cy Park South
N. Y. 10003
966

TO MEMBERS OF THE A :

Dear Member:

Mrs. Straus has ask closed
copy of a letter sh the
Mayor. As you will r itself
is May 31st, which eriod
after the Mayor rec

The Mayor has promi up to
the City to defend ne Park.
I am sure you will Com-
mittee must now awa

P.S. If you have good
enough to cor rman),
or Mrs. Strau or
Mrs. Thomas H hy).

ADELE R. LEVY MEMORIAL PLAYGROUND

MRS. MAX ASCOLI

23 Gramercy Park South
New York, N. Y. 10003
June 8, 1966

TO MEMBERS OF THE ADELE R. LEVY PARK COMMITTEE:

Dear Member:

Mrs. Straus has asked me to mail to you the enclosed copy of a letter she received on June 7th from the Mayor. As you will see, the date on the letter itself is May 31st, which falls within the two-week period after the Mayor received our letter.

The Mayor has promised to go ahead. It is now up to the City to defend all legal suits and build the Park. I am sure you will agree the Adele R. Levy Park Committee must now await developments.

Very sincerely,

Marion R. Ascoli

Mrs. Max Ascoli

P.S. If you have any questions, would you be good enough to contact me (OR 9-3620, Mrs. Herman), or Mrs. Straus, (MU 8-5700, Miss Rogan) or Mrs. Thomas Hess (MU 8-3880, Mrs. McCarthy).

CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK 7, N.Y.

May 31, 1966

Mrs. Nathan Straus
Mr. T. J. Watson, Jr.
Co-Chairmen
The Adele R. Levy Park Committee
Mayfair House
610 Park Avenue
New York, N. Y.

Dear Mrs. Straus and Mr. Watson:

I have and thank you for your letter of May 17, 1966 relating to the Adele R. Levy Memorial Playground.

Some months ago, when Commissioner Hoving and I met with representatives of the Adele R. Levy Park Committee, we gave assurances that, although the City government disagrees in concept with the placing of a structure of this proportion in park land, the matter had proceeded sufficiently through the "pipe-line" that the new City Administration would move forward with it. At that time no one could predict the outcome of the legal proceedings that were pending in the Supreme Court.

Although the opinion of the Court invalidated the old contracts and, arguably, leaves the matter outside the "pipe-line", we nevertheless hold to the statement that we would proceed with the proposal. Then, as now, we have been sensitive to the sums of money that were collected from private donors for the project. We are also sensitive to the importance of having in our City an appropriate memorial to Adele R. Levy.

Accordingly, the City government will re-advertise for bids, but on the understanding that construction will not go forward until all legal proceedings in the Courts are ended. I am advised by the Corporation Counsel that City policy has been and continues to be that construction projects financed with City funds in whole or in part are not moved forward pending litigation which can upset the construction, except in emergency cases. This applies, according to the Corporation Counsel,

Mrs. Nathan Straus
Mr. T. J. Watson, Jr.
Co-Chairmen
The Adele R. Levy Park Committee

May 31, 1966

whether or not the Court grants a stay of proceeding.

I can assure you that in the event fresh litigation is begun that the Corporation Counsel will move against it as rapidly as possible and bring it to the speediest possible conclusion.

I am aware that the Adele Levy Committee does not regard Court litigation of this kind as a necessary impediment. On that point I believe we are in disagreement, but we do not think it wise to change established City policy in this regard.

Sincerely yours,

John V. Lindsay

John V. Lindsay
Mayor

ew York Times. FRIDAY, OCTOBER 7, 1966. 45 L

r Crops Will Die

y James L. McDonald, who came from n foreign workers, has delayed harvest.

GROUP ABANDONS LEVY MEMORIAL

Sponsors of Proposed Park Project Ask City to Refund $600,000 They Donated

By EDITH EVANS ASBURY

Sponsors of the Adele Rosenwald Levy Memorial proposed for Riverside Park have abandoned it, they informed Mayor Lindsay yesterday.

Mrs. Nathan Straus, co-chairman of the committee that had raised about $600,000 and had given it to the city for the memorial, asked that the money be refunded.

"Your administration has placed one obstacle after another in the way," Mrs. Straus wrote the Mayor. As a result, she said, the committee had decided that "under the present administration the playground and community center cannot be built and operated successfully."

A spokesman for the Mayor said he would have no comment until he had had time to study the letter, which was delivered by messenger to City Hall yesterday afternoon.

Would Cost $11.1-Million

Mrs. Levy, a founder of the Citizens Committee for Children, died in 1960. In her memory, a committee of friends and relatives proposed to build a community center and playground on the slope of Riverside Park, at 103d Street. Designed by Louis Kahn, architect, and Isamu Noguchi, the sculptor, it was to have cost $1.1-million, with the committee and the city sharing the cost.

Parks Commissioner Thomas P. F. Hoving, who has never been in favor of the proposed memorial, said last night that he hoped the committee would not "just pick up its marbles and thus penalize the children of New York."

"Instead," he continued, "it should listen to the great majority of the community and make its generous gift available for a playground on a new site. This will win universal acclaim and honor the memory of Adele Levy in a truly significant manner."

Memoreal Questioned

Mr. Hoving said that the pro-

Fight for Their Preservation Is On

The East African Standard

The Arabian oryx. The species was saved when conservationists found two oryxes in a private zoo in Kuwait.

The Tasmanian thylacine, a wolf-like beast that conservationists would like to save despite its evil disposition.

New York Zoological Society

European bison is another creature facing extinction

The New York Times (by Edward Hausner)

...lip, left, and Cándido Cruz have ...use many other Puerto Ricans ...aying jobs in nearby factories.

mittee yesterday was "an unworthy memorial to a great lady. Well-intentioned but ill-conceived, it was the right building on the wrong site. The city cannot afford the skyrocketing costs our engineers have predicted for this structure."

As soon as the proposal was announced in 1961, neighborhood opposition began, with nearby residents arguing that they preferred to keep the slope clear of buildings.

On his final day as Mayor, Robert F. Wagner signed contracts for construction of the memorial, despite the incoming administration's objection to the project. The committee then gave the city the money that it now wants refunded.

After Mr. Lindsay became Mayor, Mrs. Max Ascoli, sister of the late Mrs. Levy, accused Parks Commissioner Hoving of secretly working to strengthen the opposition.

Wildlife Parley Makes a Plea For Thylacines, Dragons, Etc.

By PETER BART

Special to The New York Times

SAN DIEGO, Oct. 6 — The care, feeding and ultimate preservation of the Indonesian giant Komodo dragon, the Tasmanian thylacine, the Arabian oryx and other such exotic creatures were scrutinized and debated today at a meeting of 91 wildlife specialists from around the world.

The specialists, after comparing notes, agreed that hundreds of species of animals and birds faced imminent extinction unless worldwide conservation efforts were greatly expanded. What is needed, one expert suggested, is a contemporary Noah's Ark to save wildlife from the "predatory" incursions of man.

The three-day conference, which ended today, represented a confrontation of two groups of wildlife specialists who had once been firm antagonists—the "conservation" people and the "zoo" people.

Until recent years, many "pure conservationists" were bitterly critical of the zoos, charging that the zoos "imprisoned" animals in cages, traded with ruthless animal dealers and did not take sufficient interest in trying to restore nearly extinct species.

However, now that some zoos are taking the leadership in helping to save these species and are eliminating the "prison cages," the two factions decided to meet here near the San Diego zoo and, as one South African delegate put it, "re-establish our dialogue." The meeting was part of the San Diego Zoo's 50th anniversary celebration.

Though many delegates of-[illegible] reports about the [illegible] destined for [illegible] before the preview began and [illegible] (top price: $500) had been sold [illegible] Vlaminck's, 14 Whitneys [illegible] rushing to see or buy the celebrated Vlaminck's and the 36 Whitney paintings—12 of his, 24 of hers—to investigate.

And, although nobody was [illegible] Vlaminck's and the 36 [illegible] $72,000) [illegible] were the 28 expensive (up to [illegible] upper echelons these days, there [illegible] every social encounter in the [illegible] kisses that go with virtually [illegible] tuated by the little hugs and [illegible] chin and a lot of elegant people [illegible] who have winter quarters in [illegible] Palm Beach, Fla., began at 7 [illegible] P.M. But anybody who wanted [illegible] to see the painters — Cornelius [illegible] Vanderbilt Whitney and his [illegible] wife, the former Marylou Hos[illegible]ford — could see them as early [illegible] as 6:30.

After the big hello's, punctuated by the little hugs and kisses that go with virtually every social encounter in the upper echelons these days, there were the 28 expensive (up to $72,000) Vlaminck's and the 36 Whitney paintings—12 of his, 24 of hers—to investigate.

And, although nobody was rushing to see or buy the celebrated Vlaminck's, 14 Whitneys (top price: $500) had been sold before the preview began and two were already destined for [illegible]

'His and Her' Art by C. V. Whitneys Steals the Show

Couple Are Paired With Vlaminck in Benefit Preview

By CHARLOTTE CURTIS

The works of Maurice de Vlaminck got top billing at the Wally F. Galleries last night, but it was the painting Whitneys and the Whitneys' paintings that nearly 400 fans turned out to see.

The benefit preview, a mini-gala involving cocktails, hors d'oeuvres, music by Peter Duchin and a lot of elegant people who have winter quarters in Palm Beach, Fla., began at 7 P.M. But anybody who wanted to see the painters — Cornelius Vanderbilt Whitney and his wife, the former Marylou Hos[illegible]ford — could see them as early as 6:30.

After the big hello's, punctuated by the little hugs and kisses that go with virtually every social encounter in the upper echelons these days, there were the 28 expensive (up to $72,000) Vlaminck's and the 36 Whitney paintings—12 of his, 24 of hers—to investigate.

And, although nobody was rushing to see or buy the celebrated Vlaminck's, 14 Whitneys (top price: $500) had been sold before the preview began and two were already destined for [illegible]

Cornelius Vanderbilt Whitney shows his sister, Mrs. G. Macculloch Miller, some of his paintings on display at the Wally F. Galleries. At right is "The Fishermen," and next to it is a work entitled "Approaching Storm." The latter painting will become part of the permanent collection of the Syracuse University Museum.

Other News

[illegible] 60-million [illegible] page 1

Quotation of the Day

"Trading and dealing by party leaders not only vitiates the basis for direct election of judges, but virtually insures that any outstanding judge who appears on the bench will not be the product of the [illegible] system but its survivor."—Mayor Lindsay in

Pamela N. [illegible] Engaged to [illegible] Bradford [illegible]

1959 Debutant [illegible] of Harvard [illegible] —January [illegible]

Special to The New York Times

NEWPORT, R. [illegible]

Mr. and Mrs. Jo[illegible] of Stonor Lodge [illegible] New York, have [illegible] engagement of [illegible] Miss Pamela N. [illegible] Bradford Hast[illegible] New York and [illegible] a son of Mrs. J[illegible] of Locust Val[illegible] Aiken, S. C., a[illegible] Bradford Hast[illegible] Richmond.

Mr. and Mrs. [illegible] ing a reception [illegible] Saturday aftern[illegible] the couple.

A small fa[illegible] planned for Ja[illegible]

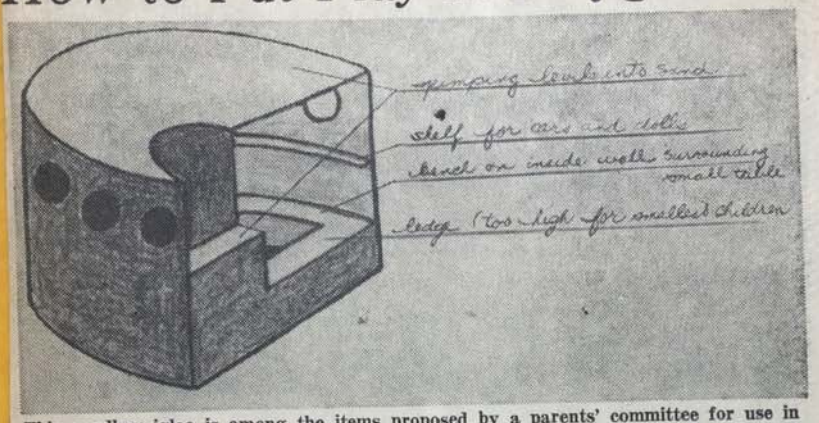
Miss Drexe[illegible] Spence School [illegible] was graduate[illegible] crofT School [illegible] Lawrence Col[illegible] ing for a mas[illegible] New School f[illegible] New York.

She was [illegible] given by he[illegible] port in July [illegible] dance given [illegible] New York t[illegible] and at the [illegible] was a member [illegible] Junior Assemb[illegible]

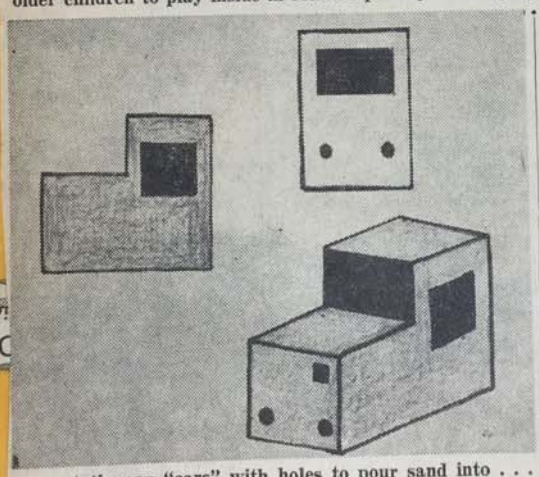
She is the [illegible] the late John [illegible] the late Mrs. T[illegible] Philadelphia a[illegible] of Stonor [illegible] Thames, Oxf[illegible]

Through [illegible] and the late [illegible]

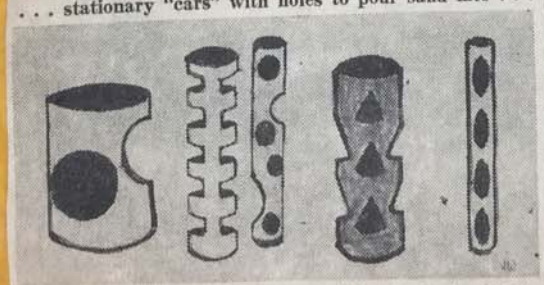
How to Put Play in Playground



This sandbox igloo is among the items proposed by a parents' committee for use in Washington Square Park. A ledge too high for smallest tots to climb would permit the older children to play inside in relative privacy. Other proposals include a group of . . .



. . . stationary "cars" with holes to pour sand into . . .



. . . and hollow cylinders, also for putting sand into. Drawings, by Mrs. Judy Wadia, appear in the committee report.

Villagers Seek More Vital Concept

By McCANDLISH PHILLIPS

Mrs. Judy Wadia of 3 Washington Square Village is a leader of the New Left in playground planning.

Sitting next to a stroller in Washington Square Park, she looks like almost any capable young wife with two small children—except perhaps for the life-size human leg she kneads into shape out of a bolt of steel wire, as other women might do their knitting.

But Mrs. Wadia is a force in the mother's underground that has been plotting the overthrow of the power of men who have done the bulk of the playground planning in the country, in a wisdom gained as they move from office to club to golf course—men who do not even know, for instance, that children like holes to pour things into.

Mothers are rising up to demand consultative rights on the design of playgrounds in which they and their children will be penned for significant parts of their lives.

Mrs. Wadia, a young woman with tawny-blond hair and pale blue eyes, has a girl 3½ and a boy 1½ years old. She buys [illegible] for $50 and fash-

'Compatibility' Is Dull, A Researcher Suggests

STRAUS / Lenox Park Comm.

WASHINGTON, Oct. [illegible] (AP)—Marriage partners who take pride in their "compatibility" may really be having a dull time of it, a Government mental health researcher says.

Indeed, says Dr. Robert Ryder, a Government study of 200 young middle-class couples suggests that compatibility, at least as defined by the couples themselves, is not necessarily a hallmark of a truly happy marriage.

"Compatibility," and terms like "comfortable," "harmonious" and "congenial," also used by some to describe their marriages, may really be synonyms for blandness or lack of excitement, Dr. Ryder suggests in a report summarized today in a publication of the National Institutes of Health.

Quotation of the Day

"Usually, I'm in the record book—on the other side."—Moe Drabowsky, who struck out six Dodgers in a row in the World Series opener. [60:7.]

ions human figures out of them in wire sculpture.

The New Play Areas

If she and a group of 60 mothers have their way, the new play areas in Washington Square Park will have electrical outlets for record players, long tunnels to drive tricycles through, a clear plastic greenhouse, sandbox igloos, natural barriers (not iron spike fences) and swings that will not fracture Mrs. Viola Morris's jaw.

The mothers say the present play areas are dangerous and deadly dull. Mrs. Morris was pregnant two years ago when a steel-seated swing struck her in the chin and cracked her jaw. That made her a true believer in auto tire or canvas swing seats. She lives at 126 West 11th Street and has two boys, aged 4 and 1.

When they learned that the park was going to be restored by 1968, the mothers got together, went over the park "inch by inch," took pictures of playgrounds wherever they went (Mrs. Tony Vietorisz has slides from Budapest) and kept feeding ideas to Mrs. Wadia, who distilled them into an illustrated report.

They formed the Parents Playground Committee of Washington Square Park and, having laid the groundwork, they are going to come out into the public tonight with an open meeting at 8 P.M. in the Eisner Lubin Auditorium of the Loeb Student Center, 566 West Broadway.

Too 'Boy-Oriented'

They will say that, in the hands of pipe-smoking designers and engineers, parks have become "completely boy-oriented," with few play areas just for girls.

The mothers want a special rest station for children (they don't want to keep running home and they say deviates lurk in the adult rest stations), a telephone (to receive emergency calls from husbands or homes) and intelligent, full-time adult recreation supervision in the park (to add the dimension of games, sports, dramatics, arts, story-telling, carnivals and costume shows to individual fun on regular playground equipment).

The theoretical ferment lately among playground planners has been almost as heavy as it usually is among political ideologues.

Right-wing conservatives say that some of the great men of our time were brought up on sandbox pits with metal swings, slides and seesaws. Moderates insist upon jungle jims and concrete pipes.

The New Left demands innovation, bursts of color, soft rubbery or foamy surfaces to cushion falls, tree houses, L-shaped sandboxes, tiny swings for dolls and parking places for carriages and strollers that won't interfere with play areas.

Tonight such playground radicals as Jane Jacobs, the urban-affairs author; Vincent Cifuni, director of the West Side Children's Center, and Howard Irvin, youth director of the Judson Memorial Church, will describe the great future.

STRAUS/
Levy Park Com.

October 20, 1966

TO: Members of the Adele R. Levy Park Committee

FROM: Mrs. Nathan Straus, Co-Chairman

The next meeting of the Adele R. Levy Park Committee will take place on Tuesday, November 22nd, at 11:00 a.m. at Radio Station WMCA, 415 Madison Avenue, 13th floor.

As this is a very important meeting, please make every effort to attend.

October 3, 1966

Dear Mrs. Straus:

Your telegram reached me just as I was leaving for the airport for two or three weeks journey to South America. Consequently to my regret I shall be unable to attend the emergency meeting of the Levy Park Committee on Wednesday, October 5th at 2:30 PM.

Sincerely,

Alfred H. Barr, Jr.

Mrs. Nathan Straus
The Adele R. Levy Park Committee
Cosmopolitan Club
122 East 66 Street
New York, New York

AHB:jsw
(signed in Mr. Barr's absence)

LEVY PARK COM.
(mtng Nov 22, Fri)

October 20, 1966

TO: Members of the Adele R. Levy Park Committee

FROM: Mrs. Nathan Straus, Co-Chairman

AHB hasn't said anything

The next meeting of the Adele R. Levy Park Committee will take place on Tuesday, November 22nd, at 11:00 a.m. at Radio Station WMCA, 415 Madison Avenue, 13th floor.

As this is a very important meeting, please make every effort to attend.

ADEZE LEVY PLAYGROUND

19 BEEKMAN PLACE
NEW YORK 10022

June 1, 1966

Mr. Alfred H. Barr, Jr.
Museum of Modern Art
11 West 53rd Street
New York, N.Y.10019

Dear Alfred:

Just a note to say I thought your letter to Mr. Laurence Rockefeller a masterpiece--clear, concise and explicit and I gather Mr. Rockefeller concurred with my opinion for I did not hear from him over the weekend.

Sorry I could not talk longer with you on Thursday. I did not wish to seem brusque nor an ingrate but the house was filled with noisy folk just when you telephoned.

Please know that I send you appreciation and thanks of the highest order for all you have done and are doing. I know that you have spent many hours of precious time on the Playground but then you are a special and wonderful sort of person.

As soon as word is received from the Mayor, you will be notified whether the outcome is good or otherwise.

While we wait, once again thank you from the tips of the toes to the top of the crown.

Fondest wishes to you and Margit.

Rudney

P.S. Latest rumor is that if Hoving is not selected as the new director of Metropolitan Museum, he has decided to run for Mayor in '69.

file

MINUTES OF MEETING OF

THE ADELE R. LEVY PARK COMMITTEE

May 9, 1966

A special meeting of The Adele R. Levy Park Committee was held at the home of Mrs. Max Ascoli, 23 Gramercy Park South, Borough of Manhattan, City of New York, on May 9, 1966. The meeting convened at 3:35 P.M.

The following members of the Committee were present:

Mrs. Nathan Straus, Presiding
Mrs. Shelley Appleton
Mrs. Max Ascoli
Dr. Elliott Avedon
Mrs. Richard Bernhard
Mrs. Victor Brudney
Mrs. J. Campbell Burton
Mr. Julius C. C. Edelstein
Mrs. Beatrice Goldberg
Miss Helen M. Harris
Mrs. Thomas B. Hess
Mrs. David M. Heyman
Mrs. Trude W. Lash
Mrs. Henry Goddard Leach
Miss Dorothy Levy
Mr. Mark McCloskey
Miss Barbara Oliver
(represented by Mrs. Beatrice Schutz)
Mrs. Robert S. Siffert
Mrs. Paul Stamm
Mr. Victor Weingarten
Mr. Louis M. Weintraub

Mr. George DeSipio of the law firm of Cleary, Gottlieb, Steen & Hamilton was present by special invitation. Mr. W. Fontaine Jones, Chairman of Local Community Planning Board #7 and Chairman of Neighborhood Council for Re-Development of Riverside Park was also present.

Mrs. Ascoli welcomed everyone to her home and then Mrs. Straus introduced Mr. George DeSipio, partner in the firm of Cleary, Gottlieb, Steen & Hamilton, the firm which has been handling legal matters for The Adele R. Levy Park Committee since December 1965. Mr. DeSipio reported on a meeting he and his partner, Mr. Leo Gottlieb, had attended that morning (May 9, 1966) at the invitation of Corporation Counsel J. Lee Rankin. Also present at this meeting were First Assistant Corporation Counsel Fred S. Nathan and Park Commissioner Thomas P. Hoving. Messrs. Gottlieb and DeSipio had stated that in their opinion the decision of Justice Hecht (April 27,1966) does not prevent the City from proceeding with construction of the Playground, but, at most, requires that new contracts be signed within the amount of money presently available after re-advertising for bids. (Mr. DeSipio explained to The Park Committee that new contracts could not be signed until after July 1, 1966, the start of the new fiscal year because the extra appropriation of City money which was approved in the 1966-67 Capital Budget will not be available prior to that date.) Mr. DeSipio stated that Commissioner Hoving expressed his continued opposition to the Playground and stated that funds were not presently available in the Expense Budget of the Department of Parks for Recreation or Maintenance personnel for such a facility.

Mr. Gottlieb asked Corporation Counsel Rankin and Commissioner Hoving if they were aware of a decision by the Mayor regarding the Playground. Both gentlemen replied they had not discussed it with Mayor Lindsay and the meeting adjourned after Corporation Counsel Rankin promised to try and arrange a meeting at an early date between himself, Mr. Gottlieb, Mayor Lindsay and Commissioner Hoving.

Mrs. Ascoli then reported on a telephone conversation she had with Commissioner Hoving the evening of April 28th, initiated by Commissioner Hoving. Commissioner Hoving said he was very unhappy about an article published in the New York Times that day in which Mrs. Ascoli stated she felt Mr. Hoving had acted in bad faith. He insisted he had done nothing of the kind, but Mrs. Ascoli told him of attending a Board meeting of the Park Association prior to their voting to issue a report concerning The Adele R. Levy Park (to which she and Mrs. Hess had been invited to address this meeting) at which the President, Sheldon Oliensis, had stated more than once the reluctance of the Park Association to issue any report about The Adele R. Levy Park, especially at this late date (February 1966). They had only agreed to do so after strong urging by Commissioner Hoving.

Commissioner Hoving asked Mrs. Ascoli if she would consider leaving the money raised by private contributions on deposit with the City for use by the Department of Parks for other future projects. Mrs. Ascoli replied that the Committee would have to make such a decision and she would write to him at the appropriate time.

Mr. W. Fontaine Jones said he had been told that certain approvals of the final plans by Municipal Departments were lacking still. Mrs. Hess stated that these had all been obtained. Mr. DeSipio concurred.

Mrs. Goldberg asked if the Committee planned to go ahead or not. Would the Committee urge the Mayor to proceed with construction?

Mrs. Ascoli, speaking for the family of Mrs. Levy, said she felt that the Committee should not urge the Mayor one way or the other. She felt the moment had come where the City had to decide whether or not to go ahead and if Mayor Lindsay decides not to proceed we should request the return of the funds.

Mrs. Bernhard made a motion which was seconded by Mrs. Siffert:

> "The Adele R. Levy Park Committee is not to ask or urge or take any further steps to convince the City to go ahead with The Adele R. Levy Park".

A discussion followed. Mr. DeSipio suggested an amendment stating that if the Mayor indicates that he is willing to go ahead within the next two weeks, the Committee will be happy to go ahead as planned.

Motion approved.

Mrs. Lash stated that she felt the Committee had to write to the Mayor, requesting his decision within two weeks--otherwise, if the Committee requested the return of the funds, the Mayor could use this as an excuse for not proceeding. This point was thoroughly discussed.

Mrs. Ascoli asked that a motion be made that a letter be written to the Mayor requesting him to notify The Adele R. Levy Park Committee of the City's intentions regarding the Playground and that if the City decided not to proceed with construction, request that the funds raised through private contributions be returned, with interest, to United Neighborhood Houses. Mr. DeSipio pointed out that there have been expenses involved, e.g. architect's fees, and that one-half of these would have to be deducted before the funds were returned to United Neighborhood Houses, by prior agreement.

A motion was made and seconded that:

> "A letter be written to the City if and when it expresses an intent not to proceed and asking for a refund of the Park's funds, less accrued expenses."

The motion was adopted.

Mrs. Straus indicated there were alternative suggestions to consider in the event of the return of the funds by the City, among which were:

1. A mental health hospital in connection with Maimonides Hospital in Brooklyn,
2. An Adele R. Levy Library at Hyde Park, New York,
3. Requests received by Mr. Weingarten from the South Bronx and Mount Vernon, each of which would like to create an Adele R. Levy Memorial Park,
4. Redoing a Pier at 125th Street creating a Park.
5. Endowing a Chair at one of the universities in which Adele Levy was interested.

Mr. Weingarten made a motion, seconded by Mrs. Weintraub that:

> "A sub-Committee be appointed by Mrs. Straus to consider these and further proposals, said sub-Committee to be convened in September."

The motion was carried.

The question was raised as to whether the action of the Committee was to be made known to the Mayor. Mrs. Ascoli suggested that Mr. DeSipio so inform the Mayor.

A motion was made by Mrs. Hess and seconded by Mrs. Weintraub that:

> "Mr. DeSipio and Mr. Weingarten draft a letter to the Mayor informing him of this meeting and stating the Committee would appreciate a reply from Mayor Lindsay within two weeks whether or not he plans to proceed with construction."

The motion was passed.

A resolution was requested to ask the United Neighborhood Houses to receive and hold monies in the event they are returned by the City, in an Escrow Account. It was so resolved.

A motion was made by Mrs. Ascoli and seconded by Mrs. Hess as follows:

> "The Chairman of the Committee be given the authority to write a letter to each donor indicating that a sub-Committee will be appointed to consider alternate projects and giving said donor the privilege of having his money returned. This letter to be sent after the two-week period allowed for the City to indicate its intentions in relation to the Park."

The motion was passed.

The meeting adjourned at 5 P.M.

Olivia L. Herman
Acting Secretary.

LEVY PLAYGROUND

May 26, 1966

Dear Laurence:

Here are some documents concerning the Adele R. Levy Playground:

(1) A copy of a letter dated May 17, 1966, to Mayor Lindsay from Co-Chairmen of the Adele R. Levy Playground.

(2) A copy of Judge Hecht's decision in a suit brought by Martin Davis against the City of New York, etc.

(3) A copy of Approval of Capital Budget Proposal, etc. to the Honorable Newbold Morris from Mayor Wagner, December 17, 1965.

(4) A confidential list of the principal donors to the fund for the Adele R. Levy Playground. I have added what I understand to have been the contributions from members of the Rockefeller family, with an indication of the contributions from the Adele Levy family.

(5) Clippings from the New York Times, Newsweek and the Progressive Architecture, all dating from early 1964. The Times editorial of February 8, 1964 seems especially relevant and quite curious in relation to the Times' current attitude.

In this complicated affair, I do not feel that I can add my own second and third-hand information. However, it is my understanding that, as of the present moment, the real decision rests with the Park Commissioner. I would hope that you or someone in your office would telephone Adele Levy's niece, Mrs. Thomas Hess, 19 Beekman Place, MU 8-3880. She expects to leave town tomorrow, Friday, about twelve o'clock. Her telephone number in the country is 203-TO9-6226.

My own concern is the loss to New York City of a highly original and interesting work of art designed by Louis Kahn, possibly the best living American architect of his generation, in collaboration with Isamu Noguchi, one of the best American sculptors and a man who has had much experience, both with playgrounds and with the designing of public gardens (Unesco, Paris and the great new art museum in Israel). By coincidence, Kahn is now having a very large, important one-man show here at the Museum of Modern Art.

Mr. Laurence Rockefeller -2- May 26, 1966

I am sure that the Committee for the Adele R. Levy Playground will much appreciate your interest in this matter and so will I.

My best to you.

Sincerely,

Alfred H. Barr, Jr.

Mr. Laurence Rockefeller
Room 5600
30 Rockefeller Plaza
New York, N. Y.

AHB:mf
(Signed in Mr. Barr's absence)

cc: Mrs. Thomas Hess

Enclosures

A. LEVY PLAYGRD

COPY

THE ADELE R. LEVY PARK COMMITTEE
c/o Mrs. Nathan Straus
Mayfair House
610 Park Avenue
New York, New York

May 17, 1966 (& May 20)

The Honorable John V. Lindsay
City Hall
New York, New York 10013

Dear Mayor Lindsay:

The Adele R.Levy Park Committee has met with Mr. George DeSipio of Messrs. Cl
Han
of
had
J.L
S.
Leo

Mrs Hess's number in the country is 203-709-6226

tlieb
and revent
the Adele
R.Le new
cont p-
prop

ely
$600,000 for this project. If it is not going to come about, we would like either to consider another project or return the money to the subscribers. Therefore, we would greatly appreciate it if you would find it possible to arrive at a decision regarding the Playground within the next two weeks.

Sincerely yours,

By_____
Mrs. Nathan Straus
Co-Chairman

_____
T.J.Watson, Jr.
Co-Chairman

A. LEVY PLAYGRD

COPY

THE ADELE R. LEVY PARK COMMITTEE
c/o Mrs. Nathan Straus
Mayfair House
610 Park Avenue
New York, New York

May 17, 1966 (rec'd May 20)

The Honorable John V. Lindsay
City Hall
New York, New York 10013

Dear Mayor Lindsay:

The Adele R.Levy Park Committee has met with Mr. George DeSipio of Messrs. Cleary, Gottlieb, Steen & Hamilton, who reviewed for us Justice Hecht's opinion of April 27, 1966 and reportec on the meeting that he had on Monday, May 9, 1966 with Corporation Counsel J.Lee Rankin, First Assitant Corporation Counsel Fred S. Nathan, Park Commissioner Thomas P.Hoving and Mr. Leo Gottlieb.

We understand that in the opinion of Messrs. Gottlieb and DeSipio, the decision of Justice Hecht does not prevent the City from proceeding with the construction of the Adele R.Levy Memorial Playground but, at most, requires that new contracts be signed within the amount of the present appropriations after re-advertising for bids.

We have collected from private donors approximately $600,000 for this project. If it is not going to come about, we would like either to consider another project or return the money to the subscribers. Therefore, we would greatly appreciate it if you would find it possible to arrive at a decision regarding the Playground within the next two weeks.

Sincerely yours,

By_____
Mrs. Nathan Straus
Co-Chairman

_____
T.J.Watson, Jr.
Co-Chairman

19 BEEKMAN PLACE
NEW YORK 10022

BY HAND

May 11, 1966
(Rec'd May 11)

TO: MR. ALFRED BARR

FROM: MRS. THOMAS B.HESS

Photographs represent model based on preliminary plans. In the final plans, the general concept and outline were maintained but various details have been modified, e.g. there will be only one "slide mountain". The majority of the changes were necessary for one or more of several reasons such as City Code requirements; changes in sub-soil conditions revealed by more extensive test borings, requirements insisted upon by New York Central Railroad; cost of item excessive, etc.etc.

Confidential including list of donors

19 BEEKMAN PLACE
NEW YORK 10022

May 4, 1966

(Rec'd May 4)
AHB

Mr. Alfred H. Barr, Jr. Director,
Museum of Modern Art,
11 West 53rd Street,
New York, N.Y.

Dear Alfred:

In accordance with Tom's directions, I am sending you herewith the following material re: The Adele R. Levy Playground:

1) Copy of Judge Hecht's decision in the case.

2) Copy of the letter marked "Exhibit F", upon which decision seems to be based.

3) Selected list of several contributors to the Special Fund of United Neighborhood Houses (acting as fiscal agent for the Park Committee). Regarding this I would like to add that we hope share this information with your usual superb tact and discretion in which I have utmost and absolute faith. Secondly, with very rare exceptions, this was the lowest "low pressure" fund raising campaign ever held--so much so that suggested amounts of gifts were almost never mentioned--even when the prospective donor requested guidance!! There are many more small contributions than large ones which pleases me in a way, for often a gift of $50.00 represents a far greater sacrifice than one ten times as large, and everyone who knew and loved Aunt Adele should feel a part of this, if ever it is built.

One last thought--Commissioner Hoving has been known to state several times that even were this building and playground constructed, there is no money in the budget for staff or equipment. That is true at present for it would be utter madness to reserve funds for a non-existent facility. However, I do not think either lack presents a serious problem. Bank Street College for Education will soon be moving to the area and has indicated a keen interest in this project. Teachers College, Columbia University is not far away either and there are one or two Settlement Houses in the

219

vicinity who could make excellent use of additional space.

The residents of the area have been quite successful in raising funds for supplies, etc. for summer programs in the Park for several years and then there are the numerous Anti-Poverty programs to consider as well.

Finally, I am convinced, if there were visible evidence of construction, one could raise money for equipment, supplies and staff without too much difficulty.

You are a wonderfully loyal and good friend and we are more grateful than words can express. My thanks to you are so profound as to be fathomless!!!

If you need anything more, please telephone and I will try to comply.

Fondly,

Audrey

Mrs. Thomas B. Mass

Confidential including

vicinity who could make excellent use of additional space.

The residents of the area have been quite successful in raising funds for supplies, etc. for summer programs in the Park for several years and then there are the numerous Anti-Poverty programs to consider as well.

Finally, I am convinced, if there were visible evidence of construction, one could raise money for equipment, supplies and staff without too much difficulty.

You are a wonderfully loyal and good friend and we are more grateful than words can express. My thanks to you are so profound as to be fathomless!!!

If you need anything more, please telephone and I will try to comply.

Fondly,

Audrey

Mrs. Thomas B.Hess

Confidential including list of donors

19 BEEKMAN PLACE
NEW YORK 10022

May 4, 1966

(Rec'd May 4) BY HAND

Mr. Alfred H. Barr, Jr. Director,
Museum of Modern Art,
11 West 53rd Street,
New York, N.Y.

Dear Alfred:

In accordance with Tom's directions, I am sending you herewith the following material re: The Adele R. Levy Playground:

1) Copy of Judge Hecht's decision in the case.

2) Copy of the letter marked "Exhibit F", upon which decision seems to be based.

3) Selected list of several contributors to the Special Fund of United Neighborhood Houses (acting as fiscal agent for the Park Committee). Regarding this I would like to add that we hope share this information with your usual superb tact and discretion in which I have utmost and absolute faith. Secondly, with very rare exceptions, this was the lowest "low pressure" fund raising campaign ever held--so much so that suggested amounts of gifts were almost never mentioned--even when the prospective donor requested guidance!! There are many more small contributions than large ones which pleases me in a way, for often a gift of $50.00 represents a far greater sacrifice than one ten times as large, and everyone who knew and loved Aunt Adele should feel a part of this, if ever it is built.

One last thought--Commissioner Hoving has been known to state several times that even were this building and playground constructed, there is no money in the budget for staff or equipment. That is true at present for it would be utter madness to reserve funds for a non-existent facility. However, I do not think either lack presents a serious problem. Bank Street College for Education will soon be moving to the area and has indicated a keen interest in this project. Teachers College, Columbia University is not far away either and there are one or two Settlement Houses in the

vicinity who could make excellent use of additional space.

The residents of the area have been quite successful in raising funds for supplies, etc. for summer programs in the Park for several years and then there are the numerous Anti-Poverty programs to consider as well.

Finally, I am convinced, if there were visible evidence of construction, one could raise money for equipment, supplies and staff without too much difficulty.

You are a wonderfully loyal and good friend and we are more grateful than words can express. My thanks to you are so profound as to be fathomless!!!

If you need anything more, please telephone and I will try to comply.

Fondly,

Audrey

Mrs. Thomas B. Hess

Telephone first thing Monday and take to Dana + extra copies for Mrs Hess and Mrs Ascoli

May 6, 1966

Dear Dick:

Unfortunately, our xerox machine has been out of order so that I was unable to send you this material in time to reach ~~you today,~~ on Friday.

I enclose:

(1) A confidential list of the donors of $1,000 or more toward the Adele R. Levy Memorial Playground, Riverside Park. The typed list was sent to me by Mrs. ~~Tom~~ Thomas Hess, the niece of Adele Levy. ~~I scribbled on~~ added other information including the Rockefellers and many other trustees of the Parks Dept. are donors.

(2) Judge Hecht's decision in the litigation which involved a suit by Martin David against ~~the Parks~~ the mayor, Robert Wagner, and Newbold Morris.

(3) The 3rd document ~~you~~ (can't remember exact description)

~~On Monday, the 9th,~~

~~It seems~~ I believe all is in order financially but for some reason ~~I do~~ Lindsay and Hoving have gone back on the City's agreement to go ahead.

A meeting of the Committee will be held at the home of Mrs Max Ascoli (address and phone number) on Monday the 9th. Mrs Hess's phone no is — I expect to see "David in Cambridge ~~the same day~~ on Monday

yours

(sign for me)

(2)

APR 27 1966

see page 5

Apr. 1966

SUPREME COURT : NEW YORK COUNTY

SPECIAL TERM : PART I

----------X

MARTIN DAVIS,

Plaintiff,

-against-

Index No.

THE CITY OF NEW YORK, ROBERT F. WAGNER, as Mayor of the City of New York, and NEWBOLD MORRIS, as Commissioner of Parks of the City of New York,

19066/1965

Defendants.

----------X

MECHT, J.:

This action seeks to enjoin the erection of a memorial in Riverside Park between 102nd and 106th Streets, in the Borough of Manhattan. It is brought by plaintiff taxpayer against former Mayor Wagner, former Park Commissioner Morris, Mayor Lindsay and Park Commissioner Hoving, and the contractors to whom the construction contracts have been awarded. Work on the project has been temporarily stayed pending determination of the instant motions--by plaintiff for an injunction pendente lite, and by defendants to dismiss the complaint on the ground that it fails to state a cause of action. CPLR Rule 3211 (a) par. 7. The pertinent allegations of the complaint are:

The family and friends of Adele Rosenwald Levy made a formal offer to the City of a gift of $500,000 towards the construction of a memorial to Mrs. Levy. It appeared that the cost of the memorial would be approximately $1,000,000, and it was stipulated that the City was to bear all costs of the operation and maintenance thereof.

The complaint alleges that, while the memorial is ostensibly designed as a recreational complex, in fact its erection "would constitute an unwarranted and unlawful wastage, encroachment and destruction of the portion of the park in which it was proposed to build the said Memorial; that the cost to the City of New York for its share of the construction of the said Memorial would involve extravagantly large sums of money; that the annual upkeep and maintenance of the said proposed Memorial would involve the expenditure of tens of thousands of dollars annually when funds were not then (and are not now) available for the ordinary maintenance and rehabilitation of the existing park facilities; that the said proposed Memorial would duplicate existing facilities; that it would serve no legitimate park purposes; that it would serve but the vanity of the donors; that the expenditure of city funds, which would be required in connection with the construction, operation and maintenance of the proposed Memorial was unwarranted because of the limited usefulness of such Memorial; that it was too large in scale and too dramatic in conception to be suitable for neighborhood use by mothers and small children;" (Twenty-Third).

It was alleged further that Park Commissioner Morris was at first opposed to the expenditure of these funds. But, after the proposed donors had appealed to Mayor Wagner, the latter, "without having before him any valid criteria for a consideration of the proposed Memorial, and disregarding his legal obligations as Mayor of the City of New York, immediately directed Newbold Morris, as Commissioner of Parks of the City of New York, to accept the proposed Memorial and to proceed forthwith to implement such acceptance." It is alleged further that the requisite approval of the Municipal Art Commission and the Department of Buildings and Housing had not been obtained.

The affidavit of former Commissioner Morris, submitted in support of the motion to dismiss (see CPLR Rule 3211 [c]), gives a detailed description of the facility and its proposed use. The affidavit acknowledges that the Commissioner had previously opposed the proposal, primarily because it would cost about $1,000,000. "I was of the opinion that the expenditure of such a sum for a neighborhood park facility was improvident at that time because of budgetary limitations. It was also my belief that if such a facility was constructed in one neighborhood, other neighborhoods would demand equal consideration and that the City's financial condition was such that equal consideration for construction of such a facility in other neighborhoods throughout the City was impractical."

However, after Mr. Morris advised the Mayor of his objections to the financial expenditure, and that the facility proposed was too large in scope, the Mayor informed him of the proposal of private parties to donate $500,000, and that the proponents agreed to a modification of the proposal to reduce it in size. This caused the Commissioner to agree to the proposal. His reasons are thus stated in ¶10:

> "The factors which I considered before making a determination to construct this park facility are the following: Almost from the inception of my tenure as Commissioner various civic organizations and individual citizens who were residents in the area, requested the department to provide recreational facilities for pre-school children which would be situated close to the upper level of Riverside Drive in the vicinity of 105rd Street. It has been a standard Park Department practice for many years to locate playground and recreational facilities which would be used by pre-school youngsters on the periphery of the parks so that they are readily and easily accessible for parents of such children. For example there are numerous playgrounds and other recreational facilities in Central Park which are located on Fifth Avenue.
>
> "These requests were based on the fact that the present recreational facilities in the park are inadequate and are located at the lower level of the park adjacent to Henry Hudson Parkway. These citizens and groups complained that it was quite difficult for mothers with babies in carriages to descend from Riverside Drive

to the lower level of the park and in turn to ascend with carriages to Riverside Drive after using the facilities located at the lower level. There are no recreational facilities at the upper level because of the sloping terrain."

He concluded: "It is my judgment that the new facility will make the recreation area more accessible to the mothers of small children in the neighborhood as well as teen-age and golden age groups and thus help the utilization of the park area." (¶ 15) The exhibits to the affidavit show that the requisite approvals of the Municipal Art Commission and the Department of Buildings and Housing were obtained.

Thereafter, the donors donated $600,924. The City appropriated $90,000 in the 1963-64 Capital Budget and $410,000 in the 1964-65 Capital Budget, making a total of $500,000.

Advertisements for bids followed. The aggregate of the lowest bid amounted to $1,200,457. This was $99,533 in excess of the amounts available from the private donations and the capital budget appropriations.

By Certificate CBM-3736, Mayor Wagner authorized Commissioner Morris to enter into contracts with the lowest bidders. That certificate provided that the deficit of $99,533 would be made good by "funds from whatever source the Comptroller deems appropriate, said source to be reimbursed at a later date by approval of the Mayor of the amendment of this approval so as to charge said cost to an amount to be approved by the Mayor subsequent to certification by the Mayor to the Comptroller of the amount to be used for financing said project under a future Capital Budget; and the Director of the Budget is authorized to approve addenda."

The Capital Budget for the year 1966-67 was finally adopted on March 15, 1966. This included Project No. P-491, which appropriates $99,533 in order to reimburse the Comptroller for funds advanced in connection with the recreational facility

in Riverside Park. Pursuant to New York City Charter §222, this item has therefore been adopted.

Plaintiff's attack on the feasibility and desirability of the proposed recreational area need not detain us. It is well settled that such matters of judgment are confided to the determination of the duly elected orappointed City officials. 795 Fifth Ave. Corp. v. City of New York, 15 N Y 2d 221, sustaining the legality of the proposed construction of the Hartford Pavilion, a cafe and restaurant at the southeast corner of Central Park. "Judicial interference with local municipal decisions by public officials in a situation of this kind is justified only when 'a total lack of power' is shown, as this court observed in Kaskel [Kaskel v. Impellitteri, 306 N. Y. 73, 79]. * * * What plaintiffs did establish on the trial was a difference of opinion among some experts in park management and a divergence of view among others interested in a proper and appropriate utilization of Central Park about how the proposed pavilion would harmonize with the dominant purposes of this noted public recreational facility. * * * The proof demonstrates adequate power in the Park Commissioner and the Board of Estimate to accept or reject this restaurant proposal. If that power in the appropriate city officials exists, and we can entertain no doubt on this record that it does exist, the court's inquiry upon the complaint of a citizen who differs with the city reaches the end of its course" (pp. 225-6, per Dorgan, J.).

It is true that, in that case, a full trial was held on the issue at Special Term. 40 Misc 2d 183. That was because the Appellate Division had previously held, in granting leave to amend the complaint, that "facts should be pleaded which set forth why the restaurant contemplated is 'of a sort not constituting a valid park use'; why its erection 'would be contrary to the purposes and trusts upon which said park was acquired and erected', and why the restaurant 'would be an unlawful encroachment upon Central Park.'" 13 A D 2d 733, 734.

That has no application to the instant case. A recreational facility is a conventional and accepted attribute of a park, and the determination as to feasibility and desirability of this particular recreational facility is left to the city officials.

That applies even though this is an indoor recreational facility in a building designed for that purpose. As Commissioner Morris' affidavit shows (¶9), the proposed building "is similar in size and proposed use to that of at least eight other park facilities which are now maintained in New York City parks and which are used by the community in ever-increasing numbers for recreation, relaxation and enjoyment. As recently as November 10, 1965, a similar facility for golden age groups was established in Sara Delano Roosevelt Park in the lower east side of Manhattan. Moreover there are eleven large buildings now maintained in New York City parks which are utilized in conjunction with adjacent outdoor swimming pools during four months of each year. During the remaining eight months these facilities are used as community recreation centers for preschool, teenage, and golden age groups. The obvious advantage of such a

facility is that it permits recreational activities to be maintained on a year-round basis despite rain, cold or other inclement weather."

"Monuments and buildings of architectural pretension which attract the eye and divert the mind of the visitor; floral and horticultural displays, zoological gardens, playing grounds, and even restaurants and rest houses and many other common incidents of a pleasure ground contribute to the use and enjoyment of the park. The end of all such embellishments and conveniences is substantially the same public good. They facilitate free public means of pleasure, recreation and amusement and thus provide for the welfare of the community" (Pound, J., in Williams v. Gallatin, 229 N.Y. 248, 253-4).

The procedure in connection with the award of contracts presents a more difficult question.

It has been well settled, since the decision in 1907 in Williams v. City of New York, 118 App. Div. 756 (1st Dept.), affd. 192 N.Y. 541, that a contract is invalid if made in excess of the previous budgetary appropriation therefor, and that the invalidity is not cured by a subsequent appropriation to cover the deficit. The City urges that the decision in Williams was dictum. However, I do not read it that way. The principle was expressly reaffirmed in People ex rel. Carlin Construction Company v. Prendergast, 220 N.Y. 725, and in People ex rel. Conners v. Board of Education, 197 App. Div. 5, 11 (1st Dept.).

In Williams v. City of New York, supra, the Board of Estimate and Apportionment and the Board of Aldermen had authorized an issue of corporate stock to an amount not

exceeding $39,000 to provide a dormitory for the employees of the Board of Trustees of Bellevue and Allied Hospitals. Plaintiffs' bid amounted to $48,996. Their bid was rejected because of the insufficiency of the appropriation. The next day, the Board of Aldermen approved an additional appropriation of $14,000 which had theretofore been approved by the Board of Estimate and Apportionment.

Plaintiffs sued for damages for breach of contract. In denying recovery, the Court pointed out the evils which might follow from validating a bid in excess of an amount previously authorized by a subsequent appropriation. The Court said, per Clarke, J. (118 App. Div. at pp. 762-3):

> "The board of trustees [of the hospitals] could not validate a bid in excess of the amount previously authorized. The bid was invalid when made and no subsequent action by that board or by any other board could breathe into it the breath of life. If the positive inhibition of the statute can be so evaded, if the city government should hereafter fall into the hands of careless or unscrupulous officials, an easy way would be provided for collusive bids under a small appropriation and a subsequent enlargement thereof in fraud of possible bidders and great loss to the city. The strict provisions of the Consolidation Act, re-enacted in the charter, were the outgrowth of the experiences of the city a little over a generation ago when its finances were unblushingly and almost openly looted by a conspiracy between public officials and their favored contractors. What has once happened may be repeated.
>
> "While in the case at bar there is no suggestion of fraud or impropriety, good motives in the particular case furnish no grounds for weakening the defences against possible fraud. . . .
>
> * * * *
>
> "Previous appropriation is essential to the validity of a contract for public work to be paid for by the public funds under the provisions of the charter" (Italics supplied.)

The City urges Seif v. City of Long Beach, 285 N.Y. 382, as authority for the fact that a subsequent appropriation

w/

may "ratify" the defect in the original appropriation. In that case, the Court reversed a judgment for legal services recovered by an attorney who had been retained by the Mayor to represent the City in certain litigation, because the City Council had refused to confirm the retainer. In a dictum, Chief Judge Lehman said (pp. 386-7):

> "The City Council, having authority to authorize appointment of Special Counsel, could, by its ratification, give validity to the retainer by the Mayor, though such retainer was unauthorized and invalid when made. Ratification by a municipal corporation, like ratification by a private corporation or by an individual, 'may be by express assent, or by acts or conduct of the principal, inconsistent with any other supposition than that he intended to adopt and own the act done in his name.' (Peterson v. Mayor, 17 N.Y. 449, 453.) The opinion, written by Judge DENIO, in that case sets forth the rule, applicable to municipal as well as private corporations: 'Chancellor KENT says, the doctrine that corporations can be bound, by implied contracts, to be deduced by inference from corporate acts, without either a vote or deed or writing, is generally established in this country with great clearness and solidity of argument.' (Citing cases.) In enunciating that rule, Judge DENIO, however, took care to point out the limits of its application. 'For instance, no sort of ratification can make good an act without the scope of the corporate authority. So where the charter or a statute binding upon the corporation, has committed a class of acts to particular officers or agents, other than the general governing body, or where it has prescribed certain formalities as conditions to the performance of any description of corporate business, the proper functionaries must act, and the designated forms must be observed, and generally no act of recognition can supply a defect in these respects' (p. 454)." (Italics supplied.)

The essential distinction is that, in that case, the City Council had authority to appoint special counsel, while in the instant case, the Charter prohibits the city authorities from entering into a contract in the absence of a

prior appropriation therefor. This rule is a salutary one for the reasons stated in Williams v. City of New York, supra, which does not apply to a situation where city authorities retain counsel or other employees for a specific purpose.

The City also urges section 225 of the City Charter, which authorizes the Mayor to increase an appropriation in the capital budget by 15 per cent. See Paduano v. City of New York, 45 Misc 2d 718, 722-23, affd. on opinion below, 24 A D 2d 437. The argument is that, under this authority, Mayor Wagner could have added $75,000 to the appropriation.

The short answer is that Mayor Wagner did not do so. The authority under section 225 must be actually exercised by the Mayor himself taking the responsibility, and not authorizing the Comptroller to borrow the sum from a future capital budget appropriation. It should also be noted that the deficiency in the appropriation was not $75,000, but $99,533.

The motion to dismiss the complaint is denied. The motion for an injunction pendente lite is granted, without prejudice to the right of the City to readvertise for bids and to award the contracts if the bids fall within the amount covered by the present appropriation. The amount of the bond to be furnished by plaintiff will be fixed in the order to be settled hereon. The Court invites comments from the parties as to the proper amount thereof. Settle order.

FILE COPY

CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK 7, N.Y.

DEC 17 1965

CERTIFIED COPY

APPROVAL OF CAPITAL BUDGET PROPOSAL FOR SERVICES, PLANS, ETC., AS REQUIRED BY ORDER OF THE MAYOR

Record - 12327-56
Certificate - CBX-3736

TO:

Hon. Newbold Morris, Commissioner, Department of Parks

Pursuant to Section 228 of the New York City Charter and Order 107 of the Mayor dated June 15, 1964 approval is hereby granted of 1) forms of contracts, plans and specifications and total estimate of cost $1,096,770 (low bid amounts plus $50,000 for possible work of unforseen nature) for construction of the Adele R. Levy Memorial Playground in Riverside Park, between the approximate prolongations of West 102nd Street and West 104th Street, Borough of Manhattan, under four contracts as follows:

Contract	Description	Estimates of Cost
M-71-264	General Construction	$ 821,450
M-71-364	Plumbing Work	74,845
M-71-464	Heating and Ventilating Work	30,625
M-71-564	Electrical Work	119,850
	Aggregate	$1,046,770
	Possible Work of Unforseen nature	50,000
	Total	$1,096,770

2) form of contract for the services of Louis Kahn, Architect, for supervision of construction of the above at an estimated fee not to exceed $41,870, 3) the amounts not to exceed $10,467 for departmental personal services and $1,000 for engineering expenses, both to be expended under authorized schedules, and $1,989 for employees benefits; the cost thereof to be charged to the extent of $66,515 to funds on deposit with the Comptroller from the Adele R. Levy Memorial Playground fund and to the extent of $509,533 to funds to be deposited with the Comptroller by the Adele R. Levy Memorial Playground fund prior to construction and to the extent of $476,515 to funds certified by the Mayor for financing said Capital Project P-491, (said amounts to include charges of departmental personal services, engineering expenses and employees' benefits); and to the extent of $99,533 to funds from whatever source the Comptroller deems appropriate, said source to be reimbursed at a later date by approval of the Mayor of the amendment of this approval so as to charge said cost to an amount to be approved by the Mayor subsequent to certification by the Mayor to the Comptroller of the amount to be used for financing said project under a future Capital Budget; and the Director of the Budget is authorized to approve addenda.

Very truly yours,

Robert F. Wagner

ROBERT F. WAGNER
MAYOR

EXHIBIT "F"

CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK 7, N.Y.

CEX-3736 (Cont'd)

ACCOUNTING INFORMATION

CAPITAL PROJECT P-491

Charge Account		Transfer from Account	
55-7047-12-52	$66,515	55-491-180-84-52	$ 66,515
55-7047-12-64	66,515P	55-491-199-84-52	66,515P
55-7047-12-52	410,000	(Funds on deposit with Comptroller from Adele Levy Memorial Fund)	
55-7047-12-64	509,533P		
55-7047-12-96-52(RC)	99,533	55-491-180-85-52	410,000
		55-491-199-85-52	410,000P

EXHIBIT "F"

CLASS OF SERVICE
This is a fast message unless its deferred character is indicated by the proper symbol.

WESTERN UNION
TELEGRAM

W. P. MARSHALL, PRESIDENT

SF-1201 (4-60)

SYMBOLS
DL = Day Letter
NL = Night Letter
LT = International Letter Telegram

The filing time shown in the date line on domestic telegrams is LOCAL TIME at point of origin. Time of receipt is LOCAL TIME at point of destination

NHC329 (18)SYA822 1966 APR 29 PM 10 39

SY AGE196 AGZ8 AGZ8 PD AG NEW YORK NY 29 NFT

ALFRED H BARR

49 EAST 96 ST NYK

WE ARE CALLING AN EMERGENCY MEETING OF THE ADELE LEVY PARK COMMITTEE MONDAY MAY 9 3:30 PM AT MY HOME 23 GRAMERCY PARK SOUTH TO DISCUSS THE ADVERSE COURT DECISION AND THE LINDSAY ADMINISTRATION OPPOSITION TO THE PARK I HOPE YOU CAN ATTEND

MRS MAX ASCOLI.

Rec'd

The New York Times
26 L Friday, April 29, 1966

FAMILY TO RECALL LEVY PARK FUND

Accuse City of Bad Faith in Scrapping 103d St. Plan

By EDITH EVANS ASBURY

The family of the late Adele Rosenwald Levy accused the city of bad faith yesterday and said that they would recommend the return of more than $600,000 in gifts made for a memorial playground for Mrs. Levy in Riverside Park.

The city was enjoined Wednesday by the State Supreme Court from building the $1.19-million playground and community center at 103d Street.

Parks Commissioner Thomas P. F. Hoving could not be reached for comment last night. But the executive director of the department, Henry J. Stern, said that he was "most appreciative of the generosity of the family and friends of Adele Levy" and was still hopeful that they would "help the city to build, in an appropriate place, a memorial recreation center or playground."

Subject of Controversy

The proposed playground has been a subject of controversy since it was announced in 1961. This week's court suit was brought by Martin Davis, a mathematics professor at New York University and owner of a one-family brownstone house in which he lives at 326 West 85th Street. He contended that the proposed memorial would be an encroachment on needed park land.

Mrs. Max Ascoli, sister of the late Mrs. Levy, and Mrs. Thomas B. Hess, a niece, said yesterday that they would recommend that the court decision not be appealed and that the funds contributed by friends and relatives be returned.

Mrs. Ascoli said she thought the city administration had acted in bad faith concerning the playground, "and we have no confidence in its promise that the park would be built."

The Mayor gave such a promise, Mrs. Ascoli declared "at a very secret meeting at the home of mutual friends in Riverdale early in February, which Mrs. Hess and I were instructed not to tell anyone about, except our lawyer."

"Mr. Hoving was there," Mrs. Ascoli continued, "but instead of sincerely trying to further the park, he has secretly [illegible] to strengthen the opposition."

Hoving Is Accused

"We don't hold the Mayor responsible for the court decision," Mrs. Ascoli said. "But we do wonder whether he knew of Mr. Hoving's activities against the memorial and, if so, why he did nothing to stop it."

The playground was conceived as a memorial to the late Mrs. Levy, a founder of the Citizens Committee for Children, by friends who agreed to raise half of the cost. This amount, more than $600,000 has already been turned over to the City Controller.

Irving Thau, a lawyer who lives in the area near the proposed playground, handled the taxpayer's suit. He is president of the West Side Parks Committee, which has opposed the project since it was announced following Mrs. Levy's death in 1960.

Humphrey Presents Handicapped Prize To a Brooklyn Man

WASHINGTON, April 28 (AP) — Vice President Humphrey bestowed the President's trophy for the Handicapped American of the Year today on a blind and deaf man from Brooklyn, N. Y.

Mr. Humphrey hailed the trophy winner, Robert J. Smithdas, as a leader in the "revolution for good."

Mr. Smithdas, 40 years old, is associate director of the Industrial Home for the Blind in Brooklyn. He was stricken with meningitis as a 5-year-old boy in Pittsburgh, losing his sight and later his hearing. Despite his handicap, he leads an active life.

Mr. Humphrey, in lauding handicapped Americans for overcoming obstacles, called upon "employers and unions to take a look at the people and the jobs and then match them up."

The Vice President said that the handicapped must not only be given equal opportunity but also "a little special opportunity to enable them to enjoy their birthright and the promise of America."

The award was presented at the annual meeting of the President's Committee on Employment of the Handicapped, which Mr. Humphrey heads. It recognized Mr. Smithdas's work to promote educational training and jobs for the deaf and blind.

Mr. Smithdas "heard" the presentation by placing one thumb lightly on Mr. Humphrey's lips and resting trained fingertips on one side of the Vice President's face to pick up motion and vibration.

APR 27 1966

see page 5

Mar. 1965

SUPREME COURT : NEW YORK COUNTY

SPECIAL TERM : PART I

----------X

MARTIN DAVIS,

Plaintiff,

-against-

Index No.

19066/1965

THE CITY OF NEW YORK, ROBERT F. WAGNER, as Mayor of the City of New York, and NEWBOLD MORRIS, as Commissioner of Parks of the City of New York,

Defendants.

----------X

MECHT, J.:

This action seeks to enjoin the erection of a memorial in Riverside Park between 102nd and 106th Streets, in the Borough of Manhattan. It is brought by plaintiff taxpayer against former Mayor Wagner, former Park Commissioner Morris, Mayor Lindsay and Park Commissioner Hoving, and the contractors to whom the construction contracts have been awarded. Work on the project has been temporarily stayed pending determination of the instant motions--by plaintiff for an injunction pendente lite, and by defendants to dismiss the complaint on the ground that it fails to state a cause of action. CPLR Rule 3211 (a) par. 7. The pertinent allegations of the complaint are:

The family and friends of Adele Rosenwald Levy made a formal offer to the City of a gift of $500,000 towards the construction of a memorial to Mrs. Levy. It appeared that the cost of the memorial would be approximately $1,000,000, and it was stipulated that the City was to bear all costs of the operation and maintenance thereof.

The complaint alleges that, while the memorial is ostensibly designed as a recreational complex, in fact its erection "would constitute an unwarranted and unlawful wastage, encroachment and destruction of the portion of the park in which it was proposed to build the said Memorial; that the cost to the City of New York for its share of the construction of the said Memorial would involve extravagantly large sums of money; that the annual upkeep and maintenance of the said proposed Memorial would involve the expenditure of tens of thousands of dollars annually when funds were not then (and are not now) available for the ordinary maintenance and rehabilitation of the existing park facilities; that the said proposed Memorial would duplicate existing facilities; that it would serve no legitimate park purposes; that it would serve but the vanity of the donors; that the expenditure of city funds, which would be required in connection with the construction, operation and maintenance of the proposed Memorial was unwarranted because of the limited usefulness of such Memorial; that it was too large in scale and too dramatic in conception to be suitable for neighborhood use by mothers and small children;" (Twenty-Third).

It was alleged further that Park Commissioner Morris was at first opposed to the expenditure of these funds. But, after the proposed donors had appealed to Mayor Wagner, the latter, "without having before him any valid criteria for a consideration of the proposed Memorial, and disregarding his legal obligations as Mayor of the City of New York, immediately directed Newbold Morris, as Commissioner of Parks of the City of New York, to accept the proposed Memorial and to proceed forthwith to implement such acceptance." It is alleged further that the requisite approval of the Municipal Art Commission and the Department of Buildings and Housing had not been obtained.

The affidavit of former Commissioner Morris, submitted in support of the motion to dismiss (see CPLR Rule 3211 [c]), gives a detailed description of the facility and its proposed use. The affidavit acknowledges that the Commissioner had previously opposed the proposal, primarily because it would cost about $1,000,000. "I was of the opinion that the expenditure of such a sum for a neighborhood park facility was improvident at that time because of budgetary limitations. It was also my belief that if such a facility was constructed in one neighborhood, other neighborhoods would demand equal consideration and that the City's financial condition was such that equal consideration for construction of such a facility in other neighborhoods throughout the City was impractical."

However, after Mr. Morris advised the Mayor of his objections to the financial expenditure, and that the facility proposed was too large in scope, the Mayor informed him of the proposal of private parties to donate $500,000, and that the proponents agreed to a modification of the proposal to reduce it in size. This caused the Commissioner to agree to the proposal. His reasons are thus stated in ¶10:

> "The factors which I considered before making a determination to construct this park facility are the following: Almost from the inception of my tenure as Commissioner various civic organizations and individual citizens who were residents in the area, requested the department to provide recreational facilities for pre-school children which would be situated close to the upper level of Riverside Drive in the vicinity of 103rd Street. It has been standard Park Department practice for many years to locate playground and recreational facilities which would be used by pre-school youngsters on the periphery of the parks so that they are readily and easily accessible for parents of such children. For example there are numerous playgrounds and other recreational facilities in Central Park which are located on Fifth Avenue.
>
> "These requests were based on the fact that the present recreational facilities in the park are inadequate and are located at the lower level of the park adjacent to Henry Hudson Parkway. These citizens and groups complained that it was quite difficult for mothers with babies in carriages to descend from Riverside Drive

to the lower level of the park and in turn to ascend with carriages to Riverside Drive after using the facilities located at the lower level. There are no recreational facilities at the upper level because of the sloping terrain."

He concluded: "It is my judgment that the new facility will make the recreation area more accessible to the mothers of small children in the neighborhood as well as teen-age and golden age groups and thus help the utilization of the park area." (¶ 15) The exhibits to the affidavit show that the requisite approvals of the Municipal Art Commission and the Department of Buildings and Housing were obtained.

Thereafter, the donors donated $600,924. The City appropriated $90,000 in the 1963-64 Capital Budget and $410,000 in the 1964-65 Capital Budget, making a total of $500,000.

Advertisements for bids followed. The aggregate of the lowest bid amounted to $1,200,457. This was $99,533 in excess of the amounts available from the private donations and the capital budget appropriations.

By Certificate CDM-3736, Mayor Wagner authorized Commissioner Morris to enter into contracts with the lowest bidders. That certificate provided that the deficit of $99,533 would be made good by "funds from whatever source the Comptroller deems appropriate, said source to be reimbursed at a later date by approval of the Mayor of the amendment of this approval so as to charge said cost to an amount to be approved by the Mayor subsequent to certification by the Mayor to the Comptroller of the amount to be used for financing said project under a future Capital Budget; and the Director of the Budget is authorized to approve addenda."

The Capital Budget for the year 1966-67 was finally adopted on March 15, 1966. This included Project No. P-491, which appropriates $99,533 in order to reimburse the Comptroller for funds advanced in connection with the recreational facility

in Riverside Park. Pursuant to New York City Charter §222, this item has therefore been adopted.

Plaintiff's attack on the feasibility and desirability of the proposed recreational area need not detain us. It is well settled that such matters of judgment are confided to the determination of the duly elected orappointed City officials. 795 Fifth Ave. Corp. v. City of New York, 15 N Y 2d 221, sustaining the legality of the proposed construction of the Hartford Pavilion, a cafe and restaurant at the southeast corner of Central Park. "Judicial interference with local municipal decisions by public officials in a situation of this kind is justified only when 'a total lack of power' is shown, as this court observed in Kaskel [Kaskel v. Impellitteri, 306 N. Y. 73, 79]. * * * What plaintiffs did establish on the trial was a difference of opinion among some experts in park management and a divergence of view among others interested in a proper and appropriate utilization of Central Park about how the proposed pavilion would harmonize with the dominant purposes of this noted public recreational facility. * * * The proof demonstrates adequate power in the Park Commissioner and the Board of Estimate to accept or reject this restaurant proposal. If that power in the appropriate city officials exists, and we can entertain no doubt on this record that it does exist, the court's inquiry upon the complaint of a citizen who differs with the city reaches the end of its course" (pp. 225-6, per Dorgan, J.).

w/

It is true that, in that case, a full trial was held on the issue at Special Term. 40 Misc 2d 183. That was because the Appellate Division had previously held, in granting leave to amend the complaint, that "facts should be pleaded which set forth why the restaurant contemplated is 'of a sort not constituting a valid park use'; why its erection 'would be contrary to the purposes and trusts upon which said park was acquired and erected', and why the restaurant 'would be an unlawful encroachment upon Central Park.'" 13 A D 2d 733, 734.

That has no application to the instant case. A recreational facility is a conventional and accepted attribute of a park, and the determination as to feasibility and desirability of this particular recreational facility is left to the city officials.

That applies even though this is an indoor recreational facility in a building designed for that purpose. As Commissioner Morris' affidavit shows (¶9), the proposed building "is similar in size and proposed use to that of at least eight other park facilities which are now maintained in New York City parks and which are used by the community in ever-increasing numbers for recreation, relaxation and enjoyment. As recently as November 10, 1965, a similar facility for golden age groups was established in Sara Delano Roosevelt Park in the lower east side of Manhattan. Moreover there are eleven large buildings now maintained in New York City parks which are utilized in conjunction with adjacent outdoor swimming pools during four months of each year. During the remaining eight months these facilities are used as community recreation centers for preschool, teenage, and golden age groups. The obvious advantage of such a

facility is that it permits recreational activities to be maintained on a year-round basis despite rain, cold or other inclement weather."

"Monuments and buildings of architectural pretension which attract the eye and divert the mind of the visitor; floral and horticultural displays, zoological gardens, playing grounds, and even restaurants and rest houses and many other common incidents of a pleasure ground contribute to the use and enjoyment of the park. The end of all such embellishments and conveniences is substantially the same public good. They facilitate free public means of pleasure, recreation and amusement and thus provide for the welfare of the community" (Pound, J., in Williams v. Gallatin, 229 N.Y. 248, 253-4).

The procedure in connection with the award of contracts presents a more difficult question.

It has been well settled, since the decision in 1907 in Williams v. City of New York, 118 App. Div. 756 (1st Dept.), affd. 192 N.Y. 541, that a contract is invalid if made in excess of the previous budgetary appropriation therefor, and that the invalidity is not cured by a subsequent appropriation to cover the deficit. The City urges that the decision in Williams was dictum. However, I do not read it that way. The principle was expressly reaffirmed in People ex rel. Carlin Construction Company v. Prendergast, 220 N.Y. 725, and in People ex rel. Conners v. Board of Education, 197 App. Div. 5, 11 (1st Dept.).

In Williams v. City of New York, supra, the Board of Estimate and Apportionment and the Board of Aldermen had authorized an issue of corporate stock to an amount not

exceeding $39,000 to provide a dormitory for the employees of the Board of Trustees of Bellevue and Allied Hospitals. Plaintiffs' bid amounted to $48,996. Their bid was rejected because of the insufficiency of the appropriation. The next day, the Board of Aldermen approved an additional appropriation of $14,000 which had theretofore been approved by the Board of Estimate and Apportionment.

Plaintiffs sued for damages for breach of contract. In denying recovery, the Court pointed out the evils which might follow from validating a bid in excess of an amount previously authorized by a subsequent appropriation. The Court said, per Clarke, J. (118 App. Div. at pp. 762-3):

> "The board of trustees [of the hospitals] could not validate a bid in excess of the amount previously authorized. The bid was invalid when made and no subsequent action by that board or by any other board could breathe into it the breath of life. If the positive inhibition of the statute can be so evaded, if the city government should hereafter fall into the hands of careless or unscrupulous officials, an easy way would be provided for collusive bids under a small appropriation and a subsequent enlargement thereof in fraud of possible bidders and great loss to the city. The strict provisions of the Consolidation Act, re-enacted in the charter, were the outgrowth of the experiences of the city a little over a generation ago when its finances were unblushingly and almost openly looted by a conspiracy between public officials and their favored contractors. What has once happened may be repeated.
>
> "While in the case at bar there is no suggestion of fraud or impropriety, good motives in the particular case furnish no grounds for weakening the defenses against possible fraud. . . .
>
> * * * *
>
> "Previous appropriation is essential to the validity of a contract for public work to be paid for by the public funds under the provisions of the charter" (Italics supplied.)

The City urges Seif v. City of Long Beach, 285 N.Y. 382, as authority for the fact that a subsequent appropriation

may "ratify" the defect in the original appropriation. In that case, the Court reversed a judgment for legal services recovered by an attorney who had been retained by the Mayor to represent the City in certain litigation, because the City Council had refused to confirm the retainer. In a dictum, Chief Judge Lehman said (pp. 386-7):

> "The City Council, having authority to authorize appointment of Special Counsel, could, by its ratification, give validity to the retainer by the Mayor, though such retainer was unauthorized and invalid when made. Ratification by a municipal corporation, like ratification by a private corporation or by an individual, 'may be by express assent, or by acts or conduct of the principal, inconsistent with any other supposition than that he intended to adopt and own the act done in his name.' (Peterson v. Mayor, 17 N.Y. 449, 453.) The opinion, written by Judge DENIO, in that case sets forth the rule, applicable to municipal as well as private corporations: 'Chancellor KENT says, the doctrine that corporations can be bound, by implied contracts, to be deduced by inference from corporate acts, without either a vote or deed or writing, is generally established in this country with great clearness and solidity of argument.' (Citing cases.) In enunciating that rule, Judge DENIO, however, took care to point out the limits of its application. 'For instance, no sort of ratification can make good an act without the scope of the corporate authority. So where the charter or a statute binding upon the corporation, has committed a class of acts to particular officers or agents, other than the general governing body, or where it has prescribed certain formalities as conditions to the performance of any description of corporate business, the proper functionaries must act, and the designated forms must be observed, and generally no act of recognition can supply a defect in these respects' (p. 454)." (Italics supplied.)

The essential distinction is that, in that case, the City Council had authority to appoint special counsel, while in the instant case, the Charter prohibits the city authorities from entering into a contract in the absence of a

prior appropriation therefor. This rule is a salutary one for the reasons stated in Williams v. City of New York, supra, which does not apply to a situation where city authorities retain counsel or other employees for a specific purpose.

The City also urges section 225 of the City Charter, which authorizes the Mayor to increase an appropriation in the capital budget by 15 per cent. See Paduano v. City of New York, 45 Misc 2d 718, 722-23, affd. on opinion below, 24 A D 2d 437. The argument is that, under this authority, Mayor Wagner could have added $75,000 to the appropriation.

The short answer is that Mayor Wagner did not do so. The authority under section 225 must be actually exercised by the Mayor himself taking the responsibility, and not authorizing the Comptroller to borrow the sum from a future capital budget appropriation. It should also be noted that the deficiency in the appropriation was not $75,000, but $99,533.

The motion to dismiss the complaint is denied. The motion for an injunction pendente lite is granted, without prejudice to the right of the City to readvertise for bids and to award the contracts if the bids fall within the amount covered by the present appropriation. The amount of the bond to be furnished by plaintiff will be fixed in the order to be settled hereon. The Court invites comments from the parties as to the proper amount thereof. Settle order.

FILE COPY

CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK 7, N.Y.

DEC 17 1965

CERTIFIED COPY

APPROVAL OF CAPITAL BUDGET PROPOSAL FOR SERVICES, PLANS, ETC., AS REQUIRED BY ORDER OF THE MAYOR

Record - 12327-56
Certificate - CEX-3736

TO:

Hon. Newbold Morris, Commissioner, Department of Parks

Pursuant to Section 228 of the New York City Charter and Order 107 of the Mayor dated June 15, 1964 approval is hereby granted of 1) forms of contracts, plans and specifications and total estimate of cost $1,096,770 (low bid amounts plus $50,000 for possible work of unforseen nature) for construction of the Adele R. Levy Memorial Playground in Riverside Park, between the approximate prolongations of West 102nd Street and West 104th Street, Borough of Manhattan, under four contracts as follows:

Contract	Description	Estimates of Cost
M-71-264	General Construction	$ 821,450
M-71-364	Plumbing Work	74,845
M-71-464	Heating and Ventilating Work	30,625
M-71-564	Electrical Work	119,850
	Aggregate	$1,046,770
	Possible Work of Unforseen nature	50,000
	Total	$1,096,770

2) form of contract for the services of Louis Kahn, Architect, for supervision of construction of the above at an estimated fee not to exceed $41,870, 3) the amounts not to exceed $10,467 for departmental personal services and $1,000 for engineering expenses, both to be expended under authorized schedules, and $1,989 for employees benefits; the cost thereof to be charged to the extent of $66,515 to funds on deposit with the Comptroller from the Adele R. Levy Memorial Playground fund and to the extent of $509,533 to funds to be deposited with the Comptroller by the Adele R. Levy Memorial Playground fund prior to construction and to the extent of $476,515 to funds certified by the Mayor for financing said Capital Project P-491, (said amounts to include charges of departmental personal services, engineering expenses and employees' benefits); and to the extent of $99,533 to funds from whatever source the Comptroller deems appropriate, said source to be reimbursed at a later date by approval of the Mayor of the amendment of this approval so as to charge said cost to an amount to be approved by the Mayor subsequent to certification by the Mayor to the Comptroller of the amount to be used for financing said project under a future Capital Budget; and the Director of the Budget is authorized to approve addenda.

Very truly yours,

Robert F. Wagner

ROBERT F. WAGNER
MAYOR

EXHIBIT "F"

CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK 7, N.Y.

CBX-3736 (Cont'd)

ACCOUNTING INFORMATION

CAPITAL PROJECT P-491

Charge Account		Transfer from Account	
55-7047-12-52	$66,515	55-491-180-84-52	$ 66,515
55-7047-12-64	66,515P	55-491-199-84-52	66,515P
55-7047-12-52	410,000	(Funds on deposit with Comptroller from Adele Levy Memorial Fund)	
55-7047-12-64	509,533P		
55-7047-12-96-52(RC)	99,533		
		55-491-180-85-52	410,000
		55-491-199-85-52	410,000P

EXHIBIT "F"