

Victory in the Courts Public Trust Doctrine Prevents Lease of Parkland

The public trust doctrine protects every square foot of Ryerss' gift of Burholme Park which must remain a park until it ceases to be a viable and active park.

[Judge John W. Herron, Philadelphia Orphans' Court, December 9, 2008](#)

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In an [Opinion released today](#), Philadelphia Orphans' Court Judge John W. Herron DENIED the City's request to lease 19.4 acres of dedicated parkland to Fox Chase Cancer Center.



The Judge applied the public trust doctrine as the standard of review in deciding this case. The public trust doctrine, enshrined in Pennsylvania since the early 1900's, is the rule of law requiring that the City "maintain Burholme Park as a park so long as it remains an active park."

Judge Herron wrote that there was no evidence presented during the seven days of testimony that Burholme Park has ceased to fulfill its purpose as a vibrant public park.

Fox Chase Cancer Center had proposed that as many as 18 buildings could be built through the very center of the lush park with heights up to nine stories. Judge Herron wrote that the development plan, "would alter, change and diminish Burholme Park forever" and that "the scope and the proposed construction is inconsistent with park purposes."

In closing, Judge Herron wrote:

"so long as a community or neighborhood actively uses dedicated park land, the City is required to hold such land in trust for their use, is legally estopped from divesting such land and is required to maintain these open spaces as public parks."

Mary Tracy, executive director of SCRUB said, "this is a great day for the citizens of Philadelphia. This ruling affirms for future generations of Philadelphians that parks belong to the public and are not the city's to sell, lease, or give away!"

SCRUB's LEGAL TEAM

Special thanks to SCRUB staff, interns and volunteer attorneys: Samuel C. Stretton , litigator, Hal Schirmer and Stacey Graham, research, and Mary Tracy, technical assistance.

[To read Judge' Herron's Opinion](#)

Links to Recent Articles

[A lovely city park is threatened for no good reason](#) Read Inga Saffron article

<http://www.philly.com/inquirer/magazine/34448394.html>

[Fox Chase grapples with park lovers over land](#) features two of the plaintiffs protecting Burholme Park: Jean Gavin and Fred Mauer.

http://www.philly.com/philly/hp/news_update/35050434.html

[High Tech Cancer Center to Be Built in Bucks County](#) Fox Chase Cancer Center can expand without taking parkland . "Dr. Michael V. Seiden, president and CEO of Fox Chase, said building in Buckingham is part of the center's effort to grow as a national leader in cancer treatment." The Cancer Center announced plans to build a state of the art facility in Bucks County featuring the world's first CyberKnife robotic radiosurgery system.

<http://www.phillyburbs.com/pb-dyn/news/113-12042008-1632183.html>

About Burholme Park

Burholme Park has provided a place to recreate and enjoy nature for generations of Philadelphians, is listed on the National Register of Historic Places, and considered by most as one of Fairmount Park's crown jewels.

Its elevation offers a majestic view of center city's skyline. Sloping downward from the historic mansion are paths for walking and jogging, a large well-used picnic area, a playground, a driving range, miniature golf course and batting cages that provide hours of recreational fun and practice for golfers, ballplayers, children, youth and families. There is also a grove of 150 year old trees which will be destroyed by the expansion.



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