

# Public Parks in Peril

## Cities Selling Land to Help Balance Budgets

**A**s municipal budget deficits swell, elected officials contemplate liquidating public parkland as a means to balance their budgets. After all, parks are tax exempt and, in general, are maintained by taxpayer dollars, thus contributing on some level to budget shortfalls. Many state and local government officials genuinely believe that giving up parkland is in taxpayers' best interest.

In today's tough economy, conveying parkland to private developers rather than enacting broad tax hikes appears to be the lesser of two evils for balancing the budget. Short-term gains may be realized from such transfer of parkland and long-term tax revenue may be generated due to a change in land use. Certainly the idea grows in popularity if politicians can convince taxpayers that any alternative use of parkland is only temporary – a lease rather than a sale – or that the park will be lost only as a tradeoff to preserve or create jobs.

Now more than ever, public parks are at risk for privatization. Despite strong opposition from voters and taxpayers, public parks are being eradicated from public use for private purposes. Prompted by a promise of job creation and rental income, the City of Philadelphia attempted to lease Fairmount Park's vibrant public parkland at Burholme Park to expand private medical research facilities. Elected officials in Erie closed its public golf course after investing approximately \$200,000 in renovations and sought purchasers for the property because the park operated at a loss of almost \$125,000

per year. Similarly, Scranton auctioned off its public golf course to a private entity and attempted to sell its public sports complex to a private university. Likewise, Downingtown entered into a purchase agreement to sell Kardon Park for private development purposes. All across Pennsylvania, elected officials are looking at public parks as cash cows for financially strapped municipalities. The circumstance under which public parks may be sold, leased or otherwise privatized is a hotly debated issue presently before the Pennsylvania Supreme Court.



Jeff Lyons

Recent Commonwealth Court rules may erode more than 150 years of common law protection for public parks. The public trust doctrine, embraced by the Pennsylvania Supreme Court in *Philadelphia Museums* (251 Pa. 115, 96 A. 123 (1915)), firmly established that the public owns property that has been dedicated for public park purposes and formally accepted by the municipality. Under the doctrine, a municipality holds such property in trust and as conservator of the title for the benefit of the public. As trustee of public parks, a municipality is subject to certain fiduciary obligations; therefore, elected officials may not simply convey the park property in order to satisfy budgetary objectives. The Pennsylvania Constitution states

“[t]he people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment,” and citizens have standing to challenge activity that eradicates public parks or otherwise dispossesses the public of its parkland.

In two separate cases, Pennsylvania Commonwealth Court held that challenges against changing the use of public parks is governed by the Dedicated and Donated Property Act (DDPA). Interpreting the DDPA, the court held that it applies to three types of public property – that which is (1) donated for public use, (2) dedicated to public use and (3) offered for public use, but no formal record of acceptance appears to exist. The court further noted that the DDPA incorporated the common law public trust doctrine and simultaneously created a mechanism to relieve the

political subdivision of its obligation to continue the original use of donated or dedicated property when such original use is no longer practicable or possible and has ceased to serve the public interest. Accordingly, a political subdivision seeking to be relieved of its duty to hold public

parkland for the benefit of the public bears the burden of establishing that the original use of the property is no longer practicable or possible.

Under the DDPA, a political subdivision must first petition Orphans' Court to abandon the original use of public property. Orphans' Court may grant relief for property held in trust for the public when “in the opinion of the political subdivision which is trustee, the continuation of the original use of the particular property...is no longer practicable or possible and in the public interest.” The DDPA requires Orphans' Court to give deference to the political subdivision's decision that the original use of public park property is no longer practicable or possible and has ceased

to serve the public interest. In fact, absent a showing of bad faith, fraud, arbitrary or capricious action, collusion or abuse of power, judicial deference must be given to the political subdivision's decision. In contrast, the public trust doctrine yields greater protection to the preservation of parks by precluding the transfer of actively used public parkland to either a public or private use that is inconsistent with the original use.

Erosion of the public trust doctrine makes public parks vulnerable to the shortsightedness of elected officials. Generating revenue will often trump preserving natural resources and public space for recreational use and enjoyment by present and future generations. For example, just months after making extensive renovations to Erie Golf Course, the city closed the park that had been actively used by the public and sought buyers for the golf course. The Commonwealth Court gave deference to the city's decision to close the park because it operated at a loss and the revenue required to operate the park was better spent on "core services such as public safety and public works." Despite the fact that operating costs for Erie Golf Course were merely one of numerous allocations of public revenue that fell outside the ambit of core services, the court failed to evaluate the arbitrary or capriciousness of Erie's decision to close the actively used park, holding that the city acted within its discretion. Under the common law public trust doctrine, the active use of Erie Golf Course would preclude any alternative inconsistent use of the property.

The Commonwealth Court found the circumstances of Burholme Park distinguishable from Erie Golf Course and held that the City of Philadelphia failed to establish that the continued original use of Burholme Park was no longer practicable or possible and ceased to serve the public interest. In reconciling the difference in its determinations, the court held that the City of Erie presented evidence that operation of its public park required allocation from the general revenue fund at the expense of core services such as public safety and public works that rendered the continued use no longer financially practicable or possible. Therefore continued use as a golf course ceased to serve the public interest, despite active use by the public for such purpose. Conversely, the court found that Burholme Park is maintained, at least in part, by an endowment made to the city that as of August 2008, exceeded \$1 million. Thus the court determined that the continued use of the park for its original purpose was

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# Make the Switch to Windows 7

## Microsoft's Latest Operating System is Efficient and User Friendly

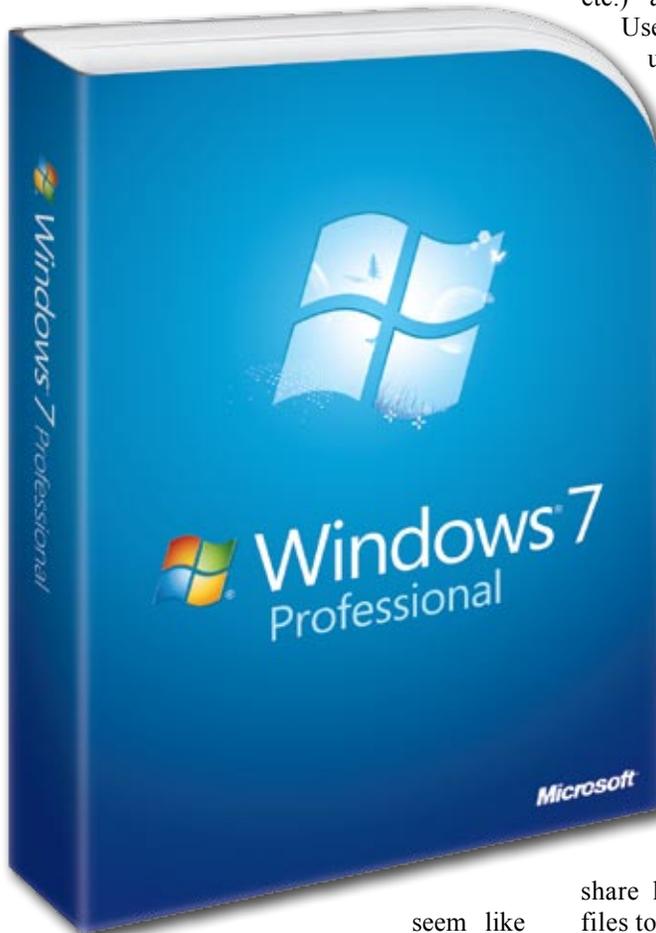
Computer operating systems aren't sexy; they're certainly not the type of thing you will hear most lawyers discussing around the coffee machine. After all, they believe that whatever system runs their computers is "fine," as long as they run. That may be true, but, in fact, the reality is that the choice of a computer operating system can make lawyers and their staffs more – or less – efficient. And, of course, efficiency means time, and time means money.

Even the least computer savvy attorneys have probably heard of various computer operating systems. There is Windows®, the generic name for various Microsoft programs since 1985. Most offices have been using Windows XP® at some point since its introduction in 2001. Some, but not many, offices began using Windows Vista® following its introduction in 2006, but most users chose not to run Vista, which generally slowed their computers, was not particularly user friendly, and was not compatible with numerous printers and other products. In essence, most businesses have and continue to use Windows XP, even though it is nearly nine years old.

In late 2009, Microsoft introduced Windows 7, the latest version of its operating system. Finally, with Windows 7, Microsoft has developed a product that is better than Windows XP, that is more efficient and as user friendly as XP, and which will justify the effort necessary to either upgrade (when possible) or replace your existing computers. I have been using Windows 7 on various personal and business computers since late 2009 and, as a result, have upgraded or replaced all

of the computers in my law office. The results are palpable.

So, why is Windows 7 better or worth the time and cost necessary to implement it? First, and foremost, Windows 7 is faster than Windows XP. From the "Start," you can see the difference. Your computer boots faster, which means less time waiting to work. That may not



seem like a big deal, but if it takes 60 seconds less a day to boot, that's more than two hours of time saved over the course of a year.

In addition, the increased speed means that your computer processes information more quickly so that you and your staff can accomplish your tasks more efficiently. From a technical standpoint,

the system works more quickly because it has far greater compatibility with today's higher speed computer chips. In addition, with the introduction of Windows 7, Microsoft has eliminated many of the annoying features of Vista, and included the most popular ones from XP, thus making the learning curve for the new product less steep.

### Why Switch to Windows 7?

Tony Bradley of *PC World* offers five reasons to upgrade to Windows 7, which I will summarize:

1. It's better than Vista. The majority of Vista users I know do not like it. The most common complaints are poor device driver support (it doesn't play nice with your printers, scanners, etc.) and the absolutely unbearable User Account Control (UAC) pop-up alerts. Windows 7 supports printers and other devices far better, and the UAC is no longer the obnoxious feature it had been.

2. It's better than XP. Simply put, security features are far better in Windows 7 than in XP. In addition, it is easier to learn and use than XP.

3. Home networking. Finally, it is easy to create a home network. For your office network, leave those issues to the professionals; but when it comes to setting up a home network, Windows 7 eliminates most of the frustration endemic to XP.

4. Media sharing. As Bradley writes, "Windows 7 makes it fairly seamless and intuitive to share audio and video media between the various devices on the network. You can access and share libraries, play audio and video files to remote systems on the network, copy recorded shows from one system to another, and more with relative ease."

5. Go with the flow. Now that Windows 7 is available, Microsoft and third-party software providers will be quick to drop support and development for Windows XP; in essence, it's time to make the switch.

## Considerations When Switching or Upgrading to Windows 7

Most small to mid-sized firms will have to decide whether to buy new PCs with Windows 7 – and the answer is two-fold: (1) time/cost, and (2) compatibility. Obviously, if you can afford it, buy new PCs. New PCs will have one of the various versions of Windows 7 installed (XP has disappeared as an option from virtually every PC), so there is no reason to upgrade. Plus, because the cost of new PCs continues to be relatively inexpensive, it may not be worth the time and money (about \$200 per PC) to upgrade your operating system.

Fortunately, Windows 7 will run most Windows Vista and a majority of Windows XP applications without change, making the transition easier. On the other hand, there are changes in the Windows 7 interface to which some users will have to adjust. In addition, if you use custom or specialized applications (such as case management or document management software), you must verify that the applications are compatible with Windows 7. Although most applications should run on Windows 7, there have been some compatibility issues reported. Better to be safe than sorry.

• If you're making the switch, be prepared. First, I don't recommend switching some, but not all, of your PCs to Windows 7. Because XP is so old, and because Windows 7 improves upon Vista, you must be certain not only that the program can handle all of your applications (programs) and the drivers (software) that operate your printers, scanners, video cards and other hardware, but also that all of your computers will be able to network if they are using different operating

systems.

To assist in the transition, Microsoft offers a Windows 7 Upgrade Advisor (<http://www.microsoft.com/Windows/windows-7/get/upgrade-advisor.aspx>), and you should use that program to be certain your upgrade will go smoothly.

• If you are upgrading, be prepared. First, not every PC can upgrade to Windows 7, which is why you should use the Upgrade Advisor. Second, even if a PC can make the upgrade, not every computer can upgrade directly to Windows 7. In fact, according to Laplink software, "Only 14 of the 66 upgrade scenarios detailed by Microsoft are supported by Windows 7 – and upgrading from XP to Windows 7 is not supported." However, Laplink sells the only product, PCmover Windows 7 Upgrade Assistant, which allows users to upgrade quickly and easily from Windows XP or Windows Vista to Windows 7.

While there are reasons not to make a direct upgrade such as this – you may have corrupt files or viruses, or there remains the possibility that something could go wrong with the upgrade – I can attest that this software makes the transition easy. On the other hand, you can also migrate programs, i.e., transfer them, from an old computer to a new one. While it's generally OK to transfer files (such as documents), I do not recommend migrating files because of the possibility of numerous pitfalls.

Of course, before performing any upgrade, it is absolutely critical that you backup your computer so that you will not lose any data in the event something goes awry. I have already used the Upgrade Assistant on six different PCs, and it has worked flawlessly each time. It also makes moving applications from one PC to a new Windows 7 system a simple process.

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No one likes change, but sometimes it is necessary. If your computers are old and slow, or if your firm is contemplating a system-wide upgrade, Windows 7 provides an excellent "excuse" for making the move. In future columns, I will discuss some of the operating system's best features, as well as ways to get the most of your new PC. ■

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financially practicable and possible for the foreseeable future and was in the public interest.

The trust fund for Burholme Park is an anomaly. Few, if any, public parks are maintained by private funding. Whether the continued use of a public park is practicable or possible should not rise or fall on judicial deference to elected

official's determination of financial feasibility of such use. A petition to abandon use of public parkland should not be determined by a simple analysis of the best use for limited public finances or the highest or best use for park property. To preserve our public parks, the public trust doctrine also must be preserved in order to prevent

privatization of property that is actively used by the public. ■

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