

510 West Lawrence Street
Albany, NY 12208
April 8, 2015

New York State Office of the Attorney General
Public Integrity Bureau
120 Broadway, 22nd Floor
New York, NY 10271

Re: Complaint # 14-2483

Dear Attorney General Eric T. Schneiderman:

Enclosed are new materials as an update to my original complaint, filed on October 24, 2014.

I submitted a FOIL request on 9/24/14 to Albany Records Access Officer Nala Woodard for documents relative to the development of property now known as 241 South Allen Street. On 3/27/15 Mr. Woodard notified me of their availability.

The requested documents may be grouped under two heads, both of which are requirements under the statute of alienation. One relates to the fair market value of the property. Three appraisals and other items are enclosed.

The other concerns the requirement to construct independent senior garden apartments, about which nothing was provided. A neighbor, Laura Cohen, pursued this subject in some depth without achieving any measure of success from Mr. Woodard, other than a statement to the effect that the city is not obliged to create documents to satisfy a FOIL request. Since that which does not exist cannot be enclosed, an analysis of this issue is furnished instead.

Therefore, it is established by the existing records that the sale price of \$100,000 was way below fair market value, and inferred from the missing records that independent senior garden apartments will not be constructed, in violation of both requirements imposed by the alienation statute, for the benefit of a former city hall functionary.

Sincerely,

Michael Kalin

enc.

1. Correction to original attachment 5 (Summary & Conclusion). #3 was wrong.
2. Statement from Albany Records Access Officer to Laura Cohen that records of the required notice of the final Common Council public hearing on the proposed rezoning do not exist.
3. Memo in support of legislation to alienate the parkland, confusing the pocket playground (consisting of four swings and one tire) with the entire 2.05 acre parkland parcel, most of which was undeveloped. It also specifies the justification, “so it can be developed into independent senior garden apartments,” and imposes a requirement to “dedicate new city park lands equal to or greater than fair market value to the lands being alienated.”
4. Real property restricted use appraisal reports. Only the Hafner Valuation Group report performed the necessary analysis of valid comparable sales. The other two relied on superficial resemblances at best. The 2013 (Alvey & DiMura) appraisal arrived at the appalling figure of \$25,000 for 2.18 acres of prime urban real estate.

The parkland lots were listed on the assessment rolls with an aggregate full market value of \$342,800 for many years (at least as far back as 2007) through 2013.

a) 9/24/2010

Hafner Valuation Group, Inc. for City of Albany (\$330,000)

b) 12/21/2010

John A. D'Anna for James J. Googas (\$120,000)

Note the failure of report **b** to compare sales of vacant parcels that were purchased for the development of apartments as described on p. 11 of report **a**. The upshot is report **b** cannot and does not use the necessary per dwelling unit bases for comparison, subbing in a superficial per acreage calculation based on invalid sales data gathered for this purpose.

The author of report **b** was unaware (or feigns unawareness) of critical facts previously known to the author of report **a**, regarding the ease with which zoning changes and approvals would be obtained. He even seems ignorant of the exact nature of the proposed development (44 apartments in 2010), and consequently grants himself the license to freely select vacant land sales developed for a variety of purposes, none consistent with the property he purports to appraise.

c) 1/3/2013

Alvey & DiMura, Inc. for Mr. Keith McDonald, City of Albany Assessor (\$25,000)

Among the deficiencies and errors in report **c**:

- p. 22 (declining population) – city population increased from 2000 to 2010 (see p. 13).
- p. 25 (2.11 acres) – actual area 2.18 acres.
- p. 27 (South Allen Street frontage 390 square feet) – actual frontage 420 feet.
- p. 28 (estimated fill cost of \$546,000) – actual fill cost \$0, the developer filled nothing.
- p. 32 – gross errors concerning zoning status as of 1/3/13, main parcel was rezoned to R-3A by the Common Council on 10/7/13 at no expense to the developer.
- p. 37 – comparable #1 development consists of a parking lot.
- p. 38 – comparable #2 lacks development plans altogether.
- p. 39 – comparable #3 lacks development plans altogether.

5. Undated Real Property Transfer Report (RP-5217) presumably filed in late 2013 following the sale, showing the value of \$342,800 from the 2013 assessment roll. This assessment was reduced to \$125,000 with the filing of the 2014 roll. Curiously, it lists a fair market value of \$114,187. On inquiry City Assessor McDonald's office refused to provide an explanation for this sudden huge reduction other than alluding to an unseen real property appraisal in the possession of corporation counsel.

6. A statement from Laura Cohen regarding her intense effort to pin down compliance with the requirement to construct "independent senior garden apartments." She demonstrates a complete failure of the city to address this statutory requirement (#3 above) and lack of enforcement thereof.

Attachment 5 – Summary & Conclusion

In 10/2012 then Common Council Member Sano who represented the surrounding South Allen Street Park neighborhood announced to a few community members a plan was underway to convert the parkland into a senior citizen housing project. Subsequent events tell a tale of skullduggery and lack of integrity by the city of Albany, the Common Council and various city agencies.

1. On 7/20/2013 a statute authorizing the parkland alienation passed both the New York State Assembly and Senate, for the purpose of building "independent senior garden apartments" on the South Allen Street lots.

2. The sale occurred pursuant to Common Council Ordinance 31.81.12, 10/7/2013, and the deed was recorded 11/19/2013. One of the grantees, James J. Googas, is a former city official. The other, Mary E. Googas, is James' wife. Despite the explicit restrictions imposed by the statute and referenced on page 933 of the deed, a search by Albany County Clerk failed to produce a restrictive covenant. None was filed.

(#3 corrected)

3. On September 16, 2013, the Albany Common Council, held a hearing for the purpose of rezoning the 17 lots that later became 241 South Allen Street after failing to notify property owners within 200 feet of 241 South Allen about this rezoning hearing as required by City Code, depriving the neighborhood of its legal right to publicly voice an opposition. On October 7, 2013 the council voted to rezone the property to Multifamily Low Density Residential district (R-3A) from a combined Single-Family Medium-Density District (R-1B) and Land Conservation District (LC), while stifling negative community input.

4. The land, consisting of 2.05 acres of parkland plus Dale Place, a paper street 30' x 198' of similar quality and value, for a total 2.18 acres, is not an obscure interior lot. It has 420' of prime street frontage, but was sold to the Googases for the extraordinarily low price of \$1.05/SF. Compare 261 S. Allen, contiguous on three sides, which sold for \$2.67/SF in 1991. Local real property has not lost value in the intervening years. Other properties listed in the spread sheet and shown on the map confirm the fact that parkland was alienated for substantially less than fair market value. This is a violation of the statute passed on 7/20/2013, which required the parkland to be transferred "at fair market value."

In conclusion, by selling parkland for less than fair market value to a former city hall functionary and approving a property development plan for which it lacked authority, the City of Albany committed two major violations of state law with respect to the alienation of South Allen Street Park. It was also guilty of numerous lapses in public candor and integrity, including the failure to comply with its own ordinance.

Please review this matter and, upon a confirmation of municipal misconduct, intervene to prevent this illegal development from proceeding, and impose whatever additional remedies may serve the interest of public fairness and justice as you see fit.

August 22, 2014

Mr. Laura Cohen
131 Onderdonk Avenue
Albany, NY 12208

Dear Ms. Laura Cohen,

Below is a copy of your initial FOIL request submitted to the City of Albany on June 20, 2014. Directly below each record requested is my response to your request.

Under the New York Freedom of Information Law, N.Y. Pub. Off. Law sec. 84 et seq., I am requesting an opportunity to obtain or inspect copies of public records held by the Albany Common Council that relate to the proposed apartment development on 241 South Allen Street by 241 South Allen Street Holdings LLC. This is known to the City of Albany Department of Development and Planning as Case #5-14, 912. The requested records include, but are not limited to, all public minutes, reports, studies, correspondence, notes, discussions, applications, etc. relevant to the developer and his agents and the Albany Common Council and its members, as well as intra-agency records.

Regarding the aforementioned records requested. All records that exist regarding the response above have been attached. If any records were not included consider it a denial as those records do not exist.

This request includes, but is not limited to:

1. Relevant Common Council meeting minutes prior to 2013, which are not posted on the City of Albany website (2013-2014 minutes are posted on the site)

Due to the voluminous nature of this portion of your request we are willing to set up an appointment to view/inspect the meeting minutes (in electronic format) from 2002-2012.

2. Minutes of the August 28, 2013 meeting of the Committee on Planning, Economic Development and Land Use regarding Ordinance Number 40.82.13 in relation to re-zoning the properties located at 241 South Allen Street, 70, 68, 66, 64, 62, 60, 44, 42, 40 and 38 Onderdonk Avenue and the portion of the former Dale Place adjacent to 261 South Allen Street and 70 Onderdonk Avenue

The minutes of this committee meeting and public notice are attached.

3. Records relating to the mailing sent to all property owners within 200 feet of 241 South Allen Street to provide notice of the final public hearing on the proposed re-zone on September 16, 2013, pursuant to Section 375-30 of the City Code, including but not limited to the recipient addresses, a copy of the notification, and date sent

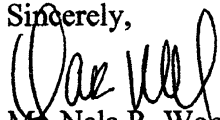
This portion of your request is denied, as no such records exist.

Any person denied access to records may appeal the denial in writing within 30 days. Such appeals should be addressed to:

Appeals Officer
Andrew Wood
City Hall, Room 202
Albany, NY 12207

Please specify the provisions of the law under which you are filing the appeal. An appeal must be decided in writing within 10 business days of the receipt of the notice of appeal.

Sincerely,

A handwritten signature in black ink, appearing to read "Nala R. Woodard", written over a circular stamp or mark.

Mr. Nala R. Woodard
Records Access Officer

**NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)**

BILL NUMBER: A4717A/S2342A REVISED MEMO 06/06/2013

SPONSOR: Assembly: Fahy Senate: Breslin

TITLE OF BILL: An act to authorize the city of Albany to discontinue the use of certain lands as park lands and to dedicate new park lands

PURPOSE OR GENERAL IDEA OF BILL:;

To allow the City of Albany to alienate a small under utilized pocket park and sell it so it can be developed and the property put back on the tax rolls.

SUMMARY OF SPECIFIC PROVISIONS:

Section 1- authorization of the alienation

Section 2 - conditions of alienation regarding replacement value

Section 3- delineates the property to be alienated

Section 4 - description of replacement property

Section 5 -outlines conditions that need to be met for parkland alienation to take effect

Section 5 - effective date

JUSTIFICATION:

To allow the city to replace a small pocket park - where the majority of the property is well below street level and contains forest and over-growth - to sell it so it can be developed into independent senior garden apartments. The city will dedicate new city park lands equal to or greater than fair market value to the lands being alienated.

PRIOR LEGISLATIVE HISTORY:

2012;A10578-A/S7606-A

FISCAL IMPLICATIONS:

None to the State

EFFECTIVE DATE:

This act shall take effect immediately

C2. Date Deed Recorded _____
Month Day Year

C3. Book _____ C4. Page _____



Office of Real Property Tax Services

RP- 5217

Real Property Transfer Report (8/10)

PROPERTY INFORMATION

1. Property Location 38, 40, 42, 44, 60, 62, 64, 66, 68, 70 Onderdonk Ave
229, 231, 241, 251, 253, 257, 259 South Allen St Date Place _____
STREET NUMBER STREET NAME

Albany CITY OR TOWN 12208 ZIP CODE
VILLAGE

2. Buyer Name Gongas LAST NAME / COMPANY James J. FIRST NAME

Gongas LAST NAME / COMPANY Mary E. FIRST NAME

3. Tax Billing Address Indicate where future Tax Bills are to be sent if other than buyer address (at bottom of form)
Address _____ LAST NAME / COMPANY FIRST NAME

STREET NUMBER AND STREET NAME CITY OR TOWN STATE ZIP CODE

4. Indicate the number of Assessment Roll parcels transferred on the deed 17 # of Parcels OR Part of a Parcel (Only if Part of a Parcel) Check as they apply:

5. Deed Property Size FRONT FEET X DEPTH OR 2.04 ACRES
4A. Planning Board with Subdivision Authority Exists
4B. Subdivision Approval was Required for Transfer
4C. Parcel Approved for Subdivision with Map Provided

6. Seller Name City of Albany LAST NAME / COMPANY FIRST NAME

7. Check the box below which most accurately describes the use of the property at the time of sale:
A One Family Residential E Agricultural I Community Service
B 2 or 3 Family Residential F Commercial J Industrial
C Residential Vacant Land G Apartment K Public Service
D Non-Residential Vacant Land H Entertainment / Amusement L Forest
Check the boxes below as they apply:
8. Ownership Type is Condominium
9. New Construction on Vacant Land
10A. Property Located within an Agricultural District
10B. Buyer received a disclosure notice indicating that the property is in an Agricultural District

SALE INFORMATION

11. Sale Contract Date _____
Month Day Year

12. Date of Sale / Transfer _____
Month Day Year

13. Full Sale Price 1,000,000.00
(Full Sale Price is the total amount paid for the property including personal property. This payment may be in the form of cash, other property or goods, or the assumption of mortgages or other obligations.) Please round to the nearest whole dollar amount.

14. Indicate the value of personal property included in the sale 0.00

15. Check one or more of these conditions as applicable to transfer:
A Sale Between Relatives or Former Relatives
B Sale Between Related Companies or Partners in Business
C One of the Buyers is also a Seller
D Buyer or Seller is Government Agency or Lending Institution
E Deed Type not Warranty or Bargain and Sale (Specify Below)
F Sale of Fractional or Less than Fee Interest (Specify Below)
G Significant Change in Property Between Taxable Status and Sale Date
H Sale of Business is Included in Sale Price
I Other Unusual Factors Affecting Sale Price (Specify Below)
J None

ASSESSMENT INFORMATION - Data should reflect the latest Final Assessment Roll and Tax Bill

16. Year of Assessment Roll from which information taken 13 17. Total Assessed Value (of all parcels in transfer) 3,428,000

18. Property Class 3.11 19. School District Name Albany

20. Tax Map Identifier(s) / Roll Identifier(s) (If more than four, attach sheet with additional identifier(s))
See over Paper Street Date Place

CERTIFICATION

I certify that all of the items of information entered on this form are true and correct (to the best of my knowledge and belief) and I understand that the making of any willful false statement of material fact herein will subject me to the provisions of the penal law relative to the making and filing of false instruments.

SELLER SIGNATURE

J. M. [Signature]

BUYER CONTACT INFORMATION

(Enter information for the buyer. Note: If buyer is LLC, society, association, corporation, joint stock company, estate or entity that is not an individual agent, attach sheet with additional identifier(s))

Violation of Section 1 of the park alienation bills A4717A/S2342A by the City of Albany, that requires the development of “independent senior garden apartments” on the former municipal park, now known as 241 South Allen Street

The City of Albany used the justification of senior housing to persuade the New York State Legislature to pass the park alienation bill. See the attached document, *New York State Assembly Memorandum In Support of Legislation*. The Justification clearly demonstrates that the City proposed to alienate the South Allen Street Playground so that the property “can be developed into independent senior garden apartments.” This intent appears as a statutory requirement in Section 1 of the bill.

A Freedom of Information Law (FOIL) filing (attached) on February 5, 2015, requested documentation from the City of Albany that demonstrates its compliance with the Section 1 restriction on senior housing. The request was accepted on March 18, 2015, and became FOIL No. W003415-020515.

The City of Albany provided copious documentation from several departments, including the Department of Development and Planning and the Department of Buildings and Regulatory Compliance. A careful examination of this material revealed no documentation of any kind that demonstrates the City’s compliance with the statutory requirement to limit the use of the property to the development of “independent senior garden apartments.” Since these documents did not demonstrate compliance with the FOIL request, the City’s response was illegal.

A subsequent e-mail (attached) was sent to Nala Woodard, the City of Albany Records Access Officer, asking for a corrected written response from the City. The e-mail, dated March 20, 2015, asserted that the City did not legally comply with the February 5 FOIL request. Specific records were requested and none of these records were supplied. To be in compliance with the New York State FOIL statute, the City must either supply the requested records or state that no such records exist.

Mr. Woodard responded on March 27, 2015 (attached). He indicated that the documentation supplied by the City “included copies of all maps, diagrams, drawings, site plans, as well as all decisions rendered, approvals granted, and/or permits issued for the proposed development of 241 South Allen Street.” He further made the following key statement:

To the extent that your FOIL request or subsequent inquiry seek a response to a question, or require the creation of a record not currently possessed or maintained, the City is unable to respond to such a request. Notwithstanding these provisions of the Public Officers Law, in response to your March 20, 2015 correspondence, I refer you to the City of Albany’s Zoning Ordinance, Chapter 375 of the Albany City Code which outlines the permitted use(s) of a property within a particular zoning district.

Mr. Woodard's statement asserts that 1) the City cannot create "a record not currently possessed or maintained," in other words, that the requested documents do not exist, and that 2) only the City of Albany Zoning Ordinance is relevant in determining the permitted use of 241 South Allen Street.

The City is knowingly violating the statutory requirement to develop "independent senior garden apartments" on 241 South Allen Street, as stipulated in the park alienation bills A4717A/S2342A. The City's failure to file a restrictive covenant reinforces this fact.

131 Onderdonk Avenue
Albany, NY 12208

February 5, 2015

Custodian of Records
City of Albany
City Hall Room 202
24 Eagle Street
Albany, NY 12207

Dear Custodian of Records,

Under the New York Freedom of Information Law, N.Y. Pub. Off. Law sec. 84 et seq., I am requesting an opportunity to obtain or inspect copies of public records held by the City of Albany that relate to the plans to develop the "independent senior garden apartments" under construction at 241 South Allen Street, Planning Department Case #5-14, 912.

State law restricts the use of the former South Allen Street Playground, now known as 241 South Allen Street, to "the development of property for independent senior garden apartments."

According to Section 1 of the park alienation statute (Senate bill 2342-A, Assembly bill 4717-A, passed 7/12/2013):

"Subject to the provisions of this act, the city of Albany, located in the county of Albany, is hereby authorized, acting by and through its common council and upon such terms and conditions as determined by such common council, to discontinue the use as park lands the lands more particularly described in section two of this act and to transfer such lands, at fair market value, which are no longer needed for park purposes for use in connection with the development of property for independent senior garden apartments."

This request includes, but is not limited to, all public minutes, reports, studies, descriptions, correspondence, notes, discussions, applications, approvals, plans, drawings, architectural renderings, measurements, the list of Codes to be enforced, etc., relative to the City's compliance with Section I of the above statute with regards to the "independent senior garden apartments," held by the City of Albany and any of its subdivisions, offices, boards, departments, etc.

Of special interest are the relevant public records held by the Mayor's Office, the Albany Common Council, the Department of Planning, the Department of General Services, the Department of Buildings and Regulatory Compliance, and the Office of the Corporation Council.

Special focus should be placed on, but not limited to, these public records:

1. Documents that describe the City of Albany's legal compliance with Section 1 of Senate bill 2342-A and Assembly bill 4717-A with regards to "independent senior garden apartments."
2. Applications or narrative descriptions that describe the nature of the apartments under construction as "independent senior" housing
3. The list of City, county and/or state building codes and regulations that will enforce compliance with the statutory requirement to construct "independent senior garden apartments."
4. Architectural drawings, including measurements, that illustrate the compliance with applicable senior housing codes
5. Documentation that confirms the restriction of the residents of these apartments to senior citizens based on their age, e.g., aged 55 and older

If any of these records are available in digital format, I would be pleased to receive them via e-mail at Lcohen100@gmail.com. If some of the requested records cannot be e-mailed to me, please inform me of the cost of reproducing the remainder of the records requested or the arrangements that can be made for me to view them. You may reach me at 482-0874, or by e-mail.

The New York Freedom of Information Law requires a response time of five business days. If access to the records I am requesting will take longer than this amount of time, please contact me within this time frame with information about when I might expect copies or when I can inspect the requested records.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

Thank you for considering my request.

Sincerely,

Laura Cohen

131 Onderdonk Avenue, Albany NY 12208
518-482-0874
Lcohen100@gmail.com



Laura Cohen <lcohen100@gmail.com>

Albany, NY Service Request Updated :: W003415-020515

Laura Cohen <lcohen100@gmail.com>

Fri, Mar 20, 2015 at 2:41 PM

To: Albany FOIL Center <AlbanyNY@mycusthelp.net>

Cc: Mayor Kathy Sheehan <mayor@albanyny.gov>, nwoodard@albanyny.gov

Dear Nala Woodard,

Thank you for accepting my FOIL request.

I reviewed the records today, and found that the City's response to my request was not legal. My FOIL request focused solely on the City's compliance with the park alienation statutes (Senate bill 2342-A, Assembly bill 4717-A), which restrict the use of the alienated parkland to "the development of property for independent senior garden apartments."

I reviewed all the records - a high volume of records from several City offices - and none of them indicated that "independent senior garden apartments" will be built.

Please send me a legal response to my FOIL request that states that the City denies my request because no such records exist.

Thank you.

Laura Cohen

cc: Mayor Kathy Sheehan

[Quoted text hidden]



Laura Cohen <lcohen100@gmail.com>

Albany, NY Service Request Updated :: W003415-020515

Nala Woodard <nwoodard@albanyny.gov>
To: Laura Cohen <lcohen100@gmail.com>

Fri, Mar 27, 2015 at 10:42 AM

March 27, 2015

Dear Ms. Laura Cohen,

This letter is in further response to your FOIL request received on February 5, 2015 as well as your correspondence received on March 20, 2015.

In response to your FOIL request, the City provided you with an opportunity to review and/or obtain copies of records possessed or maintained by the City related to the construction project at 241 South Allen Street. These records included, but were not limited to, files of the Department of Development and Planning as well as the Department of Buildings and Regulatory Compliance. I have been informed that the aforementioned records included copies of all maps, diagrams, drawings, site plans, as well as all decisions rendered, approvals granted, and/or permits issued for the proposed development of 241 South Allen Street.

With respect to your correspondence received on March 20, 2015, I note that the Public Officers Law does not require an agency to supply information in response to a question, nor does it require an agency to create a record that does not currently exist. Specifically, Public Officers Law §89(3) states that: "Nothing in this article shall be construed to require any entity to prepare any record not possessed or maintained by such entity." To the extent that your FOIL request or subsequent inquiry seek a response to a question, or require the creation of a record not currently possessed or maintained, the City is unable to respond to such a request. Notwithstanding these provisions of the Public Officers Law, in response to your March 20, 2015 correspondence, I refer you to the City of Albany's Zoning Ordinance, Chapter 375 of the Albany City Code which outlines the permitted use(s) of a property within a particular zoning district.

You may appeal any part of this letter that constitutes a denial by writing to the Appeals Officer within 30 days of this denial. Please direct any written appeal to the attention of the Honorable Andrew Wood, Appeals Officer, City Hall – Room 202, Albany, New York 12207. You must cite the appropriate passage of law on which your appeal is based.

If you have any additional questions, please do not hesitate to contact me.

Sincerely,

Nala R. Woodard

Records Access Officer

Mr. Nala R. Woodard



City Clerk, Clerk to the Common Council &

Records Access Officer

City Hall

24 Eagle Street - Room 202

Albany, NY 12207

518- 434-5090 (phone)

518-434-5081 (fax)

nwoodard@albanyny.gov

From: Laura Cohen [mailto:lcohen100@gmail.com]

Sent: Friday, March 20, 2015 2:42 PM

To: Albany FOIL Center

Cc: Mayor Sheehan; Nala Woodard

Subject: Re: Albany, NY Service Request Updated :: W003415-020515

[Quoted text hidden]

Confidentiality Notice: This fax/e-mail transmission, with accompanying records, is intended only for the use of the individual or entity to which it is addressed and may contain confidential and/or