

Can a Deed Prohibiting Change of 'Land Use' be Upheld 110 Years Later?



How one community tapped into IRWA membership to help fight City Hall

BY JOANIE MILLER, SR/WA, R/W-EC

In 1893, Solomon Curry and his wife Elizabeth quit claimed a 28.13-acre parcel to the city of Ironwood. Included in this deed were explicit use restrictions and reversionary provisions. These provisions stated: *"...said park to be forever known as 'Curry Park.' It being expressly agreed by and between the parties hereto that this conveyance shall be null and void as to said parties of the first part, their heirs and assigns, should said party of the second part attempt to divert said premises to other uses or purposes and that thereupon said premises and all the improvements shall immediately revert to said parties of the first part, their heirs and assigns and they may re-enter in and upon and repossess said premises."*

I never imagined that, more than 110 years later, this parcel would propel us into action, requiring thorough research and access to right of way expertise that only International Right of Way Association (IRWA) members could provide.

Nearly four years ago, Craig Poorker, SR/WA, and I bought a beautiful 100-year-old Victorian style home in Ironwood, Michigan, which is located in what is known as the Upper Peninsula (UP, or Yooper Territory). When we first explored this historical home, we were pleased to discover the scenic and spacious Curry Park, conveniently located next door. For four years, we have commuted between Minneapolis, our permanent residence, and Ironwood, our weekend retreat.

Curry Park is our gateway to the scenic Montreal River and the acres of woods that lie on both sides of it. In spring, we inspect new buds following the long winter. Summer finds maple trees with rustling leaves and a steady flow of campers. Fall offers a photographer's paradise and visits from our resident deer. And winter guarantees the lake-effect snow

that's measured in feet, not inches. That's when we strap on our snowshoes or cross-country skis from our front stoop and we're off, making fresh tracks through Curry Park. Sadie, our exuberant black Lab, races ahead of us, rolling in the snow.

Funny how life can change...how something we take for granted can quickly be taken away if given the opportunity.

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In early October 2005, Al Rye, our neighbor and a lifelong resident of Ironwood, called with some devastating news - the October 10 Ironwood City Council meeting had on its agenda a resolution to sell Curry Park for commercial development. We knew that the land use restrictions and reservations were clearly stated in a deed from Solomon and Elizabeth Curry to the city of Ironwood and expressly prohibited a change of land use. Retrieving a copy of this deed was imperative, as the wording on this document would prove critical in confronting City Hall.

We discovered that Solomon Curry was a man of great passion for the Upper Peninsula. As a pioneer in the mining industry and a founding father of Ironwood, he was a progressive, broad-minded man. He was instrumental in the building of Ironwood which, through his efforts, grew from a wilderness to one of the major cities in northern Michigan. Curry was elected state representative in 1874 and was a candidate for lieutenant governor in 1896. We could not comprehend how the history of a city and that of a founder could so easily be bulldozed for commercial development. We soon realized that Curry was all but forgotten by those who were driven to replace popular Curry Park with concrete and asphalt.



Over the years, Craig and I have been vocal supporters of the IRWA, actively promoting the benefits of this unique organization. We have encouraged membership and participation by reciting the advantages of education, discounts on course fees, networking, professional growth and unlimited personal experiences. We never imagined finding ourselves in a dilemma that would require extensive research and the need to utilize the IRWA membership's expertise to fight for the survival of our city park.

Locating Subject Matter Experts

While Craig and I were both familiar with deed restrictions and reversionary rights, we felt compelled to bring in subject matter experts. We needed a strong strategic plan that would include facts and expert advice in order to build our case. Our priority was clear – to find a strong legal basis that would enable us to object to the proposed sale of Curry Park.

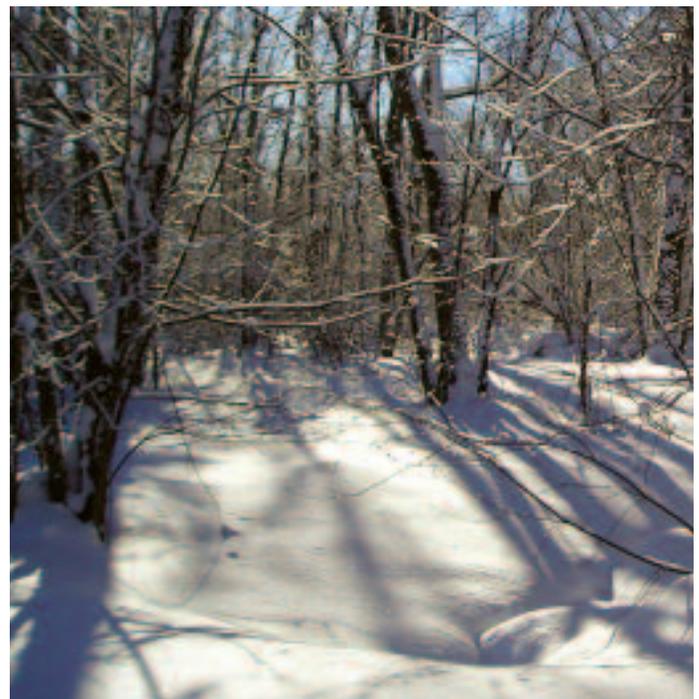
Without hesitation we started our research, beginning with the members of IRWA Chapter 20. We contacted attorney Larry Martin, SR/WA, a longtime friend and owner of L.D. Martin & Associates, Ltd. Although Larry does not practice law in Michigan, his immediate response centered on the city of Ironwood's need to condemn the reversionary rights and whether the city could meet the statutory proof of "need." He advised us to visit with a Michigan attorney for their comments and a review on Michigan laws and statutes.

Next, we contacted ProSource Technologies, Inc.'s Curt Proud and General Counsel Gregory Wheeler, both members of Chapter 20. Within two hours, they were able to identify and provide

us with a copy of a firm legal foundation: *Baldwin Manor, Inc., v. Birmingham*, 341 Mich. 423 (1954) 67 N.W.2d 812. They also informed us of tactics the city might employ to circumvent the deed to acquire the park and strategies we might follow to provide permanent protection of the park. *Baldwin Manor, Inc. v. Birmingham*, in many ways paralleled our conflict with the city of Ironwood. This suit was instituted by plaintiffs for the purpose of restraining the defendant from constructing highways (referred to in the record as a parkway) across property conveyed to the city for park purposes. In 1889, the Detroit & Birmingham Plank Road Company conveyed to the defendant, then a village, a parcel of land described therein to be used *"as a public park perpetually and so maintained. It is especially stipulated that the land deeded to the village by this instrument be used by the village for the purposes of a park and for that only, and if not so used it is to revert to my heirs."*

At the Gogebic County Recorder's office, we focused our efforts on running title, researching pertinent zoning ordinances, various restrictions and other properties owned by the city of Ironwood. Unfortunately, we were unable to find anything helpful. We met with the publisher of the Ironwood Daily Globe, the local newspaper, and requested a reporter's presence at the City Council meeting that evening. We felt it was vital that this agenda item receive news coverage to create the attention it deserved. We also requested archived articles on Curry Park.

Craig contacted Chapter 17 member Craig Solum, SR/WA, owner of Craig Solum and Associates, a right of way and appraisal firm located in Spooner, Wisconsin. We hoped he would have a suggestion for a northwest Wisconsin attorney practicing law in neighboring Michigan.



While at City Hall, we met with Community Development Director, Pat Merrill, one of two people encouraging the sale of Curry Park. Pat indicated that the Curry's heirs would now be in their nineties and would, most likely, not contest the sale of Curry Park. He emphasized that the park was losing money, it offered no tax revenue and the city could sell Curry Park, now an 8-10 acre parcel, for as much as \$1 million. Pat insisted that Curry Park was the only large parcel left on Highway 2 in Ironwood that could be commercially developed.

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Leaving City Hall with more questions, we began searching the online IRWA Membership Directory in hopes of finding a Michigan attorney. Fortunately, we found H. K. (Kirby) Albright with Fraser Trebilcock Davis & Dunlap, P.C., in Lansing, Michigan, a member of Chapter 7. Despite the short notice, Kirby immediately researched our questions and provided us with vital information.

Craig also contacted co-worker and Chapter 20 member, Carole Schmidt in Environmental Services at Great River Energy, who has over 20 years of experience in environmental permitting and compliance. We asked, “Are we overlooking a historical issue that could potentially apply to Curry Park? Could there be something in Michigan Historical Law for a park that is 110 years old and if so, who do we contact?” Carole suggested we research Curry Park with the State Historical Preservation Office (SHPO). We found both The Curry House (formerly owned by Solomon and Elizabeth Curry) and Norrie Park on the Historical Register, but not Curry Park.

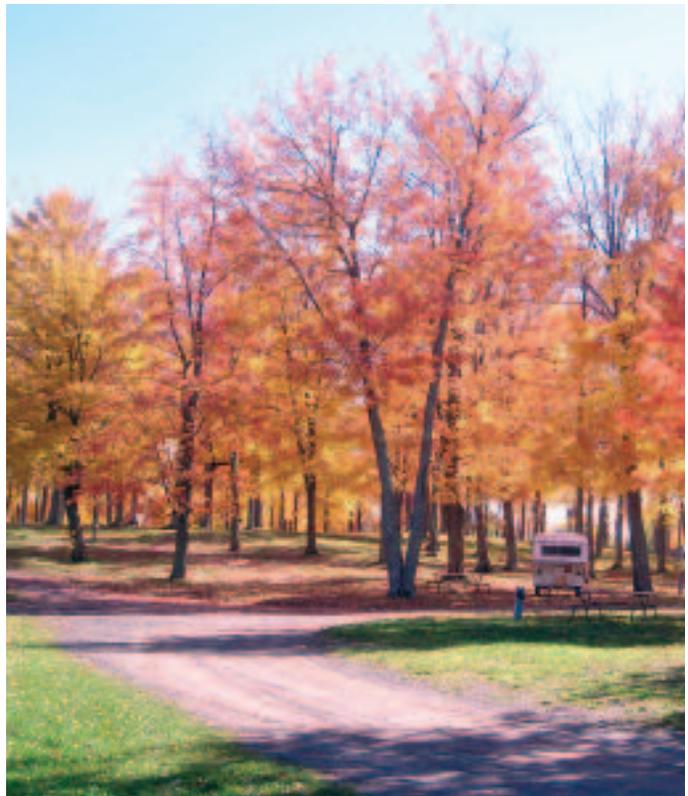
To further discuss and dissect the information we had gathered, Craig contacted Gary Ostrom, SR/WA, his supervisor at Great River Energy. While Gary and Craig talked at length about the facts and potential dilemmas, I contacted a local real estate agent and discussed commercial property available in Ironwood on Highway 2. I wanted to research the value of properties along the highway for verification of Pat’s perception of the monetary value of Curry Park. The real estate agent mentioned numerous properties available but none were as large and most were already improved.

Presenting Our Case

When it came time for the City Hall Meeting, we were pleased to find a full house of neighbors and other supporters. Pat, along with Dennis Cossi, the City Attorney, presented their proposal for Curry Park. Their position was that the city of Ironwood had no more available land on Highway 2 for commercial development; the park and campground had lost \$10,000 in 2004 and was no longer functional as a park. The state of Michigan was also requiring an upgrade to campground services in the park which would cost the city \$25,000. Pat suggested upgrading Norrie Park in Ironwood, a more remote park and off the beaten path, with money from the sale of Curry Park.

We were then given three minutes to present our case to the mayor, council members and city staff. Craig quickly launched into the wording of the quit claim deed’s restrictions and reversionary provisions. Craig stated that Curry’s intent was that the property remain a city park, and the city of Ironwood had accepted this parcel with this stipulation. He recited paragraphs of similarities from Baldwin Manor, Inc., v. Birmingham, the case law that Curt had provided us, along with these statements from the ruling.

“As a general rule, the uses to which land dedicated by its private owner as a park may be devoted depend upon the purposes of the dedication, as determined by the intention of the dedicator, and such land cannot be used for any purpose inconsistent with that intention, even though there has been a



change in the character of the surrounding property. The municipality within whose borders the premises are situated takes them, as trustees for the public, for the special uses designated by the dedicator. And the use to which the land is dedicated must be preserved or the land will revert to the original proprietors. It does not follow, however that the dedicated use may not be changed in the exercise of the right of eminent domain."

"Except as appears below, if a dedication is made for a specific or defined purpose, neither the legislature, a municipality or its successor, nor the general public has any power to use the property for any other purpose than the one designated, whether such use be public or private, and whether the dedication is a common-law or a statutory dedication; and this rule is not affected by the fact that the changed use may be advantageous to the public. This can only be done under the right of eminent domain. On the other hand, the municipality cannot impose a more limited and restricted use than the dedication warrants."

Craig mentioned neighboring Wakefield, Michigan, and their determination and plan to upgrade and improve their city park, as they saw value in a community park. He also questioned what the incentive would be for others to donate land if the intended use is challenged by the city and finally, asked the council members how developing a tiny parcel in two miles of city commercial highway property would improve the city one year from now or five years from now. We suggested revitalizing other properties already on Highway 2, which would add appeal and fill empty storefronts along the highway and also downtown.

The meeting came alive, as neighbors and Ironwood residents spoke out against selling Curry Park, citing the ongoing vandalism at Norrie Park, the campers who would be required to drive their large RVs through residential areas and a school zone, and where the road suffers from potholes and subsequent flooding. Another mentioned the cost of a legal battle to break the deed restrictions and to condemn the reversionary rights. No one believed this to be either a fair trade or practical one. One final comment was made: "When Curry Park is gone, it's gone, and there's no getting it back."

A Short-Term Victory

The resolution to sell Curry Park was tabled for one year. The City Council requested that city staff research rates, increase them for one year, and if still unprofitable, consider selling Curry Park. Our neighborhood and the residents of Ironwood won a short-term victory, and we owe them a debt of gratitude for getting involved. Two days after the City Council meeting, we discovered the income/expense figures disclosed at the meeting for Curry Park were inaccurate. Curry Park actually made \$10,000 (less electricity costs). This was according to the city of Ironwood and an article published in the

Ironwood Daily Globe. For future use and preparedness, we retained Mr. Albright and requested a legal opinion on the matter of Curry Park.

Following the City Council Meeting, the Ironwood Daily Globe received an outpouring of letters to the editor in support of saving this neighborhood jewel. They received letters from outside of Michigan, including nearby neighbors in Minneapolis that had visited Curry Park. Included in those letters were suggestions for making the park more profitable and multi-functional. Such comments included better signage on the highway from both directions to advertise Curry Park, offering a park host rather than employing a person for the summer, upgrading the electrical service and sewer and water so more campers will utilize the sites, and increasing the camping and dumping fees.

While we await the next phase of our battle, Craig and I will continue to promote the valuable benefits of IRWA membership. Our recent attempt to save Curry Park has inspired us even further, and we will be forever grateful to IRWA members who stepped in to offer their assistance, share valuable insight and knowledge, and help us fight City Hall. ■

