

October 23, 2016

## **City Hall, the Butterfly Lot, and Eugene's Public Square**

by Dan Armstrong

In 2007 the City of Eugene approached Lane County with a proposal to build a new City Hall on the County-owned half-block that contains the Butterfly parking lot. The Lane County Circuit Court immediately voiced strong opposition to the idea. The grounds for the Circuit Court's objection are stated in a letter dated May 25, 2007 (see document I)\* from Lane County Circuit Court Administrator David Factor to the Lane County Board of Commissioners, the Mayor of Eugene, and the City Manager of Eugene:

“As you know, the Butterfly Lot is part of a donation land claim transferred to Lane County in 1854 from Eugene and Mary Skinner with specific, permanent, and exclusive deed restrictions. Those deed restrictions include the restriction that ‘the transfer was made in consideration of and on the condition that the permanent seat of justice for said County Lane be located thereon.’ It is the position of Presiding Judge Mary Ann Bearden that the proposed sale would violate the deed restrictions. The lot is currently in use for courthouse purposes for the County seat of justice; it provides the parking for staff of the Circuit Court, jurors and witnesses and others in attendance of the Court. In addition, the County and the Court have long-standing plans to build the new courthouse on this lot.

“The proposed sale of the lot to the City of Eugene for the construction of a new City Hall, or for any other City of Eugene purpose, is prohibited by the deed itself and, accordingly, is unacceptable to the Court. The Presiding Judge is opposed [to] the proposed sale, has employed counsel, and will take any necessary legal steps to ensure the deed restrictions are enforced.”

Four years later in 2011, the City made a similar inquiry (see document J) to the County about using this same piece of property to house a year-round farmers' market. The Lane County Circuit Court again quickly dismissed this proposal, based on their interpretation of the Skinner deed restrictions and court parking needs.

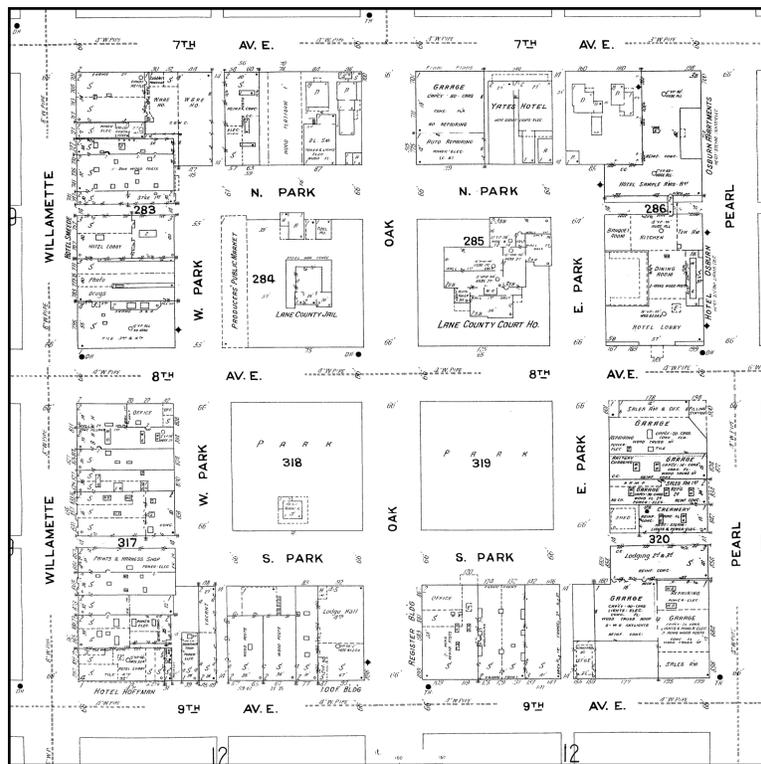
Neither proposal was pursued by City officials because they did not want to get into a legal battle with the Circuit Court. Now, however, with the City of Eugene and Lane County talking about a property swap that includes the before mentioned Butterfly Lot,

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\*All documents referenced in this history can be found in the Document List that contained this article: <http://www.mudcitypress.com/parkblockshistory.html>.

the restrictions placed on the property have again become a topic of community interest, as expressed in articles published in the Eugene Register-Guard on July 31 and September 21 of this year.

At the center of the discussion is the *public square* that was created by the Board of County Commissioners when the city was founded on land donated by Eugene Skinner and Charnel Mulligan. On December 7, 1854, the County Commissioners, acting on conditions attached to the donated land, designated a 4-acre tract in the center of Eugene to be used, as referenced in the Circuit Court’s letter, for the permanent site of the Lane County Courthouse and as a “public square in Eugene City.” Prior to the vacating of North Park Street and the building of the Butterfly parking lot in 1958, the public square was circuted by North Park Street, South Park Street, East Park Street, and West Park Street and cut into four quarters by Oak street and 8<sup>th</sup> Street. The two Park blocks where Saturday Market takes place today are the southeast and southwest quarters of what was originally designated as the public square. The Wayne Morse Free Speech Plaza is the northeast quarter, and the south end of the Butterfly parking lot covers the northwest quarter.



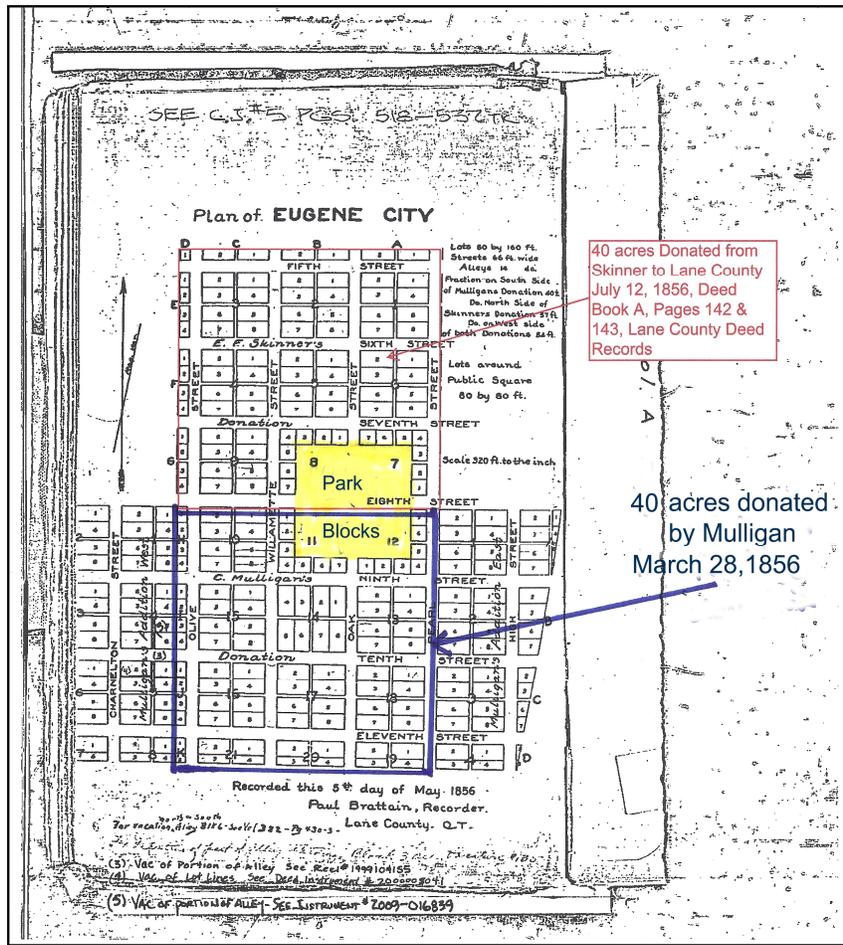
**Public Square 1925**

The use and conditions of use of the “public square in Eugene City” have been issues of debate multiple times in the one hundred and sixty-plus years since the square’s creation. With the recent discussion of a new location for the City Hall, a new location for the Lane County Courthouse, and an expanded location for the Lane County Farmers Market, the question facing local administrators is *what can the County legally do with*

this property originally deeded as a public square? Reviewing the history of the public square and the documents that created it go a long way to answering this question.

**Origin of Public Square:**

Oregon became a territory of the United States on August 14, 1848. Two and half years later, the Territorial Legislature created Lane County, naming it after Joseph Lane, the first governor of the Oregon territory. In 1853 the legislature gave Lane County permission to vote on a location for the seat of justice in the country—which was also the first step in the founding of the City of Eugene. Four forty-acre parcels of land were put on the ballot—one from Eugene Skinner, one from Charnel Mulligan, one from Prior Blair, and one in what is now the City of Springfield. Though Mulligan’s parcel received the most votes, 134 out of 396, it did not carry a majority, and the Skinner parcel, which adjoined Mulligan’s, was added to Mulligan’s. These two contiguous 40-acre parcels, which were sold to the County for a dollar each, would become the social and commercial center of early Eugene. Today, these 80 acres—the area bounded by 11<sup>th</sup> Street, Olive Street, 5<sup>th</sup> Street, and Pearl Street—still make up the core of downtown Eugene.



**Public Square 1856**

The donation of the two 40-acre tracts came with several stipulations regarding the use of the land. These conditions are awkwardly stated through the combination of Skinner's (see document A) and Mulligan's (see document B) warranty deeds and the Commissioners' journal notes of December 7, 1854 (see Commissioner' Journal Entry 1854). In sum, they require that four acres of the original eighty must be reserved in perpetuity as a public square, that the County Courthouse, the seat of justice in Lane County, must be built in the center of this four-acre tract, and that the rest of the parcel must be reserved for public use, ostensibly as a park. In response to this request, the County Commissioners designated an area 400 feet by 400 feet for the square. It was located in such a way that two acres came from Skinner's parcel and two came from Mulligan's. The remaining seventy-six acres contained no restrictions of use and were sold off by the County to finance infrastructure for the city. Thus the stipulations attached to Mulligan's and Skinner's donated land apply only to the four acres of the public square, and when all the history is reviewed, appear to apply equally to Mulligan's and Skinner's portions of the square.



**Lane County's First Courthouse**

**Changing the Location of the County Courthouse:**

In 1855, the first County Courthouse was built in the center of the public square. (Today that location would be at the intersection Oak Street and 8<sup>th</sup> Street.) Fourteen years later, the courthouse was lifted from its foundation and moved 30 feet north and 30 feet east so that 8<sup>th</sup> Street and Oak Street could be extended through the square. Though this was done to ease traffic congestion in the center of Eugene, it was arguably the first infringement of the original deed requirements. The courthouse was no longer in the center of the square—and no longer on any part of Mulligan's parcel.

The public square was further delineated in 1885 by the creation of North Park Street, South Park Street, East Park Street, and West Park Street. These four streets would circuit the public square for the next seventy-three years. The 1885 Sanborn Map of Eugene

shows the public square as containing the County Courthouse, City Hall (built in 1875), and the County jail. The rest of the square was left open for public use.

The first legal issue to arise regarding the public square occurred in 1897 when J. E. Davis of Eugene filed a suit against Lane County for extending 8<sup>th</sup> Street and Oak Street through the area designated as the public square. Davis' suit claimed that "the public square as indicated on the said town plot should be and remain a public square...undivided by streets or otherwise." Though Davis' suit does register a reasonable complaint against the division of the public square, Judge J. W. Hamilton dismissed his suit in 1899 (see document D). One might argue, however, that the creation of 8<sup>th</sup> Street and Oak Street represented the second breach of Mulligan's and Skinner's original agreement with the County.

In 1898, the courthouse that had been moved from the center of 8th and Oak to the northeast quarter of the public square was torn down, and a new County Courthouse was built in the same location and would remain there until 1959.



**Eugene's New County Courthouse 1898**  
(Watercolor by George Warner)

The 1902 Sanborn Map of Eugene shows that the northwest quarter of the public square (the south half of the Butterfly Lot) contained the City Hall, the County jail, the City jail, and the fire department. Seven years later, however, in 1909, Lane County took issue with the presence of city buildings on the "County's" public square. Judge G. R. Christman (see document E), citing the original warranty deed of Eugene Skinner, stated that "said holding and occupancy of said premises by said city is in the opinion of this court contrary to the original dedication of said premises that the purpose and object of the dedication of said premises was to maintain and keep the same as public squares for

the benefit and recreation of the public.” He then ordered the City jail and City Hall to be removed from the property.

### **The Producer’s Public Market:**

The 1912 Sanborn Map of Eugene shows that neither of those city buildings had yet been removed; however, City Hall is gone by 1915, and the Producer’s Public Market, Eugene’s first farmers’ market, was erected where the City Hall had been. The Producer’s Public Market would remain in that location until 1929.

### **The Question of a City Library on the Public Square:**

In 1954, the City of Eugene approached Lane County about the possibility of building a library on what is now the southeast Park block. On November 8<sup>th</sup> of that year, District Attorney Eugene Venn expressed his opinion in a six-page memo (see document F) to the County Commissioners titled “regarding possible allocation of County property to the City of Eugene to be used in connection with a proposed City Library, the specific property being the Southeast Park block located in the public square.” This amounted to a review of the opinion issued by Judge Chrisman that city buildings cannot be on the public square. District Attorney Venn’s remarks were the most detailed on the subject to date. He offered four ways that the language of the original deeds, which do prevent the sale of the property, could allow other kinds of arrangements between public entities: 1) “a special general election by the voters of Lane County,” 2) the County making the City a gift of the property for public use, 3) a 99-year lease, 4) a joint agreement between the City and the County. He concluded the memo by adding that “it is the opinion of this office that the language used in the Mulligan deed is non-restrictive in nature and that claims asserted on the basis of this language could be successfully defeated should litigation arise.” While he only mentioned the Mulligan deed in his memo, as the southeast quarter of the public square is from Mulligan’s donation, as stated earlier, it is reasonable to infer from the 1855 placement of the courthouse on equal portions of Skinner’s and Mulligan’s parcels that Venn’s statement holds true for both Mulligan’s and Skinner’s donations. The City did not build the library, and Venn’s opinion was never tested in court.

### **A New County Courthouse and the Building of the Butterfly Parking Lot:**

In the mid-1950s, the Commissioners decided that a new, larger County Courthouse was needed, and with that, extra parking for the court and the County administrators. The decision was made to build a two-story parking lot directly west of the courthouse on the half-block delineated by Oak Street, 8th Street, West Park Street, and 7<sup>th</sup> Street. In 1958, North Park Street and West Park Street were vacated (see document G) to accommodate a parking structure that would cover the northwest quarter of the public square. The Board of County Commissioners addressed this issue in a public statement, saying “that it is the considered opinion of the Board that the said vacation of the said portion of North Park Street will be a public benefit in its use for the site of the new County parking structure.” *Public benefit* and *public use* are two of the conditions for a piece of property to be designated as a public square. The commissioners had concluded that a parking lot—today a County-owned, commercially-operated parking lot—was a viable public use. In retrospect, the Board’s decision was, at the very least, debatable. The parking lot

completely eliminated any sense of the 100-year old vision for the City and its public square. For a third time, the intent of the original documents were ignored.

The County Courthouse that was built in 1898 was torn down in 1959. A new County Courthouse, the one used today, was built at the north end of the block bounded by 7<sup>th</sup> Street, 8<sup>th</sup> Street, Pearl Street, and Oak Street. While the original deeds stipulated that the County Courthouse was to be built in the center of the public square, this condition had already been violated in 1869 by moving the courthouse to accommodate traffic on 8<sup>th</sup> Street and Oak Street. But the location of the new courthouse went a step farther. The current building isn't on the square at all. Thus for a fourth time the conditions outlined in the original deeds were neglected.

### **Transferring Ownership of the Park Blocks to the City of Eugene:**

In 1988, the Board of County Commissioners, following one of the suggestions made by District Attorney Venn in 1954, made a “gift” (see document H) of the southeast and southwest quarters of the public square—the two Park blocks—to the City of Eugene. This was done “to increase efficiencies in public service delivery mechanisms in the Eugene/Springfield metropolitan area due to decreases in resources for public services and facilities.” This transfer amounts to the sharing of the responsibilities of maintenance and management of the public square—the north half to Lane County and the south half to the City of Eugene. This is quite a change from Judge Chrisman’s judgment to have the City jail and the City Hall torn down in 1909, and though legal by Attorney Venn’s interpretation of the documents, could be called a fifth breach of the original deed.

### **City Hall and the Butterfly Parking Lot 2016:**

Due to this history, and specifically because of the letter from the Lane County Circuit Court in 2007, when the idea to exchange pieces of property came up, the County Counsel Andy Clark and the City Attorney Glenn Klein were tasked with the job of reviewing the Skinner and Mulligan deeds. On July 25, 2014, the County Administrator Steve Mokrohisky presented their findings to the County Commissioners in a memo (see document K):

“County Counsel met with the City Attorney to discuss whether the relevant deeds contain any use or conveyance limitations relating to the butterfly lot or the other land conveyed to the county by the Skinner deed. Respective counsel discussed two issues: (1) whether use of the butterfly lot is limited to courthouse purposes or is it amenable to other public uses, and (2) whether the county courthouse is required to remain on some portion of the 40 acres of land deeded to the county by the Skinners in the 1850’s. Without going into the specifics of the legal analysis at this time, there do not appear to be any limitations in the deeds that would make the contemplated land exchange impossible.”

The attorneys’ comments were essentially a restatement of Eugene Venn’s opinion from 1954. The documents would not hold up in court, and yet, despite these findings, as

demonstrated by the Register-Guard's July 31 and September 21 articles, the issue has not gone away—and thus the reason behind writing this brief history.

**Summary:**

The preceding chronology of actions and judgments connected to the piece of property originally designated as the “public square in Eugene City” demonstrate a steadily changing interpretation of the conditions and restrictions attached to the property donated to Lane County by Charnel Mulligan and Eugene Skinner.

At one point the northwest quarter of the public square contained both City and County buildings. Thirty-four years later, the city buildings were ordered to be removed. Eighty years after that the City took over full management of two quarters of the public square. If the portions of 8<sup>th</sup> Street and Oak Street that run through the square are included, the City, which owns those paved streets, is now responsible for more than half the area that was once the public square.

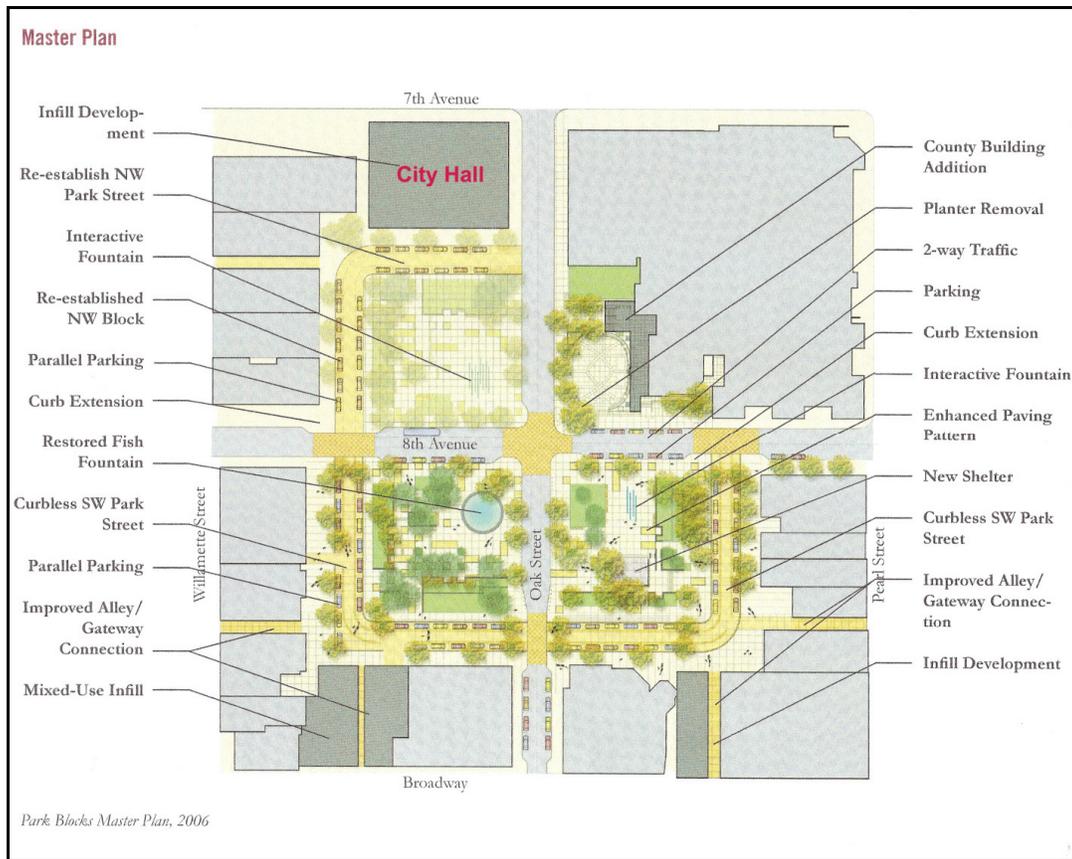
The construction of the Butterfly parking structure, perhaps more than any of the other actions or judgments, effectively erased the identity of and arguably all legal claims for what was once known as the public square. A quarter of that property is now a parking lot, the shape of the square is unidentifiable, and the original vision of the City by its founders is obscured.

The placement of the County Courthouse outside the square is also a clear violation of the intent—if not the letter of the law—of the original warranty deeds and the Board of Commissioners December 7, 1854 description of the public square. It is fair to infer from past actions “that the language used in the Mulligan deed,” as District Attorney Venn wrote in 1954, “is non-restrictive in nature.” The same must also apply to the Skinner deed as there are no grounds to consider the restrictions different for the two halves of the public square regardless of donor. In a nutshell, the elected officials have done pretty much whatever they wanted with the public square ever since its creation.

At least two interpretations of this are plausible. The first is that the language of the original deeds will not stand up in a court of law and that the City and the County are free to use this property in any way that is advantageous to the public—short of selling it—and even that could be voted upon. The “gifting” of the two Park blocks by the County to the City in 1988 substantiates this interpretation.

The second interpretation is that while the letter of the law regarding the original deeds may be subject to infinite debate and lengthy court deliberation, *the intent of those original documents is very clear*. There was to be a permanent public square in Eugene. It was dedicated to public use and the location of the County Courthouse. With this interpretation, the demolition of the parking structure would be in order. A new City Hall could be placed on the north half of the Butterfly Lot—entirely off the northwest quarter of the public square—leaving the entire northwest quarter of the square available to the public and to the Lane County Farmers Market when in session. This would be the best way to recover the identity of the public square, reestablish the original intent of the city

fathers, and free the placement of City Hall from any concerns about infringement on the Skinner and Mulligan deeds.



### Master Plan for Park Blocks 2006

One last question remains: *Would building the County Courthouse on the old City Hall block be a breach of Skinner’s and Mulligan’s original deeds?* Yes, it would not be on the public square, but it hasn’t been on the square since 1959 or in the center of the square since 1869, and a new, and certainly larger, County Courthouse would necessitate the vacating of 8<sup>th</sup> Street and Oak Street to accommodate the conditions of the document.

In closing, it should be noted that this document is not meant to be a strict legal interpretation of the material. It is meant to be a historical recounting of the actions and judgments that relate to the use of the public square in Eugene. It was written for the benefit of Lane County and Eugene public officials and Lane County residents so that they can have a better understanding of the history and what possibilities may or may not be open to them should they decide to work in partnership with said public square property.