



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kim Walesh

SUBJECT: SEE BELOW

DATE: August 6, 2012

Approved

Date

8/14/12

SUBJECT: SANTA CLARA COUNTY CIVIL GRAND JURY REPORT: "VETERANS MEMORIAL RESTORATION: PRESERVING HISTORY AND RESTORING PRIDE"

RECOMMENDATION:

It is recommended that the Mayor and City Council approve this response to the 2011-12 Santa Clara County Civil Grand Jury Report entitled "Veterans Memorial Restoration: Preserving History and Restoring Pride."

OUTCOME

Approval of this report will satisfy the requirements of Penal Code Section 933 (c), which requires the City Council to respond to Civil Grand Jury reports to the presiding judge of the Superior Court.

BACKGROUND

Grand Jury Report

The Santa Clara County Civil Grand Jury provided the City with its final report, including findings and recommendations, entitled "Veterans Memorial Restoration: Preserving History and Restoring Pride" (see Attachment A). According to the report:

The Grand Jury sought to determine why the repair (to the Veterans Memorial) took so long and what the City of San Jose's (the City) plan is to mitigate future vandalism.

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The Grand Jury report contains three findings with applicable recommendations. The City has responded to each of those findings and recommendations in accordance with California Penal Code Sections 933.05(a) and (b), which states that the responding person or entity shall indicate one of the following with respect to each finding and recommendation:

Finding:

1. The respondent agrees with the finding.
2. The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons thereafter.

Recommendation:

1. The recommendation has been implemented, with a summary regarding the implemented action.
2. The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
3. The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer and head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.
4. The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

GRAND JURY FINDINGS RECOMMENDATIONS AND THE CITY'S REPOSE

Grand Jury Finding 1

The restoration plan and project status was not communicated by the OCA consistently and accurately to the public.

City Response to Finding 1

The respondent disagrees partially with the finding. Although the on-site signage at the Veterans Memorial was not kept up to date, the Office of Cultural Affairs reported to City Council and the Mayor on the restoration and project status consistently through publicly-accessible Information Memos issued on January 19, 2011 and on February 24, 2012. Furthermore, updates on the restoration process were provided to the Arts Commission and the Public Art Committee at its regular monthly meetings through verbal and written reports. The Office of Cultural Affairs also provided status updates at public community meetings about memorials and monuments; these two meetings were well attended by veterans as some members of the public have proposed additional veteran-related memorials.

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Grand Jury Recommendation 1

The City of San Jose should regularly communicate public art restoration projects to the public in a timely and accurate manner.

City Response to Recommendation 1

The recommendation has been implemented in accordance with Public Art Program practices. OCA staff provides the Public Art Committee with regular updates of major maintenance projects. As appropriate, status updates are also provided on the site, via public notifications, and through the public art program newsletter. Whenever major public art restoration projects are taking place, OCA staff will continue its regular public reporting practices in a timely way.

Grand Jury Finding 2

OCA recognizes the need for improved security measures, including improved night lighting and security cameras.

City Response to Finding 2

The respondent agrees with the finding.

Grand Jury Recommendation 2

The City of San Jose should give funding priority to providing an adequate security solution for the SJVM.

City Response to Recommendation 2

The recommendation has not yet been implemented, but is substantially in process. OCA has successfully partnered with Adobe, which has its headquarters adjacent to the site of the memorial, to continue its video monitoring of the Veterans Memorial and make those tapes available to the City. Best Electrical Company has agreed to provide in-kind design and installation of new lighting at the Veterans Memorial and OCA has advanced funds for the cost of the fixtures. This work will be completed within six months.

There remains a need to provide dedicated public art staff resources to manage the conservation and maintenance of the public art collection. Due to the General Fund deficit and declining public art revenues, the position dedicated to collection management was eliminated beginning in FY 2011-2012. These responsibilities have been distributed among remaining staff with existing work loads.

Grand Jury Finding 3

Obtaining copyright and licensing rights from the original manufacturer delayed the SJVM restoration project because such terms were not in that contract.

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City Response to Finding 3

The respondent agrees with the finding.

Grand Jury Recommendation 3

The City of San Jose should examine and revise contract language used to purchase public art. The City's goal should be to obtain specific rights to use of license public art designs and/or manufacturing processes, as required by the City, for an indefinite time period.

City Response to Recommendation 3

The recommendation has been implemented. The City's agreement with the manufacturer of the Veterans Memorial glass was executed in 1997, and the City no longer uses that manufacturer nor does it enter into that type of agreement. Public Art contracts uniformly require the City's rights to electronic files for the purposes of restoration and maintenance of public artworks.

PUBLIC OUTREACH

By the very nature of the Grand Jury's report and its release, public outreach requirements have been met. Additionally, upon approval of this memorandum by Council, the City Attorney will submit the memorandum to the presiding judge of the Superior Court.

COORDINATION

This memorandum was coordinated with the City Attorney's Office.

CEQA

Not a Project, File No PP10-069(a), Staff report.

/s/

KIM WALESH
Director of Economic Development
Chief Strategist

For questions please contact Director of Cultural Affairs Kerry Adams Hapner at 793- 4333.

Attachment A: Santa Clara County Civil Grand Jury Report on Veterans Memorial Restoration



May 30, 2012

Honorable Chuck Reed
Mayor
City of San Jose
200 East Santa Clara Street
San Jose, CA 95113

Dear Mayor Reed and Members of the City Council:

Pursuant to Penal Code § 933.05(f), the 2011-2012 Santa Clara County Civil Grand Jury is transmitting to you its Final Report, **Veterans Memorial Restoration: Preserving History and Restoring Pride**.

Penal Code § 933.05(f)

A grand jury shall provide to the affected agency a copy of the portion of the grand jury report relating to that person or entity **two working days** prior to its public release and after the approval of the presiding judge. No officer, agency, department or governing body of a public agency shall disclose any contents of the report prior to the public release of the final report. **Leg. H. 1996 ch. 1170, 1997 ch. 443.**

This report will be made public and released to the media on **Tuesday, June 5, 2012**, at **1 P.M.** If you have any questions please contact Gloria Alicia Chacón at 408-882-2721.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathryn G. Janoff", is written over the word "Sincerely,".

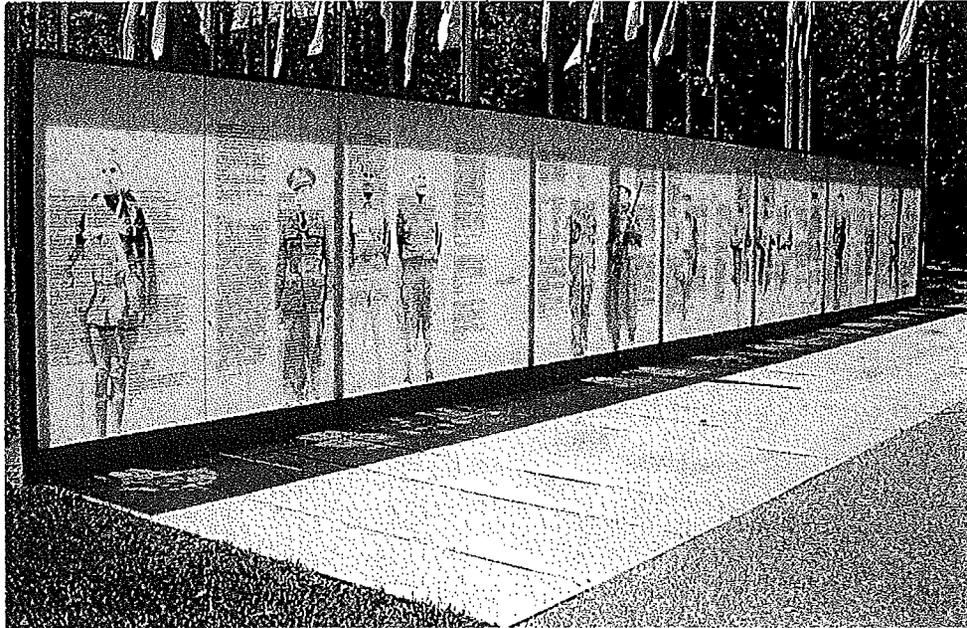
KATHRYN G. JANOFF
Foreperson
2011-2012 Civil Grand Jury

KGJ:dsa
Enclosure

cc: Ms. Debra Figone, City Manager, City of San Jose



VETERANS MEMORIAL RESTORATION: PRESERVING HISTORY AND RESTORING PRIDE



Summary

The Grand Jury received a complaint that the San Jose Office of Cultural Affairs (OCA) has taken over a year to repair vandalism to the San Jose Veterans Memorial (SJVM) located on Park Avenue near the Guadalupe River. The complaint also stated that no effort has been made to deter future vandalism. The Grand Jury sought to determine why the repair took so long and what the City of San Jose's (the City) plan is to mitigate future vandalism.

The damaged memorial was displayed for over a year with a temporary plastic cover. The memorial's restoration was delayed and several published completion dates were missed. The future plans for improved security and ongoing funding for the memorial are not clear.

Background

The SJVM was dedicated on Veterans Day 1997. The \$1.25M memorial facility was funded by the City and more than 200 individual donors, foundations and businesses. After the SJVM was erected, the remaining money (approximately \$80,000) was deposited into what is now called "Fund 3330 SJ Veterans Memorial," an annuity account for on-going maintenance managed by Silicon Valley Community Foundation (SVCF).

The OCA is responsible for overseeing the memorial's maintenance.¹ According to the City's public art website, the memorial is described as follows:

The artwork is comprised of 76 white flags on stainless steel poles in formation beyond a wall of glass imprinted with photos of local soldiers and communications sent back home during times of service; the threshold in front of the glass is inlaid with military insignias.²

The memorial faces Park Avenue and is surrounded by the river, trees and the Center for the Performing Arts. The Grand Jury observed that the night lighting is limited. From 1997 through early 2010, the memorial experienced only minor damage paid for with the maintenance annuity. From May 2010 through October 2010, three glass panels were broken. This motivated the OCA to replace all the panels with more resilient glass at a cost that exceeded the available maintenance funds.

Methodology

The Grand Jury conducted interviews with the pertinent City officials, including:

- Director of the Office of Cultural Affairs
- Commissioner of the Public Arts Commission
- Original consultant and project manager
- Current project manager

The Grand Jury also reviewed financial reports from the SVCF and the original contract with the artist. The memorial's site was visited periodically and restoration progress was monitored and photographed. All documents reviewed are listed in Appendix A.

Discussion

During the long delay in restoration, the damaged panels were covered with plywood and the overall display was cloaked in a temporary plastic shroud (see Figures 1 and 2). The temporary covering became ripped and remained in poor condition for long periods of time as recorded in photographs. The OCA restoration team did not keep the public informed of project status and the delays. Posted information at the memorial was not kept up to date (Figure 3).

Restoration Delays

With the loss of three panels in six months of 2010, the OCA decided to replace all 14 panels with a more resilient glass material. The OCA stated that the following issues delayed the restoration:

- Lengthy time selecting the more resilient glass

¹ January 19, 2011, memo to the Mayor and San Jose City Council from Kim Walesh, "Repairs to the San Jose/Santa Clara Valley Veterans Memorial."

² www.sanjoseculture.org

- Reduction in staff (original restoration project manager was laid off)
- The City's negotiation to procure from the original panel manufacturer its proprietary panel fabrication information
- Costs in excess of available funds

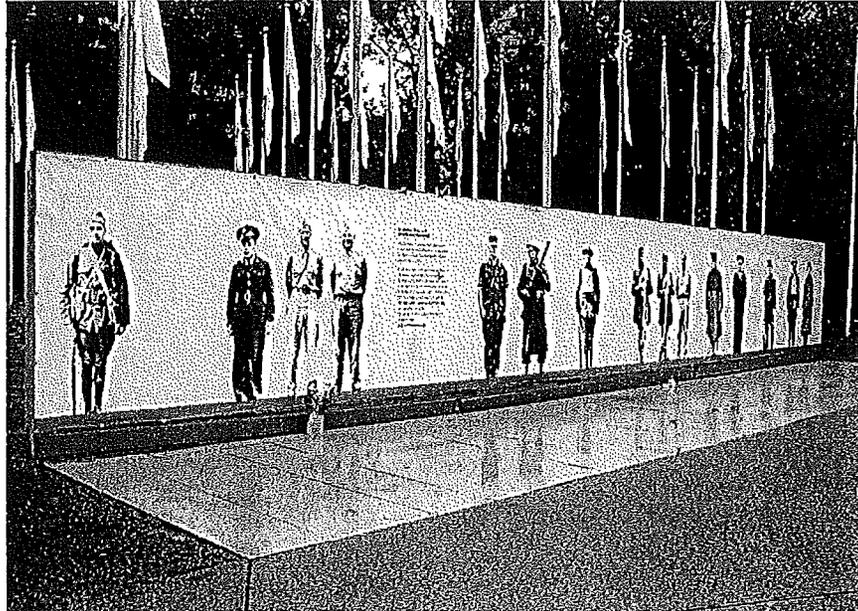


Figure 1: Front of Veterans Memorial, after damage, with temporary plastic shroud.

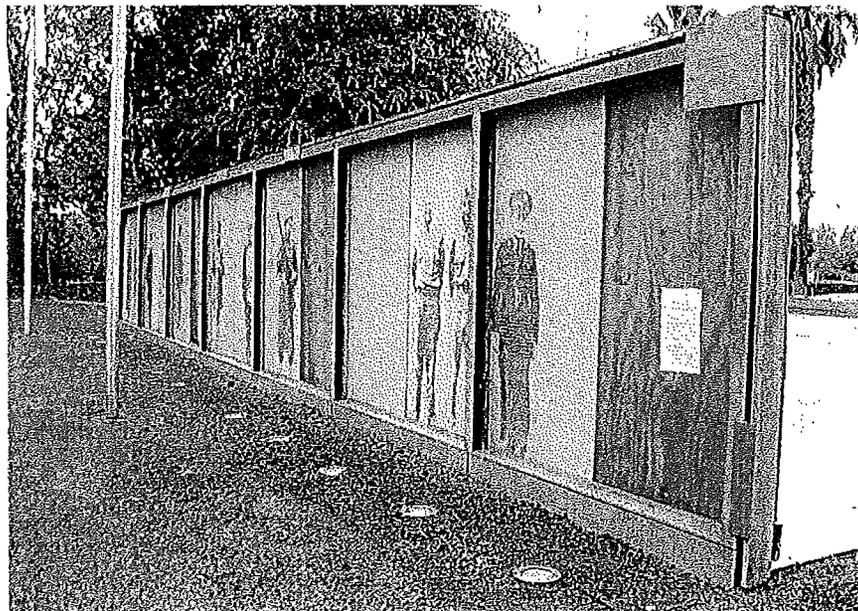


Figure 2: Back of Veterans Memorial, after damage, with temporary plywood and outdated notification posted.

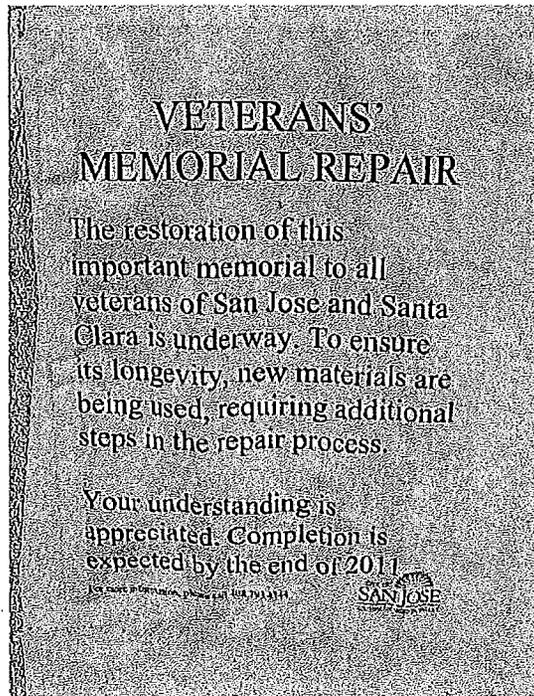


Figure 3: Outdated restoration notification, still posted as of February 2012

After several missed target dates, the new panels were installed on February 23, 2012. The memorial was vandalized within a week of its unveiling and subsequently repaired. Figure 4 shows the latest restoration of the memorial.

Future Funding for the Memorial

The City, through the OCA, is responsible for Memorial maintenance. The OCA is funded by the Transient Occupancy Tax (TOT), and the memorial maintenance was supplemented by the remaining endowment. The Memorial endowment is essentially depleted, meaning the OCA will need to pay for future maintenance with TOT funding. TOT funding is how the OCA funds maintenance of other works of public art.

In light of recent vandalism, the OCA's selected new glass did prove to be more resilient, but glass is still fragile. In addition, the replacement panels were much less expensive, at \$3-4K each versus the \$15-18K per panel cost for the original panels.

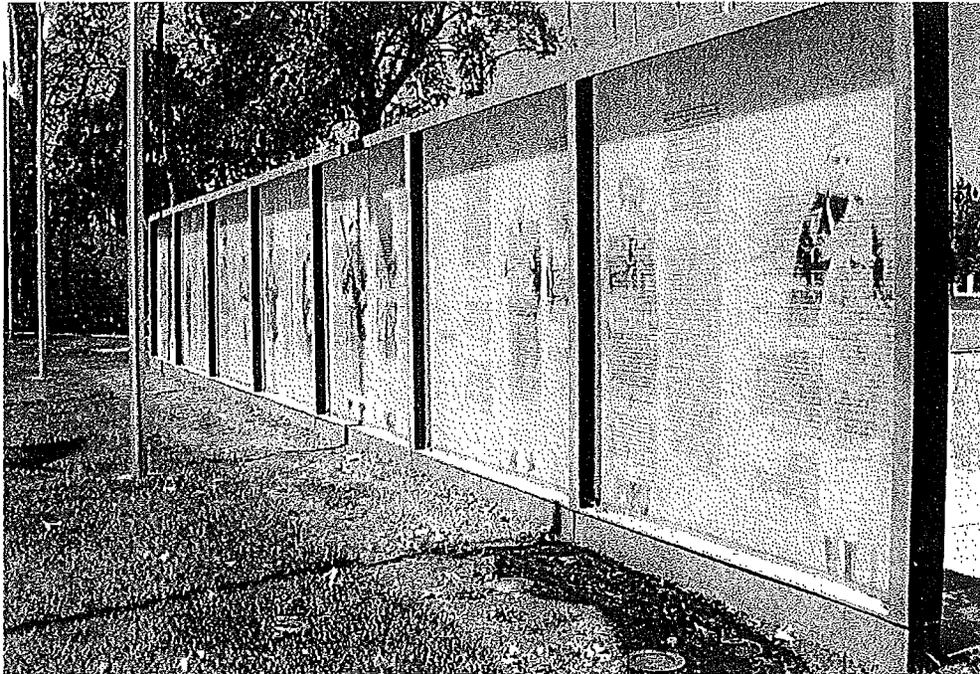


Figure 4: Back of Veterans Memorial, restored (taken May 2012).

Security

This memorial, created from fragile material and located in an open park setting in downtown San Jose, presents a security challenge. The early lack of significant damage or vandalism fostered a false sense of security. With the more recent damage, OCA staff recognized a need for greater security. According to the January 19, 2011 memo, "Staff believes the memorial will continue to be susceptible to vandalism and is also investigating security measures, insurance and alternate materials for future replacement panels." The OCA further recognized that improved night lighting was needed, but the budgeted funds were not adequate to pay for restoration as well as security lighting and/or cameras.

Ownership of the Fabrication Intellectual Property

According to interviews, the original contract for panel fabrication was not clear with respect to which party owned the rights to the panel fabrication information. As a result, when the City attempted to acquire the fabrication information in order to solicit new bids to manufacture the new panels, the original panel manufacturer claimed the contract did not entitle the City to that information. The City eventually negotiated a price to receive the plans, but the negotiation caused additional delay and cost.

Other Concerns

The OCA reports it does not have a firm plan regarding disposition of the remaining original panels. In the meantime, the panels have been stored in crates.

Conclusions

The Grand Jury concluded that the restoration project had excessive delays. The restoration project took over 18 months to complete. It is clear that the memorial remains vulnerable to future vandalism as another incident of panel damage occurred within one week of the 14-glass panel restoration. The OCA does not have a comprehensive security plan for the memorial.

FINDINGS & RECOMMENDATIONS

Finding 1

The restoration plan and project status was not communicated by the OCA consistently and accurately to the public.

Recommendation 1

The City of San Jose should regularly communicate public art restoration projects to the public in a timely and accurate manner.

Finding 2

The OCA recognizes the need for improved security measures, including improved night lighting and security cameras.

Recommendation 2

The City of San Jose should give funding priority to providing an adequate security solution for the SJVM.

Finding 3

Obtaining copyright and licensing rights from the original manufacturer delayed the SJVM restoration project because such terms were not in that contract.

Recommendation 3

The City of San Jose should examine and revise contract language used to purchase public art. The City's goal should be to obtain specific rights to use or license public art designs and/or manufacturing processes, as required by the City, for an indefinite time period.

Appendix A: List of Documents Reviewed

1. City of San Jose Monument Policy (Policy No. 9-14; 03/23/2010)
2. Silicon Valley Community Foundation, Fund 3330 Financial Statements
(2007 – 2011)
3. Silicon Valley Community Foundation General Ledger Report (2007)
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This report was **PASSED** and **ADOPTED** with a concurrence of at least 12 grand jurors on this 17th day of May, 2012.

Kathryn G. Janoff
Foreperson

Alfred P. Bicho
Foreperson pro tem

James T. Messano
Secretary



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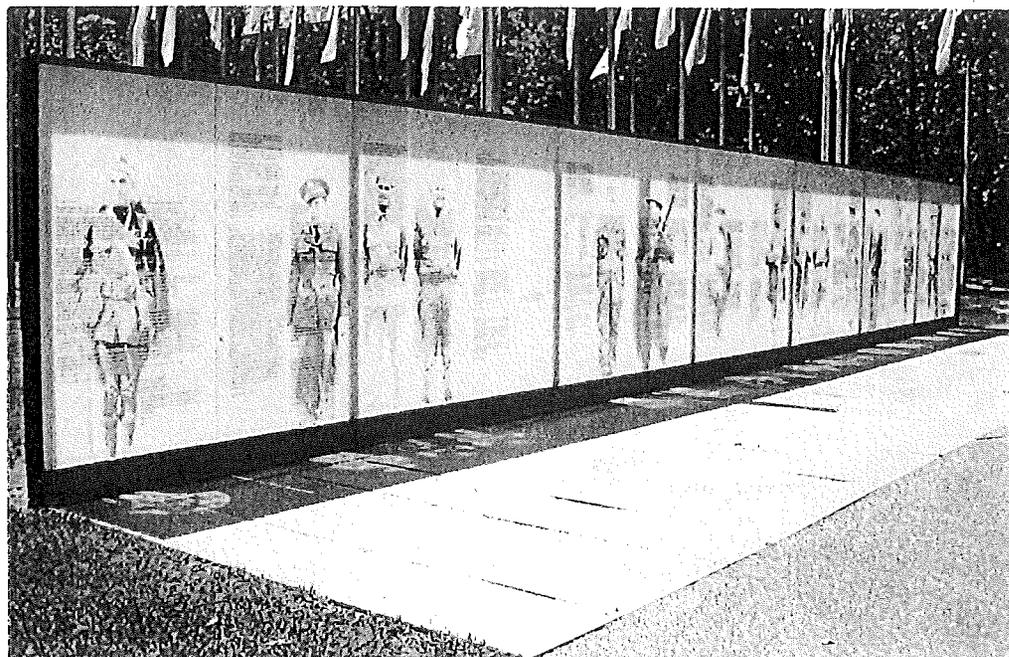
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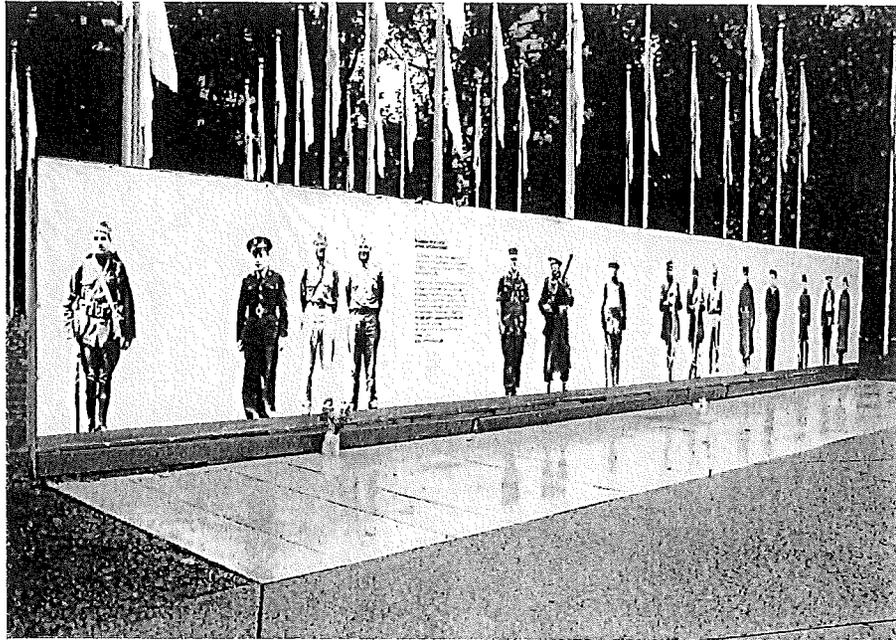


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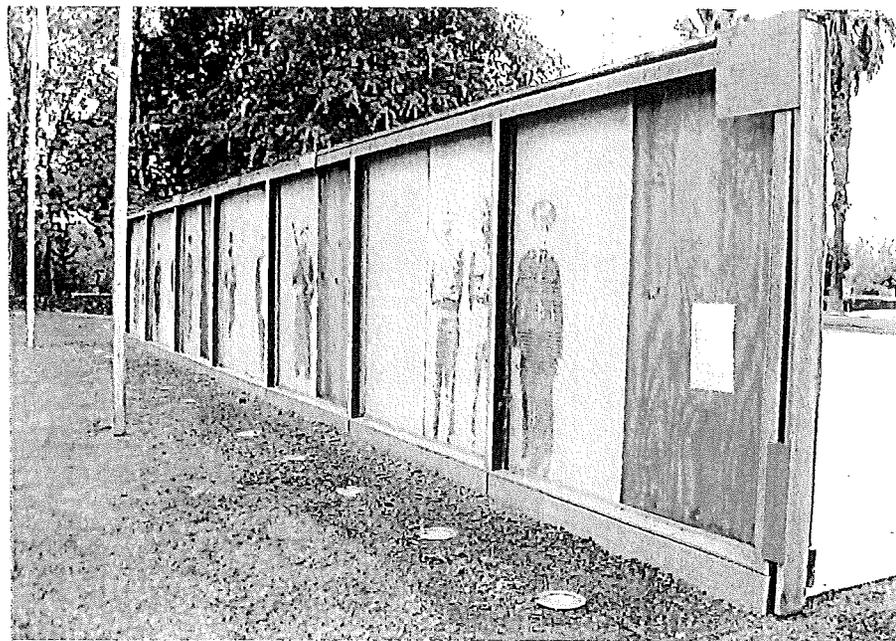


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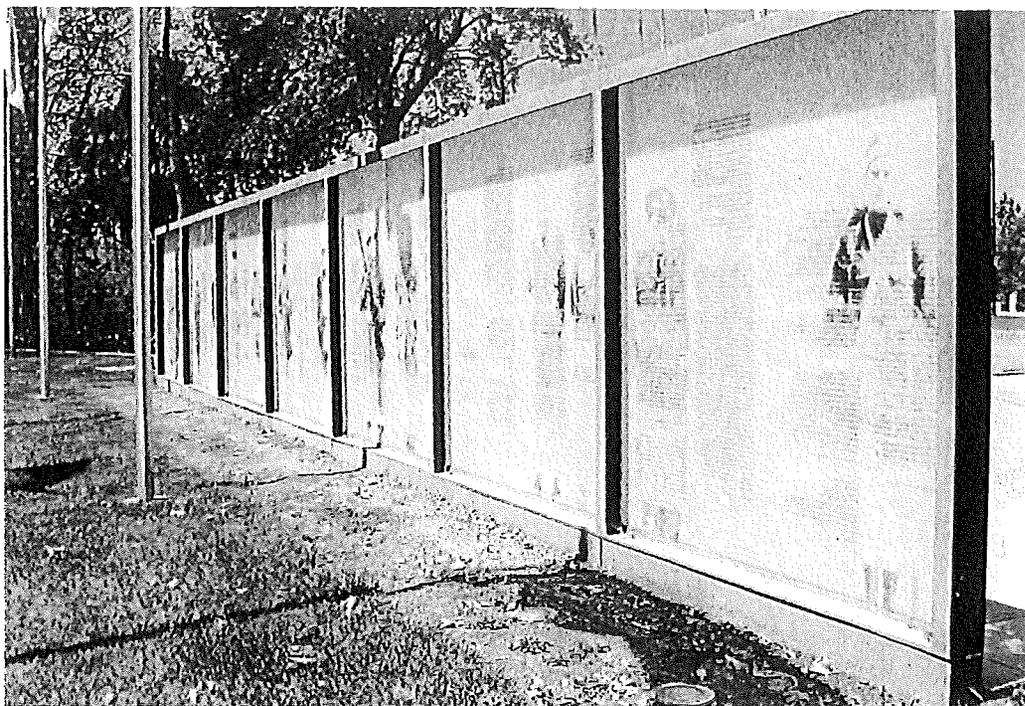


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