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October 25, 2005

Brian Melendez
Minneapolis Charter Commission Revision Reporter
Faegre & Benson LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901

Re: Proposed Eighth Revision of Minneapolis City Charter – Minneapolis Park and Recreation Board Comments

Dear Mr. Melendez:

I recently became aware that you have produced an eighth draft of the Minneapolis City Charter revision. This letter is to inform you that in my opinion, the eighth revised Charter draft still does not satisfy issues that the Park Board has raised previously in correspondence with you and the Commission.

On December 22, 2004, on behalf of the Minneapolis Park and Recreation Board, Commissioner Annie Young, who chairs the Park Board Charter Subcommittee, wrote you a letter and requested two sets of changes. (See attached letter.) In the letter of December 22, 2004, Commissioner Young specifically asked that you revise Chapter 8 of the new Charter by specifically enumerating twenty-one specific powers the Park Board currently has. The December 22nd letter also requested that the Charter Commission should include new language in Chapter 8 referencing the two special laws which granted the Park Board its authority. (See Young letter and Special Laws of Minnesota 1889, Chapters 30 and 103.)

The December 22, 2004 letter appeared in the Charter Commission minutes of February 5, 2005 under comments of the Sixth Revised Charter and several subsequent sets of minutes. I do not find that your Eighth Revised Charter incorporates either the twenty-one enumerated powers that Commissioner Young requested or the additional language in Chapter 8 referencing the 1889 acts of the Legislature.

In addition to the changes that Commissioner Young requested on behalf of the Park Board, I would also suggest the following modifications. Chapter 8.2, under

General Functions and Powers, number 8.2(a)(2), references powers of the Board. The reference to “statutory powers” should be deleted and the reference should be made to “legislatively granted powers.” (See attached Section 8.2(a) Proposed Changes.) The reason for this is that references to statutes are simply those laws that the Revisor of Statute and the Legislature have decided to present in a codified format. There are multiple special laws that continue to govern Park Board actions that are not in statute or considered “statutory”. The language of Section 8.2(a) should be changed as indicated.

On a related note, I would comment that under Section 1.3 (c), Authority, the reference to “statutes” is also incorrect. I believe that the proper reference should be to “state laws” rather than “statutes”. There are a multiplicity of laws that the Legislature enacts that do not become codified in statutes. This is the case with respect to local units of government. In particular, the City of Minneapolis has dozens of special laws that apply only to the City. Therefore, in Section 1.3(c), I would recommend that the reference be made not to “statutes” but to “state law” in the header.

I would also recommend that Section 1.3(c)(1) be deleted, as I think that it has the potential to create confusion about the status of any special law currently in existence. (See attached Section 1.3(c)(1) Proposed Changes.) It is my understanding from our discussions that special laws that currently exist that grant the Park Board authority to operate would continue to exist after the adoption of this Revised Charter. I could foresee a situation where upon the adoption of the Revised Charter, an argument could be made that the Charter would supersede those special laws, and the Charter would take precedent over any prior laws. As I have pointed out previously, I think the efforts to streamline the Charter, while they are laudable, run the risk of having the effect of eliminating the nuances of several areas of powers, roles, responsibilities and duties of the Park Board and other parts of the City. In the interest of simplifying the Charter, many provisions are removed. The language in Section 1.3(c)(1) provides that the Charter would supersede these laws to the extent there are inconsistencies. It is easily foreseeable that there will be inconsistencies given the large amount of changes being made from the current Charter to the proposed Revised Charter. In effect, the language of Section 1.3(c)(1) tells a court to start with the Revised Charter as the beginning point. And as the Revised Charter is much shorter than the current Charter, there are numerous inconsistencies between the two documents. I think that Section 1.3(c)(1) as currently drafted will create a great amount of uncertainty about the continuing validity of numerous special laws. I believe this is not only an issue for the Park Board but also is an issue for the City and all other boards.

I will be in attendance at the Charter Commission meeting on November 2, 2005. I would respectfully urge that prior to the Eighth Revised document being submitted to the public for comment that the Charter Commission incorporates the changes requested by Commissioner Young in her December 22, 2004 letter, i.e. those changes amending Chapter 8 dealing with the functions and powers of the Park Board and reference to the 1889 acts of the Legislature. I also think that the changes in Sections 1.3 and 8.2(a) I proposed in this letter should be made.

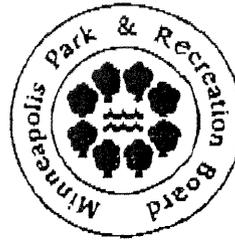
I will make myself available for making revisions to the document that you think would be helpful.

Very truly yours,

A handwritten signature in cursive script that reads "Brian F. Rice". The signature is written in black ink and is positioned above the typed name.

Brian F. Rice
Park Board Attorney

cc: Charter Commission Members
Minneapolis Park Board Commissioners
Superintendent Jon Gurban
Assistant Superintended Don Siggelkow
Assistant City Attorney Burt Osborne



December 22, 2004

Mr. Brian Melendez
Reporter, Minneapolis Charter Commission
Faegre and Benson LLP
2200 Wells Fargo Center
90 South 7th Street
Minneapolis, MN 55402-3901

**Re: Proposed Charter Revision – Minneapolis Park and Recreation Board
Comments**

Dear Mr. Melendez:

The Minneapolis Park & Recreation Board (“Board”) has reviewed the sixth draft of the Proposed Revised Charter. We understand that the Charter Commission is attempting to update the Charter and remove obsolete, redundant and superfluous language. We further understand you do not intend to make any substantive changes. A special board committee lead by Commissioner Annie Young has found the proposed revised Charter is complex to digest for several reasons. First, the proposed Charter eliminates hundreds of words. Second, the proposed Charter simplifies several extensive powers. Third, the proposed Charter may inadvertently omit some important authority.

The Park Board recommends that the Charter Commission adopt the attached list of twenty-one (21) enumerated powers of the Park Board. Our legal counsel drafted these changes to reflect the current powers in the Charter. While we understand that these powers may be redundant, the Board is very reluctant to see any of its historical powers eroded. We believe that by listing these powers, the chance of having unintended consequences would be greatly reduced.

For example, we have concerns about the Board’s authority with respect to real estate. The redrafted Charter would combine parts of Chapter 16, sections 1 and 2 and greatly shorten the language. [Compare section 8.2(d) of redrafted Charter to current charter provisions.] In doing so, the word “designated” is omitted and replaced by the word “dedicated.” Further, the current Charter appears to grant the Park Board the power to assess property benefited from land purchased by the Park Board. While the Board has not exercised such power for years, we would be very reluctant to abandon that power to specially assess property to pay for the extension of the Grand Rounds or other important park projects.

President
Jon Olson

Vice President
John Erwin

Commissioners
Rochelle Berry Graves
Walt Dziatko
Bob Fine
Marie Hauser
Carol A. Kummer
Vivian Mason
Annie Young

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Mr. Brian Melendez
December 22, 2004
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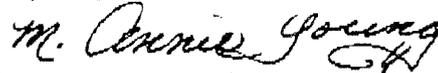
We also believe the Charter Commission should include the following language in Chapter 8 of the new Charter:

"In addition to the powers, rights, roles and duties granted to the Park Board under this Charter, the Park Board shall exercise all the powers, rights, roles and duties granted to it under the Special Laws of Minnesota 1889, Chapters 30 and 103."

We believe this would preserve our existing authority.

We look forward to seeing a Revised Seventh Draft of the Charter and commenting at the public hearing in January.

Very truly yours,



Commissioner Annie Young
Chair, Charter Subcommittee
On behalf of the Park Board

Attachments

cc: Charter Commission Members
Park Board Commissioners

Chapter 8 Park & Recreation Board

For the purposes of this section, the "Board" means the Park and Recreation Board.

(a) ~~Policy. The City will provide for parks, parkways, and recreational opportunities for its current and future residents' few use.~~

Function and powers. The Park and Recreation Board has the power to:

(1) maintain the parks, parkways, and recreational opportunities in and adjacent to the City, for which purpose it may act on the City's behalf and enjoys all the City's lawful powers, including eminent domain.

(2) hold, improve, govern, administer and regulate the parks, parkways, lakes, streams, watercourses and ponds which it has or will acquire.

(3) enter into, make, perform and enforce contracts in the name of, and on behalf of the City of Minneapolis, to carry out the purposes expressed in this Charter or in governing law.

(4) employ and dismiss, subject to the provision of the Civil Service Chapter of this Charter, such attorneys, surveyors, agents and employees, including park police officers, as may be necessary, and to fix the compensation for park commissioners and of all its appointees and employees.

(5) design, develop and maintain parks and parkways in and adjacent to the City of Minneapolis.

(6) acquire, purchase or obtain title to land and real property in and adjacent to the City of Minneapolis and accept title to lands and give back a mortgage or mortgages in the name of the City with or without bonds to secure the unpaid purchase price; provided that no liability on the part of the City and by gift, devise, purchase, lease, contract or eminent domain, shall be created by such contract, mortgage personal or general bond beyond the means at the time available.

(7) acquire lands by means of contract or mortgage through benefits assessed on benefited property on account of the lands acquired and determine the appropriate percentage of the cost for the purchase or condemnation of any park or parkway and assess upon the benefited property the cost of the park or parkway.

(8) borrow a sum of money not to exceed fifty thousand dollars (\$50,000.00) to acquire lands for parks and parkways and shall have the authority to issue bonds of the City of Minneapolis which can be secured by the parks and the improvements thereon.

- (9) levy property taxes in accordance with provisions of this Charter.
- (10) receive and accept in the name of the City any land or buildings to be used for a public park, museum, gallery
- (11) vacate and close up any and all public roads and highways, except railroads, which pass through, divide or separate any park lands
- (12) layout, construct or consent to all public roads, highways or railroads.
- (13) construct all necessary bridges and viaducts over water courses and railroads within or adjacent to the parks and parkways
- (14) regulate and control the use of shores and shore land and the water contiguous to any stream of water, lake or pond for which the fee title to the land has been acquired by the Park Board
- (15) take any, and have exclusive charge and control, regulate and govern use and prescribe penalties for the violations of such rules and ordinances of the waters of any lake or pond where the Park Board owns the entire shore of such lake or pond.
- (16) regulate by ordinance, the use of parks and parkways acquired by law whether within or without the corporate boundaries of the City to secure the quiet, orderly and suitable use and enjoyment of such parks and parkways by the people and ordain penalties for the violation thereof
- (17) control and direct, appoint and discharge and compensate police officers who shall possess all common law and statutory powers of police and peace officers and who shall have search and arrest powers within Hennepin County subject to the provisions of the Civil Service Chapter
- (18) open, improve and vacate streets
- (19) direct and regulate the planting, trimming, maintenance, removal and preservation of shade and ornamental trees and shrubbery in the streets, alleys and public grounds of the City.
- (20) assess taxes for Shade Trees
- (21) Ordinances. The Board may enact any necessary or prudent ordinance within this section's purposes. An ordinance may provide for a fine, imprisonment, other penalty, or any combination of such penalties for its violation.

MINNEAPOLIS PARK BOARD
PROPOSED CHANGES TO SECTION 8.2
EIGHTH REVISED CHARTER

§8.2. **Functions and powers**

...

(a)(2) ~~Statutory~~ **Legislatively granted powers.** The Board may also, without regard to this charter, exercise and power, right, or role ~~for which the law provides~~ provided or authorized by a state law, in addition to those for which this charter provides.

...

MINNEAPOLIS PARK BOARD
PROPOSED CHANGES TO SECTION 1.3(C)
EIGHTH REVISED CHARTER

§1.3 Authority

...
| (c) ~~Statutes.~~ State laws.

| (1) ~~Inconsistent laws superseded.~~ This charter supersedes any special
| law enacted before the charter's latest revision on _____, 200__, to
| the extent of any inconsistency between them.

| (2) ~~Certain laws preserved.~~ The charter does not affect any special or
| other law to the extent that it confers upon the City, or upon any board,
| department, or officer for which this charter or an ordinance provides, a
| power, right, or role in addition to those for which the charter or ordinance
| provides.

...