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VIA FACSIMILE AND U.S. MAIL

December 6, 2005

Mr. James Bernstein
Chair, Minneapolis Charter Commission
5216 Ewing Avenue South
Minneapolis, MN 55410-2004

Re: Charter Commissioner December 7th Meeting

Dear Chairman Bernstein:

Since the last Charter Commission meeting, I have the opportunity to meet with the Charter Commission Subcommittee on the Park Board Revisions. Park Board Commissioner Annie Young and I met with Charter Commissioner members Ty Bujold, Kari Dziedzic, and yourself on Thursday November 17th to discuss changes that the Park Board had requested to the Eighth Revised Draft of the Charter. I think that the conversations that we had that day covered the topics that had been raised in my previous correspondence with the Commission.

Subsequent to the meeting on the 17th, I did some additional research on the new proposed Chapter 5 of the Revised Charter dealing with Boards Generally, and I found several areas that I think need to be removed or modified. Specifically, they are:

1. Chapter 5.3 (c) sets out a standard that provides a definition of "majority" and directs that one must disregard a vacancy in determining what constitutes a majority. I have given my client the exact opposite opinion based on a Minnesota Supreme Court case involving the election of the Minneapolis City Council President. In Van Cleve v. Wallace, 216 Minn. 500, 13 NW 2d 467 (1944), the Minnesota Supreme Court concluded that the Charter required a majority of the entire City Council (fourteen out of twenty-six) to elect its officers. Id. At 510. In 2001, the Park Board was faced with an election of President where the vote was 4-3-1 (abstain)-1 (absent). In those circumstances, I advised that a majority of the entire Board is required for an election to take effect. At a minimum I think this provision needs to be reviewed as to the types of actions that may occur, e.g. an election of officers might be different than the passage of an ordinance. I

know that the Van Cleve case has been cited in zoning matters and that state law may require a majority or even 2/3rds vote of an entire body to enact zoning ordinances. See Ram Development Company v. Snow, 309 Minn. 139, 244 NW 2d 110 (1976). I believe that Chapter 5.3 (c) makes substantive changes in this law.

2. Chapter 5.3 (e) provides rules about how records of proceedings are kept and requires that each vote is recorded. I don't believe this language is what is required of the Park Board by Charter or law.

3. In Chapter 5.4(a) the phrase "or special law" should be added after "statute".

4. In Chapter 5.4 (b) (1) I think the reference should be to "classified" rather than "unclassified" as the Civil Service rules are designed to protect the employees in the Civil Service "classified" system.

5. The provisions in Chapter 5.6 (d) on accounting practices appears to give the City Council exceptionally broad powers over the finances of the individual boards. Within the last two years I had to research the relationship between the City Finance Department and the City Council and the Park Board. From that research, I did not conclude that the City Council would have such broad authority as the revised Chapter 5.6 (d) would grant.

6. Lastly, Chapter 5.7 on Ethics is very broad and I am unaware of any such provision in the current Charter. I do know the City Council enacted an Ethics Ordinance which essentially restated existing state laws on the topic. That ordinance specifically excluded the Independent Boards. The reason for this is quite simple, the Independent Boards under the current Charter are clearly given the ability to regulate their own affairs. This has been what the Charter provides and what has been the practice for years. Section 5.7 should be removed from the Draft as it is not current law.

Planning Commission

I have also had the opportunity to look at the issue of the abolishment of the Planning Commission in the Revised Draft Charter. This issue came up at the last Charter Commission meeting. It is my understanding that the current draft of the Charter would abolish the Planning Commission as it exists under the Charter. I understand the rationale for doing this is based on an interpretation of a 2003 law that reorganized the various economic development departments in Minneapolis into the Community Planning and Economic Development ("CPED"). (See Laws of Minnesota 2003, Chapter 127, Article 12, sections 31 to 34 ("2003 Law").

I was generally familiar with the passage of this legislation, and I have known since the passage of the legislation that the Planning Commission has continued to operate and appointments as outlined pursuant to the Charter have continued to be made to the Planning Commission by various Boards and elected officials. While I could see that the 2003 legislation which authorized the creation of CPED could suggest that all of the functions given to CPED under the law were functions previously created in the City

Charter or the prior state laws, I find the law passed in 2003 to allow the abolishment of the Planning Commission to be unreasonable given the history surrounding the legislation. I think the fact that when the City Council implemented the CPED's functions it did not either then seek to amend the Charter or to enact an ordinance that would replace the existing Charter provision make clear the 2003 Law should not be read as the 8th Draft does.

I know at the time that as the Park Board's attorney and lobbyist, the Park Board was not made aware that the 2003 CPED legislation would have such an effect on the Planning Commission itself. I think it was generally understood that the Planning Department's functions would be transferred to the new Community Planning and Economic Development Agency; I don't think there was any intent to abolish the Planning Commission itself. In fact, the 2003 Law refers to the transfer of functions to CPED from "any other department or office" of the City. The 2003 Law continues to refer to the "City's Planning Commission." (See 2003 Law, Section 31, subdivision 1(1). I take this as evidence that the 2003 Law intended to keep the Planning Commission while it eliminated the Planning Department.

I will be unable to attend Wednesday's meeting as the Park Board is convening a meeting at 4:00 p.m. on the 7th. I will be sending my Legal Assistant Kirk Pederson, and I would appreciate the opportunity to have these comments read or entered into the record at your meeting. I understand that there is a strong desire on the part of some Commission members to move the Charter revisions forward for public hearings in January and February. I again want to advise the members of the Charter Commission that it is likely that as this process moves forward, I will continue to have comments on behalf of the Park Board like the ones that are raised in this letter. Please understand that revising a document that is well over 120 years old is an enormous undertaking and creates a vast number of issues. I would request that the issues that I raise today in this letter along with the issues previously raised be addressed in some fashion before the Charter Commission comes out with a document for public comment.

Very truly yours,

Brian F. Rice

cc: Ty Bujold
Kari Dziedzic
Gary Thaden
Charter Commission Members
Minneapolis Park Board Commissioners
Minneapolis Park Board Commissioners-elect
Superintendent Jon Gurban
Assistant Superintendent Don Siggelkow
Assistant City Attorney Burt Osborne