

December 15, 2014

Minneapolis Park and Recreation Board President Liz Wielinski and Commissioners

**Re: Proposed Purchase and Lease Back of Open Space for Use by Vikings
Ownership and the Public**

Dear Commissioners:

You will be considering the approval of a Memorandum of Understanding and Lease during your Park Board meeting on December 17. We urge you to vote no on this agreement.

It is important to summarize the tortured history of this proposed park:

May 2013: Minnesota Legislature passes the Vikings stadium bill that dedicates a large portion of the City's future discretionary sales tax revenues towards the construction and operation of the Vikings stadium. The stadium bill does not fund or provide for open space for game day activities and prohibits any city subsidies of the Vikings beyond those incorporated into the stadium legislation.

June 2013: Mayor and Council leadership unveil the Downtown East development project which includes open space adjacent to the new stadium and the proposed development. The MPRB is not involved in the development of this proposal.

Summer 2013: Park Board staff in consultation with Commissioners concludes that the proposed park is not a part of its comprehensive plan for city parks and furthermore that the allocation of scarce MPRB resources into the park is not in the best interests of the park system or the citizens of Minneapolis.

Fall 2013: Based upon legal advice that the City Council has concurrent jurisdiction with the MPRB that would allow the City Council to acquire, operate and maintain the proposed park, the City Council proceeds with the development without Park Board involvement.

November 2013: With the unanimous support of the Minneapolis City Council, the Plain Language Amendments to the City Charter are adopted. Although the language as to the Park Board's exclusivity was strong in the old charter, the new language is absolute and clear. (Legal counsel for the City subsequently argued in December that the new Charter language was not yet effective and that the old Charter language gave the City the authority to operate and maintain parks.)

December 13, 2013: The City Council approves the Term Sheet for the Downtown East project and authorizes the issuance of \$62 million in general obligation bonds, \$42 million to fund the new parking ramp and \$20 million to purchase the proposed park. A portion of the bond payments are guaranteed for the first ten years of the bonds, but any shortfalls over the thirty year repayment period is to be added annually to the City's property tax levy. **The staff report claims that annual**

revenues will be sufficient to pay the bonds but no projections of parking ramp net revenues are provided to the Council or the public.

December 20, 2013: Judge Mel Dickstein of Hennepin County District Court issues his ruling denying the motion for a permanent injunction in the matter of Woodruff v. City of Minneapolis on the grounds that the matter is not “ripe for adjudication.” Legal counsel for both the City Council and the Park Board represent to the Court that the City Council and MPRB are cooperating on the project and working towards an agreement. In its brief, the MPRB states to the Court that “if the City fails to act in accordance with the Charter and does not turn over the Downtown East park to the Park Board to operate,” the Park Board “stands ready to challenge the City’s action.” Chair Erwin also states in an affidavit to the Court “it is the position of the Park Board that the City must turn over control and operation of the proposed park to the Board after the City acquires the land.”

The Court stressed in the decision that granting the City Council authority over City parks would be “irreconcilable in an ordered government.” **The Court flatly rejects the City Council’s position that it has equal and concurrent authority over City parks.** Exclusive park board authority, Judge Dickstein reasons, is critical “to maintain efficiency in the design, construction and maintenance of city parks.” The Court makes an express finding that there is evidence that the City intends to violate the Charter but states that since the park has not yet been established and won’t be operational until 2016, that judicial intervention is premature: **“If the City continues to work with the Park Board and the Park Board eventually takes over operation and control of the Downtown East park, there is no reason for the Court to intercede – only time will tell whether the Plaintiffs and Park Board have good reason to seek injunctive relief.”**

In January of 2014 the Court issued its ruling requiring the plaintiffs to post a ten million dollar surety bond based upon City representations that Wells Fargo would walk away from the project if there were any delays. Since none of the Plaintiffs are wealthy, the case was dismissed. The Plaintiffs argued that until the Park Board agrees to operate and maintain the park, the bonds should not be sold. City attorneys successfully argued that the land was purchased under special authorities given to the City under the Industrial Development Act. Under this authority, the City acquired the property to remove blighted properties and has broad discretion on how to ultimately to use the land. Legal counsel for the City states to the Court “we don’t know for sure it will be a park.”

January 2014: Plaintiffs write a letter to the Minneapolis City Council requesting the Council to review the project in light of the Court’s rulings. No response to the letter was received and the project proceeded without any further public review by the City Council.

Spring 2014: Despite Judge Dickstein’s ruling, the City, Ryan Companies, and the Minnesota Sports Facilities Authority enter into a long term use agreement governing the operation and maintenance of the proposed park. The MPRB is not a

party to the Use Agreement and the Agreement violates many of its policies. **The Use Agreement allows Vikings ownership and MFSA virtually unlimited access to the space on any days of the year for revenue generating activities including the sale of alcohol.** The Vikings are to provide a tax deductible “gift” of one million dollars but subsequently will have no rent payments and will not need to share any of its revenues with the public. Upon further review it is determined that for as many as 118 days a year the land will be unavailable to the public. Additionally since team needs will take priority there will be significant limitations on public improvements that can be made to the park.

July 1, 2014: Arlene Fried, co-founder of Park Watch, hand delivers her first Data Practices Request for documentation of the anticipated net revenues from parking ramps and bond payments. Despite three other requests, no information has been received as of December 15, 2014. The City has claimed that the information needs to be reviewed by the City Attorney and Communications Departments prior to release but has offered no satisfactory explanation for the long delay. (Arlene Fried and Paul Ostrow filed a Request for a Data Practices Advisory Opinion with the Department of Administration on December 5).

Summer of 2014: Both the MPRB and the Minneapolis City Council unanimously pass resolutions calling on the Minnesota Vikings to install bird-safe glass on the new stadium. Governor Dayton receives a petition with 78,000 signatures asking the Governor to intervene. State and federal environmental regulations clearly **require the installation of bird-safe glass.** The Vikings proceed to order glass that does not meet environmental standards for “aesthetic” reasons.

August 2014: The MPRB passes a resolution 6-2 stating that it will not operate or maintain the downtown park and “releasing” the City from further discussions with the MPRB regarding ownership and operation of the space. The perception of the public is that the Park Board’s decision is final.

October 2014: **Former Mayor Rybak calls for a re-negotiation of the Use Agreement in the cover story of the October 2014 issue of Parks and Recreation magazine: “After I left office, the Vikings and the MSFA got far more than I ever anticipated – more than they needed, and more than is helpful to create a useful, valuable public space.” Former Mayor Rybak stated that he supported re-opening negotiations on the Use Agreement, and he added, “I believe the City has the authority to do so.”**

December 12, 2014: In the last Council meeting of 2014 the Minneapolis City Council approves the Memorandum of Use Agreement and Lease with one no vote (Gordon) and one abstention (Yang).

This long tortured history brings us to today.

The saddest part of this tangled web is the fact that no one has stood up for the citizens and taxpayers of Minneapolis. No one has stood up for the laws and charter they were sworn to uphold. No one has been willing to draw a line in the sand and say NO MORE!

There is one reason – and one reason alone – that you are being asked to agree to this Memorandum of Understanding. It is an embarrassing and self-evident maneuver to evade the City Charter. We have serious doubts that it would ever be upheld in Court. In any event, we suggest you hold yourself to a higher standard– to uphold the will of the people rather than use legal gymnastics to override the will of the people.

Following the Court’s ruling last year the right path for the City Council was clear. That path was to work with the MPRB towards an agreement that would have the park board operate and maintain “the Yard.” Of course that path would have required you to make the final decision on how much rent the Vikings should pay, how much revenue they should share and what activities you would allow on this public parkland. The Vikings may not have liked your answers. The City Council may not have liked your answers. But that is not the point. It was and remains your decision and your responsibility – not theirs.

It is our legal right and expectation as citizens of Minneapolis to have our duly elected Park Board determine the operation and maintenance of the parks in our park system.

It is your legal obligation and fiduciary responsibility to exercise that authority in the best interests of your constituents.

You do not have the legal right to delegate powers that you alone may exercise to the City Council or to a private entity.

You should not approve this agreement.

Instead you should do the following:

1) Assert that the MPRB has the exclusive authority over the park system and that the previous agreements or representations regarding the use of the proposed park are null and void as contrary to the City Charter;

2) Provide that prior to any use of the public park by the Minnesota Vikings or the MSFA, the MPRB will require that the stadium comply with all environmental regulations protecting migratory birds and that the stadium install bird-safe glass.

3) Commence negotiations with the Minnesota Vikings and MSFA regarding a potential Use Agreement. The negotiations should include fair reimbursement of a substantial portion of the public cost of the park as well as a public share in the revenues generated on public property.

4) Demand that the MPRB receive the financial information requested in the July 1 Data Practices Request in order that a full accounting of the public cost for the park can be determined. In addition, you should review projections for revenues to

be generated by the Vikings and MSFA on the property in order to ensure that the public cost is substantially defrayed from those revenues.

Exactly a year ago in Court before Judge Dickstein you represented that you would challenge the City if it failed to turn over the maintenance and operation of the Yard to the Park Board. **We are asking you to live up to those words today.**

Only months ago you passionately spoke to your concerns about the migratory bird population and the impact of the proposed stadium on thousands of birds every year. **You have the opportunity to act on those words today.**

Finally you have been outspoken in your criticism of the Vikings stadium deal and the free use of the proposed park. **You can take action today to protect the Minneapolis taxpayer.**

It is not too late to do the right thing.

Sincerely,

Paul Ostrow, Former Council Member
Vivian Mason, Former MPRB Commissioner
Arlene Fried, Co-Founder Park Watch
Chris Johnson, Co-Founder Park Watch
Tom Clarke, Former Metropolitan Parks and Open Space Commissioner, Longfellow Resident
Elise Morton, Conservation Chair, Audubon Chapter Minneapolis
Ruth V. Jones, Past President, Audubon Chapter Minneapolis
Wendy Hahn, Co-Chair, Minnesota Citizens for the Protection of Migratory Birds
Lisa Venable, Co-Chair, Minnesota Citizens for the Protection of Migratory Birds
Elaine Auyoung, Minneapolis
Rachel Augusta, Minneapolis
Cathy Bailey, Audubon Chapter Minneapolis
Harvey Ettinger, Park Watch Member
Steve Greenfield, Minneapolis
Grant Hawthorne, Audubon Chapter Minneapolis
Susan Hawthorne, Minneapolis
Kit Healy, Audubon Chapter Minneapolis
Arthur Himmelmann, Minneapolis
Harriet Horowitz, East Isles Resident
Kate Hunt, Minnesota Citizens for the Protection of Migratory Birds
Susu Jeffrey, Friends of Coldwater
Ann Laughlin, Minneapolis
Matt Johnson, Audubon Chapter Minneapolis
Kande Larson, Audubon Chapter Minneapolis
Madeline Linck, Minnesota Citizens for the Protection of Migratory Birds

Howard Miller, Minnesota Citizens for the Protection of Migratory Birds

Joyce Murphy, Lowry Hill Resident

Julie Pierson, Audubon Chapter Minneapolis

Constance Pepin, Minneapolis

Linda Schutz, East Isles Resident

Michelle Schroeder, Minnesota Citizens for the Protection of Migratory Birds

Nick Schotes, Audubon Chapter Minneapolis

Wayne Swanson, Minnesota Citizens for the Protection of Migratory Birds