

**CITY OF MADISON  
CITY ATTORNEY'S OFFICE  
Room 401, C.C.B.  
266-4511**

January 29, 2003

**OPINION NO. 03-001**

TO: James Morgan, Director, Parks Division

FROM: James L. Martin, City Attorney

RE: **APPLICATION OF PRESERVATION OF SHORELINE PARKS  
ORDINANCE TO PROPOSED SAILING CENTER CONSTRUCTION**

You have requested my opinion on whether voter approval by referendum is required prior to the Park Commission holding a public hearing on proposals by the Mendota Community Sailing Organization, Inc. (the "Sailing Club"), to build a sailing center and related improvements in either Burrows Park or Warner Park. Due to the lack of information regarding the size of the building footprint, including paved areas, the length of the shoreline to be devoted to piers and docks and the cost of construction for the total project, we cannot provide a definitive answer.

Section 8.35, Madison General Ordinances ("MGO"), entitled "Preservation of Shoreline Parks", is a charter ordinance adopted by referendum in 1992. It provides that all City of Madison public parks bordering on lakes are to be protected as public open space, and that voter approval, by referendum, is required before beginning major construction in a shoreline park. Sec. 8.35 (1), MGO. Major construction is defined to mean "erecting a building or structure, changing land elevations or shore contours, and paving over land." Section 8.35(2), MGO.

Major construction germane to this request does not include:

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- (e) Construction with a total cost of less than \$500,000, if the construction is completed in calendar year 1992, or less than \$500,000 increased by 5% annually each year after calendar year 1992, if the construction is completed in a calendar year after 1992. For purposes of determining whether the \$500,000 limit applies, the cost of all construction completed in the same public park in the two preceding calendar years and not qualifying for exclusion under subdivisions (a) through (d) herein, shall be added to the cost of all construction in that public park

not qualifying for exclusion under subdivisions (a) through (d) in the year the determination is made.

- (f) Construction which when completed would result in both:
  - 1. A total including previously existing buildings, structures and paved areas, of less than three (3) acres of the public park in which the construction is occurring being covered by buildings, structures and pavement, and;
  - 2. A total, including previously existing boat docks, piers and buildings or structures extending out into or over the water, of less than 300 linear feet of the shoreline in the public park in which the construction is occurring, being occupied by boat docks, piers, buildings or structures.
  
- (g) Construction which when completed would result in both:
  - 1. A total including previously existing buildings, structures and paved areas of less than five percent (5%) of the public park in which the construction is occurring being covered by buildings, structures and pavement, and;
  - 2. A total, including previously existing boat docks, piers and buildings or structures extending out into or over the waters, of less than ten percent (10%) of the shoreline, in the public park in which the construction is occurring, being occupied by boat docks, piers, buildings or structures.

The construction of a sailing center in either Burrows Park or Warner Park would not be subject to a voter referendum required by Sec. 8.35, MGO, if any of the three exceptions in Subdivisions (e), (f) or (g) is met. I will discuss each exception separately.

#### Subdivision (e) Dollar Amount Exception

To fall within this exception the construction, if completed in 2003, must cost less than \$855,170. The Sailing Club has proposed that it pay for the design and construction costs of the sailing center. The project, as proposed, would not be subject to a public bidding process or construction oversight by the Board of Public Works. Since neither plans nor construction cost estimates have been provided to the City, it is impossible to render an opinion on whether the cost of construction would fall under the dollar amount exception found in Sec. 8.35(2)(e), MGO.

#### Subdivision (f) Three Acre Exception

To fall within the exception of Sec. 8.35(2)(f), the new sailing center, parking areas, sidewalks and boat racks, when combined with all existing buildings, structures and paved areas in the park, must total less than three (3) acres, and all new and existing docks, piers and other structures extending out into or over the water must be less than three hundred (300) linear feet of park shoreline. For Burrows Park, the Sailing Club has proposed a 4,700 square foot building

and a boat rack storage structure. The square footage of the boat rack storage structure and of any areas that would be paved is unknown. It is also unknown if any existing buildings or paved areas would be removed, or if docks, piers or other structures would be constructed out into or over the water. Thus, for the purposes of Burrows Park, we are unable to calculate whether the three acre/300 linear feet exception in (f) would be met. We would be happy to revisit the issue upon the submission of final design plans for a Burrows Park facility.

The Sailing Club has also proposed to build a portion of a sailing center in Warner Park, with the other portion being on contiguous land within the Village of Maple Bluff. The existing buildings and paved areas in Warner Park already exceed three (3) acres; thus the exception in (f) cannot be met.

Subdivision (g) Area Percentage Exception

For construction of the sailing center to meet the exception under (g), the total new construction, when combined with all existing buildings, structures and paved areas, must be less than five percent (5%) of the park, and existing and new docks, piers and structures extending into or over the water must be less than ten percent (10%) of the park's shoreline. In Burrows Park and Warner Park, more than five percent (5%) of the total park area is already covered by paved areas and buildings, so this exception cannot be met.

If the Sailing Club submits a final proposal for major construction in either Burrows Park or Warner Park that fails to meet any of the exceptions in Sec. 8.35, MGO, the Common Council may act on a resolution authorizing a referendum to be held in the next general election.

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James L. Martin  
City Attorney

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**SUMMARY:** Construction of a sailing center in Warner Park or Burrows Park may require a referendum under Sec. 8.35, MGO; however, without final design plans and construction cost estimates we cannot render an opinion on the issue