



Legislation Details (With Text)

**File #:** 25258      **Version:** 2      **Name:** Breese Stevens Deed Restrictions  
**Type:** Resolution      **Status:** Passed  
**File created:** 1/31/2012      **In control:** BOARD OF PARK COMMISSIONERS  
**On agenda:** 2/28/2012      **Final action:** 2/28/2012  
**Enactment date:** 2/29/2012      **Enactment #:** RES-12-00129

**Title:** SUBSTITUTE. Authorizing the Board of Parks Commissioners and the Parks Division to Disregard certain the Breese Stevens Athletic Field Deed Restrictions.

**Sponsors:** Bridget R. Maniaci, Mark Clear, Paul R. Soglin

**Indexes:**

**Code sections:**

**Attachments:** 1. Breese Stevens Athletic Field-Deed Restriction Memo

| Date      | Ver. | Action By                   | Action  | Result |
|-----------|------|-----------------------------|---|--------|
| 2/28/2012 | 2    | COMMON COUNCIL              | Adopt   | Pass   |
| 2/8/2012  | 1    | BOARD OF PARK COMMISSIONERS | RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER | Pass   |
| 2/7/2012  | 1    | COMMON COUNCIL              | Referred  | Pass   |
| 1/31/2012 | 1    | Attorney's Office           | Referred for Introduction                         |        |

**Fiscal Note**

No appropriation is required. A modest increase in General Fund revenues may result if additional uses are approved by the Board of Parks Commissioners or Parks management.

**Title**

SUBSTITUTE. Authorizing the Board of Parks Commissioners and the Parks Division to Disregard certain the Breese Stevens Athletic Field Deed Restrictions.

**Body**

WHEREAS, on December 1, 1936, following the satisfaction of a land contract entered into in 1923 and the payment of a total of \$35,000, the City of Madison obtained title to Block 159 in the Original Plat of Madison (aka the Pritchette Plat), the land encompassed by E. Mifflin St., N. Brearly St., E. Washington Ave., and N. Paterson St. that now makes up the Breese Stevens Athletic Field property (see the Warranty Deed recorded on December 14, 1936 in Vol. 379 of Deeds at p. 171, Doc. 591365);

WHEREAS, as a condition of the purchase from the two surviving children of Breese Stevens, Amelia Stevens and Elizabeth Stevens Jackson, the City agreed to a deed restriction upon the City's use of the land, specifically that "said block shall forever be known and designated as the 'Breese Stevens Athletic Field,' and that said premises shall never be used for any other purpose than that of an athletic field"; and,

WHEREAS, there is a history of periodic non-athletic uses of Breese Stevens Athletic Field since 1936, uses which have been in violation of the terms of the deed restriction; and,

WHEREAS, there have been some recent community requests to use the Breese Stevens Athletic Field facility for non-athletic events in violation of the terms of the deed restriction; and,

WHEREAS, the deed restriction regarding use has left the Breese Stevens Athletic Field facility underutilized in an area of the City where large outdoor open space is sparse; and,

WHEREAS, as the Breese Stevens Athletic Field facility approaches its second century of service, more flexibility in its use, ~~and possibly naming rights,~~ would allow the City to better care for and utilize this amenity; and,

WHEREAS, upon examining the original deed and land contract, researching the laws regarding the enforceability of deed restrictions, and examining the public records pertaining to the original grantors and their heirs, the City Attorney's Office has determined that this deed restriction is no longer legally enforceable by any party as no person exists who has the legal standing to enforce the terms of the deed restriction against the City (see attached "Breese Stevens Athletic Field-Deed Restriction Memo"); and,

WHEREAS, the City Attorney's Office has also determined that, prior to any express violation of the terms of the deed restriction by the City, that the Common Council, as the body that agreed to the initial deed restrictions, the body with the power to obtain and dispose of park property, and the City's policy making body, should have the initial say as to whether the City is willing to disregard the conditions upon which the City initially received the land in 1936, conditions which are no longer legally enforceable and possibly are anachronistic; and,

WHEREAS, if the Common Council makes a determination that the City may disregard the deed restrictions relating to the use for Block 159, the Board of Parks Commissioners and the Parks Division will continue to have final say in the use and management of the property, including whether to allow the use of the athletic field and stadium for non-athletic events ~~or to possibly rename the stadium altogether.~~

NOW THEREFORE BE IT RESOLVED, that, unless some fact presently unknown to the City comes to the City's attention, because the deed restriction is no longer enforceable by any person and the conditions have limited the use of the property to the detriment of the City, it is the policy of the City of Madison that it may disregard the aforementioned deed restrictions in Doc. 591365 imposed upon the City regarding Block 159 in the Original Plat of Madison (aka the Pritchette Plat), the land encompassed by E. Mifflin St., N. Brearly St., E. Washington Ave., and N. Paterson St. that now makes up the Breese Stevens Athletic Field property;

NOW THEREFORE BE IT FURTHER RESOLVED, that the use and management of the property shall continue to lie with the Board of Parks Commissioners and the Parks Division, who may separately determine whether to disregard the deed restriction in Doc. 591365;

NOW THEREFORE BE IT FURTHER RESOLVED, that this determination is limited to Block 159 and Doc. 591365 and the unique facts arising therefrom as set forth in the attached memo and in this resolution (specifically the lack of any person in a position to enforce the deed restrictions and the underutilization of the facility) and shall not be reflective of a general City policy of disregarding deed restrictions nor shall it be a binding precedent for any other similar City action, which must be separately weighed on its own merits.