



MEMORANDUM

To: John Burg, Chief Planner

From: Robert M. Fournier, City Attorney

January 27, 2006

Re: Memory Path

This memorandum is submitted in response to your request for a brief status report of the legal issues regarding the possible removal of "Memory Path" from Five Points Park.

Back in September, the City Commission accepted the recommendation of the Public Art Committee to disassemble Memory Path for temporary storage and future reconstruction. I advised the City Commission that under the Visual Artists Rights Act (or VARA), the artist had the right to prevent any intentional distortion or mutilation or other modification of her work that would damage her honor or reputation. However, I did not believe that following the Public Art Committee's recommendation would constitute a violation of VARA for two reasons. First, because disassembling and moving the piece in order to repair and preserve it is not an intentional mutilation or distortion actionable under VARA. Second, because simply relocating a work of art is not an actionable mutilation or distortion of the work under VARA, it simply has to do with the way the piece is presented.

Ms. Tacha objected to my conclusion that Memory Path could be repaired and subsequently re-assembled and displayed outside Five Points Park without violating VARA. Her attorneys submitted a legal memorandum in which they argued that Memory Path was "site specific art" which enjoyed a higher level of protection under VARA with respect to its relocation. I expect to provide the City Commission with an opinion regarding the answers to the following questions: (1) Does VARA provide a greater degree of protection to works of art which can be characterized as "site specific" and if so what is the nature and extent of such protection?; (2) Does Memory Path qualify under VARA as a "site specific" work of art? The City Commission expects to receive my opinion on these issues at some point in the month of March.

If you have any further questions, please let me know.

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