

COPY

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF WASHINGTON

TENTH JUDICIAL DISTRICT

City of Oak Park Heights,
a Minnesota municipal corporation,

Court File No: C0-05-006815

Judge: B. William Ekstrum

Plaintiff,

AMENDED SUMMONS

v.

State of Minnesota, by its
Commissioner of Transportation,

Defendant.

THE STATE OF MINNESOTA TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED AND REQUIRED TO SERVE upon Plaintiff's attorney an Answer to the Amended Complaint which is on file in the office of the Court Administrator of the above-named Court, within twenty (20) days after service of this Summons upon you, exclusive of the date of such service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Amended Complaint.

Civil cases are subject to Alternative Dispute Resolution processes as provided in Rule 114 of the General Rules of Practice for the District Courts. Alternative Dispute Resolution includes mediation, arbitration, and other processes set forth in the rules. You may contact the Court Administrator for information about these processes and about resources available in your area.

**ECKBERG, LAMMERS, BRIGGS,
WOLFF & VIERLING, P.L.L.P.**

Dated: 6-4-07

By: 

Mark J. Vierling (#112823)
Attorney for Plaintiff
1809 Northwestern Avenue, Suite 110
Stillwater, MN 55082
(651) 439-2878

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF WASHINGTON

TENTH JUDICIAL DISTRICT

City of Oak Park Heights,
a Minnesota municipal corporation,

Case Type: 14/Other Civil
Court File No: C0-05-006815
Judge: B. William Ekstrum

Plaintiff,

AMENDED COMPLAINT

v.

State of Minnesota, by its Commissioner
of Transportation,

Defendants.

COMES NOW, the City of Oak Park Heights, Plaintiff, who for its claims and cause of action against the State of Minnesota, by its Commissioner of Transportation, does hereby state and allege as follows:

1. Plaintiff, City of Oak Park Heights, is a Minnesota statutory city located in Washington County, State of Minnesota.
2. That within the corporate boundaries of the City of Oak Park Heights is located Minnesota Trunk Highway 36.
3. That the State of Minnesota, by its Commissioner of Transportation has identified and intends to construct improvements to Minnesota Trunk Highway 36 as part of the St. Croix River Crossing Project ("the project") identified within the St. Croix River Crossing Project Supplemental Final Environmental Impact Statement released June 16, 2006.
4. Defendant, State of Minnesota, by its Commissioner of Transportation (hereinafter referred to as "MnDOT") is a department of the State of Minnesota with its principal office at 395 John Ireland Boulevard, St. Paul, Minnesota 55155.

5. The State of Minnesota, by its Commissioner of Transportation began its formal review of the St. Croix River Crossing Project by creation of the St. Croix River Crossing Draft Study, Outline and Scoping document in 1985.

6. That the MnDOT also completed in 1990 a draft Environmental Impact Statement and a preferred alternative identified in the 1995 Final Environmental Impact Statement with a Record of Decision formally issued on July 10, 1995, identifying final design right-of-way acquisition and site preparation.

7. That the final design right-of-way acquisition and site preparation commenced relative to the 1995 preferred alternative were halted due to an adverse finding of the National Park Service under Section 7 of the Wild and Scenic Rivers Act in 1996.

8. That in 1996 the National Park Service (“NPS”) evaluated “the project” under Section 7 of the Wild and Scenic Rivers Act and found “the project” as proposed, to have a direct and adverse impact to the outstanding remarkable scenic and recreational values for which the Lower St. Croix River was included in the National Wild and Scenic Rivers System. As a result of that finding, federal permits from the United States Army Corp of Engineers and the U.S. Coast Guard were not issued for “the project” and “the project” was not allowed to proceed. MnDOT challenged the NPS determination in Federal District Court and in April of 1998 the United States Federal District Court upheld the National Park Service determination.

9. Following the determination of the United States Federal District Court in April of 1998, MnDOT pursued alternatives for “the project”, including various alternatives and pursued a supplemental draft EIS on “the project” which was subsequently halted in January of 2001 due to the inability of government participants in the program to reach consensus on the future of the historic Stillwater lift bridge.

10. In 2002, the Federal Highway Works Administration, State of Minnesota, by its Commissioner of Transportation and Wisconsin Department of Transportation reinitiated the St. Croix River Crossing Project Environmental Impact Statement process.

11. That in 2004 a supplemental draft Environmental Impact Statement was prepared by the State of Minnesota, by its Commissioner of Transportation to supplement the 1995 Final Environmental Impact Statement and the 1990 draft Environmental Impact Statement by providing information relating to build alternatives as well as updating information relating to no build alternatives. On June 16, 2006 the State of Minnesota, by its Commissioner of Transportation issued a Supplemental Environmental Impact Statement, supplementing the 1995 Environmental Impact Statement Record of Decision and proposing the completion of the St. Croix River Crossing Project, inclusive of modifications and improvements to Minnesota Trunk Highway 36 relative thereto.

12. That the City of Oak Park Heights had granted conditional approval in 1995 for the trunk highway 36 project update relative to the St. Croix River Crossing Project of that time. That the current proposed St. Croix River Crossing Project is advocated by the State of Minnesota, by its Commissioner of Transportation is a continuation of the 1995 approval process as opposed to a separate and distinct process.

13. That Minn. Stat. §161.17, 161.171 through §161.177 (repealed 2001) was the effective law that governed the municipal consent process relative to the 1995 trunk highway layout affecting the St. Croix River Crossing Project.

14. That in 2001 the Minnesota Legislature repealed Minn. Stat. §161.17 , 161.171 through Minn. Stat. §161.177, replacing same with Minn. Stat. §161.162 through §161.167. That Section 10 of the bill making such enactment provided:

“This act is effective the day following final enactment and applies to highway construction projects **for which municipal approval is first sought after that date.**” (emphasis added)

15. That notwithstanding the 1996 determination of the National Park Service evaluating “the project” under Section 7A of the Wild and Scenic Rivers Act finding “the project” as proposed to have a direct and adverse impact on remarkable scenic and recreational values and, thus, being included within the National Wild and Scenic Rivers System and, further, notwithstanding the determination of the Federal District Court of April of 1988 sustaining same, the State of Minnesota, by its Commissioner of Transportation has consistently proceeded and publicly presented as a single project, work for Trunk Highway 36 as part of the St. Croix River Crossing Project from 1990 through 2006. That the St. Croix River Crossing Project, inclusive of its elements affecting improvements to Trunk Highway 36, from 1990 through 2006 constitute a single project consistently pursued by the Commissioner of Transportation throughout that time.

16. That the project numbers assigned to the St. Croix River Crossing Project from 1995 through 2006, both from the State of Wisconsin and the Federal Highway Works Administration are the same as they were in 1995.

17. That the State of Minnesota, by its Commissioner of Transportation did pursue and obtain from the City of Oak Park Heights conditional municipal consent to the 1995 project as proposed and intends to make application to the City of Oak Park Heights for approval of modifications to the municipal consent previously obtained relative to “the project” as now proposed in 2006.

18. That on August 3, 2004 on behalf of the City of Oak Park Heights, legal counsel for the City of Oak Park Heights corresponded with Mr. Rick Arnebeck, the East Area Manager

and Project Manager for the then St. Croix River Bridge Crossing Project, relative to the municipal consent process, requesting that the Department recognize “the project” from 1995 through 2004 as being the same project and one consistently pursued project since 1995 and acknowledging that the municipal consent process previously established by Minn. Stat. §161.171 through Minn. Stat. §161.177 would be the applicable law to determine municipal consent process on a resubmission of that project to local government units and municipalities.

19. That on October 5, 2004 Mr. Rick Arnebeck, on behalf of the Minnesota Department of Transportation, issued its written acknowledgement to the City of Oak Park Heights providing:

“This letter is to inform you that MnDOT has reconsidered its position for this project and subsequent to the completion of the environmental process, it is our intention to resume the municipal consent process described in the statutes prior to the statutory revisions of 2001.” (See attached Exhibit A)

20. That on December 17, 2004, Mr. Rick Arnebeck, on behalf of the Minnesota Department of Transportation, issued a second written acknowledgement to the City of Oak Park Heights, confirming Mn/DOT’s position:

“This letter is provided to confirm that Mn/DOT is in agreement with the City’s position that this project, for purposes of municipal approval, will be processed according to the statutory process that was in effect prior to the statutory revisions of 2001.” (See attached Exhibit B)

21. That on August 8, 2006 the State of Minnesota, by its Commissioner of Transportation reversed its position with regard to the Minnesota statutory consent process, notifying the City of Oak Park Heights:

“In an October 2004 letter to the City and in recent MOU discussions, we stated that, per the city request, Mn/DOT intended to follow the old municipal consent statute that existed prior to 2001. However, after recent review and discussion with legal council and Mn/DOT management, it was determined that proceeding under the old statute was not defensible.” (See attached Exhibit B)

22. That resubmission of this project to the City of Oak Park Heights for municipal consent process is imminent and the City of Oak Park Heights requires a judicial determination as to the applicable process for municipal consent approval and review of this project.

COUNT I

DECLARATORY JUDGMENT

23. Plaintiff restates and re-alleges all prior paragraphs of the Complaint as fully set forth above.

24. That the St. Croix River Crossing Project, inclusive of Trunk Highway 36 improvements provided for therein, constitutes a singular project, consistently pursued by the State of Minnesota, by its Commissioner of Transportation in conjunction with the Federal Highway Works Administration and the Wisconsin Department of Transportation from 1990 through 2006. That the St. Croix River Crossing Project was first submitted to and applied for municipal approval to the City of Oak Park Heights prior to the 2001 statutory amendments repealing Minn. Stat. §161.17 and Minn. Stat. §161.171 through §161.177. That Minn. Stat. (2000) §161.17; §161.171 through §161.177 and §473.181 apply to and govern the municipal consent process relative to the St. Croix River Crossing Project and control any submissions by the State of Minnesota, by its Commissioner of Transportation for the municipal consent process relative to that project.

COUNT II

DECLARATORY RELIEF

25. Plaintiff restates and re-alleges all prior paragraphs of the Complaint as fully set forth above.

26. That the State of Minnesota, by its Commissioner of Transportation, through its authorized representatives, consented and agreed to implement the municipal consent process for local approval of the St. Croix River Crossing project utilizing Minn. Stat. §161.17, §161.171 through §161.177 and §473.181 and are bound by that determination, being required to submit the St. Croix River Crossing Project together with Trunk Highway 36 improvements related thereto pursuant to the former law otherwise repealed by the 2001 legislation.

WHEREFORE, the Plaintiff, City of Oak Park Heights, herewith seeks the declaratory judgment from the Court as follows:

1. That as a matter of law, Minn. Stat. §161.17 and Minn. Stat. §161.171 through §161.177 and §473.181 govern the municipal consent process relative to the St. Croix River Crossing Project as the State of Minnesota, by its Commissioner of Transportation first sought and obtained conditional municipal consent and approval from the City of Oak Park Heights in 1995.

2. The MnDOT is bound by its October 5, 2004 agreement with the City of Oak Park Heights to pursue Municipal Consent under the law existing prior to the 2001 legislative enactments that altered that statutory process and must pursue the requirements of law under Minnesota Statute 161.16 and 161.171 through .177 and 473.181 affecting the St. Croix River Crossing Project.

3. That the City of Oak park Heights be awarded is costs and disbursements incurred herein.

**ECKBERG, LAMMERS, BRIGGS,
WOLFF & VIERLING, P.L.L.P.**

Dated: 6-4, 2007.

By: 

Mark J. Vierling, Esq. (#112823)
Attorney for
Suite 110
1809 Northwestern Avenue
Stillwater, Minnesota 55082
(651) 439-2878

ACKNOWLEDGMENT

Pursuant to Minn. Stat §549.211, the parties represented by the undersigned attorneys acknowledge that costs, disbursements, and reasonable attorney and witness fees may be awarded to the opposing party or parties for actions in bad faith; the assertion of a claim or a defense that is frivolous and that is costly to the other party; the assertion of an unfounded position solely to delay the ordinary course of the proceedings or to harass; or the commission of a fraud upon the Court.

**ECKBERG, LAMMERS, BRIGGS,
WOLFF & VIERLING, P.L.L.P.**

Dated: 6-4, 2007.

By: 

Mark J. Vierling, Esq. (#112823)
Attorney for
Suite 110
1809 Northwestern Avenue
Stillwater, Minnesota 55082
(651) 439-2878

EXHIBIT A

**OCTOBER 5, 2004 LETTER FROM MNDOT TO
MR. ERIC JOHNSON, CITY OF OAK PARK HEIGHTS**



Minnesota Department of Transportation

051-2961732

Metropolitan Division
Waters Edge
1500 West County Road B2
Roseville, MN 55113

October 5, 2004

Mr. Eric Johnson
City Administrator
PO Box 2007
Oak Park Heights, MN 55082

Dear Mr. Johnson:

RE: St. Croix River Crossing, Municipal Consent Process

In a previous letter, dated July 8, 2004, I indicated that Mn/DOT would be using the current municipal consent process for this project.

In your letter dated August 25, 2004, you indicated that the city is of the position that this project is exempt from the new processes and should proceed under the old process.

This letter is to inform you that Mn/DOT has reconsidered its position for this project and subsequent to the completion of the environmental process, it is our intention to resume the municipal consent process as described in the statutes, prior to the statutory revisions of 2001.

The limits of the project continue to extend from 150th Street in Wisconsin to T.H. 5 in Oak Park Heights/Stillwater.

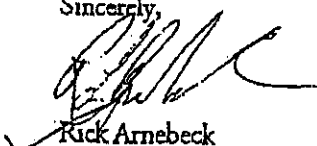
Under the previous action relating to this project, a Memorandum of Understanding was developed and signed by Mn/DOT and Oak Park Heights.

I will be calling you to set up a meeting to review the previous Memorandum of Understanding to determine what updates or revisions to the MOU would be appropriate.

Thank you for your patience on this matter in working to get it resolved.

If you have any questions, please don't hesitate to call me after I return from vacation on October 17.

Sincerely,


Rick Arnebeck
East Metro Area Manager

Cc:
Larry Hanson, Stillwater
Jim Schug, Washington County
Don Theisen, Washington County

EXHIBIT B

**DECEMBER 17, 2004 LETTER FROM MNDOT TO
MR. ERIC JOHNSON, CITY OF OAK PARK HEIGHTS**



Metropolitan Division
Waters Edge
1500 West County Road B2
Roseville, MN 55113

December 17, 2004

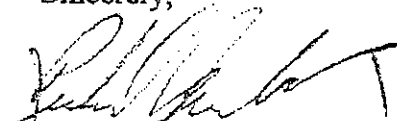
Eric Johnson, City Administrator
City of Oak Park Heights
PO 2007
Oak Park Heights, MN 55082

Dear Eric:

Subject: Municipal Consent Process

This letter is provided to confirm that Mn/DOT is in agreement with the City's position that this project, for purposes of municipal approval, will be processed according to the statutory process that was in effect prior to the statutory revisions of 2001.

Sincerely,


Richard Arnebeck

Cc:
Larry Hanson - Stillwater City Administration
Don Theisen - Washington County Engineer
Patrick Hughes - Metro District Engineer

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To: MARK V	From: ERIC J
Co.	Co.
Dept.	Phone #
Fax #	Fax #

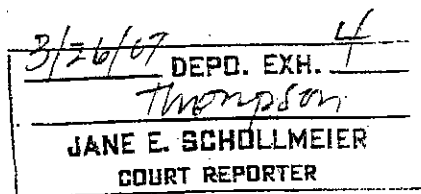
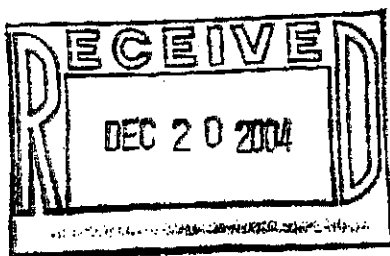


EXHIBIT C

**AUGUST 8, 2006 LETTER FROM MNDOT TO
MR. ERIC JOHNSON, CITY OF OAK PARK HEIGHTS**



Minnesota Department of Transportation

Metropolitan District
Waters Edge
1500 West County Road B-2
Roseville MN 55113-3174

August 8, 2006

Eric Johnson
Oak Park Height City Administrator
14168 Oak Park Blvd. North
Oak Park Heights, MN 55083

Re: Municipal Consent Process for St. Croix River Crossing Project

Dear Eric:

This letter is to inform the City that Mn/DOT will be submitting the St. Croix River Crossing project layout to the City under the current Minnesota State Statute for municipal consent (Mn Statute 161.164).

In an October 2004 letter to the City and in recent MOU discussions, we stated that, per the city request, Mn/DOT intended to follow the old municipal consent statute that existed prior to 2001. However, after recent review and discussion with legal council and Mn/DOT management, it was determined that proceeding under the old statute was not defensible. Submitting the layout to Oak Park Heights, Stillwater and Bayport under the current statute is the only legal option available for this project. The current statute is a more defined process than old statute; it lays out what information must be provided to each city, and clearly defines the timing of various steps.

Essentially nothing changes in our submittal of materials. As planned, Mn/DOT will officially submit the SFEIS, project layout and an estimate of local costs to the City for municipal consent. The City will need to schedule a hearing and take a formal action on the consent request within proscribed timeframes of the statute. The request for consent will be made this fall after FHWA has issued their Record of Decision. The FHWA action is expected in early September. In the interim, the City and Mn/DOT need to continue the MOU discussions and resolve remaining issues.

I regret that Mn/DOT needed to change course on this issue, but after reviewing the statutes and discussing the issue with legal council and staff we came to the inevitable conclusion that the new statute was the only reasonable option for this step in the project.

I look forward to the continued discussions and conclusion on the MOU, the council workshop in September and finalizing preparations for submittal of the project to the City for municipal consent.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nick Thompson'.

Nick Thompson
East Area Manager