

STATE OF MINNESOTA  
COUNTY OF WASHINGTON

DISTRICT COURT  
TENTH JUDICIAL DISTRICT

Case Type: Other Civil

City of Oak Park Heights  
a Minnesota municipal corporation,

Court File No.

Plaintiff,

**DEFENDANT STATE OF MINNESOTA'S  
ANSWER TO COMPLAINT**

vs.

State of Minnesota, by its Commissioner  
of Transportation,

Defendant.

Defendant State of Minnesota, Department of Transportation (Mn/DOT) for its Answer to Plaintiff's Complaint herein, admits, denies, and alleges as follows:

1. Denies each allegation in the Plaintiff's Complaint except as herein admitted, qualified, or as otherwise alleged.
2. In response to paragraph 1, admits the allegations therein.
3. In response to paragraph 2, admits the allegations therein, except denies that T.H. 36 is located in its entirety within the corporate boundaries of the City of Oak Park Heights.
4. In response to paragraphs 3 and 4, admits the allegations therein.
5. In response to paragraph 5, denies the allegations therein; alleges that the Commissioner of Transportation began review of the St. Croix River Crossing Project in 2002.
6. In response to paragraph 6, admits that in 1990 Mn/DOT submitted a Draft Environmental Impact Statement and that in 1995 Mn/DOT submitted a Final Environmental Impact Statement that included a preferred alternative; denies that it issued a Record of Decision formally issued on July 10, 1995; alleges that in 1990 it submitted the Draft Environmental

Impact Statement entitled *Stillwater-Houlton Draft Environmental Impact Statement and Section 4(f) Evaluations* (1990 DEIS) and that the 1990 DEIS was conducted for the Stillwater-Houlton Bridge Project; alleges that in 1995 Mn/DOT, Wisconsin Department of Transportation (WisDOT), and Federal Highway Administration (FHWA) submitted the *TH 36/STH 64 New St. Croix Crossing Final Environmental Impact Statement* (1995 FEIS) for the Stillwater-Houlton Bridge Project identifying final design right-of-way acquisition and site preparation for a preferred alternative for the Stillwater-Houlton Bridge Project.

7. In response to paragraph 7, admits the allegations to the extent that “the 1995 preferred alternative” mentioned therein refers to the Stillwater-Houlton Bridge Project preferred alternative as identified in the 1995 FEIS.

8. In response to paragraph 8, denies the allegations therein, except admits that the National Park Service (NPS) evaluated the Stillwater-Houlton Bridge Project that was the subject of the 1995 FEIS under Section 7(a) of the Wild and Scenic Rivers Act, and in 1996 NPS found that, as proposed, the Stillwater-Houlton Bridge Project would have a direct and adverse effect on the scenic and recreational values of the Lower St. Croix River; admits that as a consequence of the NPS’ 1996 finding, federal permits from the U.S. Army Corps of Engineers and the U.S. Coast Guard were not issued for the Stillwater-Houlton Bridge Project; admits that the Stillwater-Houlton Bridge Project was not allowed to proceed; admits that Mn/DOT challenged the NPS determination in Federal District Court; and admits that in April, 1998, the U.S. Federal District Court upheld the 1996 NPS finding.

9. In response to paragraph 9, admits the allegations, except denies that further study of alternatives between 1998 and 2001 related specifically to the St. Croix River Crossing Project, which is the subject of current environmental review, and except denies that the 2001

environmental review process was halted only because of disagreement over the future of the Stillwater lift bridge.

10. In response to paragraph 10, denies the allegations therein, and alleges that the St. Croix River Crossing Project environmental impact statement process was initiated in 2002.

11. In response to paragraph 11, admits only that a 2004 Supplemental Draft Environmental Impact Statement (2004 SDEIS) was prepared, that Mn/DOT was one of the government entities that prepared the 2004 SDEIS, and that the 2006 SFEIS recommends a preferred alternative package for the construction of the St. Croix River Crossing Project that includes modifications and improvements to T.H. 36.

12. In response to paragraph 12, denies the allegations therein.

13. In response to paragraph 13, admits only that Minn. Stat. §§ 161.17, 161.171-.177 (2000) apply to the 1995 Stillwater-Houlton Bridge Project; denies that Minn. Stat. §§ 161.17, 161.171-.177 (2000) apply to the St. Croix River Crossing Project, which is the subject of current environmental review; states that the repeal of Minn. Stat. §§ 161.17, 161.171-.177 (2000) occurred in 2001; and states that Minn. Stat. §§ 161.162-.167 (2004), to the extent applicable, govern the municipal consent process in connection with the St. Croix River Project.

14. In response to paragraph 14, admits the allegations therein, except denies that the repeal of Minn. Stat. §§ 161.17, 161.171-.177 occurred in 2004; states that the Minnesota legislature repealed Minn. Stat. §§ 161.17, 161.171-.177 (2000) in 2001 Laws of Minnesota, Chapter 191.

15. In response to paragraph 15, denies the allegations therein.

16. In response to paragraph 16, admits only that WisDOT used the same number to identify several different projects that have commenced to construct a new bridge crossing over

the St. Croix River near Stillwater; and states that Defendant is with sufficient information to admit or deny whether the FHWA has used the same number to identify the several different projects that have commenced to build a new crossing over the St. Croix River near Stillwater.

17. In response to paragraph 17, admits only that Mn/DOT pursued and received municipal consent from the City of Oak Park Heights for the Stillwater-Houlton Bridge Project preferred alternative identified in the 1995 FEIS, which was terminated in 1998, and that Mn/DOT intends to apply to the City of Oak Park Heights for municipal consent for the St. Croix River Crossing Project preferred alternative package as identified in the 2006 SFEIS.

18. In response to paragraph 18, admits that legal counsel for the City of Oak Park Heights sent a letter dated August 3, 2004, to Mr. Rick Arnebeck, East Metro Area Manager of Mn/DOT, related to the St. Croix River Crossing Project and to the municipal consent process.

19. In response to paragraphs 19, and 20, admits only that Mr. Rick Arnebeck sent a letter dated October 5, 2004 to Mr. Eric Johnson, City Administrator for the City of Oak Park Heights, related to the municipal consent process for the St. Croix River Crossing Project; and that Mr. Nick Thompson of Mn/DOT sent a letter dated August 8, 2006 to Mr. Eric Johnson, related to the municipal consent process for the St. Croix River Crossing Project.

20. In response to paragraph 21, admits only that Mn/DOT intends to submit the St. Croix River Crossing Project to the City of Oak Park Heights for municipal consent.

21. In response to paragraph 22, restates and realleges responses in paragraphs 1-20 of this Answer.

22. In response to paragraph 23, admits only that the St. Croix River Crossing Project, inclusive of T.H. 36 improvements provided for therein, is a project that has been undertaken by Mn/DOT, WisDOT, and FHWA.

23. In response to paragraph 24, restates and realleges responses in paragraphs 1-22 of this Answer.

24. In response to paragraph 25, admits that Mn/DOT's representatives stated, in a letter dated October 5, 2004, that Minn. Stat. §§ 161.17, 161.171-.177 (2000) would govern the municipal consent process in connection with the St. Croix River Crossing Project; alleges that Mn/DOT's representatives stated, in a letter dated August 6, 2006, that Minn. Stat. §§ 161.17, 161.171-.177 (2000) would not govern the municipal consent process in connection with the St. Croix River Crossing Project, and that instead such process would be governed by Minn. Stat. §§ 161.162-.167 (2004); denies that Mn/DOT is bound by the statements of intention expressed in the October 5, 2004, letter.

#### **ADDITIONAL MATTERS**

1. Plaintiff fails to state elements that constitute an enforceable promise by the State.

#### **AFFIRMATIVE DEFENSES**

1. Failure to state a claim upon which relief can be granted.
2. Failure to present a justiciable controversy.
3. Any other matter constituting an avoidance or affirmative defense to Plaintiff's Complaint.

WHEREFORE, Defendant requests that:

1. The Court deny the Plaintiff's request for a declaratory judgment;
2. The Court order Plaintiff to pay Defendant damages, costs and disbursements; and
3. The Court grant other relief as it deems just and equitable.

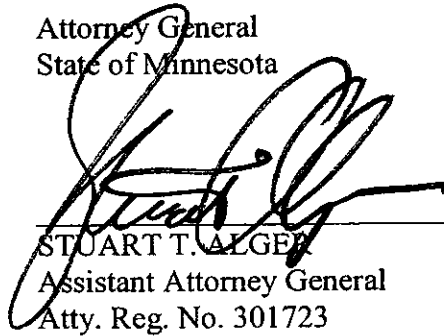
Dated:

*November 3, 2006*

Respectfully submitted,

MIKE HATCH

Attorney General  
State of Minnesota



STUART T. ALGEE  
Assistant Attorney General  
Atty. Reg. No. 301723

445 Minnesota St., #1800  
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ATTORNEY FOR RESPONDENT

MINN. STAT. § 549.211

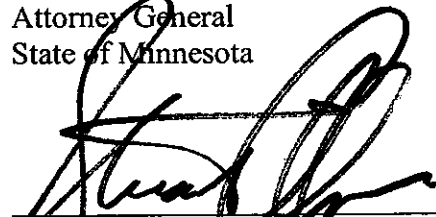
ACKNOWLEDGMENT

The party or parties on whose behalf the attached document is served acknowledge through their undersigned counsel that sanctions may be imposed pursuant to Minn. Stat. § 549.211 (2002).

Dated: November 3, 2006

Respectfully submitted,

MIKE HATCH  
Attorney General  
State of Minnesota



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STUART T. ALGER  
Assistant Attorney General  
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**AFFIDAVIT OF SERVICE BY U.S. MAIL**

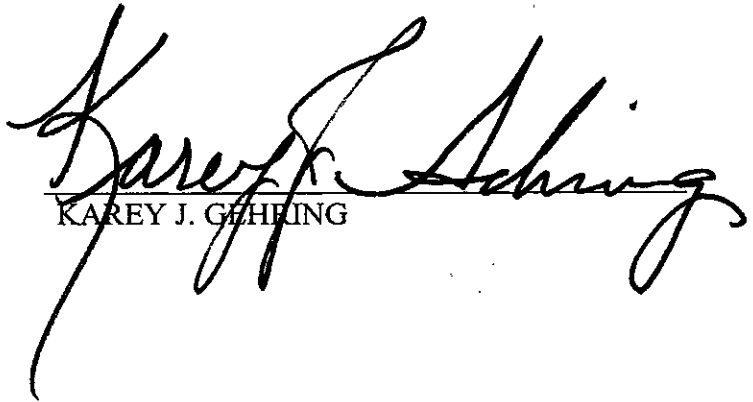
**Re: City of Oak Park Heights v. State of Minnesota**  
Court File No.

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF RAMSEY    )

Karey J. Gehring, being first duly sworn, deposes and says:

That at the City of St. Paul, County of Ramsey and State of Minnesota, on November 3, 2006, she caused to be served the *Defendant State of Minnesota's Answer to Complaint*, by depositing the same in the United States mail at said city and state, true and correct copy thereof, properly enveloped with prepaid first class postage, and addressed to:

Mark J. Vierling  
1809 Northwestern Avenue, Suite 110  
Stillwater, Minnesota 55082

  
KAREY J. GEHRING

Subscribed and sworn to before me on  
this 3rd day November, 2006.

  
\_\_\_\_\_  
NOTARY PUBLIC

AG: #1698003-v1

