

State of Minnesota  
Washington County

District Court  
Tenth Judicial District

Court File Number: **82-C0-06-006815**

Case Type: Civil Other/Misc.

**Notice of Entry of Judgment**

RICHARD L VARCO JR  
STATE ATTORNEY GENERALS OFFICE  
445 MINNESOTA ST STE 1200  
ST PAUL MN 55101

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**In Re: CITY OF OAK PARK HEIGHTS  
MINNESOTA**

**BWE vs. STATE OF**

**2 FILES V2 RED**

You are notified that judgment was entered on October 18, 2007 .

Dated: October 18, 2007

Christina M. Volkers  
Court Administrator

By: KA  
Deputy Court Administrator  
Washington County District Court  
14949 - 62nd St. N; PO Box 3802  
Stillwater MN 55082  
651-430-6263

cc: MARK J VIERLING

STATE OF MINNESOTA  
COUNTY OF WASHINGTON

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DISTRICT COURT  
FAMILY COURT DIVISION  
TENTH JUDICIAL DISTRICT  
Case Type: 14/Other Civil  
Court File No. C0-06-006815

City of Oak Park Heights,  
a Minnesota municipal corporation,

**NOTICE OF ENTRY**

Plaintiff,

and

State of Minnesota, by its Commissioner  
of Transportation,

Defendants.

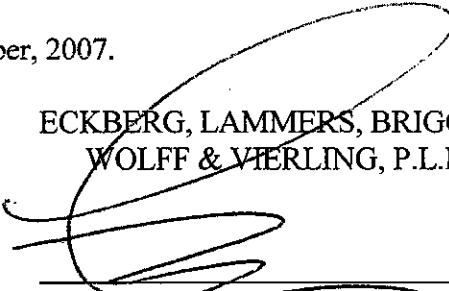
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TO: RICHARD VARKO, JR., ASSISTANT ATTORNEY GENERAL, ATTORNEY  
GENERAL'S OFFICE, STATE OF MINNESOTA, SUITE 1800, 445  
MINNESOTA STREET, ST. PAUL, MN 55101

PLEASE TAKE NOTICE, that on the 18<sup>th</sup> day of October, 2007, the annexed  
Findings of Fact, Conclusions of Law and Order issued by the Honorable B. William Ekstrum,  
Judge of District Court, with regard to the above-referenced matter, was duly entered and filed in  
the office of the Court Administrator, Washington County, Minnesota.

Dated this 19<sup>th</sup> day of October, 2007.

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



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Mark J. Vierling  
Attorneys for Plaintiff  
1809 Northwestern Avenue  
Stillwater, Minnesota 55082  
(651) 439-2878  
Attorney I.D. 112823

File # CO-06-6815

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WASHINGTON COUNTY  
DISTRICT COURT

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STATE OF MINNESOTA

DISTRICT COURT

OCT 18 2007

COUNTY OF WASHINGTON

CHRISTINA M. VOLKERS  
COURT ADMINISTRATOR

TENTH JUDICIAL DISTRICT

By LA Deputy

Court File: CO-06-6815

City of Oak Park Heights,  
a Minnesota municipal corporation,

**Plaintiff,**

vs.

**FINDINGS OF FACT  
CONCLUSIONS OF LAW  
AND ORDER**

State of Minnesota, by its Commissioner  
Of Transportation

**Defendants.**

The above-entitled matter came before the Honorable B. William Ekstrum on July 20, 2007, at the Washington County Government Center, Stillwater, Minnesota, pursuant to Defendant's motion to dismiss, Plaintiff's summary judgment motion and Plaintiff's motion to compel discovery.

Plaintiff was represented by Mark Vierling, Esq. and Jennifer Nodes, Esq. Defendant was represented by Richard Varko, Jr., Assistant Attorney General.

Based on all the files, records and proceedings herein, the Court hereby makes the following:

**FINDINGS OF FACT**

1. For at least a period of two decades, the Minnesota and Wisconsin Departments of Transportation ("Mn/DOT" and "Wis/DOT" respectively) along with municipalities located along the St. Croix River and affected by the congestion issues have attempted to address increased traffic congestion in and around the Stillwater lift bridge.
2. In the late 1980s and early 1990s, serious discussion and planning began for a replacement

bridge across the St. Croix River (hereinafter the “project”).

3. In April 1995, an Environmental Impact Statement (“EIS”) was completed.<sup>1</sup> The 1995 Final EIS considered three possible crossing areas: the north, central and south corridors. The 1995 Final EIS recommended that the crossing be in the north alignment of the south corridor.
4. On August 14, 1995, The City of Oak Park Heights (the “City”) approved the final layout plans from the Mn/DOT regarding the recommended alignment of the bridge.
5. In 1995, after completion of the Final EIS, work began on the project. In 1996, litigation was commenced alleging that work was beginning without a determination as to whether it would have a direct and adverse impact and in violation of the Wild and Scenic Rivers Act. Work on the project was halted as a result of the litigation and a finding by the National Park Service (hereinafter “NPS”) that the project as proposed would have a direct and adverse effect on the Lower St. Croix River which was protected under the Wild and Scenic Rivers Act. As a result of the NPS finding, the federal permits from the U.S. Army Corp of Engineers and the Coast Guard could not be issued.
6. Litigation ensued regarding the NPS finding. The case was filed in federal district court as Civil Case No. 4-96-547 and entitled Sierra Club Northstar Chapter and Voyagers Regional National Park Association and the City of Oak Park Heights v. Frederico Pena, Secretary of the United States Department of Transportation, et al. The United States District Court, the Honorable Ann Montgomery, denied summary judgment to Mn/DOT which had hoped to upset the NPS determination that the proposed project had an adverse effect on the St. Croix

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<sup>1</sup> Plaintiff requested that the Court take judicial notice of the 1995 Environmental Impact Statement dated April 1995, the 2006 Supplemental Final Environmental Impact Statement and the April 13, 1998 Memorandum Opinion and Order, Hon. Ann Montgomery, United States District Court, District of Minnesota. Defendant did not object. However, the Court does not take judicial notice of these documents but does acknowledge the existence of these documents and that these documents are part of the record.

River in violation of the Wild and Scenic Rivers Act.

7. After the April 1998 Order of the Honorable Ann Montgomery, Mn/DOT engaged Richard P. Braun, a retired Mn/DOT commissioner, to facilitate discussions regarding the bridge project. Following Mr. Braun's facilitation process, and after the Federal Highway Works Administration pursued a conflict resolution process, a determination was made that a consensus could be reached regarding the project. After a determination was made that regulatory agencies and federal partners were willing to proceed, Mn/DOT and Wis/DOT reinitiated the project in June 2002.
8. In 2006, a Supplemental Environmental Impact Statement was completed. Following completion of the 2006 Supplemental EIS, the Department of Transportation indicated to the City that a submission under the municipal consent statute would be forthcoming. The project for addressing the traffic congestion and issues relating to the Stillwater Lift Bridge was amended from its 1995 version as a result of the litigation and the subsequent discussions and dispute resolution process. Changes were made in the specific implementation of the bridge project. However, the focus and purpose of the project, the history of the project and the parties and players to the project remain the same.
9. The legislature amended the municipal consent layout process in 2001. Minn. Stat. §161.17, §§161.171 – 177 were replaced with Minn. Stat. §§161.162 to 161.167. A dispute between the State and the City arose regarding whether the prior statute or the current statute would govern the municipal consent process. Initially, the State indicated that it would be submitting the plan for municipal approval under the previous statutes, Minn. Stat. §161.17, §§161.171 – 177 (2000). In later correspondence from the State to the City, the State indicated that it would be submitting the plan for municipal approval under Minn. Stat.

§§161.162 to 161.167 (2006). The City maintains that the prior statutes are the applicable law, and has provided deposition testimony from the chief author of the 2006 Supplemental EIS on behalf of Mn/DOT, who confirmed that the same project had layout approval sought from the City of Oak Park Heights in 1995.

10. The goal of the project is to create a river crossing in Washington County, Minnesota to western St. Croix County, Wisconsin to serve significant transportation needs. This goal did not materially change from 1995 to 2006.
11. The identifying numbers for the project used by Mn/DOT were the same or similar in 1995 and 2006.
12. The description of the project did not materially change between 1995 and 2006.
13. Minnesota Session Laws 2001, Chapter 191 H.F.No. 1973, the legislation which amended the municipal consent statutes, states in §10, “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). The dispute between the parties arises out of the meaning of this sentence.
14. Based on the record and the submissions and arguments of counsel, the Court finds that the project as it was in 1995 and as it currently exists is in substance and purpose substantially the same project and therefore, since it was first submitted for municipal approval prior to the enactment of the 2001 legislative changes to the municipal consent process, the prior statute, Minn. Stat. §161.17, §§161.171 – 177 (2000), should apply for the current municipal consent process.

Based upon the forgoing Findings of Fact, the Court hereby makes the following:

## CONCLUSIONS OF LAW

1. No material issue of fact is in dispute between the parties. Rather, the parties request a determination as to what is the applicable law governing the municipal consent process. The City argues that the current project is substantially the same as the project first submitted for municipal approval in 1995. The State argues that the project in its current form has been changed and therefore cannot be the same project as it was in 1995. The Court determines that the statute's effective date is unambiguous. Therefore, the Court will give the words their ordinary and plain meaning. The statute states that the "act is effective the day following final enactment and applies to highway construction projects for which municipal approval is first sought after that date." The Court determines that the current project at issue in this case is materially and substantially the same project as it was in 1995 when it was first submitted for municipal approval. And because the project was first submitted for approval in 1995, the new legislation does not apply to any subsequent municipal approval process if the project remains the same.

Based upon the forgoing Findings of Fact and Conclusions of Law the Court hereby makes the following:

### ORDER

1. Plaintiff's motion for summary judgment is hereby **GRANTED**. The Court hereby determines that the St. Croix River Project ("the project") identified within the St. Croix River Crossing Project Supplemental Final Environmental Impact Statement released June 16, 2006, to be a continuation of the same "project" as identified by the 1995 Final Environmental Impact Statement with a Record of Decision formally issued on July 10,

1995. The Court further determines that the Commission of Transportation first sought municipal consent from the City of Oak Park Heights for the project in 1995. The Court determines that Minn. Stat. §161.17, §161.171 – 177 (2000) and §473.81(2000) apply to and govern the municipal consent process relative to the project and control any submissions on behalf of the State of Minnesota, by the Commissioner of Transportation, to the City of Oak Park Heights for layout approvals under the statutory municipal consent process cited above.

2. Defendant's motion to dismiss for failure to state a claim upon which relief can be granted, converted to a motion for summary judgment, is hereby **DENIED**.
3. Plaintiff's motion to compel discovery is hereby **DENIED** as moot.
4. All other requested relief is hereby **DENIED**.
5. The Washington County Court Administrator shall serve a true and correct copy of this Order by U.S. Mail upon the above-named parties.

**LET JUDGMENT BE ENTERED ACCORDINGLY**

BY THE COURT:

10/18/07  
Date

B. William Ekstrum  
B. William Ekstrum  
Judge of District Court

I hereby certify that the foregoing Order constitutes the Judgment and Decree of the Court.

DISTRICT COURT ADMINISTRATOR

Dated: 10/18/07

By: Shirley A. Saus  
Deputy