

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,

v.

**NOTICE OF MOTION AND MOTION FOR
SUMMARY JUDGMENT**

State of Minnesota, by its Commissioner
of Transportation,

Defendants.

TO: THE DEFENDANT ABOVE-NAMED, STATE OF MINNESOTA, AND ITS
ATTORNEY, RICK VARKO, ATTORNEY GENERAL, ATTORNEY
GENERAL'S OFFICE, STATE OF MINNESOTA, SUITE 1800, 445
MINNESOTA STREET ST. PAUL, MN 55101

PLEASE TAKE NOTICE, that on the 20th day of July, 2007 at 9:00 o'clock a.m., or
as soon thereafter as counsel can be heard, at the Washington County Government Center,
Stillwater, Minnesota, before the Honorable B. William Ekstrum, Judge of District Court, the
Plaintiff will move the Court for an order as follows:

1. Declaring 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, 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.
2. Declaring the Commission of Transportation to have "first sought"

municipal consent from the City of Oak Park Heights to “the project” in 1995.

3. Declaring Minn. Stat. (2000) §161.17; §161.171 through §161.177 and §473.81 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 statutory the municipal consent process cited above.

This motion is based upon:

1. 1995 Environmental Impact Statement dated April, 1995 (CD ROM);
2. 2006 Supplemental Final Environmental Impact Statement (CD ROM);
3. April 13, 1998 Memorandum Opinion and Order, Hon. Anne Montgomery, United States District Court, District of Minnesota;
4. Minnesota Session Laws 2001, Chapter 191.
5. The deposition of Richard Arnebeck taken March 27, 2007.
6. The deposition of Nicholas Thompson taken March 26, 2007.
7. The affidavit of Eric Johnson, City Administrator for the City of Oak Park Heights appending thereto documents certified to by the City as records within its official files.¹

All responsive pleadings shall be served and mailed to or filed with the Court Administrator no later than nine (9) days prior to the scheduled hearing. The Court may, in its

¹ Documents No. 1 and 2, being the 1995 and 2006 Environmental Impact Statements, were authored by the Minnesota Department of Transportation and approved by that department, the Wisconsin Department of Transportation and the Federal Highway Works Administration.

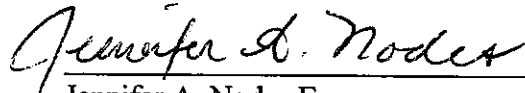
discretion, disregard any responsive pleadings served or filed with the Court Administrator less than five (5) days prior to such hearing in ruling on the motion or matter in question.

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

Dated: June 20, 2007.

By: 

Mark J. Vierling, Esq.
Attorney I.D. 112823)



Jennifer A. Nodes Esq.
Attorney I.D. 0352172

Attorneys for Plaintiff
City of Oak Park Heights
1809 Northwestern Avenue
Stillwater, Minnesota 55082
(651) 439-2878

ACKNOWLEDGMENT

Pursuant to Minn. Stat. §549.211, the party or parties represented by the undersigned attorneys acknowledge(s) 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: June 20, 2007.

By: 

Mark J. Vierling, Esq. (#112823)
Attorney for Plaintiff
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Stillwater, Minnesota 55082
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