



**RICE, MICHELS & WALTHER LLP**

Attorneys and Counselors at Law

Brian F. Rice • James P. Michels • Ann E. Walther • Karin E. Peterson • Michael J. Salchert

Writer's Direct Dial No. (612) 676-2305

Email: [kpeterson@ricemichels.com](mailto:kpeterson@ricemichels.com)

June 15, 2007

The Honorable Francis J. Connolly  
Hennepin County District Court  
1657 Government Center  
300 South Sixth Street  
Minneapolis, MN 55487

**VIA FACSIMILE AND U.S. MAIL**

Re: Peter Huxmann v. Minneapolis Park and Recreation Board  
Case No. : 27-CV-07-7807

Dear Judge Connolly:

This firm represents the City of Minneapolis, acting by and through its Park and Recreation Board (Park Board). This letter is in opposition to Plaintiff Huxmann's request for leave to file a motion for reconsideration of the court's May 25, 2007, order in the above referenced case denying Plaintiff's motion for a temporary injunction. In addition, this letter is in opposition to Plaintiff's request for recusal.

In this case, the Plaintiff failed to plead a cause of action in its Complaint yet nonetheless moved for a temporary injunction. In his initial memorandum in support of his motion, Plaintiff did nothing more than recite the case law that sets the standard for an injunction and allude to a possible cause of action. In his reply memorandum, Plaintiff continued on the path of ignoring the fact that he had to prove that he was entitled to an injunction.

Moreover, at hearing on Plaintiff's motion, the court gave Plaintiff's counsel every opportunity to explain Plaintiff's position. In fact, I believe Plaintiff's counsel was given at least 45 minutes to explain why an injunction should issue.<sup>1</sup> Plaintiff's counsel failed to do so. In short, Plaintiff failed to meet the *Dahlberg* standard for an injunctive relief.

It is the Park Board's position that statutory discretionary immunity will ultimately apply in this case. Therefore, the Park Board is likely to prevail on the merits of this case. (This is one of the *Dahlberg* standards). The Park Board fully briefed the statutory immunity issue in its memorandum and supplied the court with supporting affidavits showing that this decision was indeed a planning decision. Plaintiff was unable to distinguish the statutory discretionary immunity cases relied on by the Park Board for its position. Neither of Plaintiff's briefs nor the oral argument of Plaintiff's counsel

<sup>1</sup> I believe that the Park Board took approximately ten minutes to explain its side.

June 15, 2007

Page 2

provided the court with any valid reason to reject the Park Board's argument that it was likely to succeed on the merits of the case, i.e. that statutory immunity would apply.

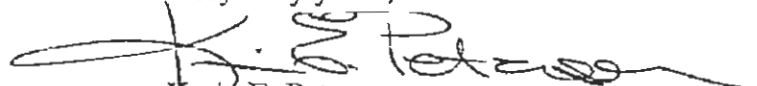
This court gave the Plaintiff every opportunity to prove its case. Quite frankly, the court was very lenient with Plaintiff treating Plaintiff almost as if he were pro se rather than represented by counsel. It is obvious that Plaintiff and his counsel do not want a bike path to be built on park property in front of their houses. Plaintiff came to court hoping, but supplying the court with little other than hope, that the court would issue an injunction. When the Plaintiff failed to meet the *Dahlberg* standard for an injunction, Plaintiff decided to attack not only the court's decision but also the court itself rather than taking stock of the shortcomings of his Complaint and in his oral argument.

There is no basis for Plaintiff's request for recusal. It appears that Plaintiff is trying to intimidate the court. The court should not yield to Plaintiff's demands. This court conducted a fair and impartial hearing in this matter.<sup>2</sup> The fact that Plaintiff failed to answer questions put to him by the court or to distinguish controlling case law is not the court's or opposing counsel's fault. Instead, the fault lies with Plaintiff or his counsel.

Finally, Plaintiff is making much of the fact that the Park Board has scheduled a motion for summary judgment. This is a non-issue. The Park Board will be presenting a properly briefed and timely motion for summary judgment to this court on the basis of statutory discretionary immunity. "Whether governmental action is protected by statutory immunity is a question of law." *Conlin v. City of St. Paul*, 605 N.W.2d 396, 400 (Minn. 2000). It is a matter, however, that is best resolved before the parties engage in lengthy discovery. *Sletten v. Ramsey County*, 675 N.W.2d 291, 300 (Minn. 2004). Thus, the Park Board has scheduled this motion for the end of August. Plaintiff has plenty of time to do discovery before then.

Based on the above, the Park Board respectfully requests that the court reject Plaintiff Huxmann's request for leave to file a motion for reconsideration and deny Plaintiff's recusal request.

Very truly yours,



Karin E. Peterson

cc: Judge Rietkerk (via U.S. Mail only)  
Alfred Stanbury (via facsimile and U.S. Mail)

---

<sup>2</sup> The court also allowed Plaintiff additional time to respond to Defendant's Memorandum, i.e. 9 days instead of the usual 3 days.