

# STANBURY LAW FIRM P.A.

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October 22, 2007

Hon. Francis Connolly  
Hennepin County District Court  
1657 Hennepin County Gov't Center  
300 South Sixth Street  
Minneapolis, MN 55487

Re: Peter Huxmann v. Minneapolis Park and Recreation Board  
Hennepin County District Court Case No. 27-CV-07-7807  
BY FAX AND REGULAR MAIL

Dear Judge Connolly:

I write (1) to learn why Your Honor has not issued a decision as to plaintiff's motion for a stay of proceedings even though fifty-three days have elapsed since the motion was heard on August 30, 2007, and (2) to inform Your Honor of some developments that the Park Board's attorney should have brought to Your Honor's attention but has not. Please make this part of the record. Delaying the issuance of a decision as to plaintiff's motion for a stay of proceedings, in my opinion, is another *objective* basis for believing that Your Honor is biased in favor of the Park Board, and, obviously, my contention cannot be kissed off as dissatisfaction with a (non-existent) decision. Declining to decide that motion promptly or at all has prejudiced plaintiff by preventing him from seeking, if necessary, the same relief in the court of appeals before the bid process reached, as it now has, the Park Board's approval and awarding of the contract to construct the bike path on the northerly side of St. Anthony Parkway between Ulysses Street NE and Stinson Boulevard. To date at least, Your Honor's failure to issue a decision one way or the other amounts, of course, to a *de facto* denial of the motion.

The Park Board approved the low bid on October 17th *without discussion and without notifying the public in advance that such approval would be sought at that meeting*. Previously, I have shown that time was not of the essence when Your Honor denied plaintiff's temporary injunction motion, and the Park Board's attorney remained silent for *four* months before disclosing to Your Honor that the Park Board had not advertised for bids until August 28th and not on June 1st as she told Your Honor on April 25th (Attachment 1). At that August 30th hearing and by way of the August 29, 2007 affidavit of Project Manager Eoloff, Your Honor was told that "[b]ids are scheduled to

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be opened on September 27, 2007” and “[t]he Contract shall be awarded subject to approval of the Board of Commissioners of the Park Board on October 3, 2007,” and “[c]onstruction will be scheduled to begin by October 5, 2007,” and “the concrete portion of the bike/pedestrian path . . . between Ulysses Street NE and Stinson Boulevard **must be completed by the end of November 2007.**” Attachment 3 (emphasis added). However, the bid specs which were authored by Eloff some three weeks *before*, told a different story:

S-21 (1806) DETERMINATION AND EXTENSION OF CONTRACT TIME

The Contract Time will be determined in accordance with the provisions of Mn/DOT 1806 and the following:

S-21.1 Construction operations **shall be started within eight (8) Calendar Days after the date of Notice of Contract Approval.** Construction operations shall not commence prior to Contract Approval.

S-21.2 All work required under the Contract except maintenance work and Final Clean Up **shall be completed within 45 Working Days.**

S-21.3 In addition to the requirements indicated above, all work required to construct the Residential Segment **shall be substantially completed by November 15** or the Contractor will be assessed a monetary deduction as shown in MnDot 1807.

Attachment 2 (emphasis added).

Bids were indeed opened on September 27, 2007, and Eloff put the low bid of about \$733,000 before the Park Board for approval at its October 3d meeting and stated in his October 3d Request for Park Board Action that “**SCHEDULE: Construction *started* fall of 2007 and *complete* spring of 2008.**” Attachment 4 (emphasis added). At the beginning of that meeting, however, the matter was struck from the meeting agenda because, reportedly, it was “incomplete.” Then the published agenda for the next regular meeting (on October 17th) contained no indication that approval of the bid would be sought (Attachment 5), and thus the public was not notified that approval of the low bid would again be sought, as it in fact was. At some undisclosed time on October 17th, Eloff submitted a Request for Park Board Action accompanied by, *inter alia*, a Memorandum dated October 17, 2007, in which he claimed in pertinent part that “[w]e have *just received* the required approval from the Minnesota Department of Transportation’s (MnDot) Civil Rights office that the contractor has met the

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Disadvantage(*sic*) Business Enterprise goals." Attachment 6 (emphasis added). In truth, that "just received" approval was communicated to Eoloff *five* days earlier in a letter dated October 12, 2007. *Id.* An agenda amendment sheet containing the addition of Eoloff's approval request appears to have been distributed to the commissioners and only to the commissioners at or around the the 5:00 P.M. start of the October 17th regular meeting, and Eoloff stated in the Request for Park Board Action that "SCHEDULE: Construction is anticipated to start this fall of 2007 **and be completed in the spring of 2008.**" Attachment 6 (emphasis added).

By approving the bid as presented and described to it on October 17th, the Park Board by implication approved the fact that it is too late in the season to think that the project can be completed in 2007. That fact and the fact that the winning bid is some \$414,000 less than the \$1,147,000 which Your Honor was told it would probably cost means that, as plaintiff has argued, there is no basis for denying plaintiff's motion for a stay of proceedings and imposing a bond. In other words, action to protect the Park Board from incurring additional costs as the result of postponing construction is unnecessary because the amount to be paid to the contractor upon completion is not dependent on completion in 2007. Additionally, the willful failure of the Park Board to apprise Your Honor of the changed circumstances I have enumerated is sufficient reason alone to grant plaintiff's motion for a stay of proceedings during the pendency of his interlocutory appeal.

Sincerely,

STANBURY LAW FIRM P.A.



Alfred Stanbury

Attachments: 6

cc: Peter Huxmann  
Karin Peterson, Esq.