

September 18, 2014

Via Email

Marcia Moermond
Office of the City Council
310 City Hall
15 West Kellogg Boulevard
St. Paul, MN 55102

Re: Thomas Murphy and Mary Murphy v. Roger W. Hodge
G&E File No.: 505-R128WB

Dear Ms. Moermond:

Thank you for allowing me to appear before you at the September 9, 2014 legislative hearing. As you may recall, I represent Roger Hodge in the civil suit commenced by the Murphys. I am writing to inform you of my thoughts in advance of the upcoming Legislative Hearing on September 23, 2014.

I understand that the City Council has been dealing with the above matter for some time with the hope of resolving the dispute between the Murphys and Mr. Hodge. However, as I indicated at the hearing, the Murphys commenced suit against Mr. Hodge on August 26, 2014. Unfortunately, I anticipate that this recent litigation will frustrate the Council's process.

It is my understanding that as a Legislative Hearing Officer, you make recommendations to the City Council. According to City of St. Paul Code of Ordinances § 18.01, your recommendations are not subject to judicial review. Upon adoption by the City Council, your recommendations are appealable to the Minnesota Court of Appeals. As stated in *Anderson v. City of St. Paul*, “[u]nless otherwise provided by statute or appellate rule, to obtain judicial review of an administrative agency’s quasi-judicial decision, a party must petition [the Court of Appeals] for a writ of certiorari.” Nos. A09-1269, A09-1288, 2010 WL 1850648 (Minn. Ct. App. May 11, 2010) citing *Nietzel v. County of Redwood*, 521 N.W.2d 73, 76 (Minn. Ct. App. 1994). Additionally, a quasi-judicial act is defined as a “product or result of investigation, consideration and deliberate human judgment based upon evidentiary facts of some sort commanding the exercise of their discretionary power.” *Id.*

At the Legislative Hearing on September 9, 2014 and by letter dated September 11, 2014, you requested that the parties “further discuss or come up with an end date to the stabilization of the soils to prevent erosion of embankment to 15 W. Baker Street.” I also understand that if the parties do not have an end date by the September 23, 2014 Legislative Hearing, you will choose an end date. While I know you have all of the parties’ (and City’s) best interests in mind, I do

not believe we will be able to come up with such an end date by the September 23, 2014 Legislative Hearing. I also believe that if you recommend a date to the City Council, we will only run into more complications.

Since the Murphys commenced suit, we are now also in Ramsey County District Court. As part of litigation, we will need to Answer their Complaint, conduct discovery including written discovery and depositions, hire an expert to examine the property, and get repair bids for the reconstruction of the retaining wall. At this point, we dispute Mr. Hodge's liability in the matter. Accordingly, as much as it would be ideal, I do not see this issue being resolved before the snow falls.

Should you set an end date for repair at the upcoming Legislative Hearing, I will likely need to take the following steps. I would request an opportunity to be heard on these issues at the subsequent City Council Public Hearing. If your recommendation was approved, I would then appeal to the Minnesota Court of Appeals. Simultaneously, the action would be proceeding in Minnesota District Court. The potential situation would not be ideal for any parties.

In the alternative, I would suggest that the request to come up with an end date for this matter be tabled for six months. I would take into consideration your requests for the parties to utilize the Neighborhood Dispute Resolution Center, in addition to court-ordered mediation. If you would like to have the parties appear at Legislative Hearings intermittently during the six month stay, I would be amenable to that. Allowing the parties a six month stay on these issues would allow the corresponding District Court action to properly proceed.

I have also discussed the idea of tabling the repair date with the Murphy's attorney. He is in agreement that it is preferable to table your request until we have conducted more discovery in the current civil action.

Please contact me with any questions or thoughts on this matter. We can also discuss my concerns at the September 23, 2014 Legislative Hearing, which I will appear at. Thank you.

Very truly yours,

GOETZ & ECKLAND P.A.

By



Alan P. King

APK/mjs

cc: George A. LeTendre, Esq. (via email)
Mr. Roger W. Hodge (via email)
300-0089299-2014 (via email)