

STATE OF MINNESOTA
COUNTY OF ST. LOUIS

CASE TYPE: 14
DISTRICT COURT
SIXTH JUDICIAL DISTRICT
File #: 69-DU-CV-09-2866

THE STATE OF MINNESOTA by Marilyn Campetti and Eric J. Ringsred;
and Marilyn Campetti and Eric J. Ringsred, individuals.

Plaintiffs,

AMENDED COMPLAINT

vs.

CITY OF DULUTH, a municipal corporation.

Defendant.

COMPLAINT
December 15, 2009

INTRODUCTION

- 1) Plaintiffs are bringing this legal action to protect environmental and aesthetic resources, namely, the Lake Superior shoreline, Interstate I-35 amenities and its Lakewalk, and the City of Duluth's Skyline Parkway, which is protected under Minnesota state environmental laws Chapters 116 B and D of Minnesota Statutes.
- 2) The questions presented represent an actual controversy between legal parties and plaintiffs have no adequate remedy at law and will suffer irreparable harm if the relief requested is not granted.

JURISDICTION

- 3) This court has jurisdiction over this action arising from the provisions of the Minnesota Environmental Rights Act, M.S. Chapter 116 B.01 et.seq; the Minnesota Environmental Policy Act, M.S. Chapter 116 D.01 et.seq; the regulations promulgated under these state statutes, and the legislative code of the City of Duluth, Minnesota.

PARTIES

- 4) Marilyn Campetti is an individual residing within the City of Duluth, Minnesota and who is also a public user of the City of Duluth's Skyline Parkway and the Interstate I-35 Lakewalk.

- 5) Eric Ringsred is an individual residing within the City of Duluth, Minnesota and who is also a public user of the City of Duluth's Skyline Parkway and the Interstate I-35 Lakewalk.
- 6) The City of Duluth, Minnesota is the primary governmental entity that is responsible for the permitting and the regulation of construction and land-use activities within its own municipal boundaries.

FIRST CAUSE OF ACTION

For their first Cause of Action, the plaintiffs incorporate the allegations of paragraphs one (1) through seven (7) above and further state and allege as follows:

- 7) That the shoreline of Lake Superior and the Duluth Lakewalk are governmentally owned, scenic and aesthetic natural resources within the meaning of Minnesota environmental laws defined under M.S. Chapter 116 B., subd. 4.
- 8) That the citizens of Minnesota and the state of Minnesota have expended considerable sums of tax money for the construction of I-35, the I-35 Lakewalk, and other freeway amenities to ensure the preservation and public enjoyment of these aesthetic and scenic natural resources.
- 9) That the City of Duluth has issued permits to allow construction on Lake Superior's shoreline which impairs the natural scenic beauty of a significant part of this aesthetic and scenic resource, in violation of M.S. Chapters 116B & 116D. (Exhibits A and B)
- 10) That the City of Duluth, Minnesota has granted permits to Beacon Point, LLC. for a project which "has the potential for significant environmental effects", without conducting an Environmental Assessment and/or an Environmental Impact Statement required under state environmental law M.S. Chapter 116 D.04.

SECOND CAUSE OF ACTION

For their Second Cause of Action, the plaintiffs incorporate the allegations of paragraphs one (1) through eleven (11) above and further state and allege as follows:

- 11) That the City of Duluth's Skyline Parkway has been constructed and maintained with public funds over the past century with a primary purpose of displaying Duluth's scenic and natural environment for the enjoyment of residents and visitors.
- 12) That the State government has recognized this important function by designating the City of Duluth's Skyline Parkway as a " Scenic Roadway."
- 13) That the City of Duluth has granted construction and land-use permits which impair and destroy the scenic and aesthetic qualities of Skyline Parkway. (Exhibits C and D)
- 14) That Skyline Parkway and its scenic vistas are governmentally owned aesthetic and scenic resources as defined by MS Chapter 116B.02 Subd 4
- 15) That the City of Duluth continues to grant government permits for the piecemeal destruction of its Skyline Parkway and its natural scenic beauty.

16) That the City of Duluth is granting permits on an ongoing basis for projects that have the "potential for significant environmental effects" without conducting an Environmental Assessment and/or an Environmental Impact Statement as required under M.S. Chapter 116 D.01., et.seq.

PRAYER FOR RELIEF

Wherefore, and in consideration of the above paragraphs, the plaintiffs, including the State of Minnesota and its own citizens, respectfully request relief as follows:

FIRST CAUSE OF ACTION

- 17) Declaring the Lake Superior shoreline and Duluth Lakewalk adjacent to Interstate I-35 from downtown Duluth to 26th Avenue East a protected natural resource under M.S. Chapters 116 B and D.
- 18) Enjoining the City of Duluth from any further actions which will impair this natural resource.
- 19) Ordering the City of Duluth to abate any and all structures or activities which it has unlawfully permitted which impair this natural resource.
- 20) Ordering the City of Duluth to complete an Environmental Impact Statement prior to any land-use permits and/or other governmental action which have the "potential for significant effects" upon this natural resource.

SECOND CAUSE OF ACTION

- 21) Declaring that the City of Duluth's Skyline Parkway is a protected scenic and aesthetic natural resource under Minnesota's environmental statutes M.S. Chapters 116 B and D.
- 22) Enjoining the City of Duluth from any further actions which will impair this natural resource.
- 23) Ordering the City of Duluth to abate any and all structures or activities which it has unlawfully permitted which impair this natural resource.
- 24) Ordering the City of Duluth to complete an Environmental Impact Statement prior to any land-use permits and/or other governmental action which has the "potential for significant effects" upon this natural resource.

Dated: December 15, 2009

Respectfully submitted by,

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ACKNOWLEDGMENT PURSUANT TO M.S. 549.21 as follows:

The undersigned hereby acknowledges that the costs, disbursements, and reasonable attorneys' and witness fees may be awarded pursuant to M.S. 549.21, subd. 2 to the party against whom the allegations in this pleading are asserted.

Marilyn Campetti

Eric J. Ringsred