

LPA UPDATE:

FEBRUARY 25, 2015 FEDERAL COURT HEARING WITH JUDGE TUNHEIM

I'm sure you are eager to hear about yesterday's court hearing. We think it went extremely well.

As you know, the argument centered on whether the Met Council and the FTA violated environmental laws by forcing municipal consent before an EIS was done on the current plans — in other words, moving the procedure along in a way that guarantees a specific outcome without benefit of an EIS on the current plan, and without considering alternatives that may do less environmental damage.

FTA-Met Council argument

First, among other things, the FTA and Met Council argued before Judge John Tunheim that LPA didn't have status in this case. They said our lawsuit was premature because there would be plenty of time after the final EIS for public discussion and consideration. (According to the most recent brief filed by the Met Council, that EIS will be completed in 2016, but in court their attorneys characterized it as coming "soon")

But to this non-attorney, it seems their central point was that municipal consent constituted nothing final or irrevocable. They went so far as to say there was nothing final about the agreement to not have freight run through St. Louis Park (St. Louis Park officials might be surprised to hear that). They said no agreements and no plans would be final until the last EIS had been written and the FTA consequently makes its final judgment about funding; and that no one knows whether the FTA will ultimately approve project (does anyone think there is any doubt about that?).

LPA response

LPA's attorneys, Lew Remele and Tom Johnson, were both present. Lew was the one who made our case.

He traced the history of SWLRT, supporting his argument that even though an EIS on the current version of the project had not been completed, the Met Council was pushing the project ahead in substantive ways that, in effect, determined the outcome. He said the only environmental study to date (the 2012 draft EIS, which considered a since-abandoned scenario) said co-location would be environmentally bad.

He argued that while the goal of both federal and state environmental law is robust public discussion of all the environmental considerations, much of the Met Council process has been secretive. He offered the example of the Met Council's

closed-door negotiations with the City of Minneapolis, which obviously were entered into in order to reach a binding agreement, i.e., one that would be determinative of the final outcome.

He scoffed at the Met Council argument that seeking municipal consent didn't move the project along in any determinative way, offering as proof a quotation from the new Met Council head, Adam Duininck, who said in the 2/12/15 Met Council newsletter that SWLRT's "... rating rose in large part due to the project's ability to achieve municipal consent from all five corridor cities...."

He said the politicization of the process, including Gov. Dayton's threat to deny funds to the park board, did not square with the intent of the laws, which is to have open, public discussions about environmental issues before a decision is made as to which particular plan will be followed.

Judge Tunheim

Judge Tunheim's questions were excellent and to many of us had the effect of highlighting the point of our lawsuit. At one point he asked our opposing attorneys if the project had not already "left the station," (the import of which was that if MC-FTA continued to move along unchecked, LPA litigants would be denied any chance of remedy). He also challenged their case law arguments, wondering if our case was unique. Remele said yes, the situation is unique because no other agency "has been blatant enough to truncate the EIS" process as the Met Council has.

Bottom line

Our legal team was brilliant, speaking eloquently to the rights of citizens to hold their governments responsible for following the law.

The MC-FTA's team engaged in what can only be described as legal sophistry, a word Lew used in his presentation.

The judge was extremely well informed about the case. He has obviously followed the daily news and also studied several related cases. At no time did he seem hostile to our case.

We left smiling because of the performance of our attorneys, and because our hopes had been lifted. One supporter, who attended with the express purpose of assessing the performance of our legal team, sat down and wrote a check to LPA on the spot.

What happens next

The next hearing will be on

*March 9, at 3:00 p.m.,
Federal Court Building, Suite 13-E,*

300 S. Fourth Street, Minneapolis

Please come if you can. Yesterday, someone entering the courtroom for the next hearing commented she had never seen it as packed as it was for our SWLRT hearing. That kind of turnout has to say to the judge and reporters that 1) our lakes and parks are important to this community, and 2) we are willing to fight for the principle that government bodies must obey the law.

Read more about yesterday's hearings:

Star Tribune

<http://www.startribune.com/local/west/294116881.html>

MinnPost

<http://www.minnpost.com/politics-policy/2015/02/southwest-light-rail-route-opponents-get-their-first-day-court>

Finance and Commerce (Paywall will prevent your seeing the whole story unless you are a subscriber; we will try to post this clear and accurate story on our website.)

<http://finance-commerce.com/2015/02/alliance-asks-judge-to-apply-brakes-on-lrt/>