

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT
Type of Case: Assessment Appeal
Case No. _____

Christina Anderson and Simon Taghioff;)
Daniel Sullivan; Robert Bloomer, Jr.;)
Kevin Fenelon; Michael Brennan; Monica)
Carlson; Matthew Russell; Mary Porter)
and Thomas Hays; Tom Gallagher;)
Samuel J. Varghese; Sherri Mortenson Brown;)
Denny and Mary Thalhuber; Caprice Glaser;)
John Pitera and Kate Patterson; Kenneth)
and Harriet Goodpaster; Lindsay Drebenstedt;)
Pearl Bejblik; Soo Line Railroad; Paul and)
Deanne Gieser, Judith Miller)

**Notice of Appeal
from the 2018 St. Paul Street
Maintenance Program Fees
and Special Assessment**

(also known as a Complaint)

Plaintiffs,)

vs.)

City of St. Paul,)
Defendant.)

**To: City Clerk Shari Moore, 310 City Hall and City Hall and Courthouse,
15 W. Kellogg Blvd., St. Paul, MN 55102**

Please take notice that the above plaintiffs intend to appeal to the District Court the special assessments described below in the form set out below accompanied by the attached Summons.

1.) The plaintiffs appeal from 2018 St. Paul Street Maintenance Fees and Special Assessments (RES PH 19-40, RES PH-19-42, RES PH 19-38, RES PH 19-41) (the “Project”) regarding their properties as listed on Exhibit A.

2.) On June 19, 2019, the St. Paul City Council approved the special assessment for 2018 Street Maintenance mill and overlay fees and assessments and levied special assessments

on the plaintiffs' properties shown on Exhibit A if the plaintiffs had not earlier paid the amounts previously billed. The council resolutions became effective on June 25, 2019 when they were signed by the Mayor.

3.) The St. Paul City Council acted with knowledge that the exactions it initially billed as a fee and the special assessments being levied against the plaintiffs' properties were made without there having been any determination of special benefit to the plaintiffs' properties nor was there any effort to approximate a market value analysis as required by Minnesota law.

4.) To the extent that these fees and assessments exceed any special benefit (increase in market value), the charges constitute an unconstitutional taking without due process in violation of both the Minnesota Constitution (Article X) and the U.S. Constitution (5th and 14th Amendments).

5.) The proposed fees and assessments also fail all relevant tests of uniformity and proportionality because they are based on lineal front footage only, no matter how different in size, value or scale the properties may be. The proposed fees and assessments also ignore how different in use, design, and type of service the streets may be. At the same time the City fails to assess lots owned and used by the City, if any.

6.) The City seeks to solely burden properties adjacent to major thoroughfares for the disproportionately higher cost of maintaining those high use and high volume roads that serve wider segments of the public than the neighborhoods through which they run. Neither these high costs nor the high usage on those roads cause any special benefit to Plaintiffs' properties.

7.) The fees and assessments also constitute unconstitutional taxation of tax exempt properties and double taxation of plaintiffs who pay a gross earnings tax.

8.) The 2018 Street Maintenance Program is little more than a scaled-down and rebranded version of its discredited Street ROW Assessment Program.

9.) Starting in December of 2018, the City sought to generate over \$870,000 in new revenue to help balance its budget. It focused on public works projects that the City Council had previously approved without public comment or warning. The work was already completed and paid for. The City chose eight (8) high traffic roads and shifted their costs from the general budget funded by *ad valorem* taxes to less than 300 individual property owners who happened to own properties adjacent without considering special benefit or burden.

10.) The City's previous Street ROW Assessment Program was challenged in *First Baptist Church of St. Paul, et al. v. City of St. Paul*, 884 N.W.2d 355 (Minn. 2016). In its unanimous opinion, the Supreme Court ruled that the city's program was a revenue raising tax and not a regulatory or commodity fee. In that case, the city was told that it could not simply play with terminology to try to avoid the requirement that it can raise revenue by either an *ad valorem* tax or by means of a valid special assessment that causes a corresponding special benefit (increase in value) to the charged properties.

11.) Because it was unable to demonstrate the required special benefit, the City has settled the challenges of its Street ROW Assessment Program charges in cases starting in 2011 and ending in 2016 by means of a refund to plaintiffs of 80% to 100% of the amounts appealed.

12.) In response to the Supreme Court's ruling, the City now claims that it has (but it refuses to produce) a legal opinion from outside counsel that allows it to recast at least a third of the old Street ROW Assessment as a rejiggered fee/assessment in the form of the 2018 Street Maintenance fee/assessment.

13.) The newly relabeled Street Maintenance Assessment Program (“SMAP”) remains a major revenue raising effort by the City which it persists in initially calling a “fee” because most people will pay a fee without understanding that it is improper and can be challenged.

14.) If the “fee” is not paid, the City attempts to collect that “fee” as a “special assessment”. The fee moniker is purposely used to avoid describing any appeal rights. If the fee is not paid, the city then attempts to collect it using its special assessment power. The grounds and procedure for a challenge to an assessment are set out in both the City Charter and in Chapter 429 of the Minnesota Statutes.

15.) This case challenges the legality and constitutionality of the 2018 SMAP as either a fee or as a special assessment. The 2018 SMAP Fee/Assessment charges for street cleaning and lighting have already been disallowed as nothing more than the previously overruled Street ROW Assessment by Judge Robyn A. Millenacker. *First Baptist Church of St. Paul, et al. v. City of St. Paul*, 62-CV-18-7686. The mill and overlay charges in the instant case are merely more of the same.

16.) The City’s SMAP fee/assessment, under whatever guise, is an illegal and unconstitutional overreach by a governmental body desperate to avoid using its valid but politically unpopular *ad valorem* taxing authority.

17.) These Street Maintenance charges are neither a regulatory fee (like a parking or speeding ticket incidental to the enforcement of a law or regulation) nor a commodity fee (think gas, electricity or water charges which a payer has some ability to control). It is at base a method to fund regular street maintenance—which is normally funded by *ad valorem* taxes in other jurisdictions.

18.) The City hopes that its so-called “fee” will be paid by most property owners with a minimum of understanding and fuss, and by the rest as a special assessment that they cannot afford to appeal, even though the City knows it cannot show any special benefit to support the assessment.

19.) The actions of the City Council constitute assessments without special benefit, and mistakes of law and fact that directly and materially deprive plaintiffs of their constitutional rights. To the extent that it represents a repeated refusal to follow judicially determined law, it approaches and may well be a fraud on the public.

20.) Plaintiffs have paid or intend to pay the fees and assessments charged against their properties.

21.) Joinder of these plaintiffs is proper because the legal issues and the facts are essentially the same for each.

22.) Certain plaintiffs paid their fee as billed by the city because the city’s bill failed to indicate that the taxpayers had any right to appeal. The city now contends that if a taxpayer paid such a bill as directed and failed to let it become an assessment, such taxpayers have no right to appeal. See *Brown v. City of St. Paul*, 62-CV-19-3077. This “Catch 22” trickery amounts to fraud and is in direct violation of federal and state constitutions, state statutes and city charter requirements that taxpayers must be informed of their right to appeal.

23.) In addition, to the extent that this fee/assessment violates the federal constitution, the notice of claims requirements of Minn. Stat. 429 and St. Paul Charter Article XIV are preempted by federal law and are unenforceable.

24.) Sections 42 U.S.C. 1983 and 1988 (and associated sections) of the United States Code allow citizens who have been deprived of their constitutional rights to seek damages and

attorneys' fees from the entity responsible for the deprivation. The plaintiffs have had to incur substantial legal expenses and other costs as a result of the city's unconstitutional fees and assessments. This claim for attorneys' fees and costs is based on plaintiffs' free standing federal constitutional appeal rights even though state law does not allow an award of attorneys' fees for solely state claims.

25.) Plaintiffs request attorneys' fees, costs, and possibly damages under 42 USC 1983 and 1988. They do so in the hope that such an award will do three things:

- a. Encourage the city and other governmental units to more readily respect the rights of citizens and taxpayers without the need for repeated court proceedings and orders;
- b. Affirm the remedy of attorneys' fees so that a broader panel of counsel might get interested in assisting in similar cases; and
- c. Provide plaintiffs' counsel with a fee award in addition to the 1/3 contingent fee plaintiffs have promised to recompense him for the countless hours he has spent defending plaintiffs and others similarly oppressed by the defendant's actions.

WHEREFORE, Plaintiffs request the following:

- a.) A determination that this appeal is not an appeal from an administrative judicial determination or a regulatory or commodity fee but rather from a revenue raising tax, the validity of which must be decided de novo by the District Court;
- b.) A ruling that the imposed fees and assessments are illegal to the extent that they exceed any reasonable special benefit to the properties, are void *ab initio* because the city council failed to consider and make findings re valuation and special benefit, and

thereby constitute an unconstitutional taking without due process under both state and federal constitutions;

- c.) A ruling that the proposed fees and assessments are unlawfully disproportional, non-uniform, and exceed the city's actual costs;
- d.) An injunction against the City to prevent its continued efforts to use misleading terms and discredited concepts to try to disguise a regular revenue raising tax;
- e.) An order requiring that the 2018 SMAP fees or assessments whenever paid by these plaintiffs be refunded and the assessments be set aside;
- f.) An order that the appellants be awarded reasonable attorney's fees, the costs of their litigation and any damages that they may be able to show under 42 USC 1983 and 1988;
- g.) such other relief as the Court may deem appropriate.

Dated: July 9, 2019

Respectfully submitted,

JOHN G. HOESCHLER, P.A.

By _____
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ACKNOWLEDGEMENT

The Plaintiffs, by their attorney, hereby acknowledge that costs, disbursements, and reasonable attorney and witness fees may be awarded in this action pursuant to Minn. Stat. §549.211.

Dated: July 9, 2019

By _____

John G. Hoeschler (#45810)

Attorney for Plaintiffs

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Eagan, MN 55121

651-324-1694

jghoeschler@comcast.net

EXHIBIT A

Name	Property ID
Christina Anderson & Simon Taghioff	02-28-23-43-0118
Daniel Sullivan	02-28-23-42-0167
Robert Bloomer Jr.	02-28-23-42-0187
Kevin Fenelon	02-28-23-43-0153
Michael Brennan	02-28-23-42-0188
Monica Carlson	07-28-22-44-0019
Matthew Russell	02-28-23-34-0001
Mary Porter and Thomas Hays	02-28-23-34-0023
Tom Gallagher	19-29-22-23-0029
Tom Gallagher	19-29-22-23-0028
Samuel J. Varghese	02-28-23-34-0093
Sherri Mortenson-Brown	02-28-23-42-0123
Denny and Mary Thalhuber	02-28-23-34-0073
Caprice Glaser	07-28-22-41-0142
John Pitera and Kate Patterson	02-28-23-43-0117
Kenneth and Harriet Goodpaster	02-28-23-34-0024
Lindsay Drebenstedt	02-28-23-43-0143
Pearl Bejblik	07-28-22-41-0072
Soo Line Railroad	19-29-22-24-0036
Soo Line Railroad	19-29-22-31-0007
Paul and Deanne Gieser	02-28-23-31-0036
Judith Miller	02-28-23-43-0175