

ADAM STEELE;

Plaintiff,

Case No. 19-CV-1620 JNE/LIB

vs.

THE CITY OF BEMIDJI, MINNESOTA,
a municipal corporation;

other unnamed persons and
entities;

FIRST AMENDED
COMPLAINT FOR
DECLARATORY JUDGEMENT,
INJUNCTIVE RELIEF,
AND DAMAGES

Defendants.

Plaintiff alleges:

I.

Defendant City of Bemidji, Minnesota is a municipal corporation organized under the laws of the State of Minnesota and domiciled in Beltrami County, State of Minnesota. The address of said Defendant is 317 4th St. NW, Bemidji, MN.

II.

Plaintiff Adam Steele is a resident of the City of Bemidji, County of Beltrami, State of Minnesota. He is domiciled at 189 Gemmell Ave., Bemidji, MN 56601; his mailing address is P.O. Box 1132, Bemidji, MN 56619. His telephone number is 218-759-1162.

III.

JURISDICTION. The basis for jurisdiction of the United States District Court is that this action involves a federal question under the Fifth and Fourteenth Amendments to the United States Constitution, and 42 USC Sec. 1983.

IV.

VENUE. The basis for venue in the District of Minnesota is that all of the acts enumerated herein occurred in Beltrami County, State of Minnesota; and Defendant, The City of Bemidji, Minnesota, is domiciled in Minnesota.

V.

The true names and capacities of Defendants, “other unnamed persons and entities” are unknown to Plaintiff, who therefore sues them under said name, and Plaintiff will amend this complaint when their true names and capacities become known to him.

STATEMENT OF THE CLAIMS

FIRST CAUSE OF ACTION: UNCONSTITUTIONAL TAKING BY WAY OF IMPROPER ASSESSMENT -- DEPRIVATION OF CIVIL RIGHTS UNDER 42 USC SEC. 1983, AND RELATING TO THE “TAKINGS” CLAUSE OF THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION AS EXTENDED TO THE STATES UNDER THE FOURTEENTH; AND UNCONSTITUTIONAL TAKING UNDER THE MINNESOTA CONSTITUTION, ARTICLE I., SECTION 13.

VI.

The Plaintiff herein has an interest in real property at 189 Gemmell Ave. SW, in the city of Bemidji, Minnesota; and is the taxpayer for the taxes assessed upon said property.

VII.

Gemmell Ave. is an approximately 1,595 foot length of residential city avenue, bounded on the North end by its intersection with the one-way southbound side of Paul Bunyan Drive (also known as Midway Drive), a major thoroughfare and traffic corridor from downtown Bemidji; and

on the South end by a cul-de-sac with a surmountable (beveled) curb, allowing access/egress via a dirt road (hereinafter “the dirt road”) that passes through various privately and publicly held parcels, and then connects to another city street. Parallel parking is, and historically has been, permitted along both sides of Gemmell Ave., and several residents routinely park their vehicles in front of their homes.

VIII.

None of the owners of the said parcels through which the dirt road passes have objected to the use of said road for vehicle traffic, and it is regularly and daily used by residents of Gemmell Ave., and other traffic, including the city bus service (Paul Bunyan Transit) that serves Bemidji and uses the dirt road to access points south, and avoid the dangerous intersection of Gemmell Ave. with Paul Bunyan Drive (further discussed, post). Historically, the dirt road has often been maintained and kept open in the winters, probably by the plow crews of The City of Bemidji.

IX.

On January 7th, 2019, at its regular meeting, the Bemidji City Council passed a resolution affecting the Plaintiff’s said property, in that said resolution provided for modifications to be made, in 2019, to the approx. 1,595 ft. length of Gemmell Ave., including, principally, a) replacement of a “trunk” sewer pipe; b) “complete reconstruction” of the street following installation of the new sewer pipe; c) replacement of curbs, gutters, and driveway aprons along the entirety of Gemmell Ave.; d) closing, or impeding access/egress to and from Gemmell Ave. at its South end (i.e. via the dirt road); e) narrowing the present 30 to 35 ft. width of Gemmell Ave. to 30 ft., uniformly; f) replacing a section of water main; and g) following said construction and street narrowing, imposing year-around calendar parking for the entirety of Gemmell Ave.

X.

Defendant City of Bemidji has estimated the total cost of the said 2019 Gemmell Ave. street, water and sewer work to be approximately \$750,000., of which \$330,000 to \$380,000 is allocated for the street work alone (principally, items b through e of paragraph IX), exclusive of the sewer and water line work.

XI.

Said Defendant proposes to pay, in part, for the foregoing work by way of assessing property owners on Gemmell Ave. at the rate of approximately \$38 per lineal foot of frontage, and has threatened to do so. Per said Defendant, the total projected “street” assessment, for the 34 parcels on the block is \$121,239. Plaintiff Adam Steele’s portion of that is \$2,660. for his 70 feet of frontage.

XII.

Said assessment far exceeds the value of any special benefit that the Plaintiff reasonably foresees receiving as a result of said street, sewer, and water work.

XIII.

Per statements of the Defendant, and its agents and employees, there has been no material flaw in the existing sewer line. The property owners on Gemmell Ave. have had no problem with it, or its condition; it has not failed, nor is there reason to believe that it will fail in the foreseeable future.

XIV.

It is believed that the Gemmell Ave. “trunk” sewer line replacement was contemplated by Defendant, and is intended by them to provide additional sewer capacity and/or assurance for

“upstream” utility customers (not those on Gemmell Ave.) in the newer South Shore commercial development area, including the city-owned Sanford [events] Center, and other nearby properties, to some of which the City of Bemidji is trying to lure investors and developers.

XV.

The Plaintiff herein, thusly, derives no benefit from the said sewer replacement.

XVI.

Likewise, the Plaintiff has experienced no problems with the existing water main, and achieves no benefit from its replacement.

XVII.

The pre-2019-construction curbs, gutters, and driveway aprons, abutting the Plaintiff’s property, were fully serviceable, and in a good state of repair; they did not require replacement, and Plaintiff achieves no material benefit by their replacement. Prior to their removal, Plaintiff requested of the Bemidji Engineering Dept. (in charge of the project) that they not be removed, but said request was denied.

XVIII.

Similarly, the other curbs, gutters and driveway aprons on Gemmell Ave. were not in such a state as to require replacement; and Plaintiff achieves no material benefit by their replacement.

XIX.

Plaintiff will receive no benefit from the narrowing of the street width; and the same is, in fact, detrimental to him, as stated, post.

XX.

Plaintiff receives no benefit from the closure of, or impeded access/egress to and from,

Gemmell Ave. at the South end cul-de-sac; and the same is, in fact, detrimental to him, as stated, post.

XXI.

Plaintiff receives no benefit from the imposition of year-around calendar parking on Gemmell Ave.; and the same is, in fact, detrimental to him, as stated, post.

XXII.

Gemmell Avenue is fully serviceable as an avenue for traffic, and all other normal purposes, and has no material flaws impeding its use for the same. It has the usual tarred cracks and potholes found on many city streets, none of which are substantial enough to materially impede traffic traveling at lawful speed. Except as stated in the following paragraphs, the Plaintiff receives no benefit from the “complete reconstruction” (as it is termed in the Defendant’s papers and notices) of said Gemmell Ave. It is believed that said “complete reconstruction” would be necessitated solely due to excavation of Gemmell Avenue for replacement of the sewer and water pipes. The cost of this portion of the project is, thusly, properly allocable to the sewer and water work, which would be properly paid by way of sewer and water fees charged to those customers benefitted by same; or by the City’s general taxes; and are not assessable against the properties on Gemmell Avenue, on the Defendant’s proposed frontage lineal foot basis, which does not properly and accurately reflect the benefit (if any) received by Plaintiff and by the other owners of said respective properties.

XXIII.

The only part of the said Gemmell Ave. street project from which Plaintiff might benefit comes by way of the resurfacing of the street.

XXIV.

Plaintiff Adam Steele has investigated the reasonable competitive cost of said resurfacing alone, and found it to be estimated, by a reputable Bemidji contractor, to total approximately \$12,760. for a 2 inch depth of bituminous material, installed over the entirety of the 35 ft. width, and 1,595 ft. length of Gemmell Ave. This amounts to approximately \$4 per lineal foot of frontage (total frontage is approx. 3,190 feet, as both sides of the street have frontage).

XXV.

The said proposed assessment of approx. \$38 per lineal foot far exceeds the reasonable value of the improvement (i.e. the resurfacing of the street); and far exceeds any benefit the Plaintiff would receive by way of said resurfacing.

XXVI.

Said proposed assessment far exceeds the benefit, if any, that the Plaintiff would receive by way of the said 2019 Gemmell Avenue sewer, water, and street project; taken as a whole.

XXVII.

The power of Defendant to make assessments is limited by The Bemidji City Charter, Sec. 8.03, which states “. . . No assessment shall exceed the benefits to the property.” This doctrine is also contained in the provisions of M.S. 429.051, which provides, “The cost of any improvement, or any part thereof, may be assessed upon property benefited by the improvement, based upon the benefits received”

XXVIII.

Said assessment, proposed and threatened by the Defendant, constitutes a taking of private property for public use without just compensation as prohibited by the Fifth and Fourteenth

Amendments to the U.S. Constitution; and for which relief is available under 42 USC Sec. 1983.

XXIX.

Said assessment, proposed and threatened by the Defendant, further constitutes a taking of private property for public use without just compensation first paid or secured as prohibited by Article I., Section 13, of the Minnesota Constitution.

SECOND CAUSE OF ACTION: UNCONSTITUTIONAL TAKING -- STREET NARROWING AND CALENDAR PARKING -- DEPRIVATION OF CIVIL RIGHTS UNDER 42 USC SEC. 1983, AND RELATING TO THE "TAKINGS" CLAUSE OF THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION AS EXTENDED TO THE STATES UNDER THE FOURTEENTH; UNCONSTITUTIONAL TAKING UNDER THE MINNESOTA CONSTITUTION, ARTICLE I., SECTION 13.

XXX.

Plaintiff incorporates, by reference, all of the foregoing.

XXXI.

Per a document prepared by Samuel C. Anderson, P.E., Asst. City Engineer of Defendant City of Bemidji, the aforementioned narrowing of Gemmell Ave. to a 30 foot width "will require the roadway to be posted for 'Calendar Parking'".

XXXII.

Accordingly, immediately following the passage of the aforementioned resolution to narrow the avenue, the Bemidji City Council passed another resolution authorizing year-around calendar parking on the street, with said Council noting, orally, that the posting for calendar parking would go into effect following the construction narrowing the avenue.

XXXIII.

Although Defendant may have control, by way of ownership and easements, of the streets, boulevards, sidewalks, and other infrastructure adjacent to private properties; the presence, condition, and availability of said public infrastructure is an intangible asset that is inextricably connected to said private properties, and affects their functionality, use, and value.

XXXIV.

Gemmell Avenue has been, for over 25 years, its present width; and has had parking on both sides of the avenue; many residents on the block do, and have historically, parked their vehicles in front of their homes. This availability of parking has been a convenience and an asset to residents on Gemmell Ave. To the best of the Plaintiff's knowledge, after having lived on Gemmell Ave. for over 27 years, the two-sided parking has never resulted in any problem to vehicular traffic flow, or access and egress by emergency vehicles; not even after the heavy snows of the 2018-2019 winter.

XXXV.

The Defendant's proposed street narrowing and imposition of calendar parking would degrade this asset, and degrade the use, functionality, desirability, and probable value of the properties located on Gemmell Avenue, including property of the Plaintiff.

XXXVI.

Said street narrowing and imposition of year-around calendar parking achieves no valid public purpose, and is not constitutionally reasonable.

XXXVII.

Said imposition of calendar parking would remove the availability of approximately half of

the available parking on Gemmell Avenue.

XXXVIII.

The proposed imposition of calendar parking would result in an unnecessary and unreasonable security risk to Plaintiff, and other residents on Gemmell Ave., and their vehicles; in that the vehicles could not be as well observed, by Plaintiff and the other residents, if they could not be parked in front of their respective homes. This risk is augmented by the fact that vandalism and other crimes against unattended property are not uncommon in the Gemmell Ave. neighbourhood. Said imposition, by the Defendant, of year-around calendar parking would also deny the Plaintiff of the peaceful and quiet enjoyment of his premises, in that the said constriction of parking on Gemmell Ave. (by removal of half of it) would likely result in other people's vehicles being parked, every other day, in front of the Plaintiff's home, increasing noise invading his home.

XXXIX.

The imposition of calendar parking is further detrimental to the Plaintiff, and unreasonable, in that, due to the severity of winters in Northern Minnesota, vehicles, to be operative, often have to be "plugged in" in the winter, particularly at night. This, reasonably, requires that the vehicle be parked near the dwelling providing the electricity. To require that the vehicle be parked across the street from same, with an electrical cord running across the street, would result in unreasonable risk of damage to property, and would endanger the public safety.

XL.

The said proposed avenue narrowing would reduce safety to vehicles, pedestrians, and animals using said avenue for passage; would impede emergency vehicle access to homes on

Gemmell Ave., particularly during or after heavy winter snows (see Plaintiff's Exhibit 1, at p. 20, hereof) and, absent a substantial overriding valid public purpose, is constitutionally unreasonable.

XLI.

Although Minnesota Statutes Sec. 429.021 Subd. 1 (1) authorizes the Defendant, by its City Council, to “. . . widen any street . . .”; it does not authorize the narrowing of same. The subject action by Defendant, in attempting to narrow the street, is without authority and exceeds the lawful powers of the Defendant and its City Council.

XLII.

The said proposed narrowing of Gemmell Ave. and imposition of year-around calendar parking, by the Defendant, constitutes a taking of private property for public use without just compensation as prohibited by the Fifth and Fourteenth Amendments to the U.S. Constitution; and for which relief is available under 42 USC Sec. 1983; and further constitutes a taking of private property for public use without just compensation first paid or secured as prohibited by Article I., Section 13, of the Minnesota Constitution.

XLIII.

The said proposed narrowing of Gemmell Ave. and imposition of year-around calendar parking would result in irreparable harm to the Plaintiff in that some of the damage is to intangible assets, including but not limited to loss of quiet enjoyment of his home, and loss of convenience, functionality, safety, and use of same; as well as, to some extent, the probable value of same; and so the overall damage is difficult, if not impossible, to quantify and compensate; and the Plaintiff has no adequate remedy at law other than the injunctive relief sought herein.

XLIV.

The aforementioned actions of the Defendant are a further implementation of a continuing practice, policy and/or custom, of the Defendant, tending to degrade the Gemmell Avenue neighbourhood and the properties on Gemmell Avenue, including the Plaintiff's. Previously, these actions have included, but are not limited to, permitting severe zoning variances to enable a self-styled Christian ministry to construct a house on a substandard (by way of being far too small and crowded to be in compliance with zoning) lot (see Plaintiff's Exhibit 3, at p. 22, hereof). Said variances were, at public hearings, strongly opposed by several property owners on Gemmell Avenue; but nonetheless passed, over their objections, by the Defendant's City Council, unanimously. The aforementioned new resolution authorizing the year 2019 Gemmell Avenue street project further continues the Defendant's practice, policy and/or custom of degradation of said Gemmell Avenue and the properties on it, eroding their desirability, use, and function as residential homes, and their probable value.

XLV.

Said actions by Defendant have been either malevolent, or, at the very least, without regard for the rights of home and property owners on Gemmell Avenue.

THIRD CAUSE OF ACTION: DEPRIVATION WITHOUT DUE PROCESS -- STREET NARROWING -- DEPRIVATION OF CIVIL RIGHTS UNDER 42 USC SEC. 1983, AND RELATING TO THE "DUE PROCESS" CLAUSE OF THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION AS EXTENDED TO THE STATES UNDER THE FOURTEENTH; UNCONSTITUTIONAL DEPRIVATION OF PROPERTY UNDER THE MINNESOTA CONSTITUTION, ARTICLE I., SECTION 7; RESOLUTION NOT

AUTHORIZED UNDER M.S. 429.021 SUBD. 1(1).

XLVI.

Plaintiff incorporates, by reference, all of the foregoing.

XLVII.

The aforementioned resolution of the Bemidji City Council authorizing and directing street narrowing of Gemmell Avenue is detrimental to the Plaintiff and serves no valid public purpose. As such, it is arbitrary, capricious, and constitutionally unreasonable; and is invalid as it violates the Due Process clause of the Fifth Amendment to the U.S. Constitution, as extended to the states and their subdivisions by the Fourteenth Amendment, and for which relief is available under 42 USC Sec. 1983. Said resolution further constitutes a deprivation of property without due process as prohibited by Article I., Section 7, of the Minnesota Constitution. Further, said resolution is invalid as it exceeds the scope of authority vested in city councils by Minnesota Statutes Sec. 429.021 Subd. 1 (1); and as such is, further, without due process.

FOURTH CAUSE OF ACTION: DEPRIVATION WITHOUT DUE PROCESS -- CALENDAR PARKING -- DEPRIVATION OF CIVIL RIGHTS UNDER 42 USC SEC. 1983, AND RELATING TO THE "DUE PROCESS" CLAUSE OF THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION AS EXTENDED TO THE STATES UNDER THE FOURTEENTH; UNCONSTITUTIONAL DEPRIVATION OF PROPERTY UNDER THE MINNESOTA CONSTITUTION, ARTICLE I., SECTION 7.

XLVIII.

Plaintiff incorporates, by reference, all of the foregoing.

II.

The aforementioned resolution of the Bemidji City Council authorizing and imposing year around calendar parking on Gemmell Avenue is detrimental to the Plaintiff and serves no valid public purpose, particularly on a year around basis. As such, it is arbitrary, capricious, and constitutionally unreasonable; and is invalid as it violates the Due Process clause of the Fifth Amendment to the U.S. Constitution, as extended to the states and their subdivisions by the Fourteenth Amendment, and for which relief is available under 42 USC Sec. 1983. Said resolution further constitutes a deprivation of property without due process as prohibited by Article I., Section 7, of the Minnesota Constitution.

FIFTH CAUSE OF ACTION -- UNCONSTITUTIONAL TAKING -- IMPEDING OR CLOSING CUL-DE-SAC ACCESS -- DEPRIVATION OF CIVIL RIGHTS UNDER 42 USC SEC. 1983, AND RELATING TO THE "TAKINGS" CLAUSE OF THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION AS EXTENDED TO THE STATES UNDER THE FOURTEENTH; UNCONSTITUTIONAL TAKING UNDER THE MINNESOTA CONSTITUTION, ARTICLE I., SECTION 13.

L.

Plaintiff incorporates, by reference, all of the foregoing.

LI.

Defendant City of Bemidji has stated, through its Engineering Dept., that, as part of the overall 2019 Gemmell Ave. street work project, that it intends to impede access/egress to and from Gemmell Ave. via the dirt road at the South (cul-de-sac) end of said avenue; and may, at some future time, block said access/egress altogether.

LII.

The only other access and egress to and from Gemmell Ave. is at its North end, by way of its uncontrolled (except for a 2-way stop sign) intersection with Paul Bunyan Drive, a heavily traveled traffic artery, which has the right-of-way. Depending upon the time of day, it is often difficult to safely enter or cross this intersection from Gemmell Ave..

LIII.

Said impeding or blocking of said mode of access/egress (on the South end of Gemmell Ave.) is without valid public purpose.

LIV.

Said impeding or blocking of said mode of access/egress is detrimental to the Plaintiff, as 1) it deprives him of the convenience of said direct access/egress to and from points South; 2) it is a safety concern, as it deprives the Plaintiff (in a vehicle) of a way of crossing Paul Bunyan Drive at a semaphore-controlled intersection, which may be accessed via the said dirt road; and 3) it is further a safety issue, as, should some event, such as large tree falling across Gemmell Ave. (which has previously occurred during a storm), a fallen electrical cable, a vehicular accident, or other street blockage event occur; the residents on said Gemmell Ave., on the South side of said blockage, would have their vehicles trapped by said blockage, and would not have an alternate mode of vehicular egress (such as that that the dirt road now provides). Further, in such an event, emergency vehicles, utility line repair trucks, etc., might not have immediate access to homes on the blocked portion of Gemmell Ave., which could well include the Plaintiff's home (see Plaintiff's Exhibit 2, at p. 21, hereof).

LV.

The Defendant's threatened impeding or blockage of said access/egress would degrade the neighbourhood infrastructure, and degrade the use, safety, functionality, and probable value of the properties located on Gemmell Avenue, including property of the Plaintiff.

LVI.

The aforementioned actions of the Defendant are part of a continuing practice, policy and/or custom of the Defendant tending to degrade the Gemmell Avenue neighbourhood and the properties on Gemmell Avenue, including the Plaintiff's, as further detailed in para. XLIV., hereof.

LVII.

The said impeding or blocking of the connection of the said cul-de-sac with the dirt road, by the Defendant, is without valid public purpose. It is thusly constitutionally unreasonable and also constitutes a taking of private property for public use without just compensation as prohibited by the Fifth and Fourteenth Amendments to the U.S. Constitution; and for which relief is available under 42 USC Sec. 1983; and further constitutes a taking of private property for public use without just compensation first paid or secured as prohibited by Article I., Section 13, of the Minnesota Constitution.

LVIII.

The said impeding or blocking of the connection of the said cul-de-sac with the dirt road would result in irreparable harm to the Plaintiff in that some of the damage is to intangible assets, including but not limited to loss of quiet enjoyment of his home, and loss of convenience, functionality, safety, and use of same; as well as, to some extent, the probable value of same; and so the overall damage is difficult, if not impossible, to quantify and compensate; and the Plaintiff

has no adequate remedy at law other than the injunctive relief sought herein.

SIXTH CAUSE OF ACTION: DEPRIVATION WITHOUT DUE PROCESS -- IMPEDING OR CLOSING CUL-DE-SAC ACCESS -- DEPRIVATION OF CIVIL RIGHTS UNDER 42 USC SEC. 1983, AND RELATING TO THE "DUE PROCESS" CLAUSE OF THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION AS EXTENDED TO THE STATES UNDER THE FOURTEENTH; UNCONSTITUTIONAL DEPRIVATION OF PROPERTY UNDER THE MINNESOTA CONSTITUTION, ARTICLE I., SECTION 7.

LIX.

Plaintiff incorporates, by reference, all of the foregoing.

LX.

The aforementioned resolution of the Bemidji City Council authorizing the said impeding or blocking of access/egress at said cul-de-sac at the South end of Gemmell Avenue is detrimental to the Plaintiff and serves no valid public purpose. As such, it is arbitrary, capricious, and constitutionally unreasonable; and is invalid as it violates the Due Process clause of the Fifth Amendment to the U.S. Constitution, as extended to the states and their subdivisions by the Fourteenth Amendment, and for which relief is available under 42 USC Sec. 1983. Said resolution further constitutes a deprivation of property without due process as prohibited by Article I., Section 7, of the Minnesota Constitution.

LXI.

WHEREFORE, Plaintiff prays that this Court,

1. Issue a Declaratory Judgement finding that the Defendant's said proposed and threatened assessment upon the Plaintiff and his property, to the extent that it exceeds any benefit received by

the Plaintiff, by way of the Defendant's aforementioned 2019 Gemmell Ave. street, sewer and water project; constitutes an unconstitutional taking of private property for public use;

2. As a finder of fact, determine the amount of said benefit, if any, to Plaintiff and his said property, as a result of Defendant's said project;

3. Issue an order invalidating any assessment against Plaintiff or his property, that the Defendant has made, or would prospectively make, for said project; that exceeds said benefit;

4. Issue a Declaratory Judgement finding that the Defendant's passage of the said resolution authorizing the 2019 Gemmell Avenue street project, as it relates to street narrowing, year-around calendar parking, and impeding or closure of access/egress at the cul-de-sac is invalid, as it is arbitrary, capricious, and constitutionally unreasonable, and thusly violates due process; and further said resolution, as it relates to the street narrowing, is invalid as it exceeds the scope of authority vested in city councils by Minnesota Statutes Sec. 429.021 Subd. 1 (1); and further that the implementation of said resolution constitutes a constructive taking of private property for public use without compensation as prohibited by the U.S. and Minnesota Constitutions.

5. Issue a preliminary injunction enjoining the Defendants, and their agents, officers, employees, contractors, successors, attorneys and all those in active concert or participation with them, from:

a) Narrowing said Gemmell Avenue to less than its width as of June 1st, 2019, before the said construction started;

b) Imposing and enforcing calendar parking on said avenue; and

c) Impeding or blocking vehicular traffic, at the connection of the cul-de-sac with the said dirt road at the South end of Gemmell Ave.;

6. Issue a permanent injunction enjoining the Defendant from the said acts;

7. Issue an order requiring that the Defendant restore, at its expense, any damage, caused by them, to the pre-construction (i.e. as of June 1st, 2019) street width, and modes of access/egress of said Gemmell Ave.;

8. Should the order requested in para. 6, immediately above, not be found, by this Court, to be appropriate, and should said order thusly fail to issue; then, alternatively, to grant judgement for the Plaintiff in such amount as to compensate for any and all loss or damage, as enumerated in para. 6, immediately above, which is not restored by the Defendant;

9. Issue an order requiring that the Defendant restore, at its expense, any damage, caused by them, to the pre-construction (as of June 1st, 2019) curbs, gutters and driveway aprons attached to, or abutting the Plaintiff's property on Gemmell Ave.; or compensate the Plaintiff for said damage, in such amount as it appears to this Court as proper and just;

10. Grant judgement for the Plaintiff's costs of action; and

11. Grant judgement for such other and further relief as, to the Court, seems proper.

Dated: _____

Adam Steele, Plaintiff, pro se
P.O. Box 1132
Bemidji, MN 56619
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PLAINTIFF'S EXHIBIT 1



This is a photo, taken in early 2019, of Gemmell Ave., the street that the Defendant proposes to narrow by up to 5 feet. Contrast has been augmented to make the extent of the snow berms more visible. The grey car on the right is parked; the red SUV is in the lane of travel.

PLAINTIFF'S EXHIBIT 2

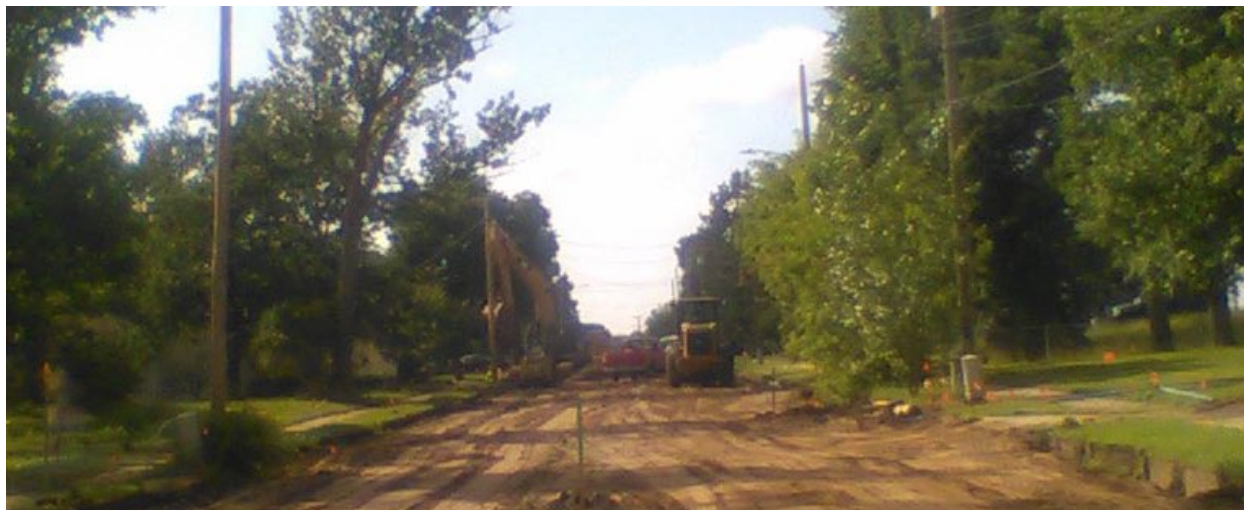


Photo of a total blockage on Gemmell Avenue. This one was due to the current construction, but the street has also been blocked by downed trees during a storm, and could be blocked by other causes. When these blockages occur, the only vehicular access/egress to and from the homes on Gemmell Ave., south of where the blockage occurs, is via the cul-de-sac at the south end of the street, which connects to a dirt road, which then connects to a city street (Clausen Ave.). If that access/egress were closed, those residents would, essentially, be trapped (for vehicular traffic) until the blockage was cleared. Under these circumstances, it would also be difficult for emergency vehicles, or utility repair trucks, etc., to reach the homes and utility lines on the part of the street south of the blockage.

PLAINTIFF'S EXHIBIT 3



These photos depict various views of the house and property at 200 Gemmell Ave., which was built only by way of the Defendant, the City of Bemidji, allowing severe variances as to required lot size, setbacks, etc.; over the objections of several Gemmell Ave. property owners, who voiced those objections at the public hearings on the variances. These photos were taken during the current street construction, but it is not uncommon for the owner, even at other times, to have 3 or more vehicles parked in the 2-car driveway and also on the lawn in front of the house. The lot was simply too small to have this house, its fenced yard, and all of these vehicles crammed into it; and the City of Bemidji's allowing it to be built, not conforming to zoning ordinances, degraded the Gemmell Ave. neighbourhood, and the other properties on it, the owners of which, including the Plaintiff, had reasonably relied upon enforcement of the zoning ordinances to protect the values of their properties, and the quality of their neighbourhood.

ADAM STEELE;

Plaintiff,

Case No. 19-CV-1620 JNE/LIB

v.

THE CITY OF BEMIDJI, MINNESOTA,
a municipal corporation;

other unnamed persons and
entities;

Defendants.

AFFIDAVIT OF PLAINTIFF IN
SUPPORT OF PRELIMINARY
INJUNCTION AND
PERMANENT INJUNCTION

ADAM STEELE deposes and says:

1. That he is a Plaintiff in the above entitled action.
2. That injunctions are sought, in the above-entitled action, to prevent irreparable damage from occurring and continuing.
3. Work is presently under way, pursuant to a resolution of Defendant's City Council, passed January 7th, 2019, on the Defendant's year-2019 Gemmell Ave. (in the City of Bemidji, Minnesota) street, sewer, and water project, as more fully described in the First Amended Complaint; however, as of the date of filing this Affidavit, the permanent street narrowing, imposition of calendar parking, and impeding or blocking of access/egress at the cul-de-sac have not yet occurred.
4. That the said work, authorized by said resolution, involves damaging, destroying or removing the pre-construction (as of June 1st, 2019) curbs, gutters, and driveway aprons on said Gemmell Ave.; permanently narrowing the street, and permanently impeding vehicular access/

egress to and from the said avenue at its south end (the cul-de-sac). Said resolution also authorizes the imposition of year-around calendar parking on Gemmell Ave. Prevention of damage to these items, and by extension, damage to the Plaintiff and his property, is the subject of the First Amended Complaint filed herein.

5. Prior to their being removed, Plaintiff requested, of the City of Bemidji Engineering Dept., that, specifically, the curbs, gutters, and driveway aprons abutting his property not be removed and replaced, but said request was denied, and said items were, by the Defendant, removed.

6. Said resolution (para. 3, above) is invalid in regard to the said street narrowing, calendar parking, and impeding or blocking of access/egress at the cul-de-sac, in that those portions of said resolution are arbitrary and capricious and serve no valid public purpose; and thusly violate the due process clauses of the U.S. (Fifth Amendment) and Minnesota (Art. 1 Sec. 7) Constitutions. Further, the part of the resolution authorizing street narrowing exceeds the lawful authority of said City Council under Minnesota Statutes Sec. 429.021 Subd. 1 (1), and said resolution is thusly invalid as pertains to that part of it.

7. Further, the implementation of said resolution in regard to the said street narrowing, calendar parking, and impeding or blocking of access/egress at the cul-de-sac would, constructively, effect a taking of private property for public use without compensation therefor, as prohibited by the Fifth Amendment to the United States Constitution, as well as Article 1, Sec. 13 of the Minnesota Constitution; in that it would result in a loss to Plaintiff's use of his property (i.e. his home), and the convenience, functionality, and safety of same as well as, to some extent, the probable value of same.

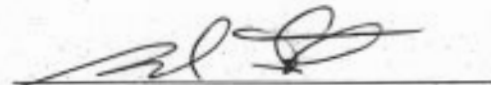
8. If the injunctions prayed for should fail to issue, the Plaintiff would be irreparably harmed

in that the said street narrowing, imposition of calendar parking, and impeding or blocking access/ egress to and from Gemmell Avenue via connection of the cul-de-sac at the south end of same with the dirt road; would result in damage to the Plaintiff, some of which is to intangible assets, including but not limited to loss of quiet enjoyment of his home, and loss of convenience, functionality, safety, and use of same; and so the overall damage is difficult, if not impossible, to quantify and compensate; and the Plaintiff has no adequate remedy at law other than the injunctive relief sought herein.

9. WHEREFORE, Plaintiff requests that this Court issue injunctions as prayed for in the First Amended Complaint, enjoining Defendant, The City of Bemidji, Minnesota, and its employees, agents, officers, contractors, successors, attorneys and all those in active concert or participation with them, from:

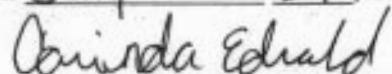
- a) Narrowing said Gemmell Avenue to less than its width as of June 1st, 2019, before the said construction started;
- b) Imposing and enforcing calendar parking on said avenue; and
- c) Impeding or blocking vehicular traffic, at the connection of the cul-de-sac with the said dirt road at the South end of Gemmell Ave.

Dated: July 24, 2019



Adam Steele, Affiant, P.O. Box 1132
Bemidji, MN 56619 (218) 759-1162
editor@northernherald.com

Subscribed and sworn to before me, on July 24, 2019.



Notary Public in and for the County of
Beltrami, State of Minnesota.

