

A06-0982

State of Minnesota
In Court of Appeals

Juris Curiskis,

Appellant

vs.

City of Minneapolis,

Respondent

APPELLANT'S INFORMAL BRIEF AND APPENDIX

Juris Curiskis, pro se, for Appellant
1199 Edlin Place
Minneapolis, MN 55416

Telephone No. 612-377-6153

Edward A. Backstrom, Assistant Minneapolis City Attorney, for Respondent
Attorney Registration License No. : 3803
333 South Seventh Street, Suite 300
Minneapolis, MN 55402

Telephone No. 612-673-2072

TABLE OF CONTENTS

SUBJECT	PAGE
TABLE OF CONTENT-----	1
STATEMENT OF ISSUE-----	2
STATEMENT OF CASE-----	3
STATEMENT OF FACTS-----	4
REFERENCE and COMMENT FOR SUPPORT DOCUMENTS-	5
LEGAL ARGUMENT-----	6 & 7
CONCLUSION-----	8
INDEX TO APPENDIX (ATTACHED SEPARATELY) -----	0
ORDER FOR SUMMARY JUDGMENT and MEMORANDUM -	1 - 7
CERTIFIED COPY OF CITY CHARTER CH. 10, SEC. 8-----	8 -10
CERTIFIED COPY OF CITY CHARTER CH. 10, SEC. 6-----	11-13
CERTIFIED COPY OF PUBLIC HEARING NOTICE -----	14 -17
APPEAL STAMPED “RECEIVED” BY MAYOR’S OFFICE-----	18
APPEAL STAMPED “FILED” BY CITY CLERK’S OFFICE-----	19
DATE CASE FILED WITH DISTRICT COURT-----	20

STATEMENT OF ISSUE

Is the City of Minneapolis entitled to a SUMMARY JUDGMENT based on a motion by the City Attorney citing Minneapolis City Charter Chapter 10, **Section 6** that the appellant did not file a written complaint prior to the public hearing and that the appeal to the Fourth District Court did not meet a filing deadline in spite of the MATERIAL FACTS presented by the appellant demonstrating that the City Attorney's motion was out of context with Section 6 and that the appellant had followed precisely the **applicable** Minneapolis City Charter Chapter 10, **Section 8** and the City's own directives for appeal requirements to District Court?

STATEMENT OF THE CASE

The Minneapolis City Clerk's Office notified the residents of the Bryn Mawr Neighborhood on April 19, 2005 that there will be a public hearing on May 3, 2005 about the scope, cost and special assessments for street renovation.

The appellant and other residents attended the public hearing. Number of issues were presented to the Minneapolis City Council Committee conducting the public hearing. None of the issues presented by the appellant and the other residents were acted upon by the City Council Committee and the special assessments for street renovation were forwarded to the full City Council for adoption. The public was not allowed to comment at the full City Council meeting. On May 13, 2005, **THE MINNEAPOLIS CITY COUNCIL ADOPTED THE SPECIAL ASSESSMENTS TO BE LEVIED ON INDIVIDUAL PROPERTY TAX STATEMENTS.**

The Minneapolis City Clerk's notification of April 19, 2005 also noted that If the residents are not satisfied, **after** the Minneapolis City Council action on the **SPECIAL ASSESSMENTS**, they have the option to appeal it to the Fourth District Court as follows:

FIRST

1. **Within 30 days AFTER** the Minneapolis City Council action, the residents must file an appeal **to the Mayor or City Clerk of Minneapolis.**

SECOND

2. Then, **AFTER serving the appeal to the Mayor or City Clerk of Minneapolis, within 10 days the residents must file it with the Fourth District Court.**

STATEMENT OF FACTS

The Minneapolis City Charter, chapter 10 **section 8**, states how a resident must appeal a City Council adoption of special assessments for street renovation. **It is the same as stated in the City Clerk's notification of April 19, 2005.** IT DOES NOT STATE THAT A WRITTEN APPEAL MUST BE FILED BEFORE THE PUBLIC HEARING. The precise language of **section 8** relating to the appeals process is as follows:

“ if after the City Council adopts the assessments, the owner of the property is dissatisfied with the assessment against the property the owner may appeal to district court by serving a notice upon the Mayor or the City Clerk within thirty days after the City Council has adopted the assessments and by filing the notice with the clerk of district court within ten days after its service”

1. City Council adopted the special assessments on May 13, 2005
2. Appellant filed an appeal with the Mayor & the City Clerk on June 10, 2005.
(that is within 30 days of May 13)
3. Appellant filed the appeal with the clerk of district court on June 20, 2005
(that is within 10 days of June 10)

The City Attorney used the City Charter Chapter 10 Section 6 to advance his argument for SUMMARY JUDGMENT that a formal appeal was not filed prior to the public hearing and that it was not served upon the district court within 30 days. Section 6 deals with the compensation assessments for taking, whole or part, of ones property by the City. **Section 6 does not apply to Special Assessments for street renovation, but Section 8 does.**

SUPPORT DOCUMENTS FOR STATEMENT OF FACTS and COMMENT

In the APPENDIX, the following documents support THE STATEMENT of FACTS:

1. Certified copy of Chapter 10 Section 8 of the Minneapolis Charter
(appendix pages 8-10)
2. Certified copy of Chapter 10 Section 6 of the Minneapolis Charter
(appendix pages 11-13)
3. Certified copy of the notice the City of Minneapolis sent to the residents
(appendix pages 14-17)

The above certified copies demonstrate that **SECTION 8** of the Minneapolis Charter has the same procedure for appeals as the notice that was sent to the residents.

However, in Section 6 the first sentence starts out as follows: “*Any person whose property is proposed to be taken,---*” Section 6 does not apply. This case is about special assessments for street maintenance and therefore **Section 8 applies**.

4. Appeal to City of Minneapolis **June 10, 2005** “stamped FILED and RECD”
(appendix pages 18-19)
5. Notice of Judicial Officer Assignment, Case Filed **June 20, 2005** in District Court
(appendix page 20)

Items 4 & 5, above, support that the appellant followed **Section 8** for filing an appeal with the District Court. Please note that the same dates, in item 4 & 5 above, are confirmed in Judge McShanes’s memorandum on page 4. In addition, it confirms that the City Council approved the special assessments on May 13, 2005. If Judge McShane had applied the same dates to **Section 8**, the Trial Court would not have had any jurisdictional issues.

LEGAL ARGUMENT

In granting the City of Minneapolis a SUMMARY JUDGMENT, Judge McShane writes the following CONCLUSION:

“Given the case law that statutes must be strictly construed and that proper filing of the appeal with the district court is jurisdictional, the Court lacks jurisdiction to hear the appeal. Appellant Curiskis failed to timely file his notice of objection prior to the public hearing and his notice of appeal with the District Court. Respondent City of Minneapolis’ Motion for Summary Judgment is granted and the appeal is dismissed with prejudice.”

Judge McShane bases his conclusion from the ANALYSIS portion of his memorandum. Starting at the bottom of page 5 and continuing to top of page 6, Judge McShane writes the following:

“ “ Juris Curiskis conceded, in response to the discovery. “There were no objections filed with the Minneapolis City Clerk’s office prior the adoption of of the assessments by Minneapolis City Council.” ”

Yes, the Appellant, Juris Curiskis stated in the response to the interrogatory, during the discovery period, that he had not filed an objection prior to the adoption of assessments by the Minneapolis City Council because the City Clerk’s notice of April 19, 2005 and Chapter 10, Section 8 of the Minneapolis Charter states that it must be filed, within 30 days, AFTER the adoption by the City Council with the City Clerk or the Mayor and not BEFORE.

Then Judge McShane continues with his analysis by writing the following:

"In addition, under Chapter 10. Section 6 of the City Charter, an appeal to the district court must be filed within 30 days of the confirmation of the assessments by City Council:"

Judge McShane was wrong in accepting the City Attorney's argument for Summary Judgment based on Section 6 because the notice from the City Clerk's Office, on April 19, 2005, specifically stated that the appeal to district court must be filed within 10 days after it has been filed with the Mayor or the City Clerk and that the filing with the Mayor or City Clerk must be within 30 days after the City Council adopts the assessments. The City Clerk's time line is identical to the Minneapolis Charter Chapter 10, Section 8..

In the last paragraph of his analysis, on top of page 7, Judge McShane concludes his analysis by writing the following:

" At the oral argument, Curiskis represented he tried to follow all the rules and did as he was told by various government personnel. The fact that Curiskis chose to represent himself pro se does not relieve him of the obligations set forth in the jurisdictional rules."

No transcript exists to verify what was said at the oral argument. However, Appellant's oral argument was not any different, in concept, from that of his BRIEF against the Summary Judgment and his written response to City Attorney's challenge, which is part of the Trial Court record on this case: **That record clearly demonstrated that Section 8 is the jurisdictional rule and not Section 6.**

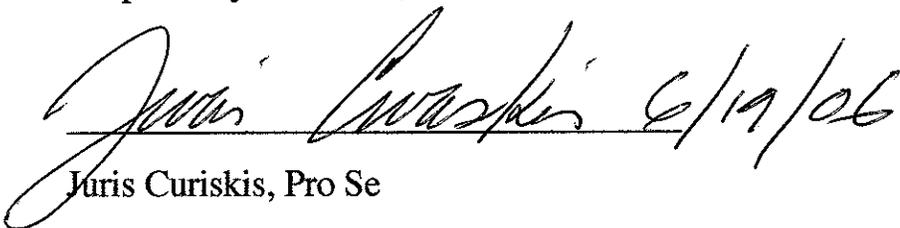
CONCLUSION

Minneapolis City Charter Chapter 10 deals with Special Assessments. There are Special Assessments for taking ones property for the public good and then there are Special Assessments for the infrastructure repair and maintenance. Section 6 of Chapter 10 deals with “taking of property” and Section 8 of Chapter 10 deals with “repair and maintenance”. The appeals process and time line are different for the two types of Special Assessments.

This case deals with Special Assessments for the repair and maintenance of the infrastructure. Hence, Section 8 applies and not Section 6. The certified copies from City Clerk’s Office of Section 6 & 8 as well as the Notice of the Public Hearing, clearly supports the fact that this case **falls under the jurisdiction of Section 8** because the requirements for filing an appeal to District Court are identical between Section 8 and Notice of the Public Hearing by the City of Minneapolis.

There is sufficient evidence that Chapter 10, Section 8 of the Minneapolis Charter applies to this case. The Appellant has complied with the requirements of Section 8. **Granting a Summary Judgment based on Section 6 is an error.** Therefore, the Trial Court should be reversed and directed to set the matter for trial.

Respectfully submitted,


Juris Curiskis, Pro Se

1199 Edlin Place

Minneapolis, MN 55416

Tel. 612-377-6153

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).