

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Timothy Burke, Chairman,
NoSportsplex.org,

Complainant,
vs.

PROBABLE CAUSE
ORDER

Bradley Meeks, Superintendent ISD
192, Aaron Tinklenberg,
Communications Specialist ISD 192,
and the ISD 192 School Board
Members,

Respondents

This matter came on for a probable cause hearing under Minnesota Statutes § 211B.34, before Administrative Law Judge Barbara L. Neilson on April 4, 2007, to consider a complaint filed by Timothy Burke, Chairman of NoSportsplex.org. The probable cause hearing was conducted by telephone conference call. The record closed at the conclusion of the probable cause hearing on April 4, 2007.

Timothy Burke, P.O. Box 51, Farmington, MN 55024 ("Complainant") appeared without counsel in his capacity as Chairman of NoSportsplex.org.

Sara J. Ruff, Attorney at Law, 1820 Xenium Lane North, Plymouth, MN 55441, appeared on behalf of Bradley Meeks, Aaron Tinklenberg, and the members of the School Board of Independent School District 192 ("Respondents").

Based on the record and all of the proceedings in this matter, including the Memorandum incorporated herein, the Administrative Law Judge finds that there is no probable cause to believe that the Respondents violated Minnesota Statutes § 211B.06.

ORDER

IT IS ORDERED:

That there is no probable cause to believe that Respondents violated Minnesota Statutes § 211B.06 as alleged in the Complaint, and therefore the Complaint is DISMISSED.

Dated: April 10, 2006

/s/ Barbara L. Neilson
BARBARA L. NEILSON
Administrative Law Judge

Tape recorded (two tapes); no transcript prepared.

NOTICE OF RECONSIDERATION RIGHTS

Minnesota Statutes § 211B.34, subdivision 3, provides that the Complainant has the right to seek reconsideration of this decision on the record by the Chief Administrative Law Judge. A petition for reconsideration must be filed with the Office of Administrative Hearings within two business days after this dismissal.

If the Chief Administrative Law Judge determines that the assigned Administrative Law Judge made a clear error of law and grants the petition, the Chief Administrative Law Judge will schedule the complaint for an evidentiary hearing under Minnesota Statutes § 211B.35 within five business days after granting the petition.

MEMORANDUM

This case concerns a proposed \$24 million bond referendum for the Farmington School District (ISD 192) to finance the construction of a "Sports and Wellness Center" adjoining the District's new High School. The special election on the bond referendum is scheduled to take place on May 8, 2007. The Complainant is the Chairman of a grass-roots organization opposed to the bond referendum called "NoSportsplex.org." The Complaint alleges that the Respondents prepared and disseminated false campaign material about the bond referendum in violation of Minnesota Statutes § 211B.06. Specifically, the Complaint alleges that the Respondents intentionally placed misleading information on the School District's website to suggest that the proposed bond referendum will finance more facilities than it actually will finance, and that failure to approve the referendum will result in the new High School not having any athletic or recreational facilities at all. The Complaint further asserts that the articles written by Respondent Meeks and Farmington High School principal Monica Kittock-Sargent misrepresented the scope of the proposed Center by commingling its proposed facilities with those already approved for the new High School.

Factual Background

The relevant facts in this case are undisputed. In February 2005, residents of the Farmington School District approved a bond referendum to finance the construction of a new High School, which included the following athletic and recreational facilities:

- Three-court competition gymnasium
- Indoor walking/jogging track
- 7,000 square foot fitness center (cardio exercise, dance/aerobics area)
- Weight training room

Wrestling room
Stadium field, track, field event spaces
Three softball fields
Two baseball fields
Eight outdoor fields (soccer, football, other uses)¹

The new High School is currently under construction. It is not scheduled to open until the fall of 2009.

On February 12, 2007, the School Board called for a special election to authorize an additional \$24 million bond referendum to finance the construction of the proposed Sports and Wellness Center. If the bond referendum is approved, the Center will be built next to and share a wall with the new High School. The proposed Sports and Wellness Center will have the following athletic and recreational facilities:

50 meter pool;
four-court auxiliary gymnasium;
hockey complex (2 sheets);
“Support bay”; and
outdoor amenities (Tennis, etc.).²

The Complainant asserts that information on the School District’s website devoted to the proposed Sports and Wellness Center incorrectly combines all of the already approved and financed recreation and athletic facilities of the new High School with those proposed for the new Center. The result, according to the Complainant, is that a voter viewing the School District’s website will be misled into believing that the proposed bond referendum will finance all of the athletic and recreational facilities listed, and will not realize that many of the facilities listed have already been financed by the 2005 bond referendum. Additionally, the Complaint asserts that a voter will also be misled into believing that the failure to pass the proposed bond will mean that the new High School will have none of the recreational and athletic facilities listed.

The specific information that the Complainant finds objectionable is contained in a document entitled “Farmington Sports and Wellness Center Proposal February 2007”³ (the “Proposal Document”), which was posted on the School District’s website from approximately late February to March 30, 2007. Prior to March 30, 2007, a visitor to the School District’s website (located at www.farmington.k12.mn.us) could view this document by selecting the “Sports and Wellness Center” icon on the District’s home page, which leads to the “Proposed Sports and Wellness Center” page. The “Proposed Sports and Wellness Center”

¹ Exs. 4 and 16.

² Exs. 1 and 3.

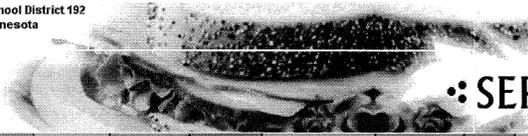
³ Ex. 4.

page is the main page on the School District's website devoted to the proposed bond referendum. This page was posted on the School District's website on or about February 13, 2007. The link to the Proposal Document is labeled "Project Overview." A scanned copy of the Proposed Sports and Wellness page with the Project Overview link appears below:

Independent School District 192
Farmington, Minnesota
(651) 463-5001



Farmington Public School
421 Walnut St.
Farmington, MI
(651) 463-5001



:: SERVICES ::

Home
District
Schools
Learning
Parents
Community Ed
Resources
News
Services
Site

SERVICES

- ▾ Buildings
- ▾ New High School Sports/Wellness
- ▾ Current Projects
- ▾ Legal Notices
- ▾ Contact Us
- ▶ Special Services
- ▶ Human Resource
- ▶ Health Services
- ▶ Food Service
- ▶ Finance
- ▶ Communications
- ▶ Technology
- ▶ Transportation
- ▶ District 192 Home

Proposed Sports and Wellness Center

General Information

On Feb. 12, 2007 the Farmington Area Public School Board called for a special election regarding construction of a proposed Sports and Wellness Center attached to the new high school. The proposed facility would include two sheets of ice, a 50-meter pool, a four-court auxiliary gymnasium and tennis courts.

These amenities would be accessible by the entire community, including school programs and teams, area youth and adult recreation programs, as well as individual users.

It's estimated that the project would cost \$24 million to construct and could be substantially completed in the fall of 2009, when the new Farmington high school opens. At that cost, taxes on a \$200,000 home would increase an estimated \$3.50 per month to repay to the bonds.

Project Information
The following documents are in .pdf format. They can be viewed with [Adobe Acrobat Reader](#).

[Project Overview](#)

[Estimated Tax Impact](#)

Operating Budget Projections/Estimations
(These will be updated soon to reflect recent commitments from the Farmington Youth Hockey Association)

[Review and Comment Materials](#)
(As presented to state Department of Education)

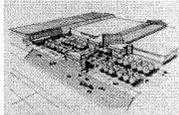
[Join the Discussion](#)

Upcoming Meetings
Check back soon

[Frequently Asked Questions](#) new

["The Classroom" online forum](#)

[Send a Question/Comment](#)



An architect's rendering of the ice rinks and pool components of the proposed Sports and Wellness Center shows its proximity to the west side of the new high school stadium.

LATEST HEADLINES

ANSWERS

PROJECT DETAILS

JOIN THE DISCUSSION

Latest Headlines

Feb. 13, 2007
[Board authorizes bond referendum for Sports and Wellness Center](#)

Jan. 12, 2007
[Board authorizes further consideration of Sports and Wellness Center](#)

Dec. 20, 2006
[School Board awards new high school construction contracts, considers recreation center proposal](#)

The Proposal Document, which visitors to the School District's website could view by selecting the "Project Overview" link, consisted of slides or graphics from a powerpoint presentation that was conducted by School District staff in February 2007.⁴ The Complaint focuses on three slides from this document

⁴ A video-recording of a February 12, 2007, School Board meeting at which the powerpoint was presented by John Summer is available on the School District's website at www.farmington12.mn.us/resources/02-12-07wmv and was received as Ex. 13 at the hearing.

located at pages 2-4. The first slide at issue, entitled "Proposed Facilities Overview," included among the facilities listed under the heading "Outdoor Facilities" some facilities that were approved as part of the new High School, such as the soccer/recreation fields, softball and baseball complex, and field and track spaces. The second slide at issue is a site plan depicting the new High School with its associated athletic facilities and the proposed facilities of the Sports and Wellness Center. The third slide at issue, also entitled "Proposed Facilities Overview," included among the facilities listed under the heading "Indoor Facilities" some facilities that were approved as part of the new High School, such as the 7,000 square foot fitness center, weight room, wrestling room, and 3-court competition gym.

The Complainant maintains that by commingling the already approved facilities of the new High School with the facilities of the proposed Sports and Wellness Center in the Proposal Document, the Respondents intentionally misrepresented the scope of the proposed bond referendum to voters in order to promote the referendum's passage in the upcoming special election. According to the Complainant, visitors to the School District website who viewed this document could easily have been misled into believing that all of the facilities listed are part of the proposed Center. The Complainant also asserts that Farmington High School principal Monica Kittock-Sargent and ISD 192 Superintendent Brad Meeks added to the confusion about the scope of the bond referendum by failing to distinguish between the facilities that are part of the new High School and those proposed for the Center in articles the two wrote in support of the referendum. These articles appeared in the *St. Paul Pioneer Press* and a local Farmington newspaper.⁵ As evidence of voters' confusion, the Complainant submitted copies of letters to the editor of the local Farmington paper in which persons supporting the referendum discuss the need for softball, soccer and baseball fields.⁶ These fields are already planned for the new High School and are not part of the proposed Sports and Wellness Center.

The School District argues that the purpose of the three slides at issue in the Proposal Document was to identify all of the athletic facilities that will be available at the new High School complex if the proposed Sports and Wellness Center is built. However, since the filing of this Complaint, the School District has made changes to the Proposal Document as posted on its website. After a focus group meeting composed of District staff and residents held in early March 2007, the School District decided to post a revised version of the Proposal Document on its website to distinguish more clearly between facilities included as part of the new High School and facilities proposed as part of the new Center. The revisions were prepared by approximately March 26, 2007, and were uploaded to the District's website along with other updated information on March 30, 2007.

The video-recording shows that Mr. Summer in his oral presentation acknowledged that some of the facilities listed on the indoor and outdoor facility slides (Ex. 4, pages 2 and 4) were included in the new High School project and others were part of the new Sports and Wellness Center proposal.

⁵ Exs. 9-11.

⁶ Ex. 12.

The Proposal Document, as revised, now specifically delineates which indoor and outdoor facilities are proposed as part of the Sports and Wellness Center, and which have already been approved as part of the new High School.⁷ The Complainant insists that even with these changes the document is misleading because it continues to improperly link the new High School facilities with those of the proposed Center.

During the probable cause hearing, counsel for Respondents pointed out that the School District's website accurately describes the scope of the bond referendum and proposed Sports and Wellness Center in numerous locations. For example, visitors to the School District's website⁸ who view the main "Proposed Sports and Wellness Center" page,⁹ can read several paragraphs about the proposed Center and bond referendum under the heading "General Information." In the first paragraph the School District states the following: "The proposed facility would include two sheets of ice, a 50-meter pool, a four-court auxiliary gymnasium, and tennis courts."

The "Proposed Sports and Wellness Center" page also includes a link entitled "Frequently Asked Questions." If a visitor clicks on the link "Frequently Asked Questions," he or she is brought to a page of questions and answers concerning the proposed Center and its costs. The first question on the page asks: "What facilities will be built if the bond referendum passes?" The School District's response to this question is:

A: Proposed to be built if voters approve the May 8 referendum are:

- Two-rink skating center
- 50-meter pool
- Four-court auxiliary gymnasium
- Tennis courts

The second question on this page is: "What athletic facilities are already being constructed at the new high school?" The School District's response to this question is:

A: The facilities that are already planned to be built at the new high school include:

- Three-court competition gymnasium
- Indoor walking/jogging track
- 7,000 square foot fitness center (cardio exercise, dance/aerobics area)
- Weight training room
- Wrestling room

⁷ Ex. 16 at 2 and 4.

⁸ Ex. 2.

⁹ Ex. 3.

- Stadium field, track, field event spaces
- Three softball fields
- Two baseball fields
- Eight outdoor fields (soccer, football, other uses)

All of this information has been consistently included in the District's website since approximately February 13, 2007. The "Proposed Sports and Wellness Center" page also has consistently included a link entitled "Latest Headlines." The headline under the date Dec. 20, 2006, is entitled "School Board awards new high school construction contracts, considers recreation center proposal." A website visitor who selects this headline link is brought to the article which indicates in pertinent part that the Board was considering an expanded community recreation center proposal to be developed in conjunction with the new High School that would include "two sheets of ice and a 50-meter pool." Similarly, if a visitor selected the headline under the date Jan. 12, 2007, entitled "Board authorizes further consideration of Sports and Wellness Center," the linked article indicates that the "proposed facility would include a two-sheet ice center, 50-meter pool, auxiliary gym space and tennis courts."

In addition, a visitor who selects the headline under the date Feb. 13, 2007, entitled "Board authorizes bond referendum for Sports and Wellness Center," is brought to a page discussing the bond referendum. The first paragraph of this page states: "Scheduled for May 8, the referendum will ask voters whether or not Farmington Area Public Schools should issue building bonds to construct the facility, which will also include two ice rinks, a 50-meter swimming pool, a four-court auxiliary gymnasium, and eight tennis courts." And finally, even the disputed Proposal Document, which visitors to the District's website can view by selecting the "Project Overview" link, contains information in the financial information section about the bond specifications that clearly identifies the scope of the proposal to include only "rinks/pool, aux. gym, tennis courts."¹⁰

Legal Analysis

The purpose of a probable cause hearing is to determine whether there are sufficient facts in the record to believe that a violation of law has occurred as alleged in the complaint.¹¹ The Office of Administrative Hearings looks to the standards governing probable cause determinations under Minn. R. Crim. P. 11.03 and by the Minnesota Supreme Court in *State v. Florence*.¹² The purpose of a probable cause determination is to answer the question whether, given the facts disclosed by the record, it is fair and reasonable to require the respondent to go to hearing on the merits.¹³

¹⁰ Ex. 4 at 12.

¹¹ Minn. Stat. § 211B.34, subd. 2.

¹² 239 N.W.2d 892 (Minn. 1976); see also Black's Law Dictionary 1219 (7th ed. 1999) (defining "probable cause" as "[a] reasonable ground to suspect that a person has committed or is committing a crime.")

¹³ *Id.*, 239 N.W.2d at 902.

Minn. Stat. § 211B.06 prohibits a person from intentionally participating in the “preparation, dissemination, or broadcast” of campaign material with respect to the effect of a ballot question that is designed or tends to promote or defeat a ballot question, and which the person knows is false or communicates to others with reckless disregard of whether it is false. Information on the School District’s website concerning the bond referendum meets the statutory definition of “campaign material.”¹⁴

In order to be found to have violated section 211B.06, two requirements must be met: (1) a person must intentionally participate in the preparation or dissemination of false campaign material; and (2) the person preparing or disseminating the material must know that the item is false, or act with reckless disregard as to whether it is false. The term “reckless disregard” was added to the statute in 1998 to expressly incorporate the “actual malice” standard applicable to defamation cases involving public officials from *New York Times v. Sullivan*.¹⁵ Based upon this standard, the Complainant must prove by clear and convincing evidence that the Respondents either published the statements knowing the statements were false, or that they “in fact entertained serious doubts” as to the truth of the publication or acted “with a high degree of awareness” of its probable falsity.¹⁶ In addition, the burden of proving the falsity of a factual statement cannot be met by showing only that the statement is not literally true in every detail. If the statement is true in substance, inaccuracies of expression or detail are immaterial.¹⁷

As discussed more fully below, the Administrative Law Judge concludes, after considering all of the evidence in the record and the arguments of the parties at the probable cause hearing, that the Complainant has failed to present sufficient facts to support a finding of probable cause that the Respondents violated Minn. Stat. § 211B.06.

A. Intentional Participation Requirement:

As an initial matter, the Complainant put forward no evidence to support his claim that either Superintendent Meeks or the ISD 192 School Board members had any involvement in preparing or disseminating the Proposal Document that is at issue in this case. Instead, the evidence supports finding only that Respondent Tinklenberg, who maintains the School District’s website as part of his duties as Communications Specialist, was directly involved in either preparing or disseminating the Proposal Document slides at issue. Because there is no evidence suggesting that Respondents Meeks or the ISD 192 School Board members intentionally prepared or disseminated the Proposal Document, this allegation in the Complaint must be dismissed as against them.

¹⁴ Minn. Stat. § 211B.01, subd. 2.

¹⁵ *New York Times v. Sullivan*, 376 U.S. 254, 279-80 (1964).

¹⁶ See *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968); *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964); see also *Riley v. Jankowski*, No. A051125 (Minn. App. Apr. 26, 2006).

¹⁷ *Jadwin v. Minneapolis Star and Tribune Co.*, 390 N.W.2d 437, 441 (Minn. App. 1986).

B. False Statement of Fact/Reckless Disregard Requirement:

Minn. Stat. § 211B.06 is directed against false statements of fact and not against unfavorable or misleading inferences.¹⁸ In this case, the Complainant has alleged that three pages of a 15-page document entitled “Farmington Sports and Wellness Center Proposal February 2007”¹⁹ that was linked to the School District’s website contained factually false statements. Specifically, the Complainant argues that including the already approved and financed indoor and outdoor facilities of the new High School along with the proposed Center facilities under the heading “Proposed Facilities Overview” rendered the information contained in those lists false. In addition, the Complainant has alleged that the inclusion of a site plan in the Proposal Document showing both the proposed facilities that would be built under the upcoming referendum as well as the facilities to be built as part of the new High School amounted to the dissemination of false campaign material.

The first three pages of the Proposal Document at issue here discuss the facilities and include a site plan of the new High School *complex* with the proposed Sports and Wellness Center attached. It is clear that these three pages of the Proposal Document are presenting information as to what the entire High School complex would look like if the Sports and Wellness Center were built. Given that neither the new High School nor the Center has been constructed, the slides described the combined facilities of the buildings in the complex as proposed. While including all of the facilities in a document entitled “Farmington Sports and Wellness Center Proposal” under the heading “*Proposed Facilities*”²⁰ may have rendered this information somewhat confusing or even misleading, it did not render the information factually false. The slides must fairly be viewed in the context of the entire Proposal Document (which included an accurate description of the scope of the proposed Center in the financial section) and in the context of the School District’s website as a whole (which contains repeated and accurate references to the facilities encompassed in the upcoming referendum). Viewed in proper context, it is evident that the challenged portions of the Proposal Document are, at most, misleading and do not rise to the level of false campaign material. The vast majority of the information on the School District’s website accurately describes the scope of the bond referendum and the proposed Sports and Wellness Center. Combining the athletic facilities of the new High School and the proposed Center in two lists contained in a larger powerpoint presentation is insufficient to render the School District’s information false campaign material.

The Administrative Law Judge also finds that the Complainant has failed to make an adequate showing that there is probable cause to believe that factually false information was contained in the site plan included in the Proposal Document²¹ and in the revision to that document.²² The site plan simply reflects the architect’s view of where the proposed facilities would be located within the overall new High School complex, and includes labels of all of the various athletic

¹⁸ *Kennedy v. Voss*, 304 N.W.2d 299 (Minn. 1981).

¹⁹ Ex. 4.

²⁰ Emphasis added.

²¹ Ex. 4 at 3.

²² Ex. 16 at

and recreational facilities. As such, there has not been a showing that the site plan contains false information.

But even if the Complainant's view is correct that the lists of facilities for the proposed Center and the site plan contained in Exhibit 4 are factually false because many of the facilities are already approved and not "proposed" as part of the Center, the Complainant has failed to put forward any evidence beyond his own assertion to support his claim that the Respondents knew the information was false or communicated the information while subjectively believing it was probably false. Although the School District conceded that combining the listing of the facilities potentially could have caused confusion, there is nothing in the record to support a finding that the Respondents knew the combined facility listings were factually false when they posted the document on their website, or that they posted the document while entertaining serious doubts as to the truth of the lists. Instead, the evidence in the record points to a contrary conclusion. The vast majority of the School District's website contains factually accurate information about the proposed Center and reflects the considerable efforts made by the Respondents to correctly delineate the facilities and identify the scope of the proposed bond referendum. Accordingly, the Administrative Law Judge finds that the Complainant has failed to make a sufficient showing to support finding probable cause that the Proposal Document contained false campaign material and that Respondents knew it contained false material or disseminated it with reckless disregard as to whether the material was false.

The Complainant also suggested that two opinion articles written by Respondent Meeks were misleading because they avoided any mention of facilities to be built as part of the upcoming referendum and asserted that this further reflected the Respondents' overall attempt to mislead voters by commingling the facilities associated with the new Center and those approved for the new High School. The Complainant did not allege that any specific statements in these articles were false. For the most part, the two articles written by Dr. Meeks merely expressed his support for the upcoming referendum in the context of a general discussion about academic and athletic values and the opportunity offered by the referendum for members of the community to decide what kinds of facilities they want. He did not mention any particular facilities that would be built if the referendum passed, but he did generally express his opinion that, "[w]ithout some additional physical education spaces, there will be less opportunity for students than at the current high school (five gyms at the current FHS and three at the new FHS)."²³ The Administrative Law Judge finds that there has been no showing that false or misleading statements are contained in these articles.²⁴

Finally, the Administrative Law Judge finds the Complainant's contention that the revised version of the "Farmington Sports and Wellness Center" document (Exhibit 16) remains misleading despite the changes made by the School District

²³ Ex. 10.

²⁴ A third article provided by the Complainant that was written by Ms. Kittock-Sargent (the high school principal) specifically supported the building of additional gyms, a pool, and ice rinks—all amenities that are, in fact, included as part of the proposed Sports and Wellness Center. Ex. 9.

to be without merit. The School District changed pages 2 and 4 of the document by specifically delineating which facilities would be built for the Sports and Wellness Center if approved, and which facilities were already included with the new High School. As a result of these changes, there is nothing written on either page that could arguably be viewed as false material. Complainant's continued objection to any linkage of the two projects is insufficient to form the basis of a claim under Minn. Stat. § 211B.06.

Because the Complainant has failed to put forward sufficient evidence to find probable cause to believe that the Respondents committed a violation of Minnesota Statute § 211B.06 as alleged in the Complaint, it is not fair or reasonable to require the Respondents to go to hearing on the merits. Accordingly, the Complaint in this matter is dismissed. Respondents' request that the Complaint be found to be frivolous, however, is denied as the Complaint was supported by good faith argument and had a sufficient basis in law to survive initial *prima facie* review.

B. L. N.