

TO: CITY COUNCIL
THROUGH: CITY MANAGER
FROM: CITY ATTORNEY
DATE: MAY 12, 2008



City of West Saint Paul

SUBJECT:

Alice Krengel appeal

CITY COUNCIL ACTION REQUESTED:

Consider supporting petitioning the Supreme Court for review

BACKGROUND INFORMATION:

As you know, on May 6, the Court of Appeals overturned the District Court's injunction against Alice Krengel. The Court determined that the City did not meet the technical requirement in the statute of having two nuisance violations occur within 12 months of the injunction hearing.

The Court's opinion is published, meaning it has statewide impact on the public nuisance statute. The League's attorney who represented the City supports asking the Supreme Court to review the case. The League's general counsel, Tom Grundhoefer, also offered these words:

I frankly think the opinion is unjustifiably narrow in its interpretation of the public nuisance statute. To me, the triggering event needs to be the notice of violation. It seems a bit absurd to say the validity of the action is dependent upon the timing of when you're able to get into court on the temporary injunction. I'd actually support a PFR. [Petition for Review from the Supreme Court]

The City's responsibility is to pay for 15% of the appeal. The City has already met the \$20,000 deductible so any additional costs, up to \$250,000 are paid for by the LMCIT, except for the 15% co-pay. Therefore, the outside risk is \$37,500 and that is only if the litigation costs reach \$250,000, which is unlikely. The total litigation costs so far total only \$27,000.

The City must seek a Petition for Review within 30 days of the Court of Appeals' decision. Based on the precedential nature of the case, as well as the implication that there may be a damages claim in process, I would recommend authorizing the League to file the Petition for Review. The law firm of Jardin, Logan, O'Brien represented the City very well at the Court of Appeals and I would further recommend that they be engaged to pursue the Petition.

Timeline:

Petition for Review must be filed by June 5

RECOMMENDATION:

Add to the Council agenda the authorization of the LMC to file a Petition for Review in the Alice Krengel matter