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REPLY TO BLUE EARTH OFFICE

October 1, 2015

SENT VIA EMAIL AND U.S. MAIL

Mr. Troy Timmerman
Faribault County Attorney
P.O. Box 5
Blue Earth, MN 56013

RE: Parking Issue
Our File No.: 3277.01

Dear Mr. Timmerman:

At your request, I have examined the issue of the County's potential liability exposure in the event that it were to authorize a design which features angled parking on two blocks of County State Aid Highway Six (better known as Main Street in the City of Blue Earth) when the street undergoes reconstruction next year. It is my understanding that the area that we are concerned with is Main Street between Fifth and Seventh Streets, which is the part of Main Street which currently features angled parking.

BACKGROUND

My understanding of the background of this issue is as follows. A plan for the reconstruction of Blue Earth's Main Street has been in the works for several years. During the planning stages, it was determined that, due to present building locations, there would not be enough room for angled parking in the area in question due to the requirements of Minnesota Rules part 8820.9961, which sets minimum design standards for 45-degree and 60-degree pull-in diagonal parking. On May 22, 2014, Faribault County and the City of Blue Earth submitted a request for variance to the Minnesota Department of Transportation (MnDOT) which sought two variances from the requirements of part 8820.9961: (1) to allow a two foot distance between the traffic lane and the 45-degree parking stalls rather than the required 14 feet; and (2) to allow an 18-foot parking stall depth rather than the

* Fied Neutral under Rule 114 of Minnesota General Rules of Practice

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required 20-foot depth. The variance request package was submitted by then-County Engineer John McDonald, which included a required resolution from the County Board of Commissioners that the County would defend and indemnify the State for any action brought against the State based upon its granting of the variance. On June 24, 2014, MnDOT advised Mr. McDonald in writing that the variance request was approved based upon recommendations of the June 19, 2014 State Aid Variance Advisory Committee.

As I understand it, at the time that the variance request was submitted to MnDOT, there had not been a final decision made by the City or the County as to what type of parking configuration was preferred, but that the variance was sought so that angled parking could be an option to consider. I further understand that, at this time, the City of Blue Earth Street Committee is recommending a plan that includes angled parking in the area in question, but current County Engineer Mark Daly is recommending against this plan, citing a number of safety concerns as well as a concern regarding the County's potential liability exposure, with emphasis on the indemnification agreement with the State.

I also understand through a conversation with Mr. Daly that if angled parking is chosen, there could be difficulties complying with the Americans with Disabilities Act (ADA) with respect to the sidewalks in this area due to the reduced sidewalk widths, slope requirements, etc. Please understand that I am not offering any opinions or conclusions with respect to ADA compliance on the sidewalks at this time, as I do not have any information with respect to the sidewalk plans and I consider this issue to be outside the scope of my assignment. I am also not able to delve into ADA issues at this time and keep my billing within the range of the quote that I gave you for this assignment.

LEGAL ANALYSIS

Minnesota Statutes, Section 160.02 authorizes MnDOT to promulgate rules and design standards relating to county state aid highways throughout the State. Subdivision 3a of this statute authorizes MnDOT to grant variances to these rules and design standards based upon a written request from a political subdivision, which is what occurred in this case. Under MnDOT agency rule (part 8820.3300, subpart 3), the recipient of the variance must agree to defend and indemnify the State in any legal action brought against the State as a result of the granting of the variance. The County did provide such an indemnification agreement in this case. Therefore, in determining the County's potential liability exposure for accidents based upon an angled parking configuration, both the State's and the County's potential liability must be considered.

Under Minnesota Statutes, Section 3.736, Subdivision 3(b), the State is immune from suit for a loss caused by the performance or failure to perform a discretionary duty, whether or not the discretion is abused. Counties and other municipalities enjoy the same or similar immunity under Minnesota Statutes, Section 466.03, Subdivision 6. This statutory discretionary immunity has been interpreted numerous times by the Minnesota Supreme Court to prohibit judicial second-guessing of policy decisions made by governmental entities. This immunity is extended when there has been a planning-level decision on the part of the government entity; that is, social, political, or economic considerations have been evaluated and weighed as part of the decision-making process. See, for example, Schroeder v. St. Louis County, 708 N.W.2d 497, 504 (Minn. 2006).

Under Minnesota Rules parts 8820.3300 and 8820.3400 (MnDOT agency rules), MnDOT is to consider the following factors in determining whether to grant a variance: (a) economic, social, safety, and environmental impacts which may result from the requested variance; (b) effectiveness of the project in eliminating an existing and projected deficiency in the transportation system; (c) effect on adjacent lands; (d) number of persons affected; (e) effect on future maintenance; (f) safety considerations as they apply to pedestrians, bicyclists, motoring public, and fire, police, and emergency units; and (g) effect that the rule and standards may have in imposing an undue burden on a political subdivision. MnDOT may appoint an advisory committee to investigate these factors and make a recommendation, which it did in this case. While I have not seen any detailed written findings by MnDOT or the advisory committee with respect to this variance request, I can only assume that MnDOT followed its own agency rules and considered the seven factors listed above in rendering its decision on the variance request. These factors are clearly social, political and economic considerations. Therefore, it is my opinion that a lawsuit against the State as a result of the granting of this variance would most likely be easily defended on discretionary immunity grounds.

The next question to be addressed, then, is whether the County could face liability in the event of an accident for its role in the design of a road which deviates from MnDOT design specifications for parking. If I understand the debate correctly, the justifications which have been offered for angled parking in the area in question is the perception that angled parking would be better for the economic vitality of downtown Blue Earth, and that it seems to be preferred by most business owners and users of Main Street. These are clearly social, political and economic factors. Therefore, it is my opinion that if the County Board were to authorize angled parking in this area and properly document the fact that these social, political and economic factors were considered, then a lawsuit against the County as a result of this design decision would most likely be easily defended on discretionary immunity grounds. There are many examples of decisions that government entities have to make in which safety is weighed against political and economic considerations, and these are precisely the types of policy decisions which are protected by discretionary immunity.

Despite the fact that I believe the risk of liability exposure to the County would be low if it were to approve angled parking due to a discretionary immunity defense, it does seem a bit counter-intuitive to me that the County would be assuming all of the risk for a decision to utilize angled parking, when it is the City of Blue Earth that wants this parking configuration. I would suggest that, if the County Board chooses to authorize angled parking, it should first require that the City of Blue Earth sign an agreement to defend and indemnify both the State and the County in the event of a claim relating to the deviation from State design specifications. This would not eliminate the risk of a lawsuit, but if there ever was such a suit, then at least the County could try to tender the defense of the case to the City based upon the indemnity agreement.

CONCLUSION

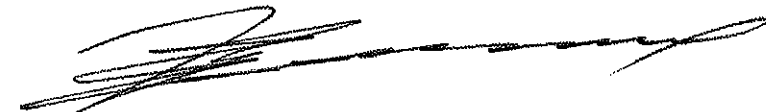
It is my opinion that, in the event that the Faribault County Board of Commissioners were to approve a plan for 45-degree angled parking on County State Aid Highway Six (or Main Street in Blue Earth) between Fifth and Seventh Streets, the risk of liability to the County would be low due to what would be strong discretionary immunity defenses for both the State and the County, so long

as the social, political and economic considerations which were weighed by the Board in arriving at that decision were properly documented. If the Board does wish to authorize angled parking, I would recommend that the County procure a promise from the City of Blue Earth to defend and indemnify both the State and the County, since it is the City of Blue Earth which desires and benefits from the angled parking.

Please also take note of my comments above relating to ADA compliance issues with the sidewalks.

Feel free to contact me should you or the Board have any further questions regarding this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Joseph M. Bromeland". The signature is stylized and somewhat cursive, with a long horizontal stroke extending to the right.

Joseph M. Bromeland
FOR THE FIRM