

April 3, 1987

Mr. Bob Peterson,
Councilman
White Bear Lake, Minnesota

Dear Rob:

As you know, I am the acting president of the Cottage Park Homeowners Association. I have discussed your letter of March 23, 1987 with a number of directors on the Association as well as homeowners. We would like to make a written response to your letter.

Perhaps the biggest concern which most of us have with your letter is that it contains certain assumptions and statements which need to be clarified. It would also seem from the tone of your letter that you have already reached a conclusion on your issue, and your letter is more an expression of your own opinion rather than a desire to objectively obtain the input from other homeowners. We hope you are willing to get additional input before you reach any conclusions.

Your letter also contains several legal statements. Because of that, I have discussed this in some detail with Denny Trooien, who you know is an experienced real estate lawyer and has had many, many hours of involvement in the Park A question. He has indicated to me the following:

1. The letter which you attached from William Manley is dated June 7, 1983. Neither Denny nor any of us have ever seen that letter until recently. In any case, that letter was drafted at a time when there was only a "proposed" stipulation of settlement. In fact, on October 18, 1983 the City of White Bear Lake executed a settlement stipulation. Thus, the present status in April of 1987 is that there is a final stipulation already recorded with the County Recorder (document number 2219607).

Thus, any issue as to whether the easement should run in favor of the individual lot owner or the Homeowners Association was resolved long ago back in 1983 that it run in favor of the Association.

Denny cannot stress enough that this matter has already been finally resolved, and there is no "proposed settlement". The only matter which remains are some very technical procedural aspects of the settlement, including the correction of an oversight committed by the City of White Bear Lake. The substance of the lawsuit and the rights of all homeowners are merged into it.

2. You indicate that if the Association becomes inactive the interest in Park A "could be lost".

Mr. Manley must have assumed that the Homeowners Association was a temporary political group. In fact, the Homeowners Association is a duly incorporated non-profit corporation under the laws of the State of Minnesota and has perpetual existence. It is not a temporary association.

3. Your letter states "as it now stands everyone who owns property in Cottage Park has the free and unrestricted use of the common park area regardless of membership or non-membership in any Homeowner Association". This statement is absolutely false. That was the entire substance of the lawsuit which was brought by the City of White Bear Lake, which was settled pursuant to the stipulations of October, 1983 that granted the easement to the Association. Several of the reasons that the easements were run in favor of the Association were: (1) Any well organized neighborhood that has a common amenity should have a Homeowners Association (e.g. like condominiums and townhouses which have common amenities such as swimming pools, tennis courts, etc.), (2) that there is a democratic way of resolving individual disputes, (3) and there was a concern that because the City already was a "landowner" and could be a future "landowner" of additional lots in Cottage Park, that the City would argue that it had the right as a "landowner" to likewise use Park A for public purposes.

4. You indicate that "several homeowners funded the litigation of this lawsuit and it was their expectation that the resolution would retain their rights in this land as property owners." Again, that seems to be inconsistent with the facts. It was the Homeowners Association, not any individual property owners, which collected the pledges for legal fees, retained Mr. Daubney (there is a written retainer agreement between Mr. Daubney and the Homeowners Association to which Mr. Arth consented), and it was the Homeowners Association which ultimately resolved and compromised the matter with the City of White Bear Lake.

5. There were basically two sets of homeowners involved in the lawsuit: those who did not answer the lawsuit and defaulted (their rights were automatically terminated), and those homeowners which answered the lawsuit (such as Trooien, Butcher, Arth, Mooney, Fritz and Reichuber). These non-defaulting homeowners expressly consented and signed a document approving the stipulation that granted the easement in favor of the Association. In other words, Trooien, Reichuber, Mooney, Fritz, etc. and including Mr. Arth expressly agreed, with the advice of Mr. Daubney, to the 1983 compromise that granted certain easements to the Homeowners Association and certain other easements to the City of White Bear Lake.

Bob, we think fairer questions to the homeowners in the neighborhood would be a vote on the following:

1. Should all homeowners enjoy the Park (we think yes).
2. Should use of the Park be a "free for all" (i.e. cut down trees, put your dock wherever you want and let non-residents dock their boats) or should it be orderly and fair? (we think orderly and fair).
3. Does a democratic Homeowners Association result in more fairness and order than if it is a "free for all" where the best (or biggest) person wins? (we think a democratic association is better)

Very truly yours,


Pattie Butcher.