

# HINSHAW

& CULBERTSON LLP

December 29, 2011

Ellen J. Schanzle-Haskins, Chief Counsel  
Illinois Department of Transportation  
2300 S. Dirksen Parkway, Suite 300  
Springfield, IL 62764

John J. George  
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20 S. Clark Street  
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**ATTORNEYS AT LAW**

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Alan L. Farkas  
SmithAmundsen Aerospace  
150 N. Michigan Avenue  
Chicago, IL 60601

Re: *Streeteroville Organization for Active Residents vs. Illinois Department of Transportation, et al.*, Cook County No. 2011 L 51471

Dear Counsel:

Enclosed is the motion to stay, a notice of motion setting it for hearing on January 10, 2011 at 1:00, and an alias summons because the prior summons to IDOT contained the wrong zip code. Ellen graciously agreed to overlook the zip code issue because mail is making it to her desk, but I thought it worthwhile to correct this.

We will be filing a memorandum in support of the motion to stay which will elaborate on the grounds for a stay.

Should you have any questions, please do not hesitate to call me at 312/704-3261. Thank you.

Very truly yours,

HINSHAW & CULBERTSON LLP



Nancy G. Lischer  
[nlischer@hinshawlaw.com](mailto:nlischer@hinshawlaw.com)  
312/704-3261

NGL

cc: Susan Shea, Ph.D. Director  
Richard S. Porter

Enclosures

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

Streeterville Organization for Active Residents,

*Plaintiff,*

vs.

Illinois Department of Transportation, IDOT  
Director Susan Shea, Ph.D., and Children's  
Memorial Hospital,

*Defendants.*

No. 11-~~001~~-51471

**NOTICE OF MOTION**

TO: See Attached Service List

PLEASE TAKE NOTICE THAT on January 10, 2012, at 7:00 pm, as soon thereafter as counsel may be heard, I shall appear before the Honorable Daniel Gillespie, in Courtroom 2607, or any Judge sitting in his stead, in the courtroom usually occupied by him in the Richard J. Daley Center, Chicago, Illinois, and then and there present **Plaintiff's Motion to Stay**, a copy of which is herewith served upon you.

HINSHAW & CULBERTSON LLP

By: *Nancy Lischer*

One of Its Attorneys

Nancy G. Lischer  
HINSHAW & CULBERTSON LLP  
222 N. LaSalle, Suite 300  
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**PROOF OF SERVICE**

I, a non-attorney, certify that I served this Notice of Motion with attachment(s) by U.S. Mail to the person(s) listed herein, on the 29th day of December, 2012, before 5:00 p.m. at 222 N. LaSalle Street, Suite 300, Chicago, Illinois 60601 with proper postage affixed.

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth herein are true and correct.

*Nancy Lischer*

**SERVICE LIST**

Illinois Department of Transportation  
ATTN: Ellen J. Schanzle-Haskins, Chief Counsel  
2300 S. Dirksen Parkway, Suite 300  
Springfield, IL 62764

Susan Shea, Ph.D., IDOT Director  
Illinois Department of Transportation  
2300 S. Dirksen Parkway  
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*(Attorneys for Children's Memorial Hospital)*

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

Streeterville Organization for Active Residents,

*Plaintiff,*

vs.

Illinois Department of Transportation, IDOT  
Director Susan Shea, Ph.D., and Children's  
Memorial Hospital,

*Defendants.*

No. 11-<sup>L</sup>51471

**PLAINTIFF'S MOTION TO STAY**

Plaintiff Streeterville Organization for Active Residents moves this Court for the entry of a stay pending resolution of administrative review pursuant to 735 ILCS 5/3-111(a)(1). In support, it states as follows:

1. On October 14, 2011, Defendant Illinois Department of Transportation rendered an administrative decision that its April 14, 2009, decision to grant a certificate of approval for Defendant Children's Memorial Hospital's proposed heliport would stand.

2. Section 3-111(a)(1) empowers this Court "to stay the decision of the administrative agency in whole or in part pending final disposition of the case." 735 ILCS 5/3-111(a)(1). Under §3-111, courts have "broad judicial discretion" to stay an administrative decision. *Ardt v. Illinois Dept. of Prof. Regulation*, 154 Ill.2d 138, 147, 607 N.E.2d 1226, 1230 (1992).

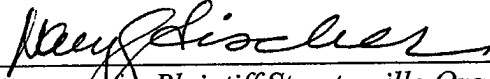
3. The Illinois Administrative Review Act explicitly provides that "good cause" for a stay is present where "(i) an immediate stay is required in order to preserve the *status quo* without endangering the public, (ii) it is not contrary to public policy, and (iii) there exists a reasonable likelihood of success on the merits." 735 ILCS 5/111(a)(1).

4. Here, all factors favor a stay of the administrative orders. First, an immediate stay is required in order to preserve the *status quo* (i.e., no flights are being made in and out of the heliport at the new hospital, which does not open until June 9, 2012) without endangering the public. Second, a stay would promote the clear public policy of protecting the safety of the citizens of the State, see 735 ILCS 5/25 (purposes of the Illinois Aeronautics Act include “promotion of safety in aeronautics”); further, even if the stay continued to remain in effect after June 2012, it would not endanger any patients because the new hospital will be able to conduct medical air transport at the Dime Pier heliport located 0.8 of a mile from the hospital pursuant to a Plan Development approved by the Chicago City Council. (IDOT Doc. 65, Tr. pp. 29-32, Testimony of Alderman Brendan Reilly.) Among other evidence showing the safety problems posed by the heliport, experts have testified that unpredictable wind patterns among nearby highrises make flights in and out of the heliport unreasonably dangerous, that there are insufficient emergency landing areas, that an escape route for aborted landings identified by the hospital leads directly into Water Tower Place (a substantially taller high rise proximate to the heliport), and that the proposed automated weather system (AWOS) will actually provide misleading information for the predominant wind direction. The IDOT order even explicitly acknowledged that the AWOS needed further testing for accuracy at this location. Therefore, the only way to protect the public safety is to stay the IDOT orders.

5. Third, the Plaintiff has a reasonable likelihood of success on the merits of its claim that Defendant Illinois Department of Transportation misinterpreted both the Aeronautics Act and the Administrative Review Act in rendering its decision. Among other things, the Plaintiff will show that the Department misapplied the Aeronautics Act

by limiting its analysis to only nine factors set forth in the Act while ignoring the additional requirement that the Department *shall* consider “such other factors as ... [have] an important bearing thereon,” 620 ILCS 5/48 (2011), which surely include safety, and violated the Administrative Review Act by shifting the burden of proof in the hearing from Children’s Memorial Hospital to SOAR, 5 ILCS 100/10-15 (2011) (applicant is required to establish its case by “preponderance of the evidence”). These errors, and others, create a “fair question as to the likelihood of success on the merits,” which is all that is required to meet the third factor. *Markert v. Ryan*, 247 Ill.App.3d 915, 917, 617 N.E.2d 1373, 1375 (4<sup>th</sup> Dist. 1993).

For the foregoing reasons, and as more fully set forth in the Memorandum of Law to be submitted by the Plaintiff and incorporated herein, Plaintiff asks this Court to stay the administrative orders pending resolution of administrative review and for such other relief as this Court deems proper.

  
\_\_\_\_\_  
*Attorneys for Plaintiff Streeterville Organization  
for Active Residents*

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FIRM NO. 90384

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

Streeterville Organization for Active Residents, )  
 )  
 Plaintiff, )  
 v. )  
 Illinois Department of Transportation, IDOT Director )  
 Susan Shea, Ph.D., and Children's Memorial Hospital, )  
 )  
 Defendants. )

Case No. 2011 L 51471

2011 DEC 23 PM 12:36  
Clerk of Court

**ALIAS SUMMONS IN ADMINISTRATIVE REVIEW**

To each Defendant:

**YOU ARE HEREBY SUMMONED** and required to file an answer in this case or otherwise file your appearance in the office of the clerk of this court located in Room 801, Richard J. Daley Center, Chicago, Illinois, within 35 days after the date of this summons.

Firm No: 90384  
Name: Richard S. Porter  
Hinshaw & Culbertson LLP  
Atty. for: Plaintiff, Streeterville Organization  
for Active Residents  
Address: 100 Park Avenue  
City/State/Zip: Rockford, IL 61110  
Telephone: 815/490-4920

WITNESS: \_\_\_\_\_ **DEC 29 2011**

**DOROTHY**  
Clerk of Court

Firm No: 90384  
Name: Nancy G. Lischer  
Hinshaw & Culbertson LLP  
Atty. for: Plaintiff, Streeterville Organization  
for Active Residents  
Address: 222 North LaSalle, Suite 300  
City/State/Zip: Chicago, IL 60601-1081  
Telephone: 312/704-3000

**CERTIFICATE OF MAILING**

On December \_\_\_\_, 2011, I sent by registered mail a copy of this summons to each defendant addressed as follows:

<u>Defendant</u>	<u>Address</u>
<u>Illinois Department of Transportation (IDOT)</u>	<u>2300 S. Dirksen Parkway</u> <u>Springfield, IL 62764</u>

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Clerk of the Circuit Court)