

## Mishawaka disability lawsuit lingers

By Joseph Dits South Bend Tribune | Posted: Sunday, December 1, 2013 5:48 am

One man's lawsuit against the city of Mishawaka concerning disability act violations continues to drag on since he filed it in April 2012, having taken strange turns and, in the words of the federal magistrate, gone "far afield."

The city's attorneys now raise concerns about what they see as the man's recent threat to the mayor.

A hearing Tuesday in federal court proved no exception.

Don Terry Oberloh, 56, who uses a cane and said he has osteoarthritis and lack of cartilage in his knees, claims more than 1,000 violations of the American with Disabilities Act in city facilities. He claims that it began with architectural barriers at the city's Battell Center that he said kept him from voting there in the November 2011 elections.

But U.S. District Court Magistrate Christopher Neuchterlein told him Tuesday, "The core of the court's concern is your disrespect for the very process you seek."

The magistrate said he's concerned that Oberloh is treating the litigation as "some kind of sport" and is "trivializing the ADA claim."

Just prior to the suit, the city had drafted a plan to address more than \$3.5 million worth of improvements to city facilities over the next 30 years to comply with ADA.

The lawsuit has cost the city about \$200,000 in attorney fees so far from Barnes & Thornburg, said city Controller Rebecca Miller. That's roughly \$50,000 more since The Tribune last reported on the case Sept. 24.

The most complicating factor is that Oberloh is fighting the case pro se -- on his own, without an attorney -- causing it to go on longer than normal. He acknowledged Tuesday, as he did this earlier this year, that he isn't capable of winning the case without an attorney because he doesn't understand the protocol of the law.

He's said he cannot afford an attorney. He'd asked the court one year ago to appoint him a pro bono attorney, but Neuchterlein had responded that Oberloh hadn't shown reasonable efforts to secure one on his own.

The suit lingers in the discovery phase, where both sides seek documents and answers to questions. It had a chance to end Tuesday, but that quickly fell apart.

Before the hearing began, Oberloh offered to drop the case, telling The Tribune that his wife told him that morning that she'd return to him if he did. He said they've been separated since this summer, as she's grown tired of the case, too.

But, after he met in private with the city's attorneys, he decided against dropping the suit, saying the attorneys asked for too much. Later, he explained that the city's attorneys asked that he agree to never file a complaint about the attorneys' actions. He said he didn't want to give up that option.

Neuchterlein said he'll prepare a report based on Tuesday's hearing. If he concludes that the lawsuit should be dismissed, he said, he'll send that recommendation to the presiding federal judge, James T. Moody, in the northern Indiana district. Oberloh will have a "limited opportunity to respond." Then Moody would decide whether or not to dismiss the lawsuit.

Oberloh has refused to pay the roughly \$9,500 in legal fees that Neuchterlein had ordered him to pay in September. Oberloh has argued that he's indigent and can't afford to pay and that the fees are inflated.

Eric Thomason, of Barnes & Thornburg, who's representing the city, argues that Oberloh has provided inconsistent answers, plus what he sees as a threat.

"We don't see his misconduct lessening," Thomason said. "We see it increasing. To let him continue in this way is only going to severely prejudice my client. How do we interrogate a client who changes his mind all the time?"

Thomason read an email that Oberloh sent to him on Nov. 7 where Oberloh refers to Mishawaka Mayor Dave Wood and how Oberloh would use "deadly force" if needed.

Thomason quoted the email: *"Be advised! the next time your client Dave Woods, speeds in the city hall parking lot and looking me directly in the eyes, swears [sic] around the corner, placing me in undue danger while extricating my wheel chair from the rear of my truck, in a traffic route due to the city's failure to remediate obvious parking discrimination, I will be forced to take defensive action including, but not limited to the use of deadly force to save myself from eminent death."*

In court, Oberloh said, "There's nothing in that email that constitutes a threat."

He responded that he's been the victim of the attorneys' actions, that he hasn't been given a chance to present "factual rebuttal evidence" and that Thomason doesn't back up what he's saying.

Thomason and Neuchterlein have often raised issues with the words Oberloh uses. The city's attorneys had asked him to identify specific barriers to people with disabilities. In his sworn response, Thomason said, Oberloh mentions "vampires, zombies and retards."

Oberloh added that he didn't see it as a "flippant" remark since he believes in vampires and zombies. He later told a reporter that he wasn't talking about the characters seen in movies but, for

example, people who've been brought back to life in places like Haiti. He said he was responding to a question about lighting, saying, "Zombie and vampires live in the dark."

"What do they (vampires and zombies) have to do with the lawsuit?" Neuchterlein pressed.

"Absolutely nothing," Oberloh said. He also told the magistrate, "I fail to see a problem with tongue-in-cheek answers to ridiculous questions."

But Neuchterlein affirmed that the question was appropriate.

In a nine-page document that Oberloh filed Monday, he accused Neuchterlein and the city's attorneys of "harassing pressure and cronyism ... for no other reason than to blackmail him (Oberloh) into dropping the case." To address that, Neuchterlein asked in court and Thomason denied that they ever socialize.

**JDits@SBTinfo.com**

574-235-6158

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