

From: Mark A. Baker
Sent: Monday, September 18, 2023 3:13 PM
To: MN_EQB_Info <info.EQB@state.mn.us>
Subject: September 20 meeting

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Hello:

I am writing to comment on the Duluth, MN (i.e. Kinseth Hotel Project) item on the agenda. I would like to applaud Mr. Bauerkemper and other members of the board for maintaining focus on this important policy item and moving forward to take action as part of the EQB's remit.

That said, Mr. Bauerkemper's memo is spot on, and I would expand on it only by saying that the AG should be encouraged to consider not only if there is a local appeals process is available AFTER PUBLICATION of an RGU final decision, but if 116D.04, subd.10, (environmental review decisions to be appealed to the Court of Appeals) simply "occupies the field" regarding any appeal on an environmental review decision by an aggrieved party.

State preemption of municipal legislative authority in this area needs to be analyzed and an opinion rendered by the AG's office. The factors spelled out in *Mangold Midwest Co. v. Village of Richfield*, 274 Minn. 347, 143 N.W.2d 813 (1966) that determine state preemption of a local ordinance are met in this Duluth case; there is simply no local appeal of an RGU's decision on environmental review allowed under MN statute. 116D, subd.10 completely "occupies the field".

Finally, it has come to my attention that Executive Director Nueschler has a "social relationship" with a Duluth assistant city attorney who directly participated in advocating on behalf of the city. She has not revealed this relationship to the Board. It is beyond coincidence that the email the City Council relied upon to justify a local appeal was nearly identical to subsequent statements in the EQB *Monitor* that were in error. Intentional or not, Ms. Nueschler's actions clearly prejudiced the petitioners in this manner.

Thank you!

Mark A. Baker