

# October 2023 Environmental Quality Board meeting

**Wednesday, October 18 from 1 – 4 p.m.**

## Join in person or online

- In person: [520 Lafayette Road, St. Paul, MN 55155](#), lower level conference rooms
  - Online: For the meeting link and more information, visit the [board meeting webpage](#).
- 

## Participating in board meetings

### Attending in person

The Environmental Quality Board (EQB) will convene its meeting in person in the lower level conference rooms at the Minnesota Pollution Control Agency St. Paul office building. All visitors must sign in at the front desk. Transportation options:

- Bicycle: Visit the [Saint Paul Bike Map](#) webpage for route information. Outdoor bicycle parking is available to the left of the front doors near the loading dock.
- Transit: Use [Metro Transit's Trip Planner](#) to determine the best routes and times.
- Car: You may park in a Visitor Parking space in the parking lot just outside the front door, or park in one of the visitor lots. The visitor lots are the Blue Lot (Olive St. and University Ave.) and the Jupiter Lot (on Grove St. across from the Ramsey County Law Enforcement Center); please see the [parking map](#). Parking in these lots is free of charge. You must register your vehicle at the front desk upon arrival.

### Attending virtually

Members of the public may join the meeting virtually using the Teams link at the board meeting webpage link above. Please review the [Guide to Teams Participation](#) for additional information.

### Accessibility

Please contact Environmental Quality Board (EQB) staff at least one week prior to the event at [info.EQB@state.mn.us](mailto:info.EQB@state.mn.us) to arrange an accommodation. Meeting materials can be provided in different forms, such as large print, braille, or on a recording.

### Public engagement opportunities at EQB meetings

EQB encourages public input and appreciates the opportunity to build shared understanding with members of the public. The opportunities for public engagement for this meeting are below.

## Oral public comment

In this meeting, the board will accept oral public comment as the final agenda item.

Procedure and guidelines for giving oral public comment:

- If you wish to speak:
  - Virtual: when prompted, use the “raise hand” feature in Teams, located at the top of your screen.
  - In person: sign up at the welcome table before the meeting starts.
- Your remarks will be limited to two (2) minutes. When necessary, the chairperson may limit commenters’ time for remarks to ensure there is equal opportunity for the public to comment.
- When the chairperson calls on you to speak:
  - Introduce yourself before beginning your comment.
  - Please keep your remarks to those facts which are relevant and specific, as determined by the chairperson, to the agenda item at hand.
  - Please be respectful of board members, staff, and other meeting participants. Avoid questioning motives. The chair, vice-chair, or other presiding officer will not tolerate personal attacks.
  - Please note that the chair will use their discretion for directing public comment to ensure the board’s ability to effectively conduct business.

## Written public comment

You may submit written comment to EQB by emailing your letter to [info.EQB@state.mn.us](mailto:info.EQB@state.mn.us) or mailing to: Environmental Quality Board, 520 Lafayette Road, Saint Paul, MN 55155. Comments must be received by EQB staff **by noon the day before the meeting**.

Staff will compile letters, make them available to members and the public online, and attach them to the public record. Any written comments received after this deadline will be included in the next meeting packet.

All comments will be made available to the public. Please only submit information that you wish to make available publicly. EQB does not edit or delete submissions that include personal information. We reserve the right to not publish any comments we deem offensive, intimidating, belligerent, harassing, bullying, or that contain any other inappropriate or aggressive behavior.

## Agenda

### 1. Welcome and roll call

Nancy Daubenberger – Chair, EQB; Commissioner, Department of Transportation

### 2. Approval of consent agenda

- Meeting minutes from the September 20, 2023, Environmental Quality Board meeting on packet page 5
- Preliminary agenda for the October 18, 2023, Environmental Quality Board meeting

### 3. Executive Director's report

Catherine Neuschler – Executive Director, EQB

### 4. Update and Discussion on Minnesota's Climate Action Framework and Inter-agency Climate Work: Implementation, Funding, and Reporting

**Type of item:** Informational

**Summary:** Governor Walz created the Climate Change Subcabinet through EO 19-37. Chaired by the MPCA Commissioner, this body works to advance climate policy and action in Minnesota through inter-agency efforts.

A major part of the subcabinet's work was development of Minnesota's Climate Action Framework, released on September 16, 2022.

In the year since the release of the Climate Action Framework, Minnesota has made progress on implementing the Framework through state policy change, the state budget, and federal funding through the Inflation Reduction Act and Bipartisan Infrastructure Law. The presenters will describe these implementation successes.

**Outcome:** The Board will also hear about Climate Action Framework implementation activities moving forward, including planning, reporting, and funding.

The presentation will go deeper on Minnesota's work on the Climate Pollution Reduction Grant (CPRG) Program. This Program is an IRA-funded EPA program designed to make near-term, durable reductions in climate pollution. Minnesota received a \$3 million CPRG and is doing the work of this grant now, doing community engagement and inter-agency coordination to prepare for the CPRG implementation grant funding opportunity. The CPRG implantation grant funding opportunity is \$4.6 billion of funding, \$300 million of which is specifically for tribes and territories.

**Presenters:** Kate Knuth, Climate Director; Amanda Jarrett Smith, Climate Unit Supervisor  
Minnesota Pollution Control Agency

### 5. Per diem and expense policy

**Type of item:** Decision

**Summary:** Legislation in 2023 increased the allowable per diem payment for public members of multiple Boards, including EQB. To account for this change, and make other clarifications, the Board needs to approve an updated Per diem and expense policy. The policy was last updated in 2018. The policy can be found on packet page 10.

**Outcome:** The Board approves an updated policy on per diem and expense payments.

**Presenter:** Catherine Neuschler – Executive Director, EQB

## **6. Public comment**

The board welcomes oral public comment. Please see guidance and procedures on packet page 2.

After the September 20, 2023 meeting, the Board received public comment. Public comment is included on page 13 of the packet.

## **7. Closing and adjournment**

## September 2023 Environmental Quality Board meeting

Wednesday, September 20, 2023 | 1:00-4:00 p.m. | 520 Lafayette Road, St. Paul, MN 55155, Conference Room 100 and via Teams.

---

### Minutes

#### 1. Welcome and roll call

Chair Nancy Daubenberger called to order the regular meeting of the Environmental Quality Board.

Members present: Grace Arnold, Joseph Bauerkemper, Stacie Christensen, Nancy Daubenberger, Kenneth Foster, Rylee Hince, Daniel Katzenberger, Katrina Kessler, Mehmet Konar-Steenberg, Nicholas Martin, Paul Nelson, Thom Petersen, Matt Varilek

Members excused: Peter Bakken, Brooke Cunningham, Todd Holman, Sarah Strommen, Charles Zelle

Proxies present: Dan Huff (for Cunningham), Sue Vento (for Zelle)

EQB staff present: Catherine Neuschler, Erik Dahl, Rebeca Gutierrez-Moreno, Hazel Houle, Jesse Krzenski, Priscilla Villa-Watt, Kayla Walsh

Chair Daubenberger noted that Public Member Konnar-Steenberg is stepping down from the EQB at the end of September, as he received a Fulbright scholarship. She thanked him for his service on the board.

#### 2. Approval of consent agenda

- Meeting minutes from August 16, 2023, Environmental Quality Board meeting
- Proposed agenda for September 20, 2023, Environmental Quality Board meeting

**Motion:** Board Member Petersen moved the consent agenda; Board Member Kessler seconded. Motion carries with a unanimous vote.

#### 3. Executive Director's report

Catherine Neuschler – Executive Director, EQB

- Staffing Update
  - Erik Dahl, Planning Director – Special Projects, EQB is leaving EQB for another opportunity. Director Neuschler thanked Erik for his service.

- MEPA 50th Anniversary Article is now posted on the EQB website
- Public board member position for the 5<sup>th</sup> congressional district is open
- Two comment letters received for the September board meeting meeting re: Duluth environmental review issue
  - One comment letter implied that Director Neuschler’s friendship with a Duluth assistant city attorney impacted the discussion of the issue and should have been disclosed to the Board. Dir. Neuschler noted that at a gathering in the spring, the attorney mentioned to Dir. Neuschler the Planning Commission meeting and the decision that was made on the EAW, but at this time Dir. Neuschler was not significantly involved with the Duluth petitioners. The following week, Dir. Neuschler told the petitioners that she personally knew an assistant city attorney and that the attorney had very briefly mentioned the project but that they would no longer discuss the issue, and they have not.
- The November board meeting will be virtual, with breakout rooms
- The December board meeting will be canceled

#### 4. Duluth follow-up (closed session)

**Presenters:** Catherine Neuschler – Executive Director, EQB; Oliver Larson and Anne Kealing, Attorney General’s Office

**Type of item:** Informational, potential decision in open session

**Summary:** The Board went into closed session as permitted by attorney-client privilege under Minn. Stat. 13D.05 in order to discuss and receive legal advice on the possibility of participating in the legal case related the petition for an EAW for the Kinseth Hotel (Case title: *In re Resolution Reversing the Planning Commission’s Decision to Grant the Petition for an Environmental Assessment Worksheet (EAW) for a Hotel at Sundby Road and West Page Street.*)

**Outcome:** The Board received legal advice.

**Motion:** After returning to open meeting, Board Member Katzenberger moved that the EQB not intervene in the court case; Board Member Kessler seconded.

**Motion:** Board Member Varilek proposed an amendment to invite Director Neuschler to suggest process improvements. Board member Kessler seconded. The amended motion was put to a roll call vote.

In favor: Arnold, Christensen, Daubenberger, Foster, Katzenberger, Kessler, Martin, Nelson, Petersen, Varilek. Opposed: Bauerkemper. Abstained: Hince, Konar-Steenberg. Excused: Bakken, Cunningham, Holman, Strommen.

Motion passes.

#### 5. Pollinator action framework

**Presenters:** Rebeca Gutierrez-Moreno, State Pollinator Coordinator, EQB; Christina Locke, Pollinator Conservation Coordinator, DNR; Jamison Scholer, Research Scientist, MDA

**Type of item:** Decision

**Summary:** The Board heard a presentation about the 2023 Minnesota State Agency Pollinator Report, which contains the Pollinator Action Framework to protect pollinators in Minnesota. The Board discussed next steps for the implementation of the action framework and considered a resolution to approve the 2023 Minnesota State Agency Pollinator Report and the Pollinator Action Framework.

**Discussion:**

- Minnesota Department of Agriculture reviews the pollinator and water plans every four months to keep up with the goals
- Technology is helping to target pesticide/herbicide application
- Important to look at what resources are needed within and outside the 10 agencies to make these goals possible; be proactive about which agencies are responsible for the proposed actions
- Next steps could be prioritization of the goals

**Outcome:** Decision on a resolution to approve the 2023 Minnesota State Agency Pollinator Report and the Minnesota Pollinator Action Framework, and to support cross-agency collaboration to lead the implementation of the Minnesota Pollinator Action Framework.

**Motion:** Board Member Arnold moved to approve the resolution; Board Member Kessler seconded.

In favor: Arnold, Bauerkemper, Christensen, Daubenberger, Foster, Hince, Katzenberger, Kessler, Konar-Steenberg, Martin, Nelson, Petersen. Opposed: none. Excused: Bakken, Cunningham, Holman, Varilek, Strommen.

Motion passes.

## 6. 2020 State Water Plan Implementation Update

**Presenters:** Erik Dahl, Planning Director – Special Projects, EQB; Alycia Overbo – Drinking Water Strategic Initiatives and Communications Planner, Department of Health; Jeff Berg – Water Policy Specialist, Department of Agriculture; Suzanne Rhees – Special Projects Coordinator, Board of Water and Soil Resources

**Type of item:** Informational

**Summary:** The purpose of the [2020 State Water Plan](#) is to establish a framework for aligning state agencies, legislative priorities, and local government policy, programs and actions for the coming decade. EQB developed this plan to set an agenda for tackling the stubborn and complex water problems that climate change will intensify for Minnesotans.

The Minnesota Legislature directs the Environmental Quality Board (EQB) to coordinate comprehensive long-range water resources planning and policy through a State Water Plan every 10 years ([Minnesota Statutes 103B.151](#), [103A.43](#), [103A.204](#)).

The board heard a progress update on the [2020 State Water Plan](#) on Goals #1 (Ensure drinking water is safe and sufficient) and #2 (Manage landscapes to protect and improve water quality).

**Discussion:**

- Concern about nitrates in wells
  - It's difficult to gather data and track nitrates in private wells and more work could be done in this area. Nitrates in private wells is a serious concern and an equity issue
  - There is some data regarding nitrates in private wells coming in the Environment and Energy Report in January, 2024
  - There is extensive data for Minnesota's public water systems. The MN Department of Health (MDH) is rebooting its annual nitrate report, which will show the source and treated water for the current year as well as the historic trends for communities that have come close to or exceeded the nitrate standards
- The Great Plains Institute has a contract with MDH, and along with other agencies and solar developers are planning a feasibility analysis for solar development in drinking water areas

**Next steps:** Possibly have a future discussion item regarding private well and nitrates data; EQB can work with the Interagency Groundwater Drinking Water team and agencies that work on this issue

## 7. Clean Water Council update

**Presenter:** Paul Gardner – Clean Water Council Administrator

**Type of item:** Informational

**Summary:** The Clean Water Council recommended how to spend the Clean Water Fund (CWF) that is derived from the Clean Water, Land, and Legacy Amendment. The CWF supplements existing funding for water and plays a major role in fulfilling elements of the State Water Plan.

## 8. Public comment

After the August 16, 2023 meeting, the Board received public comment which is in the packet and in the additional materials. No time remained for public comment so members of the public who were interested in commenting were encouraged to email their comments to [eqb.info@state.mn.us](mailto:eqb.info@state.mn.us).

Board Member Bauerkemper moved a resolution to observe that Erik Cedarleaf Dahl has served the people of Minnesota exceptionally well through his work as a planner and interim executive director of EQB, and express the extensive gratitude that the EQB has for Erik and his service and wish him all the best in his opportunities before him. Board Member Katzenberger seconded.

Motion carries with a unanimous vote.

## 9. Closing and adjournment

Board Member Katzenberger motioned to adjourn. Board Member Nelson seconded. All in favor; meeting adjourned.





## RESOLUTION OF THE MINNESOTA ENVIRONMENTAL QUALITY BOARD

### Per diem and expense policy for Board members

Multiple Minnesota statutes allow and set requirements for per diem compensation and reimbursement of expenses incurred for member of state administrative boards, agencies, and committees. For the Environmental Quality Board, these include:

- Minn. Stat. § 15.0575, subdivision 3
- Minn. Stat. § 116C.03, subd. 2a for EQB Board Members
- Minn. Stat. §15.059, subdivision 3 for EQB Appointed Advisory Councils

Under these statutes, Boards are required to adopt internal standards for purposes of making per diem payments. In addition, it is good practice to provide clarity about compensation and reimbursement.

The EQB last adopted a per diem and expense policy for Board members on February 21, 2018. Since that time, changes have been made to statutes to update the allowable per diem amounts, and to allowable expense reimbursements.

**The board resolves to** adopt the attached Per diem and expense policy for Board members, dated September 2023. This policy applies to per diem and expenses incurred after July 1, 2023 and supersedes all prior policies on per diems and expense reimbursements.

The board approved and adopted this resolution on October 18, 2023.

\_\_\_\_\_  
Nancy Daubengerger, Chair  
Minnesota Environmental Quality Board

Date: \_\_\_\_\_

Attachments: Environmental Quality Board Per diem and expense policy for Board members, October 2023

# Environmental Quality Board

## Per diem and expense policy for Board members

Effective Date: July 1, 2023

### I. Legal Basis

The basis for this policy is Minn. Stat. § 15.0575, subdivision 3 and Minn. Stat. § 116C.03, subd. 2a for EQB Board Members, and Minn. Stat. §15.059, subdivision 3 for EQB Appointed Advisory Councils. This policy fulfills the requirement under Minn. Stat. § 15.0575, subd. 3(c) to adopt internal standards for purposes of making per diem payments.

#### **Minnesota Statute §15.0575, subdivision 3. Compensation.**

(a) Members of the boards may be compensated at the rate of \$55 a day spent on board activities, when authorized by the board, plus expenses in the same manner and amount as authorized by the commissioner's plan adopted under section 43A.18, subdivision 2. Members who, as a result of time spent attending board meetings, incur childcare expenses that would not otherwise have been incurred, may be reimbursed for those expenses upon board authorization.

(b) Members who are state employees or employees of the political subdivisions of the state must not receive the daily payment for activities that occur during working hours for which they are compensated by the state or political subdivision. However, a state or political subdivision employee may receive the daily payment if the employee uses vacation time or compensatory time accumulated in accordance with a collective bargaining agreement or compensation plan for board activities. Members who are state employees or employees of the political subdivisions of the state may receive the expenses provided for in this subdivision unless the expenses are reimbursed by another source. Members who are state employees or employees of political subdivisions of the state may be reimbursed for child care expenses only for time spent on board activities that are outside their working hours.

(c) Each board must adopt internal standards prescribing what constitutes a day spent on board activities for purposes of making daily payments under this subdivision.

#### **Minnesota Statutes §15.059, subdivision 3. Compensation.**

(a) Members of the advisory councils and committees may be compensated at the rate of \$55 a day spent on council or committee activities, when authorized by the council or committee, plus expenses in the same manner and amount as authorized by the commissioner's plan adopted under section 43A.18, subdivision 2. Members who, as a result of time spent attending council or committee meetings, incur child care expenses that would not otherwise have been incurred, may be reimbursed for those expenses upon council or committee authorization.

(b) Members who are state employees or employees of political subdivisions must not receive the daily compensation for activities that occur during working hours for which they are compensated by the state or political subdivision. However, a state or political subdivision employee may receive the daily payment if the employee uses vacation time or compensatory time accumulated in accordance with a collective bargaining agreement or compensation plan for council or committee activity. Members who are state employees or employees of the political subdivisions of the state may receive the expenses provided for in this section unless the expenses are reimbursed by another source. Members who are state employees or employees of political subdivisions of the state may be reimbursed for child care expenses only for time spent on board activities that are outside their working hours.

(c) Each council and committee must adopt internal standards prescribing what constitutes a day spent on council or committee activities for purposes of making daily payments under this subdivision.

**Minnesota Statutes § 116C.03, subdivision 2a. (As amended in 2023)**

Subd. 2a. Public members. The membership terms, compensation, removal, and filling of vacancies of public members of the board shall be as provided in section 15.0575, except that a public member may be compensated at the rate of up to \$125 a day.

**II. Policy of the Environmental Quality Board (Board)**

- 1) The Board shall compensate Board members and reimburse eligible expenses for each day spent on Board activities, including travel days when needed and appropriate.
  - a) Per Diem Compensation: The Board shall compensate state agency members of the Board, when eligible, at the rate of \$55/day; the Board shall compensate public members of the Board at the rate of \$125/day.
  - b) Expense Reimbursement: The Board shall reimburse eligible expenses for all members in the same manner and amount as authorized by the Commissioner’s Plan adopted under section 43A.18, subdivision 2.
- 2) The Board’s policy is to provide the per diem compensation, plus expenses, to eligible members for the following meetings and activities that constitute a day spent on Board activities:
  - a) Regular and Special Meetings of the Board and Subcommittees – This includes the regular monthly Board meeting, any special Board meetings, meetings of Board subcommittees, and preparatory meetings scheduled by EQB staff.
  - b) Other Board-related Activities – This includes Board retreats or similar meetings; attending the Environmental Congress; participating as an appointee on Board-appointed advisory councils; attending training relevant to Board membership with prior approval by the Board Chair or the Executive Director; and representing the Board at events and meetings with prior approval by the Board Chair or the Executive Director.
  - c) Participation in other activities – such as short phone calls or meetings with EQB staff – does not constitute a day eligible for a per diem.
- 3) Procedures
  - a) Expense Reports: Each Board member eligible to receive a per diem and expense reimbursement as outlined in the Policy section above must claim them on the appropriate form provided by the Executive Director and/or Board Administrator. This form must be submitted to the Board Administrator for approval and processing on a bi-monthly basis. All compensation for the state fiscal year (July 1 to June 30) must be submitted no later than two weeks after the end of the fiscal year.

- b) Expense reimbursement shall be in accordance with the current Commissioner’s Plan for state employees.
  - i) Note the following expense report requirements for non-state employees and state employees:
    - (1) Non-state Employees must provide their Social Security number (on top of the form) and home address for purposes of expense processing.
    - (2) State Employees must fill out the employee expense report to request reimbursement. Specify “Environmental Quality Board” on the form.
  - ii) Approval of all expense requests must be communicated to the MPCA by the Executive Director. The availability of funds must be confirmed by MPCA staff. Notification of action on all requests must be made by the Executive Director to the Board member or by MPCA staff at the request of the Executive Director.
- c) Expense Reimbursement:
  - i) Mileage: Mileage is reimbursed at the current rate as specified by the IRS for travel to and from approved Board meetings and on approved Board business. Mileage must be calculated on the most direct route according to the Department of Transportation records.
  - ii) Meals: Food allowances are actual expenditures for meals and gratuity, not including alcoholic beverages, up to the maximum and under the conditions specified in the Commissioner’s Plan. When in travel status for two (2) or more consecutive meals, reimbursement shall be for the actual costs of the meals including tax and a reasonable gratuity, up to the combined maximum amount for the reimbursable meals.
    - (1) As of the date of this policy, the maximum reimbursement for localities within Minnesota is \$10.00 for breakfast (if you are in travel status prior to 6 a.m.), \$13.00 for lunch and \$19.00 for dinner (if you are in travel status after 7 p.m.).
    - (2) Refer to the statutory language in Minn. Stat. §15.059, Subd. 3(b) for eligibility requirements for state employees or employees of political subdivisions.
  - iii) Lodging: Hotel/motel will be reimbursed for actual expenditures providing good judgment is exercised in incurring lodging costs and that charges are reasonable and consistent with the facilities available. Receipts for lodging must accompany the Expense Report.
  - iv) Child Care: Expenses for childcare will be paid if such expenses are incurred as a result of time spent attending Board meetings and would not otherwise have been incurred by the Board member. Members who are state employees or employees of political subdivisions of the state may be reimbursed for childcare expenses only for time spent on Board activities that are outside their working hours.
  - v) Miscellaneous: This category of expenses includes parking, phone calls when in travel status overnight, and others. Consult the provisions of the Commissioner’s Plan under expense reimbursement. With the exception of parking, Board members may incur miscellaneous expenses infrequently and their reimbursement can be discussed with the Executive Director on a case-by-case basis.
  - vi) Receipts: Receipts are required for hotels, non-meter parking, and other miscellaneous expenses

**From:** Jill N. Crawford-Nichols  
**Sent:** Tuesday, September 19, 2023 1:33 PM  
**To:** MN\_EQB\_Info <[info.EQB@state.mn.us](mailto:info.EQB@state.mn.us)>  
**Subject:** September 20 meeting, public comment

You don't often get email from [jnadinen@gmail.com](mailto:jnadinen@gmail.com). [Learn why this is important](#)

**This message may be from an external email source.**

Do not select links or open attachments unless verified. Report all suspicious emails to Minnesota IT Services Security Operations Center.

---

Please see the attached letter intended for the EQB members in regard to the closed session agenda item for the 9/20/23 hearing.

Thank you,

--

Jill N. Crawford-Nichols

September 19, 2023

Dear Environmental Quality Board Members,

**The following is the current reality in Duluth, Minnesota**

You are a citizen of the city of Duluth, and you are filing a Citizen's Petition per the state's MEPA statutes and EQB rules. You've read through all the statutes, you've conferred with the EQB staff, and you've prepared your petition per the state's guidance, both legal and administrative. Your petition is successfully submitted and *accepted* by the EQB. The next step is for the RGU to be notified, and the EQB informs you that the governing body is the City of Duluth.

You then direct your attention to Duluth's ordinances. You review the Table of Contents, scanning through the 51 chapters for a hint on which chapter addresses "Environmental Reviews". There isn't a clear choice for this topic, so you resort to using search tools, such as CTRL + F. Here you find City Ordinance 2-41 (chapter 2) that outlines the following:

*Sec. 2-41. Powers and duties.*

*In addition to the powers and duties granted to the planning commission by this Code, by the ordinances of the city of Duluth and by the laws of the state of Minnesota, the planning commission shall serve as the responsible governmental unit and conduct environmental reviews pursuant to Minnesota Statutes Chapter 116D and the applicable state regulations.*

This is the only mention of *environmental reviews* or a *responsible governmental unit* within the entire municipal code, in all 51 chapters. You also receive communication from Duluth staff, expressly outlining the exact same ordinance and identifying the Planning Commission as the RGU. Additionally, the staff preemptively outlines the appeal process in their memo to the Planning Commission (attached), which states the following:

*The decision of the RGU to prepare or not prepare an EAW can be appealed in the county district court where the project would take place.*

So, Citizen, you proceed, fingers-crossed, that your petition for an EAW will be successful. If it's not, you're mentally prepared to appeal within the state's court system. But because you've made such a compelling argument, your petition *is approved* and the EQB documents the Final Decision by publishing the RGU's approval in the Monitor. However, you come to learn that the City Council has received an appeal from the wealthy developer to overturn the Planning Commission's decision. You ask yourself, "*How? You've done your research and asked questions, it's abundantly clear the only course for appeal is with the state!*" You ask the city the same question.

September 19, 2023

According to the city, you, Citizen, were supposed to read the entire municipal code, from start to end. And while you're reading, the expectation is that you, Citizen, are expected to piecemeal how Chapter 50 (the planning chapter) and Chapter 2 (the administration chapter) relate, and not only that, conclude that Chapter 50 *governs* Chapter 2, even though the city has not cited or referenced these chapters to one another at any point within their ordinances. Additionally, when you do review Chapter 50's section on appeals, you are supposed to ignore the statement "*only in the context of this chapter*". And then, Citizen, when the City staff instructed you that appeals go to the State, you were supposed to recognize that guidance was possibly an error. And finally, you, Citizen, were expected to ask, "Can this be appealed to the City Council?" To which, if you had asked that question, the city staff supposedly would have responded with, "Yes". But this City Council appeal option isn't advertised and is only available if you know how to ask for it. Oh, and most importantly if you're a wealthy developer, not a citizen of Duluth.

Board Members, now that you have the context of how Duluth is so shamelessly pliable at the hands of wealthy developers, but at the detriment of their own ordinances and their citizens, you must decide if you're willing to participate. As a Board established by the State to "enhance Minnesota's environmental quality for current and future generations", are you going to step in and intervene?

Are you going to correct your mistakes, i.e., allowing the city of Duluth to change their Final Decision after it was published by you?

Are you going to let the city of Duluth twist your words against you?

Are you going to ignore this developer handshake?

If you do, a precedent will be set that completely undermines the Environmental **Quality** Board's entire purpose, especially the crucial and vital citizen participation. And anything written within codes, ordinances, or statues in the state of Minnesota will no longer be viewed as meaningful legal documents.

This scenario that the city of Duluth has thrust us all into (the EQB, the AG, Kineth, the Citizens of Minnesota) is much bigger than this single hotel or the site that has already been cleared. They have created a roadmap for everyone to follow titled *How to Cheat the EQB*. And unless you intervene, you are allowing that map to guide your future. And Minnesota's.

Thank you,

Jill Crawford-Nichols

Citizen of Duluth, Citizen of Minnesota, Taxpayer of environmental cleanups



**Planning & Development Division**  
*Planning & Economic Development Department*

Room 160  
 411 West First Street  
 Duluth, Minnesota 55802



218-730-5580



planning@duluthmn.gov

## MEMORANDUM

**DATE:** April 3, 2023  
**TO:** Planning Commission  
**FROM:** Jenn Moses, Senior Planner  
**RE:** Citizen Petition for An Environmental Assessment Worksheet (EAW) Related to the Kinseth Hotel Development

On March 10, 2023, the Minnesota Environmental Quality Board (EQB) notified the City of Duluth that a citizen petition for an Environmental Assessment Worksheet (EAW) had been submitted. The petition requests an EAW for the Kinseth Hotel project on Sundby Road, which Planning Commission reviewed as an MU-C Planning Review (PL 22-143) at its October 11, 2022 meeting. The Commission approved the Planning Review on a vote of 7-1. The Planning Commission decision was appealed to the City Council which affirmed the decision of the Planning Commission on December 19, 2022.

According to Section 2-41 of the City Code, the planning commission shall serve as the responsible governmental unit and conduct or oversee environmental reviews pursuant to Minnesota Statutes Chapter 116D and the applicable state regulations.

It is the Planning Commission's responsibility to review the submitted petition and the proposed Findings of Fact, and determine if an EAW is required. Per Section II of the attached Findings document, it is the recommendation of City Staff that an EAW is not needed and the petition should be denied. Minnesota Rules related to environmental reviews require a decision on whether an EAW is required no later than April 25, 2023. As such, the April 11<sup>th</sup> Planning Commission meeting is the last regular meeting before a decision is required. There is no provision of Minnesota Rules allowing for a further extension of this deadline, as it was already extended by the maximum 15 day extension to allow for a decision at the April 11<sup>th</sup> meeting.

Attached you will find:

- Planning Commission resolution
- Findings of Fact and related exhibits
- EQB Letter
- Citizens' Petition for an EAW



***What is the purpose of the environmental review process?***

The Minnesota Environmental Policy Act of 1973 established a formal process for reviewing the environmental impacts of major development projects. The purpose of the review is to provide information to units of government on the environmental impacts of a project before approvals or necessary permits are issued. After projects are completed, unanticipated environmental consequences can be very costly to undo, and environmentally sensitive areas can be impossible to restore. Environmental review creates the opportunity to anticipate and correct these problems before projects are built. The process operates according to rules (legally binding regulations) adopted by the EQB, but it is carried out by a local governmental unit or state agency (which is termed the RGU, for Responsible Governmental Unit). The Duluth City Planning Commission is the RGU for the City of Duluth. The primary role of the EQB is to advise local units and state agencies on the proper procedures for environmental review.

***What is an Environmental Assessment Worksheet (EAW)?***

An EAW is a document designed to provide a brief analysis and overview of the potential environmental impacts for a specific project and to help the RGU determine whether an Environmental Impact Statement (EIS) is necessary. The EAW consists of a standard list of questions and is meant to set out the basic facts of the project's environmental impacts. The EAW is not meant to approve or disapprove a project, but is simply a source of information to guide other approvals and permitting decisions. The information in the EAW process has two functions: to determine whether an EIS is needed, and to indicate how the project can be modified to lessen its environmental impacts; such modifications may be imposed as permit conditions by regulatory agencies.

***What are significant environmental effects?***

In deciding whether a project has the potential for significant environmental effects, the RGU "shall compare the impacts that may reasonably be expected to occur from the project with the criteria in this rule," considering the following factors (part 4410.1700, subparts 6 and 7):

- A. Type, extent, and reversibility of environmental effects;
- B. Cumulative potential effects of related or anticipated future projects;
- C. The extent to which environmental effects are subject to mitigation by ongoing public regulatory authority; and
- D. The extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies undertaken by public agencies or the project proposer, including other Environmental Impact Statements.

***Can the RGU's decision be appealed?***

The decision of the RGU to prepare or not prepare an EAW can be appealed in the county district court where the project would take place. The appeal must be filed within 30 days of the date on which the RGU makes its decision. There is no administrative appeal of an RGU; the EQB has no jurisdiction to review an RGU's decision.

## 50-36 REVIEWERS AND DECISION-MAKERS.

---

### 50-36.1 Council.

The council is the governing body of the city, with all of those powers granted by the state and the City Charter. In the context of this Chapter, the council has the following powers.

- A. To adopt the comprehensive land use plan and to approve all amendments to it pursuant to Section 50-37.2;
- B. To adopt the text, amendments to that text, and interim ordinances related to this Chapter pursuant to Section 50-37.3;
- C. To adopt the official zoning map and all amendments to it pursuant to Section 50-37.3;
- D. To approve the vacation a public street pursuant to Section 50-37.6;
- E. To approve the concurrent use of a public street pursuant to Section 50-37.7;
- F. To approve historic resource designations pursuant to Section 50-37.8;
- G. To hear appeals of decisions of the planning commission pursuant to Section 50-37.1.O. (Ord. No. 10044, 8-16-2010, § 6; Ord. No. 1077, 11-25-2021, §7)

### 50-36.2 Planning commission.

---

#### A. Creation.

The planning commission is that body authorized by MSA 462.354 and created by Ordinance 1809. In addition, the council hereby designates the planning commission as the board of adjustment authorized by MSA 462.354 and Section 27 of the City Charter. The planning commission shall have all powers authorized for a planning commission or a board of adjustment under the state law and this City Code. Procedures before the planning commission shall be governed by rules and regulations adopted by the commission. This Section is intended to comply with the provisions of MSA 462.354 as amended, and Section 27 of the City Charter, and shall be interpreted to comply with those provisions wherever possible;

#### B. Membership and terms.

Except as provided by Ordinance 9985, the planning commission shall consist of nine members, all of whom shall be citizens of the city and none of whom shall be a paid city employee, and all of whom shall be appointed by the mayor and with the consent of the council, and all of whom shall make and file with the city clerk an oath and affirmation as provided in Section 28 of the city Charter. Members shall be appointed for a term of four years, and the terms shall be staggered in accordance with Ordinance 9985. Vacancies shall be filled by appointment for the unexpired term only. Members of the board shall serve without compensation;

#### C. Meetings and proceedings.

1. All hearings of the planning commission shall be public and shall occur after 5:00 p.m.;
2. The concurring vote of a majority of the members of the commission shall be sufficient to exercise any power granted to the planning commission by this Chapter;
3. The commission may delegate to a committee of the commission or to its secretary specific review and approval activities provided that it provides written criteria to guide the performance of the delegated duties, and the decisions made by the committee or secretary will be considered decisions of the commission;

**From:** Jill N. Crawford-Nichols  
**Sent:** Wednesday, September 20, 2023 4:24 PM  
**To:** MN\_EQB\_Info <[info.EQB@state.mn.us](mailto:info.EQB@state.mn.us)>  
**Cc:** Mark A. Baker; Becca Mulenburg; [ppassi@duluthnews.com](mailto:ppassi@duluthnews.com)  
**Subject:** Public Comment to Sept. 20 Meeting

You don't often get email from [jnadinen@gmail.com](mailto:jnadinen@gmail.com). [Learn why this is important](#)

**This message may be from an external email source.**

Do not select links or open attachments unless verified. Report all suspicious emails to Minnesota IT Services Security Operations Center.

---

EQB,

I waited all day to provide public comment and was denied that opportunity. This is so disrespectful to your citizens.

As I was waiting to comment on the closed session and listened to the hearing, something that was really striking to me was the continued use of the phrase "climate change". It was used over and over again, across every presentation. But the manner in which it was stated and how it was used, almost made the phrase "climate change" sound like its own phenomenon. There was never any acknowledgment of the "what" or the "who" of climate change. Somehow you made "climate change" Minnesota Nice. Someone is at fault. We aren't operating under "phenomenal" circumstances, we are operating under proactive or reactive circumstances. And you have significant power to control these circumstances, but only if you're proactive. Because if you let it happen, you're relinquishing that control, and you have no choice other than to react.

My question is directed to your agenda item regarding Duluth reversing their decision to require an EAW *after* it was acknowledged by the EQB Monitor as Final. And for this case when we're discussing the "phenomenon of climate change" and how it will perpetuate, the *What* is a large development on wetlands and across the street from an impaired waterway, and the *Who* is the City of Duluth and Kinseth Hospitality (Des Moines, Iowa).

I realize the discussion was deemed confidential under client attorney privilege, but I do ask that the board provide the public with context as to how you came to the decision that you just publicly voted on. **I believe that the public is warranted more of an explanation, especially if your vote includes improvements to the EQB administrative process or rules.**

**From:** [Becca Mulenburg](#)  
**To:** [Neuschler, Catherine \(She/Her/Hers\) \(EOB\)](#)  
**Cc:** [Contact, Commissioner \(COMM\)](#); [Commissioner, Health \(MDH\)](#); [MnDOT Commissioner](#); [Todd Holman](#); [Kessler, Katrina \(She/Her/Hers\) \(MPCA\)](#); [Petersen, Thom \(MDA\)](#); [MN Commissioner \(DNR\)](#); [Dahl, Erik \(EOB\)](#); [Gutierrez-Moreno, Rebeca \(She/Her/Hers\) \(EOB\)](#); [Walsh, Kayla \(EOB\)](#); [Krzenski, Jesse W \(EOB\)](#); [Houle, Hazel \(She/Her/Hers\) \(EOB\)](#); [Villa-Watt, Priscilla \(EOB\)](#); [Peter Bakken](#); [Joseph Bauerkemper](#); [Kenneth Foster](#); [Rylee Hince](#); [Dan Katzenberger](#); [Mehmet Konar-Steenber](#); [Nicholas F. Martin](#); [Paul Nelson](#); [Hapka, Katrina \(MPCA\)](#); [anne.kealing@state.mn.us](#); [oliver.larson@ag.state.mn.us](#)  
**Subject:** Public Request for Closed-Session Meeting Contents  
**Date:** Thursday, September 21, 2023 8:04:39 AM  
**Attachments:** [EOB Sept 2023 Packet - FINAL\\_0.pdf](#)  
[Minnesota Open Meeting Law.pdf](#)

You don't often get email from [beccamulenburg@yahoo.com](mailto:beccamulenburg@yahoo.com). [Learn why this is important](#)

**This message may be from an external email source.**

Do not select links or open attachments unless verified. Report all suspicious emails to Minnesota IT Services Security Operations Center.

Dear EQB,

On Wednesday, 9/20/2023, the EQB went into closed session to discuss the Kinseth hotel project/Citizens' Petition for an EAW in Duluth, MN.

The EQB's Sept. 2023 Packet for the September 20th Board Meeting states that the closed session meeting would be to obtain legal advice.

From the EQB Sept 2023 Packet - FINAL\_0.pdf, page 3 (attached):

**Type of item:** Informational, potential decision

**Summary:** The Board will go into closed session as permitted by attorney-client privilege under Minn.

Stat. 13D.05 in order to discuss and receive legal advice on the possibility of participating in the legal

case related the petition for an EAW for the Kinseth Hotel (Case title: *In re Resolution Reversing the*

*Planning Commission's Decision to Grant the Petition for an Environmental Assessment Worksheet*

*(EAW) for a Hotel at Sundby Road and West Page Street.)*

**Outcome:** The Board will receive legal advice.

Per the Minnesota Open Meeting Law, as stated below and taken directly from <https://www.house.mn.gov/hrd/pubs/openmtg.pdf> (attached) "The attorney-client privilege exception does not apply to a mere request for general legal advice."

The Minnesota Open Meeting Law is as follows  
(<https://www.house.mn.gov/hrd/pubs/openmtg.pdf>):

"The law permits closed meetings based on a limited attorney-client privilege. In 1976, the Minnesota Supreme Court held that there is a limited exception, based on

the attorney-client privilege, for meetings to discuss strategy for threatened or pending litigation.<sup>51</sup>

In 1990, the legislature added the attorney-client exception to the open meeting law.<sup>52</sup> Minn. Stat. § 179A.14, subd. 3. Although the statute is not limited, the court has since held that the scope of the exception remains limited in relation to the open meeting law.<sup>53</sup>

The attorney-client privilege exception does not apply to a mere request for general legal advice. Nor does it apply when a governing body seeks to discuss with its attorney the strengths and weaknesses of a proposed legislative enactment (like a city ordinance) that may lead to future lawsuits because that can be viewed as general legal advice. Furthermore, discussion of proposed legislation is just the sort of discussion that should be public.<sup>54</sup>

In order to close a meeting under the attorney-client privilege exception, the governing body must give a particularized statement describing the subject to be discussed. A general statement that the meeting is being closed to discuss pending or threatened litigation is not sufficient.<sup>55</sup>"

This e-mail serves as a request to provide the public with the full contents of the closed session held during the EQB's Board meeting on September 20, 2023. If this is not provided, the public deserves an explanation as to how you met the requirements of a closed session meeting "to discuss strategy for threatened or pending litigation." If the requirement was met, the "particularized statement describing the subject to be discussed" is warranted per the Minnesota Open Meeting Law. "A general statement that the meeting is being closed to discuss pending or threatened litigation is not sufficient."

The public looks forward to your response.

Thank you,  
Becca Mulenburg

Becca Mulenburg  
1649 W Page St  
Duluth, MN 55811  
email: beccamulenburg@yahoo.com

**From:** [Neuschler, Catherine \(She/Her/Hers\) \(EOB\)](#)  
**To:** [Becca Mulenburg](#)  
**Cc:** [Contact, Commissioner \(COMM\)](#); [Commissioner, Health \(MDH\)](#); [MnDOT Commissioner](#); [Todd Holman](#); [Kessler, Katrina \(She/Her/Hers\) \(MPCA\)](#); [Petersen, Thom \(MDA\)](#); [MN Commissioner \(DNR\)](#); [Dahl, Erik \(EOB\)](#); [Gutierrez-Moreno, Rebeca \(She/Her/Hers\) \(EOB\)](#); [Walsh, Kayla \(EOB\)](#); [Krzenski, Jesse W \(EOB\)](#); [Houle, Hazel \(She/Her/Hers\) \(EOB\)](#); [Villa-Watt, Priscilla \(EOB\)](#); [Peter Bakken](#); [Joseph Bauerkemper](#); [Kenneth Foster](#); [Rylee Hince](#); [Dan Katzenberger](#); [Mehmet Konar-Steenber](#); [Nicholas F. Martin](#); [Paul Nelson](#); [Hapka, Katrina \(MPCA\)](#); [oliver.larson@ag.state.mn.us](mailto:oliver.larson@ag.state.mn.us)  
**Subject:** RE: Public Request for Closed-Session Meeting Contents  
**Date:** Thursday, September 21, 2023 2:36:30 PM  
**Attachments:** [image001.jpg](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)

---

Becca -

I did ask for and receive legal advice on the issue of the meeting closure and compliance with open meeting law prior to working with the chair to place the item on the agenda.

The closed session met the requirements of the open meeting law. As clearly stated in the agenda, the closed session was for attorneys to provide specific and particular legal advice to the Board on the question of whether the Board could or should participate in (or intervene) in the ongoing existing legal case related the petition for an EAW for the Kinseth Hotel (Case title: In re Resolution Reversing the Planning Commission's Decision to Grant the Petition for an Environmental Assessment Worksheet (EAW) for a Hotel at Sundby Road and West Page Street.)

Thanks.

-Catherine

**Catherine Neuschler** (she/hers) | Executive Director  
Minnesota Environmental Quality Board (EQB)  
520 Lafayette Road N | Saint Paul, MN | 55155  
651-757-2607 (o) | 651-470-4941 (c)  
[catherine.neuschler@state.mn.us](mailto:catherine.neuschler@state.mn.us) | <https://www.eqb.state.mn.us/>



**Sent:** Friday, September 22, 2023 5:32 PM  
**To:** Env Review (EQB) <[Env.Review@state.mn.us](mailto:Env.Review@state.mn.us)>  
**Subject:** RE: Proposed Duluth Heights Hotel - Miller Creek Watershed

You don't often get email from [rtrousdell@chartermi.net](mailto:rtrousdell@chartermi.net). [Learn why this is important](#)

Really disappointed in your recent decision not to get involved. It's just an EAW.

The Duluth Planning Commission (the RGU) ordered one prepared. The City overruled its own Planning Commission, contrary to its own approved regulations

The case is currently scheduled for a hearing by the Minnesota Appeals Court. What are you going to say if the Court rules against the City? The EQB and the State could be liable for remediation/restoration costs.

I guess the EQB does not really adhere to its own responsibility to protect and safeguard the environment.

Roy Trousdell

Sent from my Galaxy