



## MINNESOTA ENVIRONMENTAL QUALITY BOARD

520 Lafayette Road  
St. Paul, MN 55155-4194

Phone: 651-757-2872  
Fax: 651-297-2343  
[www.eqb.state.mn.us](http://www.eqb.state.mn.us)

**Wednesday, February 20, 2013**

**Meeting Location: MPCA Board Room**

**St. Paul, Minnesota**

**1:00 p.m. – 4:00 p.m.**

### **AGENDA**

- I.**     \*Adoption of Consent Agenda  
          Proposed Agenda for February 20, 2013, Board Meeting  
          January 16, 2013, Meeting Minutes
- II.**    Introductions
- III.**   Chair's Report
- IV.**   Executive Director's Report
- V.**     Update on Minnesota Environmental Congress
- VI.**    \*\*Living Word Bible Camp Decision Item
- VII.**   473H Eminent Domain Discussion
- VIII.**  Adjourn

Note: Items on the agenda are preliminary until the agenda is approved by the board.

This agenda and schedule may be made available in other formats, such as Braille, large type or audiotape, upon request. People with disabilities should contact Mary Osborn, Board Administrator, as soon as possible to request an accommodation (e.g., sign language interpreter) to participate in these meetings.

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*\* Items requiring discussion may be removed from the Consent Agenda*





## MINNESOTA ENVIRONMENTAL QUALITY BOARD

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Wednesday, February 20, 2013

### **Meeting Location: MPCA Board Room**

**St. Paul, Minnesota**

**1:00 p.m. – 4:00 p.m.**

### **ANNOTATED AGENDA**

#### **General**

This month's meeting will take place in the MPCA Board Room at 520 Lafayette Road in St. Paul. The meeting will begin at 1:00 p.m. Staff will be available for briefing and questions at 12:30 p.m.

#### **I. \*Adoption of Consent Agenda**

Proposed Agenda for February 20, 2013, Board Meeting  
January 16, 2013, Meeting Minutes

#### **II. Introductions**

#### **III. Chair's Report**

#### **IV. Executive Director's Report**

#### **V. Update on Minnesota Environmental Congress**

**Presenter:** Ellen Anderson, Senior Advisor to the Governor  
(651-201-6173)

#### **Materials enclosed:**

None

#### **Issue before the Board:**

The completed Citizen Forums and the plans for the Environmental Congress event will be presented to the EQB. These plans are satisfying part four of Executive Order 11-32, dated November 16, 2011, which states, in part,

*"By January 15, 2013, the EQB shall organize and host an environmental congress focused on the current state of Minnesota's environment, utilizing the elements in the report card."*

#### **Background:**

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*\* Items requiring discussion may be removed from the Consent Agenda*

The team is pleased to announce plans for the state Environmental Congress to be held March 15, 2013, at the Bloomington Ramada. This one-day conference will engage a group of citizen leaders with diverse viewpoints and backgrounds to help the EQB shape a vision for the future that addresses Minnesota's environment and energy challenges and opportunities.

The 2012 Minnesota Environment and Energy Report Card provides a baseline for how Minnesota is currently performing in the areas of water, land, air, energy, and climate. Citizen input gathered through the Environmental Congress Citizen Forums, comment cards, and an online Citizen Forum will be the starting point for the day's conversations. The Congress will be a working session, where recognized experts and community leaders will lead a dialogue to help participants synthesize citizen input and develop recommendations to the EQB.

The EQB will invite a broad cross-section of experts, community leaders, and stakeholders to participate in the Congress. Leaders from environmental, conservation, and agricultural organizations, chambers of commerce, scientists and other experts, representatives from all levels of government, tribal leaders, as well as leaders from the business, student, and faith communities will be invited to attend. In addition, interested members of the public will be welcome to register as space allows. Registration will open the first week of March.

**VI. \*\* Designation of a Different Responsible Governmental Unit for Preparation of an Environmental Assessment Worksheet for a Proposed Recreational Development in Shoreland (Living Word Bible Camp)**

**Presenter:** Bob Patton  
(651-201-6226)

**Materials enclosed:**

- Letters of request from neighboring landowners' representative, February 15 and 21, 2012
- Letter of request from Itasca County, April 9, 2012
- Submittals from neighboring landowners' representative, May 7 and June 8, 2012
- Submittal from Itasca County, June 12, 2012
- Submittal from project proposer, June 12, 2012
- Draft Findings of Fact, Conclusions, and Order
- Sample Resolution
- Minnesota Rule 4410.0500

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*\*\* Denotes action may be taken*

Note: Items on the agenda are preliminary until the agenda is approved by the Board.

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### **Issue before the Board:**

The EQB has received three requests to designate a different responsible governmental unit (RGU) for the preparation of an Environmental Assessment Worksheet (EAW) for the Living Word Bible Camp on Deer Lake in Itasca County. The RGU is Itasca County. The three requests are from:

1. Itasca County; the Itasca County Board voted to refer the Living Word Bible Camp EAW “to the Environmental Quality Board (EQB) for the selection of a Responsible Governmental Unit (RGU) in place of Itasca County such as the Minnesota Pollution Control Agency (MPCA) or such other appropriate entity as the EQB may appoint;”
2. Neighboring landowners, who requested the EQB designate MDNR as the new RGU for the proposed project; and
3. The project proposers, to “designate the government unit with the most authority and expertise, the MPCA, as the RGU.”

The environmental review rules, in Minn. R. 4410.0500, provide procedures for selection of an RGU for environmental review. Minn. R. 4410.0500, Subpart 6 provides the EQB authority to designate a different RGU than would otherwise be determined through the selection procedures. Specifically, the rule provides:

*Notwithstanding subparts 1 to 5, the EQB may designate, within five days of receipt of the completed data portions of the EAW, a different RGU for the project if the EQB determines the designee has greater expertise in analyzing the potential impacts of the project.*

Minn.R. 4410.0500, Subp. 6 (2011).

### **Background**

The proposed project is a bible camp/retreat center on a 253 acre site on the east shore of Deer Lake in Itasca County. The proposed project includes a lodge with a chapel, an office, five dormitories, an activity building, storage buildings, recreational facilities, a ball field, a campfire area, and a trail system. The site consists of mostly undeveloped woodlands except for four residential buildings (a house and three accessory buildings).

### **Project History**

The detailed history of this matter is outlined in the Findings of Fact, Conclusions and Order. In brief, the history is as follows:

The project proposers (Living Word Bible Camp: Ron and Judy hunt) applied to Itasca County for a planned unit development and conditional use permit in 2006. Neighboring landowners filed a petition for EAW, which was assigned by EQB staff to Itasca County. Itasca County denied the petition. The denial was challenged by the petitioners in Itasca County District Court, and the District Court determined that Itasca County erred in its decision. The District Court decision was affirmed by the Court of Appeals in 2008.

An EAW was prepared and published by Itasca County in 2009. In 2010, Itasca County issued a

positive declaration, requiring preparation of an EIS. This decision was appealed by the project proposers. On December 15, 2011 the Itasca County District Court remanded the EAW to Itasca County and “strongly recommended” that Itasca County and Living Word Bible Camp refer the EAW to the MPCA or other appropriate entity.

The neighboring landowners appealed the District Court decision to the Court of Appeals. Meanwhile, the Itasca County Board voted to refer the Living Word Bible Camp EAW to the EQB for “selection of a responsible governmental unit (RGU) in place of a Itasca County such as the Minnesota Pollution Control Agency (MPCA) or such other appropriate entity as the EQB may appoint.”

In addition to the request from Itasca County, the EQB also received requests to designate a different RGU from the neighboring landowners and the project proposers. The neighboring landowners request designation of the DNR, while the project proposers requested designation of the MPCA.

The EQB considered requests to designate a new RGU on June 12, 2012, but tabled the matter until final resolution before the Court of Appeals. The Court of Appeals affirmed the District Court decision on September 27, 2012, and on appeal, the Minnesota Supreme Court denied the neighboring landowners petition for review.

### **Discussion**

As discussed above, Minn. R. 4410.0500, provide procedures for selection of an RGU for environmental review and, under Minn. R. 4410.0500, Subpart 6, the EQB has authority to designate a different RGU than would otherwise be determined through the selection procedures. Itasca County, the neighboring landowners, and the project proposers have requested the EQB to designate a different RGU using this authority.

However, a letter from attorney G. Craig Howse, sent on behalf of the project proposers, suggests that the EQB also consider Minn. R. 4410.0500, Subpart 5; therefore, the findings contained in the draft Findings, Conclusions, and Order address both Subparts 5 and 6 of Minn. Rule 4410.0500.

Minnesota Rule 4410.0500, Subp. 5 reads:

*For any project where the RGU is not listed in part 4410.4300 or 4410.4400 or which falls into more than one category in part 4410.4300 or 4410.4400, or for which the RGU is in question, the RGU shall be determined as follows:*

*A. When a single governmental unit proposes to carry out or has sole jurisdiction to approve a project, it shall be the RGU.*

*B. When two or more governmental units propose to carry out or have jurisdiction to approve the project, the RGU shall be the governmental unit with the greatest responsibility for supervising or approving the project as a whole. Where it is not clear which governmental unit has the greatest responsibility for supervising or approving the project or where there is a dispute about which governmental unit has the greatest responsibility for supervising or approving*

*the project, the governmental units shall either:*

*(1) by agreement, designate which unit shall be the RGU within five days of receipt of the completed data portion of the EAW: or*

*(2) submit the question to the EQB chairperson, who shall within five days of receipt of the completed data portions of the EAW designate the RGU based on consideration of which governmental unit has the greatest responsibility for supervising or approving the project or has expertise that is relevant for the environmental review.*

Minn.R. 4410.0500, Subp. 5 (2011).

Staff is of the opinion that Minn.R. 4410.0500, Subp. 5, paragraph B is relevant because it provides a procedure for determining an RGU where “two or more governmental units propose to carry out or have jurisdiction to approve the project,” since approvals are required from two of more governmental units, including the MPCA, and possibly the DNR. The first test in the procedure is that “the RGU shall be the governmental unit with the greatest responsibility for supervising or approving the project as a whole.” Staff believes that, of the approvals required for the project, the multiple land use approvals required of Itasca County (conditional use permit preliminary planned unit development approval, and shoreland alteration permit) constitute “the greatest responsibility for supervising or approving the project as a whole,” and therefore the rule indicates Itasca County should be the RGU.

Having considered the procedures in Minn.R. 4410.0500, Subp. 5, staff then evaluated the request to designate under Minn.R. 4410.0500, Subp. 6, To designate a different RGU than Itasca County, under Minn. R. 4410.0500, Subp. 6, the EQB must determine that the designee has greater expertise in analyzing the potential impacts of the project. For guidance on the expertise required to analyze the potential impacts of the project, staff considered the 1982 Statement of Need and Reasonableness (SONAR) for the “recreational development” mandatory category, which was the predecessor of the “campgrounds and RV parks” (Minn. R. 4410.4300, Subp. 20) and “resorts, campgrounds, and RV parks in shorelands” mandatory categories (which most closely match the proposed development. Staff believes the SONAR makes clear that the local government is presumed to have the greatest expertise in land use. The local government with land use approval authority over the project is Itasca County. Because of this authority, and the County’s expertise in the particular facts, history, and circumstances of the project, staff believes that Itasca County is the appropriate RGU.

The draft Findings of Fact, Conclusions, and Order are written in support of staff’s recommendation to deny the requests to designate a different RGU. New findings would be required if the Board chooses to designate a different RGU.

**Staff recommendation:**

Staff recommends adoption of the sample resolution for denial of a different RGU.

## **VII. 473H Eminent Domain Item**

**Presenter:** Jeff Smyser, EQB (651)757-2279

**Materials enclosed:** Minnesota Statutes 473H

### **Issue before the Board:**

Whether or not a proposed eminent domain action might have an unreasonable effect on agriculture and agricultural resources.

### **Background:**

This is a discussion item for the February 20 meeting. Staff is asking for input from the Board. It will be an action item for the March 20 meeting.

Minnesota Statute 473H created the Metropolitan Agricultural Preserves Program to protect agricultural lands in the metropolitan area. Land enrolled in the program can only be taxed at agricultural rates and is protected from assessments that often are applied to property for infrastructure projects. To be removed from the program, the property owner must file a notice and then wait eight years. The statute is included in the packet as an attachment.

If an eminent domain action is proposed for ten acres or more of land that is enrolled in the program, Minn. Stat. 473H.15 requires that the agency taking the action must file a notification with the EQB. To summarize the statute, the EQB, in consultation with affected units of government, must review the proposed action to determine the effect on the preservation and enhancement of agriculture and agricultural resources within the preserves and the relationship to local and regional comprehensive plans. If the Environmental Quality Board finds that the proposed action might have an unreasonable effect on an agricultural preserve or preserves, the EQB shall issue an order within the 60-day period for the party to desist from such action for an additional 60-day period. During the additional 60-day period, the Environmental Quality Board must hold a public hearing concerning the proposed action.

Northern States Power (Xcel Energy) has filed a notification regarding a proposed eminent domain action in Vermillion Township in Dakota County. They intend to acquire 15 acres for an electrical substation. This 15 acres of land is part of a large property currently within the Metropolitan Agricultural Preserves Program.

The notification was received February 8. This did not allow time for staff to research the action and prepare a report prior to the February 20 meeting. Staff is researching relevant information and communicating with Xcel, affected government units, and the land owner. A resolution will be prepared for adoption by the Board at the March 20 meeting. If there is no unreasonable effect foreseen, the adopted resolution will state that. If research indicates there will be an unreasonable effect, the resolution will order the additional 60-day period and a public hearing.

## **VIII. Adjourn**



**MINNESOTA ENVIRONMENTAL QUALITY BOARD  
MEETING MINUTES**

**Tuesday, January 16, 2013  
MPCA Room Board Room, 520 Lafayette Road, St. Paul**

**EQB Members Present:** Dave Frederickson, Brian Napstad, John Saxhaug, Julie Goehring, Erik Tomlinson, Mike Rothman, John Linc Stine, Ed Ehlinger, Katie Clark Sieben, Tom Landwehr, Charlie Zelle, Kate Knuth

**EQB Members Absent:** Kristin Duncanson, Spencer Cronk

**Staff Present:** Bob Patton, Kate Frantz, Jeff Smyser (EQB), Mary Osborn and Beth Tegdesch (MPCA for EQB)

Chair Dave Frederickson called the meeting to order at 1:15 p.m.

**I. Adoption of Consent Agenda and Minutes**

A motion to adopt the Consent Agenda was made, seconded, and carried unanimously.

**II. Introductions**

Chair Dave Frederickson introduced two new Board members; Commissioner Charlie Zelle of MnDOT, and Kate Knuth, Citizen Member from New Brighton, and a longtime member of the State Legislature. Members of the EQB and those in attendance introduced themselves. A special introduction to Andrea Fetherston, the Dept. of Agriculture's new Executive Assistant.

**III. Chair's Report**

Six Citizen Forum meetings were held across the state and the Governor is very pleased with the input from these meetings. The Governor complimented Ellen Anderson and Anna Sherman on the great work they had done to put together these meetings. 1,200 people (actual number) attended. Looking forward to the Environmental Congress on March 15th.

**IV. Executive Director's Report**

- Additional correspondence was handed out to each board member.
- Beth Tegdesch was introduced as the new EQB support staff who is replacing Mary Osborn.
- The Living Word Bible Camp will not be on the agenda today; operating rules require us to have 10 calendar days' notice to parties when staff prepares findings and conclusions; will be preparing those findings and get them out to the parties
- Ellen Anderson and Bob Patton will appear before the Senate Environmental Committee tomorrow and give a brief overview on the Board; Bob will be covering the Board background and Ellen will talk about the Executive Order. This is a great opportunity to highlight what the Board has been doing.
- Echo the Chair's report on the Citizen's Forum and wants to also thank the agencies and staff for help with putting those on.

## V. **Mandatory Environmental Review Categories Report**

Presenter Jeff Smyser: Report and Notice for Comment

This item is about initiating the formal rule making process to see what changes the public and the different agencies would like to see made for certain aspects of the environmental review program rules. EQB is not asking for approval of this document, this is mainly for information purposes. **Action item is approving the resolution that will start the process to get formal comments on the rules.** The Resolution is to authorize the Chair of the EQB to sign and publish a Request for comments.

There was much Board discussion. A motion was made to have a transmittal letter created to submit to the Governor's office and legislature a finalized version of the report. The transmittal letter will be signed by the three commissioners whose agencies prepared individual reports compiled into this finalized version, as well as the Board Chair in regard to the individual report by EQB Staff which has also been included in the finalized version.

"Now, therefore, be it resolved that the EQB hereby authorizes the Chair to publish a Request for Comments on possible amendments of Minn. R. ch. 4410."

- Motion passes with 11 ayes, 1 no.

Presenter Bob Patton: Establish an EQB Subcommittee

The following members agreed to be on the subcommittee, and will meet at the PCA once a month.

- John Linc Stine
- Dave Frederickson
- Kate Knuth
- Brian Napstad

## VI. **Silica Sand Draft Report Discussion**

Presenter Jeff Smyser

Chair Frederickson wants to indicate, for the record, that Governor Dayton is very, very concerned about the whole issue of silica sand mining and its impact and effect on the southeastern portion of Minnesota; he definitely does not want projects to get approved before legislative decisions can be made, and if need be assured that he will use his executive powers to slow things down; he is looking for serious discussions/debates but wants that to take place along with members of the legislature; he is watching very carefully and critically of what is going on in the countryside.

**Issue before the Board:** Discuss preliminary working draft and provide comment and direction to staff for revisions to the document.

The Board requested that state agency staff look at the issues related to the silica sand industry and prepare a report. The direction of the report is supposed to be what do we know, and what don't we know. A sub theme as part of the discussion: what is it that state government might be able to provide local governments to help them address the issues that are important to them.

- This is a preliminary draft
- This report will not be encyclopedic

- This report from the EQB should be reliable
- The report does not advocate a particular perspective on the silica sand issues

#### **Board Discussion**

The following people provided comments on silica sand mining:

- Kristin Eide-Tollefson, Citizen, Florence Township, Goodhue County
- Tony Kwilas, Director of Environmental Policy, Chamber of Commerce
- Winston Kaehler, Red Wing, MN
- Jody McIlrath, Frontenac, MN

#### **VII. Update on Citizen Forums and Minnesota Environmental Congress**

Presenter Ellen Anderson, Senior Advisor to the Governor

The completed Environmental Congress Citizen Forums and the plans for the Environmental Congress event was presented before the EQB.

The Board commended the group: Kate Frantz, Jeff Smyser, Ellen Anderson, and Anna Sherman for these forums. Also John Saxhaug, Erik Tomlinson, Julie Goehring, Kristen Duncanson and Brian Napstad, for the extra effort they put in being part of these listening sessions.

#### **IX. Adjourn**



**From:** [James Peters](#)  
**To:** [Patton, Bob \(MDA\)](#)  
**Subject:** Living Word Bible Camp EAW - Itasca County  
**Date:** Wednesday, February 15, 2012 12:40:38 PM  
**Attachments:** [EQB Request February 15 2012.pdf](#)

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Dear Mr. Patton:

- Attached please find a request that the EQB assign MN DNR as the RGU on this Project.
- I will also mail the request letter.
- Please do not hesitate to contact me with questions or comments.

Jim

Law Offices of James P Peters PLLC





LAW OFFICES OF  
**JAMES P. PETERS, PLLC**

460 Franklin Street North #100  
PO Box 313  
Glenwood, MN 56334  
320-634-3778

RECEIVED  
FEB 23 2012  
BY: \_\_\_\_\_

February 21, 2012

Minnesota Environmental Quality Board  
Bob Patton, Executive Director  
520 Lafayette Road North  
St. Paul, MN 55155

**Re: *Living Word Bible Camp EAW - Itasca County, Minnesota  
Request to Assign MN DNR as the RGU***

Dear Mr. Patton:

I write again to follow up regarding the environmental assessment worksheet ("EAW") process regarding the proposed Living Word Bible Camp commercial planned unit development in Itasca County ("Project"). There are additional reasons why the EQB should assign the Minnesota Department of Natural Resources ("MN DNR") to serve as the RGU for the EAW on the Project.

MN DNR has area-specific expertise in resource management regarding this part of Itasca County. The Division of Ecological Resources of MN DNR has several habitat preservation projects (easement and management areas) in Itasca County, including on Deer Lake. MN DNR manages the Beer Island-Deer Lake Island Wildlife Management Area, the Trout Lake Wildlife Management Area, the Bowstring Deer Yard Wildlife Management Area, the Sugar Lake Conservation Easement, and the Bass Brook Wildlife Management Area.

MN DNR also has specific expertise regarding the State Aquatic Management Areas, which include Kocemba Bay on Deer Lake.

Your attention to this matter is appreciated.

Sincerely,

  
James P. Peters







Writer's Email: mford@quinlivan.com

Writer's Direct Dial: (320) 258-7848

April 9, 2012

Kevin A. Spellacy  
Michael J. Ford\*  
Michael T. Feichtinger\*  
Steven R. Schwegman\*\*\*  
Michael D. LaFontaine  
Ronald W. Brandenburg  
Bradley W. Hanson\*  
Kenneth H. Bayliss  
Michael C. Rajkowski  
Dyan J. Ebert<sup>o</sup>  
Luke M. Seifert  
Robert P. Cunningham  
Melinda M. Sanders  
Thomas J. Christenson<sup>o\*</sup>  
John H. Wenker  
Shelly M. Davis  
James S. McAlpine\*  
Laura A. Moehrle  
Cally R. Kjellberg  
W. Benjamin Winger  
Garin L. Strobl  
Sarah R. Jewell  
  
*Of Counsel:*  
John J. Hoefs\*  
  
*Retired:*  
John D. Quinlivan  
Keith F. Hughes  
Gerald L. Thoreen  
Dennis J. (Mike) Sullivan

**Robert Patton**  
**Executive Director**  
**Environmental Quality Board**  
**520 Lafayette Road North**  
**Saint Paul, MN 55155**

**RE: Request for the appointment of a new RGU on the Living Word Bible Camp project in Itasca County**  
**Claim #102GL1015392JS**  
**Our File #19243.18518**

**Dear Mr. Patton:**

**I have been engaged to represent Itasca County in a dispute that is currently on appeal to the Minnesota Court of Appeals. The dispute, generally, involves a project being pursued by the Living Word Bible Camp whose counsel is Craig Howse whom I copy on this message.**

**At present, there is a District Court Order that remands a decision on the need for an Environmental Impact Statement to the County Board.**

**In the order of remand the District Court recommended that the County Board consider referring the decision on the need for an Environmental Impact Statement to the Environmental Quality Board for selection and appointment of a different Responsible Government Unit to decide the issue.**

**On February 7<sup>th</sup> and again on February 28<sup>th</sup> the Itasca County Board took up the issue and ultimately decided to select "a Responsible Government Unit (RGU) in place of Itasca County such as the Minnesota Pollution Control Agency (MPCA) or such other appropriate entity as the EQB may appoint." See, Minutes, February 28, 2012 Itasca County Board.**

**Enclosed please find copies of the relevant District decisions on 07-15-11 and 12-15-11 and County Board meeting minutes of 02-07-12 and 02-28-12.**

**I have earlier provided this material, and explanation, to your agency's assigned legal counsel, Kathleen Winters, and by copy of this letter do so again.**

*Mail & Fax Center*  
PO Box 1008  
St. Cloud, MN 56302  
Fax 320.251.1415  
www.quinlivan.com

*Saint Cloud Office*  
Wells Fargo Center  
400 South First Street, Suite 600  
St. Cloud, MN 56301  
Phone 320.251.1414

*Little Falls Office*  
First Street Suites  
107 First Street SE, Suite 105  
Little Falls, MN 56345  
Phone 320.632.0440


*\*Qualified ADR Neutral*  
*\*MSBA Certified Civil Trial Specialist*  
*\*American College of Trust & Estate Counsel*  
*<sup>o</sup>Also licensed in South Dakota*  
*<sup>o</sup>Also licensed in North Dakota*  
*<sup>o</sup>Also licensed in Wisconsin*

I understand from Ms. Winters that a group of neighboring land owners represented by Jim Peters has already requested that the EQB appoint a new RGU and I therefore copy Mr. Peters with this letter and its enclosures.

Should the EQB appoint a new RGU then and at that time the County primary point of contact on all administrative matters relating to the EIS issue will be the Itasca County Environmental Services Administrator, Don Dewey ((218) 327-2857) and I therefore copy Mr. Dewey on this letter as well.

Should your agency require anything further on this request, please feel free to contact me or have Ms. Winters do so.

Sincerely,



Michael J. Ford  
Attorney at Law  
MJF/mal/807398  
Enclosures

C: w/encl. James P. Peters  
Law Offices of James P. Peters, PLLC  
PO Box 313  
Glenwood, MN 56334

G. Craig Howse  
Howse & Thompson, P.A.  
3189 Fernbrook Ln. N.  
Plymouth, MN 55447

Don Dewey  
Environmental Services Administrator  
Itasca County Environmental Services  
123 N.E. 4th St.  
Grand Rapids, MN 55744-2600

Kathleen Winters  
Assistant Attorney General  
Minnesota Attorney General's Office  
445 Minnesota St., Ste. 900  
St. Paul, MN 55146

State of Minnesota  
Itasca County

District Court  
9th Judicial District

Court File Number: **31-CV-10-885**

Case Type: Civil Other/Misc.

**Notice of Filing of Order**

MICHAEL J FORD  
QUINLIVAN & HUGHES P.A.  
BOX 1008  
ST CLOUD MN 563021008

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**LIVING WORD BIBLE CAMP vs COUNTY OF ITASCA**

You are notified that an order was filed on this date.

Dated: July 25, 2011

Nancy Winger, Acting  
Court Administrator  
Itasca County District Court  
123 Northeast 4th Street  
Grand Rapids Minnesota 55744  
218-327-2870

cc: G CRAIG HOWSE  
JAMES PIERCE PETERS

A true and correct copy of this notice has been served by mail upon the parties herein at the last known address of each, pursuant to Minnesota Rules of Civil Procedure, Rule 77.04.



STATE OF MINNESOTA

IN DISTRICT COURT

COUNTY OF ITASCA

NINTH JUDICIAL DISTRICT

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Living Word Bible Camp,

File #: 31-CV-10-885

Plaintiff,

vs.

County of Itasca,

Defendant.

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
ORDER and  
MEMORANDUM**

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The above-entitled matter came on for hearing before the undersigned Judge of District Court, on May 2, 2011 pursuant to the parties' cross motions for summary judgment on plaintiff's declaratory judgment action challenging Itasca County's positive declaration for an EIS. In addition, the issue of intervention is before the court based upon a notice of intervention filed on behalf of neighboring landowners. Plaintiff, Living Word Bible Camp, was represented by Craig C. Howse, Attorney at Law. Defendant, County of Itasca, was represented by Michael J. Ford, Attorney at Law. The proposed intervenors were represented by James P. Peters, Attorney at Law.

Based on the arguments and memoranda and the file and proceedings herein, this Court makes the following:

**ORDER**

1. An evidentiary hearing shall be scheduled for an evidentiary hearing to determine whether Commissioner McLynn's partiality and improper actions rendered the County Board's positive declaration for an EIS arbitrary and capricious.
2. A scheduling hearing shall be held on August 4, 2011 at 8:30a m.
3. Defendant County of Itasca's motion for summary judgment as to plaintiff's equal protection claim is granted.
4. The Notice of Intervention, filed April 21, 2011, is denied.
5. The issue of costs and disbursements is reserved.

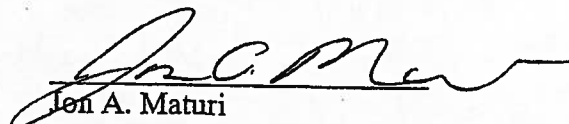
6. All other claims by either party not addressed herein are dismissed.

Let the attached Memorandum be made a part hereof.

IT IS SO ORDERED:

Dated this 25<sup>th</sup> day of July 2011.

BY THE COURT:

  
Jon A. Maturi  
Judge of District Court

**FILED**  
JUL 25 2011

COURT ADMINISTRATOR  
ITASCA COUNTY MINN.

BY \_\_\_\_\_

## MEMORANDUM

### Statement of Facts

In April of 2006, Ron and Judy Hunt applied on behalf of plaintiff Living Word Bible Camp ("LWBC") for a planned unit development ("PUD") and a conditional use permit ("CUP") to establish a youth/bible camp on Deer Lake, located in Itasca County, Minnesota. In May of 2006, a citizen's petition seeking to have an Environmental Assessment Worksheet ("EAW") completed on the LWBC project was filed with the Environmental Quality Board ("EQB"). An EAW is a "brief document which is designed to set out the basic facts necessary to determine whether an environmental impact statement is required for a proposed action." Minn. Stat. § 116D.04, Subd. 1a(c). The EQB referred the matter to Itasca County as the responsible governmental unit ("RGU").

When preparing the EAW, the RGU applies certain criteria set forth in Minn. R. 4410.1700, Subp. 7, to determine whether the project has "potential for significant environmental effects." Minn. Stat. § 116D.04, Subd. 2a(c); Minn. R. 4410.1700, Subp. 7. If, after reviewing the EAW, the RGU decides that the project does have the potential for significant environmental effects, the RGU is required to issue a "positive declaration" indicating that an Environmental Impact Statement ("EIS") must be completed. Minn. R. 4410.1700, Subp. 1 & 3. An EIS is an exhaustive environmental review that the party proposing the project must conduct at its own expense. See Minn. R. 4410.2000, Subp. 1; Minn. R. 4410.2300; Minn. Stat. § 116D.045.

The Itasca County Board of Commissioners ("County Board") determined that an EAW was not required for the project. The only vote for an EAW was Commissioner Catherine McLynn, who indicated that she was voting for the EAW because the petitioners were constituents and taxpayers in her district. The petitioners challenged the decision in District Court. Based upon the record, both the District Court and the Minnesota Court of Appeals concluded that the County Board acted arbitrarily and capriciously in not ordering an EAW. The matter was remanded to the County Board with direction to order an EAW.

In January of 2009, the County Board hired Widseth Smith Nolting & Associates, Inc., ("WSN") to complete the EAW. Brian Ross of WSN worked on completing the EAW. On October 13, 2009, completed data portions of the EAW prepared by LWBC were forwarded to WSN. On November 10, 2009, WSN notified LWBC that their data submittal was complete. The EAW was approved for distribution following a contentious County Board meeting on December 7, 2009. The EAW was published in the EQB Monitor on December 28, 2009. The deadline for public comment was January 27, 2010. On January 14, 2010, Mr. Ross facilitated a public meeting on the EAW petition. The County Board received roughly 40 comments on the EAW, some in support of the EAW, some against. The EAW and the comments comprised the record upon which the County Board was to make its decision. This court based its decision upon the roughly 2300 pages that comprise the entire Record of Decision ("ROD"). The evidence in the record that could arguably support either a finding that an EIS was necessary or that an EIS was not necessary, depending upon what evidence the individual County Board members chose to rely upon to reach their decision.

On February 23, 2010, the County Board voted 3-1 in support of a resolution, supported by findings of fact, which made a positive declaration for the need for an EIS.

Commissioner McLynn, in whose district the majority of Deer Lake is located, was closely involved throughout the entire EAW process and it is her involvement that is at the center of the present dispute. She voted in favor of an EIS. Plaintiff LWBC alleges that Itasca County Board's positive declaration for the need for an EIS was arbitrary and capricious, not supported by the evidence and full of irregularities because Commissioner McLynn did not approach the decision with a neutral and detached mind, failed to act in good faith, was not capable of fairly judging the controversy on its own circumstances, and/or took a position in opposition to the LWBC project and exhibited a closed mind when voting for an EIS.

#### **Standard of Review**

The parties agree that decision of a county board in determining whether to require an EAW is quasi-judicial in nature. In other words, the board members must act as judges and not as representatives or advocates. It is certainly understandable that it may sometimes be difficult for the members of a political body, like a county board, to put aside political considerations and act in a quasi-judicial capacity that requires that board members determine facts presented by opposing sides and make a decision based upon findings of fact and application of the appropriate legal criteria and standard, rather than simply doing what is in their own self interest, or that which serves the interests or desires of the member's constituents.

When acting in a quasi-judicial capacity, county boards are subject to more extensive judicial oversight than when making zoning decisions. *Honn v. City of Coon Rapids*, 313 N.W.2d 409, 416-17 (Minn.1981). Reviewing courts must defer to county board decision unless the decision reflects an error of law, is arbitrary and capricious, or is unsupported by substantial evidence. *Citizens Advocating Responsible Development v. Kandiyohi County Board of Commissioners*, 713 N.W.2d 817, 833 (Minn. 2006) ("CARD"). An RGU's determination regarding an EIS is arbitrary and capricious if the decision represents "its will, rather than its judgment." *Pope County Mothers v. Minn. Pollution Control Agency*, 594 N.W.2d 233, 236 (Minn.App. 1999). Alternatively stated, an RGU's decision is arbitrary and capricious if it (1) is based on factors that the legislature did not intend for the RGU to consider; (2) entirely fails to address an important aspect of the problem; (3) offers an explanation that is counter to the evidence; or (4) is so implausible that it could not be explained as a difference in view or the result of the RGU's decision-making expertise. *CARD* at 833.

In *CARD*, the Minnesota Supreme Court stated that the scope of review in environmental review cases is as set forth in the Minnesota Administrative Procedure Act ("MAPA") § 14.69. *Id.* at 832. That statute permits a reviewing court to affirm, remand, reverse, or modify the agency's decision. But in *Iron Rangers for Responsible Ridge Action v. Iron Range Resources*, 531 N.W.2d 874, 880 (Minn.App. 1995), the Court cited *Swanson v. City of Bloomington*, 421 N.W.2d 307, 313 (Minn.1988), as directing application of the arbitrary and capricious standard when reviewing county board decisions that are based on the record. *Swanson* goes on to state that if the proceedings have not been fair, the parties are entitled, under *Honn v. City of Coon Rapids*, 313 N.W.2d 409 (Minn.1981), to augment the record with evidence introduced to the district court.



**Commissioner McLynn's Actions Were Improper and an Evidentiary Hearing is Necessary to Determine Whether the Decision of the Itasca County Board to Require an EIS was Arbitrary and Capricious**

The record as a whole establishes that Commissioner McLynn consistently favored those who were seeking a positive declaration for an EIS. Although there are some statements in the record that would enable one to make an argument that Commissioner McLynn did have an open mind on this issue, her actions do not support such a conclusion that she approached the EAW process, including the decision for an EIS, with a neutral and detached mind as is required of County Board members when acting in a quasi-judicial capacity.

Evidence outside the record, including Commissioner McLynn's efforts to revoke the tax exempt status of LWBC and her statement at the November 16, 2009 hearing on whether to order an EAW, is relevant to show McLynn's alignment with opponents of the LWBC project. Commissioner McLynn's ultimately successful attempts to change the tax exempt status of the LWBC property, like McLynn's past involvement with members of the Deer Lake Association ("DLA") in matters relating to LWBC, are circumstantial evidence that bolsters the conclusion that McLynn did not approach the EAW process with an open mind. Commissioner McLynn's reason for voting to require an EAW- that the petitioner was a constituent- is not part of the present record of decision, but it is relevant to the issue of her advocacy on behalf of LWBC opponents as well as McLynn's disregard of her obligation to act in a quasi-judicial capacity on this issue by making decisions based upon the facts rather than on political considerations.

Even more significant than Commissioner McLynn's statement that she was voting for an EAW because the petitioner was a constituent, was McLynn's insistence that she be able to review the EAW with her constituents to help her determine if the EAW was complete and ready for public comment. (ROD # 2326, 2328). Commissioner McLynn's insistence on having persons opposed to the LWBC project help her determine whether to deem the EAW complete was, as she was informed by other commissioners and Brian Ross of WSN, inappropriate. That McLynn improperly relied upon LWBC opponents in determining whether the EAW was complete raises the question of whether McLynn relied on LWBC opponents in voting to require an EIS.

From the beginning of the EAW process, McLynn consistently sought to remove from the EAW statements and conclusions that were favorable to LWBC and she sought to include statements and information that were unfavorable to LWBC. She accomplished this through numerous e-mails with Brian Ross, whom the County had hired to prepare the EAW, and during County Board meetings. In support of her efforts, McLynn made incorrect statements, including: "Statements drawing conclusions are very specifically not to be included in the EAW." (ROD # 998); "conclusory statements are NOT appropriate in an EAW." (ROD # 996); and she complained that the "EAW is full of references to promises, indications, expectations and proposed conditions NONE of which are in force as mitigation measures YET." (ROD 996) The statements were incorrect because the EAW specifically asks for information on "proposed mitigation measures" (ROD 324) and for discussion of measures to minimize or avoid impacts (ROD 330).

Brian Ross of WSN expressed concern to the County Board that McLynn's proposed changes sought to take away some of the conclusions and professional opinions

that were specifically asked for in the EAW and which are normally part of an EAW. (ROD 249, 258). McLynn and Ross went back and forth over proposed changes to the EAW. (ROD #250-51) McLynn sought to include a conclusion that there "may be prior environmental hazards" from prior use. Ross countered that there was no evidence of any hazards as a result of prior use.<sup>1</sup> McLynn also sought to remove language from the EAW stating that LWBC had agreed to protect a larger area of shoreline. (ROD # 257). McLynn sought to remove this language, arguing in essence that LWBC's promises mean nothing. The Board disagreed with McLynn, eventually agreeing to include language that LWBC has "made representations" about protecting shoreline.

Commissioner McLynn succeeded in removing appropriate conclusions and discussions from the EAW despite the numerous specific requests in the EAW for the preparer to draw conclusions, discuss effects, and discuss potential or proposed mitigation measures. Notably, the conclusory statements and discussion that McLynn had removed from the EAW consisted of statements and discussion that were favorable to LWBC in that they tended to either be neutral or suggest that there would not be significant environmental effects. Changes that McLynn succeeded in having made to the EAW include the following:

- The EAW specifically asks for a description of how plants and other ecological resources would be affected by the project (ROD # 324), but McLynn had a statement regarding their effect removed (ROD #994);
- The EAW specifically asks for a comparison of runoff quality before and after the project (ROD #325), but McLynn sought and received removal of a statement about the quality of runoff water before and after the project (ROD # 992);
- The EAW specifically asks for an estimate of the impact on traffic congestion (ROD #328), but McLynn sought and received removal of statements on traffic congestion (ROD # 995);
- The EAW specifically asks about the impact of the project on nearby historical resources (330), But McLynn sought and received removal of a statement indicating that the Voight-Baker house, a historical site located nearby, would not be affected by this project or related activities (ROD #995);
- The EAW specifically asks about the impact of the project on scenic views and vistas and other unique resources (ROD #330), but McLynn sought and received removal of a statement indicating that two scenic and natural areas, each located about one mile away from the project, would not be impacted by the project (ROD # 995);

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<sup>1</sup> Evidence in the record regarding the prior use of the property shows that a small number of mink were kept there for a number of years. The claims made by LWBC opponents exaggerate the size and duration of the mink farming and their supporting "evidence" of potential harm is not on point in that they attempt to equate the potential harm from a long-term, large scale commercial mink operation with the small, relatively short-term, farm that had some mink over 50 years earlier.

- The EAW specifically asks about cumulative potential effects and asks for a summary of available information relevant to determining whether there is a potential for significant environmental effects due to these cumulative effects (ROD # 331), but McLynn sought and received removal of a statement that relied upon information received from the Minnesota Department of Natural Resources which concluded that the project should not impact certain resources (ROD # 995);
- In its summary section, the EAW specifically asks for a discussion of alternatives or mitigation measures that have been or may be considered for the issues raised, "including those that have been or may be ordered as permit conditions." (ROD # 332), but McLynn sought and received removal of a statement indicating that proposed permit conditions limited the number of boats to be used by LWBC and prohibited the use of jet boats and jet skis (ROD 995);

While there is support in the record for some of McLynn's changes, particularly after McLynn was successful in having documents from those opposed to LWBC added as appendices, there is no legitimate basis for other changes affected by McLynn. In contrast, there was factual support in the record for the statements that McLynn had removed. In addition, all of the changes McLynn sought and had made to the EAW, other than typographical changes (affect v. effect, for example) changed statements that were more favorable to LWBC's position into statements that were either facially neutral or more favorable to those opposed to LWBC's position.<sup>2</sup> All of the changes to the EAW affected by McLynn are significant because they could have affected the public comments, and ultimately, the consideration and votes of other commissioners. The removal of discussion and conclusions that are supposed to be a part of the EAW may have resulted in an arguably inaccurate presentation of the LWBC project and permitted greater, and therefore less accurate, speculation about the potential environmental effects that such a project might have.

The extent of Commissioner McLynn's partiality is shown by unsuccessful attempts to change the EAW in favor of those opposed to LWBC. McLynn unsuccessfully sought to change the EAW to incorrectly note that future stages of development were planned or likely to happen even though LWBC had abandoned plans for future development and she unsuccessfully sought to have the EAW state that an EAW was mandatory. She also sought unsuccessfully to change Finding of Fact # 6 of Resolution # 2-10-06, the positive declaration for an EIS. McLynn sought to include language prohibiting any PUD or CUP permits from being "considered" until the completion of the EAW/EIS process. As Assistant County Attorney Michael Haig explained in a memorandum to the County Board recommending that the Board not adopt McLynn's proposed change, the change proposed by McLynn was "troubling" and

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<sup>2</sup> This court uses the term "facially neutral" because while the absence of certain statements could be read to be neutral, the effect of issuing an EAW with missing information served to invite comments pointing out the inadequacy of the EAW. The changes unreasonably and unfairly increased uncertainty about the County's ability to add conditions and restrictions on LWBC.

"inaccurate" because the finding could be interpreted as an incorrect statement of the law. (ROD# 2171-72).

Commissioner McLynn's partiality can be inferred from the way in which she reacted to certain events. On January 14, 2010, Brian Ross facilitated a public meeting regarding the EAW pursuant to Minn.R. 4410.1600. The next morning, Commissioner McLynn, who had attended the meeting, walked into Itasca County employee Nadine Hopkins' office "very upset" with the previous night's meeting. (ROD # 986). She ordered that a transcript of the meeting not be prepared because comments on EAW were to be in writing. (Id.) She also questioned why county employees had been present at meeting. (Id.) McLynn may have been upset because the meeting was dominated by persons opposed to the need for an EIS and that Dave Holmbeck, a retired DNR employee, made specific arguments supported by evidence that undermined claims of the potential for significant environmental effects and he pointed out that some of the information provided to the district court before it made its April 27, 2007 decision on the need for an EAW had been misleading.

On another occasion Commissioner McLynn became upset upon learning that Mr. Ross had communicated with counsel for LWBC regarding suggestions and changes to the draft EAW. (ROD #996-97). It is interesting to note that McLynn was seeking to incorporate information provided by those opposed to LWBC into the EAW as appendices and she wanted to let her constituents, who are opposed to LWBC, offer input and help her decide whether the EAW was complete, but she became upset and resorted to use of all caps in her emails when she learned that Mr. Ross has been speaking with the attorney for LWBC about the EAW. This disparate treatment of the two opposing sides and Commissioner McLynn's perception of Mr. Ross' attempted objectivity as bias are a concern.

Commissioner McLynn arguably took inconsistent positions with respect to LWBC's development plans. She argued that LWBC's prior proposal for a larger project, which was abandoned, is relevant to the EAW, (ROD#700-701), but that LWBC's current promises to engage in or refrain from certain actions, including further development, are irrelevant. (ROD #257). Although Commissioner McLynn's position on what is and is not relevant evidence appears inconsistent, what remains consistent is her support of those who oppose the LWBC project.

An additional reason for questioning Commissioner McLynn's lack of an open mind is evidence that, despite her close involvement with the EAW process, she was not familiar with the information relied upon in the draft EAW. At the County Board meeting on December 7, 2009, almost a month after the County Board members received a draft EAW that included as an appendix a report from limnologist Carolyn Dindorf, Commissioner McLynn, who had suggested numerous changes to the draft, some of which are discussed above, stated that she was not aware of Ms. Dindorf's report. This is significant because Ms. Dindorf's report, unlike much of the criticism of the EAW and the LWBC project, uses facts and data specific to Deer Lake and supports the position that an EIS is not necessary. From the December 7, 2009 transcript and the record as a whole, one can infer that Commissioner McLynn is knowledgeable about information that would support the need for an EIS, but that she had not bothered to familiarize herself with the entire draft EAW even though it was she who was suggesting significant changes.

The evidence in the record clearly establishes that Commissioner McLynn did not take a hard look at the issues, relied upon factors she was not permitted or intended to consider, aligned herself with LWBC opponents, and took a position in opposition to LWBC before the EAW process was complete. What is unclear is what, if any, effect Commissioner McLynn's improper actions and partiality had upon the fairness and regularity of the process and/or upon the votes of the other county board members.

That two other board members also voted for an EIS could, depending upon facts adduced at an evidentiary hearing, support a finding that the decision was reasonable. Commissioner Burthwick proposed significant substantive findings of fact in support of her vote and her findings are supported by substantial evidence in the record and Commissioner Dowling cited the DNR's comment letter as support for her positive vote. Given the other Board Members' facially objective and independent reasons for voting for an EIS, it would be entirely speculative for this Court, on this record, to conclude that McLynn's involvement so tainted the process that the decisions of the other Board Members were rendered arbitrary and capricious. On the other hand, had Commissioner McLynn not acted improperly, the EAW would likely have been different and the comments to the EAW, including the DNR letter relied upon by Commissioner Dowling, may have been different. With a different EAW and different comments, the votes of the other County Board members may have been different as well.

For all of the foregoing reasons, this matter shall be scheduled for an evidentiary hearing to determine whether Commissioner McLynn's partiality and improper actions rendered the County Board's positive declaration for an EIS arbitrary and capricious.

The Court did not grant LWBC's request for a negative declaration under its EAW because even without Commissioner McLynn's improper actions, there appear to be sufficient facts and concerns to justify an EIS. Likewise, the record would seem to support a negative declaration. Because the record before the Court could support either a positive or a negative declaration for an EIS, it is impossible to speculate as to what the result would have been absent Commissioner McLynn's partiality and improper conduct.

#### **EQUAL PROTECTION**

The Equal Protection Clause of the Fourteenth Amendment requires that the government "treat all similarly situated people alike." *Barstad v. Murray County*, 420 F.3d 880, 884 (8<sup>th</sup> Cir. 2005). The Minnesota Constitution contains a similar equal protection clause requiring equal treatment of those similarly situated. *State v. Fraizer*, 649 N.W.2d 828, 837 (Minn. 2002). The burden is on the party claiming an equal protection claim to submit evidence necessary to establish the claim. *See Kottschade v. City of Rochester*, 537 N.W.2d, 301, 307 (Minn.App. 1995)(determining that a realtor's equal-protection claim failed when realtor "failed to show any similarly situated property owners whom the city treated differently from [realtor]"), *review denied* (Minn. Nov. 15, 1995).

The threshold inquiry is whether the party claiming a denial of equal protection was "similarly situated" to others who were treated differently. *Barstad* 420 F.3d at 884. The applicant must then demonstrate that there was no rational basis for differential treatment. *Id.* Being similarly situated to those allegedly receiving disparate treatment is "an essential element" of any equal-protection claim. *In re Welfare of M.L.M.*, 781 N.W.2d 381, 390 (Minn.App. 2010). A person is not similarly situated to another person

unless they are alike in all relevant respects. *St. Cloud Police Relief Ass'n v. City of St. Cloud*, 555 N.W.2d 318, 320 (Minn.App. 1996), *review denied* (Minn. Jan. 7, 1997).

LWBC has failed to meet its burden on the threshold requirement that it identify any similarly situated camps or commercial developments. LWBC's claim that Camp Hiawatha and other institutional projects are similarly situated but treated differently fails to explain how they were similarly situated. There is no evidence in the record that Camp Hiawatha, or any other similar entity, has sought approval of a similar development. Even if there were such a circumstance, LWBC would have to establish that its project and the other proposed project were so similar in almost all aspects to invoke equal protection concerns. Given the evidence in the record alleging the unique characteristics of the property involved and the support in the record for concluding that this project will have significant environmental effects, which supports the decision for an EIS, it seems unlikely that LWBC would be able to point to any similarly situated camp or commercial development. Each parcel of property is different and the construction and operation of a camp or commercial development on one parcel may have no noticeable environmental effects while the construction on another parcel might significantly affect the environment. Because the record in this case could support a finding of the potential for significant environmental effects and because LWBC has failed to identify others who are similarly situated, LWBC's equal protection claim must be dismissed.

#### INTERVENTION

Minnesota Courts are to encourage all legitimate interventions. *Costley v. Caromin House Inc.*, 313 N.W.2d 21, 28 (Minn. 1981). The only burden that persons seeking intervention as of right must meet is the "minimal" showing that the existing parties might not adequately represent their interests. *Minneapolis Star & Tribune Co., v. Schumacher*, 392 N.W.2d 197, 207 (Minn.1986). The interest of neighboring landowners in preventing a decline in their property values has been deemed sufficient to permit intervention in an action regarding a turkey farm's application for a conditional use permit. *Jerome Fairbo Farms v. County of Dodge*, 464 N.W.2d 568 (Minn.App. 1990). If a court determines that full intervention is not appropriate, the court may permit limited intervention if doing so will not prejudice the parties. *SST, Inc., v. City of Minneapolis*, 288 N.W.2d 225, 230 (Minn. 1979).

Because County Board as the RGU, is required to act in a quasi-judicial manner, and, because the evidentiary hearing before the district court will be limited to whether Commissioner McLynn's partiality and actions rendered the process unfair and irregular and whether any other members of the board were influenced by Commissioner McLynn's partiality and actions or by other improper considerations, the intervenors' interests will be adequately represented by the county and the Notice of Intervention is, therefore, denied.

J.A.M.

State of Minnesota  
Itasca County

District Court  
9th Judicial District

Court File Number: 31-CV-10-885

Case Type: Civil Other/Misc.

FILE COPY

**Notice of:**

<input checked="" type="checkbox"/>	<b>Filing of Order</b>
<input type="checkbox"/>	<b>Entry of Judgment</b>
<input type="checkbox"/>	<b>Docketing of Judgment</b>

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LIVING WORD BIBLE CAMP vs COUNTY OF ITASCA

You are hereby notified that the following occurred regarding the above-entitled matter:

- |                                     |  |
|-------------------------------------|--|
| <input checked="" type="checkbox"/> | An Order was filed on December 15, 2011.   |
| <input type="checkbox"/>            | Judgment was entered on .  |
| <input type="checkbox"/>            | You are notified that judgment was docketed on<br>at in the amount of \$. Costs and interest will accrue on this amount from the<br>date of entry until the judgment is satisfied-in full. |

Dated: December 15, 2011

Court Administrator  
Itasca County District Court  
123 Northeast 4th Street Grand Rapids  
Minnesota 55744  
218-327-2870

cc: G CRAIG HOWSE  
MICHAEL J FORD  
JAMES PIERCE PETERS  
David G Holmbeck

A true and correct copy of this Notice has been served by mail upon the parties named herein at the last known address of each, pursuant to Minnesota Rules of Civil Procedure, Rule 77.04.





STATE OF MINNESOTA

IN DISTRICT COURT

COUNTY OF ITASCA

NINTH JUDICIAL DISTRICT

Living Word Bible Camp,

File #: 31-CV-10-885

Plaintiff,

vs.

**CONCLUSIONS OF LAW,  
ORDER and  
MEMORANDUM**

County of Itasca,

Defendant.

The above-entitled matter came on for hearing before the undersigned Judge of District court, on September 12, 2011 pursuant to the motions for amended findings of both plaintiff Living Word Bible Camp and defendant County of Itasca. The court also considered a motion for reconsideration filed by the proposed intervenors.

Plaintiff, Living Word Bible Camp, was represented by Craig C. Howse, Attorney at Law. Defendant, County of Itasca, was represented by Michael J. Ford, Attorney at Law. The proposed intervenors were represented by James P. Peters, Attorney at Law.

Based on the arguments, memoranda, and the file and proceedings herein, this court draws the following:

**CONCLUSIONS OF LAW**

1. The evidence in the record supports a finding that Commissioner McLynn acted arbitrarily and capriciously in voting for a positive declaration for an EIS whether or not evidence outside the record is considered. Evidence outside the record was not material to this court's determination that McLynn acted arbitrarily and capriciously. Because Commissioner McLynn acted arbitrarily and capriciously, her vote for a positive declaration for an EIS should not count. Without Commissioner McLynn's vote, there can be no positive declaration for an EIS.
2. This court erred in its prior Order of July 25, 2011 when it upheld the positive declaration of the County Board based upon the votes of only two County Board members. Pursuant to Minn. Stat. § 375.07, the County Board can not pass any resolution unless a majority of County Board members vote in favor of the resolution. The disqualification of Commissioner McLynn means that the measure did not pass.
3. The record could support either a positive or negative declaration for an EIS.
4. Because Commissioner McLynn's actions and involvement may have affected the whole EAW process and the extent of her improper influence cannot be determined, it is necessary that the EAW process be completed anew.

5. The disposition of this action does not impair or impede the interests of the proposed intervenors.

Based upon the foregoing Conclusions of Law, this court makes the following:

### ORDER

1. The defendant's motion for amended findings, which asks that this court affirm the decision of the Itasca County Board, is denied.
2. The plaintiff's motion for amended findings is denied in part and granted in part. The portion of the motion asking that this court make a negative determination for an EIS based upon the record is denied. The portions of the plaintiff's motion asking that this matter be remanded to Itasca County or the MPCA to repeat the EAW process and that this court exclude Commissioner McLynn from participating in that process, are granted.
3. The prior Order is amended to remand the matter to Itasca County in order to conduct a new EAW process. This court strongly recommends that Itasca County and LWBC refer the EAW to the MPCA or other appropriate entity, if possible.
4. Commissioner McLynn is enjoined from any decisions in the subsequent EAW process involving Living Word Bible Camp.
5. The proposed intervenors' motion asking that the court permit their intervention is denied.
6. The pretrial hearing/settlement conference scheduled for January 23, 2012, and the evidentiary hearing scheduled for February 13, 2012, are cancelled.
7. The motion of David G. Holmbeck, filed October 7, 2011, in which Mr. Holmbeck seeks to intervene as a plaintiff, is denied as untimely.

The attached Memorandum is made a part hereof.

IT IS SO ORDERED:

Dated this 15<sup>th</sup> day of December 2011.

STATE OF MINNESOTA } ss  
COUNTY OF ITASCA }

I HEREBY CERTIFY THAT I HAVE  
COMPARED THE WITHIN COPY WITH  
THE ORIGINAL OF RECORDS IN MY  
OFFICE AND THAT THE SAME IS A  
TRUE COPY OF SAID ORIGINAL IN  
TESTIMONY WHEREOF I HAVE HERE-  
UNTO AFFIXED THE SEAL OF SAID  
COUNT OF SAID COUNTY AND HAVE  
SIGNED MY NAME THIS 30 DAY  
OF January 2012  
BY [Signature]  
COURT ADMINISTRATOR  
DEPUTY CLERK

BY THE COURT:

[Signature]  
Jon A. Maturi  
Judge of District Court

### **Motions for Amended Findings**

The plaintiff's motion argues that the court should have found that Commissioner McLynn's actions rendered the EAW process unfair and arbitrary and capricious and that the plaintiff is, therefore, entitled to a negative EIS determination or, alternatively, to have the matter remanded to the county board or MPCA for a new EAW. The plaintiff is also asking that Commissioner McLynn be precluded from participating in the future EAW process. The Defendant's motion simply asks that this court affirm the County Board's positive declaration for an EIS.

After considering the parties' motions, reviewing parts of the record, and reconsidering the July 25, 2011, Findings of Fact, Conclusions of Law, Order and Memorandum, this court stands by the prior determination that Commissioner McLynn's vote for a positive declaration for an EIS was arbitrary and capricious and should not be considered, but this court also acknowledges that it would be inappropriate to let the positive declaration stand in light of the fact that without McLynn's vote there were not enough votes to pass the resolution for a positive declaration for an EIS.

For the purposes of this order, the court did not consider Commissioner McLynn's role in the tax exemption procedure and this court never considered the Westwood report. The only action this Court has considered that is arguably outside of the record is Commissioner McLynn's vote on whether to require an EAW and the reasons she expressed for that vote. Although technically not part of this record of decision, that vote and the reasons that she gave for her vote were part of the process that led to the vote on the EIS and, therefore, may be considered by the Court.

The Court notes that it does not take lightly the conclusion that Commission McLynn did not perform her duties in this matter in a proper quasi-judicial manner. The Court does not question either her sincerity or her concern for the environment. The problem is that she conflated her usual duty to represent her constituents and their interests with her duty to be a "judge" of the facts as presented in the EAW. There are no better illustrations of this than her vote on the EAW wherein she voted for the EAW because the petitioner was her constituent and her later statement that she had to consult with her constituents to help her determine if the EAW was complete and ready for public comment. These actions, particularly when considered in light of her other actions and comments that are a part of the record, establish her role as an advocate throughout the EAW proceedings. In her capacity as a quasi-judicial official, these actions were no more appropriate than if this Court consulted public opinion on an issue before making its decision in a case. The Court appreciates the difficulty that county commissioners have in their dual roles and that there may be times when it is hard to know which role is the correct one. This is particularly true where the matter under consideration is in the commissioner's district and constituents become involved and express their concerns and positions. As for Commissioner McLynn's future role in this EAW process, unfortunately there is no way to put the cat back into the bag. Therefore, the Court is compelled to exclude her from taking part in that process on remand.

This Court is remanding the matter because Minnesota law requires that no business may be done by a county board "unless voted for by a majority of the whole board." Minn.Stat. §375.07. Commissioner McLynn's disqualification, which is supported by the record as a whole (even if the additional evidence from outside the record is not considered), means that a majority of the whole Itasca County Board did not vote for a positive declaration for an EIS.

The decision of whether an EIS should be required still needs to be made. The issue is whether the project has the potential for significant environmental effects, not whether any party has the right to a certain outcome. See Minn.R. 4410.1000, subp. 1 (stating the purpose of an EAW). LWBC does not have a right to have to a negative declaration just because the County Board's decision-making process was flawed. Nor is an EIS automatically required simply because evidence in the record could support such a decision. The evidence could also support a determination that an EIS is not necessary. The primary consideration is the environmental law and that law must be complied with. See *No Power Line, Inc., v. Minnesota Environmental Quality Council*, 262 N.W.2d 312, 327 (Minn.1977)(stating, in the context of preparation of an Environmental Impact Statement, that agencies conducting environmental review must make impartial decisions based upon environmental considerations).

Because the record could potentially support either a positive or negative declaration for an EIS, it is appropriate to remand this matter so that the EAW process can be repeated. See *Citizens Advocating Responsible Development v. Kandiyohi County Board of Commissioners*, 713 N.W.2d 817, 832 (Minn. 2006)(scope of review is as set forth in Minn.Stat. §14.69, which states that a reviewing court may affirm, remand, reverse, or modify the decision). This court strongly recommends that LWBC and Itasca County agree to have the MPCA, EQB, or other entity handle the EAW process on remand if possible. Having another governmental unit oversee the EAW process may eliminate some of the political pressure associated with this particular EAW and may permit the process to focus exclusively on the environmental concerns. Given the exclusion of Commission McLynn, it would be more fair and equitable to have an outside entity act as the RGU as opposed to a county board without one of its members. If the parties cannot agree, or if it is not possible that another governmental unit assume responsibility for the EAW, then Itasca County shall be the RGU.

#### **Intervention**

The proposed intervenors represented by James P. Peters, Attorney at Law, are seeking to intervene in this action as of right. They are asking that this court affirm the County Board's positive declaration for an EIS. The rule regarding intervention of right reads as follows:

Upon timely application anyone shall be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Minn.R.Civ.P. 24.01. The rule can be broken down into four elements, each of which the party seeking to intervene must meet:

- (1) a timely application for intervention;
- (2) an interest relating to the property or transaction which is the subject of the action;
- (3) circumstances demonstrating that the disposition of the action may as a practical matter impair or impede the party's ability to protect that interest; and
- (4) a showing that the party is not adequately represented by the existing parties."

*Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197, 207 (Minn. 1986). The rule on intervention of right is to be liberally construed to allow intervention. *Luthen v. Luthen*, 596

N.W.2d 278 (Minn.App. 1999). The interest of neighboring landowners in preventing a decline in their property values has been deemed sufficient to permit intervention in an action regarding a turkey farm's application for a conditional use permit. *Jerome Fairbo Farms v. County of Dodge*, 464 N.W.2d 568 (Minn.App. 1990).

This court originally denied the request to intervene based upon a finding that the proposed intervenors' interest was adequately represented by Itasca County. Because the proposed intervenors had, in essence, prevailed, there was no need to permit an intervention.

Following the parties' motions for amended findings, this court has determined that the positive declaration for an EIS cannot stand and that the matter must be remanded for the completion of a new EAW. This is a significant change, but it does not mean that the proposed intervenors are entitled to become parties to this action.

Itasca County may or may not appeal this Order to remand. If Itasca County appeals this decision and prevails, it will have adequately represented the proposed intervenors' interests. If Itasca County appeals and does not prevail, or chooses not to appeal, then the disposition of this action by remand has not impaired or impeded the proposed intervenors' ability to protect their interest because the matter would be remanded for a new EAW. As part of a new EAW process, the proposed intervenors will be able to participate in the process by commenting and that process may result in a favorable outcome for the proposed intervenors in that there may be a positive declaration for an EIS. If a new EAW process results in a negative declaration, the proposed intervenors may challenge that determination by intervening in any challenge or by commencing their own action. See Minn.Stat. § 116B.03 (stating that any person may bring a civil action for the protection of air, water, land or other resources). Finally, even if this matter is not appealed there can be no action by LWBC that would adversely affect the proposed intervenors' interests until the EAW process has been completed and any appeals resolved, thus there is no risk of the intervenors' interests being harmed by a denial of intervention at the present time.

The motion for intervention of David G. Holmbeck is denied as untimely. The existing parties' motions for amended findings and the proposed intervenors' request for intervention were all heard on September 19, 2011, but Mr. Holmbeck's motion was not filed until October 7, 2011.

J.A.M.

**ITASCA COUNTY BOARD OF COMMISSIONERS  
WORK SESSION  
FEBRUARY 7, 2012**

Pursuant to adjournment, the Itasca County Board of Commissioners met on Tuesday, February 7, 2012, in the Itasca County Boardroom with the following members present: Chair Catherine McLynn (District #2), and Commissioners Davin Tinquist (District #1), Leo Trunt (District #3) and Mark Mandich (District #5). Commissioner Rusty Eichorn (District #4) was absent.

**CALL TO ORDER**

Chair McLynn called the meeting to order at 2:00 p.m.

**\* APPROVAL OF AGENDA**

Commissioner Tinquist moved to add the items Re: 2012 Association of Minnesota Counties (AMC) 4-H Community Leadership Award Application and Golden Electronic Training and Support, LLC Contract and to approve the agenda, as amended. Commissioner Trunt seconded the motion. Motion carried: Ayes – Districts #1, #2, #3, #5; Nays – None; Absent – District #4.

**INFORMATIONAL/UPDATE**

Crissy Krebs presented the October and November 2011 Trial Balance. This item was informational only.

**\* MINUTES**

Commissioner Mandich moved to accept the minutes of the January 17, 2012 Work Session. Commissioner Trunt seconded the motion. Motion carried: Ayes – Districts #1, #2, #3, #5; Nays – None; Absent – District #4.

**CONSENT AGENDA**

The following items were recommended for the February 14, 2012 Consent Agenda:

- a) Policy Updates
- b) Abolish Administrative Services Supervisor Position
- c) Appointment – Extension Committee
- d) Changes to Storage Area Network (SAN) Project Request for Proposal (RFP)
- e) Applications for Cancellation of Forfeiture
- f) Parking Lot Plan Amendment
- g) Final Payment – CSAH 26 Bridge Replacement
- h) Final Payment – CSAH 35 Bridge Replacement
- i) County Support of Grant Application – Routes of Regional Significance
- j) Schedule Meeting – Five-Year Plan for Highway Construction
- k) Kunze Land Exchange
- l) Land Replacement Purchase – 39.5 acres (future Consent Agenda item)
- m) Request to fill Itasca Resource Center (IRC) Custodian – Head Vacancy
- n) Request to fill Fraud Prevention Investigator Vacancy
- o) Food Service Management Agreement – Amendment Number Two
- p) Request for Out of State Travel
- q) Grant Application – Bureau of Justice Grant
- r) Grant Application – Community Crime Prevention Grant

### **SACKETT CARTWAY**

Bob Scheierl presented information relative to the Sackett Cartway Continued Public Hearing, confirming that an agreement between the parties has been reached. The Continued Public Hearing will be held on Tuesday, February 14, 2012 at 3:10 p.m. This item was informational only.

### **\* 2012 AMC 4-H COMMUNITY LEADERSHIP AWARD APPLICATION**

Robbie Radaich requested the approval of a letter of support for the 2012 Association of Minnesota Counties (AMC) 4-H Community Leadership Award and authorization of the signature of Chair McLynn as the Itasca County Extension Committee board representative.

Commissioner Mandich moved to approve an application and letter of support for the 2012 AMC 4-H Community Leadership Award and authorized the signature of Chair McLynn as the Itasca County Extension Committee board representative. Commissioner Tinquist seconded the motion. Motion carried: Ayes – Districts #1, #2, #3, #5; Nays – None; Absent – District #4.

### **GOLDEN ELECTRONIC TRAINING AND SUPPORT, LLC CONTRACT**

Trish Klein requested the approval of a Support Services Agreement between Itasca County and Golden Electronic Training and Support, LLC for IFS software training add-on service in the amount of \$30.00 per month and authorization of a reduction in insurance requirements. This item was recommended for consent agenda.

### **ASSESSOR DATA ON PUBLIC WEBSITE**

Joe Udermann requested the approval of additional assessor data being added to the public website including number of bedrooms, extra bath fixtures, year built, first floor square footage, gross square footage, basement finish, garage type, garage size, lot size, front feet of lake shore and last sale date. This information is already public and available internally. Placement on the public website will reduce counter and phone traffic and increase public access to public data. This item was recommended for consent agenda.

### **SCHEDULE PUBLIC HEARING RE: COUNTY-WIDE ZONING MAP AMENDMENTS**

Don Dewey requested the scheduling of a Public Hearing Re: County-Wide Zoning Map Amendments pursuant to provisions of Minnesota State Statutes and the Itasca County Zoning Ordinance to discuss and adopt proposed zoning map amendments. This item was recommended for consent agenda.

### **ENVIRONMENTAL ASSESSMENT (EA) – SHOAL LAKE**

Don Dewey requested acceptance of the Environmental Assessment (EA) for the Shoal Lake 115kV Substation and Transmission Line and authorization for the Environmental Services Department to issue the zoning permit for the installation of the substation as set forth in the EA, which would also allow the installation of the transmission line which is an essential service and a permitted use in the Itasca County Ordinance. This item was recommended for consent agenda.

### **LEGISLATIVE PLATFORM – TRANSPORTATION ISSUES**

Dave Christy requested direction regarding the transportation related items on the legislative platforms adopted by the Association of Minnesota Counties (AMC) and Minnesota County Engineers Association (MCEA). Dave Christy was asked to narrow the scope to the top 5-10 legislative priorities. This item was recommended for regular agenda, as amended.

### **GRANT APPLICATION AND ACCEPTANCE POLICY UPDATE**

The Grant Application and Acceptance Policy Update issue was continued to the March 13, 2012 Work Session.

**DISCUSSION ITEMS – MAGNETATION**

Commissioner Trunt addressed the Board relative to Magnetation and the siting of a Magnetation pellet plant. Commissioners Trunt and Mandich agreed to work with Administrator Klein to work with Magnetation to clarify the road blocks and see how the County can be of assistance. Administrator Klein will contact newly appointed President/CEO of the Itasca Economic Development Corporation (IEDC), Joe Broking, to schedule a meeting.

**COMMITTEE REPORTS**

Commissioner Tinquist – Mississippi Headwaters Board and Association of Minnesota Counties (AMC) Leadership Development Academy

Commissioner Trunt – Solid Waste, Western Mesabi Mine Planning Board (WMMPB), Itasca Water Legacy Partnership (IWLP), Health & Human Services Redesign and Range Association of Schools and Municipalities (RAMS)

Commissioner Mandich – Arrowhead Economic Opportunity Agency (AEOA) Board of Directors and HOME Consortium

Commissioner McLynn – Transportation Enhancements, Law Library, City/County Cooperative Committee, Itasca Water Legacy Partnership (IWLP), Arrowhead Regional Development Commission (ARDC) and Precinct Caucuses

**RECESS**

Chair McLynn recessed the meeting at 3:00 p.m.

**RECONVENE**

The County Board Work Session was reconvened at 3:36 p.m.

**\* CLOSED SESSION – LIVING WORD BIBLE CAMP**

Board members present: Chair Catherine McLynn (District #2), and Commissioners Davin Tinquist (District #1), Leo Trunt (District #3) and Mark Mandich (District #5). Commissioner Eichorn (District #4) was absent.

Others present: MCIT Appointed Attorney Michael Ford (via teleconference), County Attorney Jack Muhar, Assistant County Attorney Michael Haig, Environmental Services Administrator Don Dewey, Assistant Planning/Zoning/Sanitation Administrator Dan Swenson, County Auditor/Treasurer Jeff Walker and County Administrator Trish Klein

Commissioner Mandich moved to go into Closed Session. Commissioner Tinquist seconded the motion. Motion carried: Ayes – Districts #1, #2, #3, #5; Nays – None; Absent – District #4.

The purpose of the Closed Session was to consult with attorney in reference to pending litigation Re: Living Word Bible Camp (LWBC) v Itasca County: Environmental Impact Statement (EIS) Declaratory Judgment, pursuant to Minn. Stat. § 13D.05, Subd. 3(b), and 13D.05, Subd. 1(d) [based upon Attorney Client Privilege, Minn. Stat. § 595.02, Subd. 1(b)].

Commissioner Mandich moved to go back into Open Session. Commissioner Trunt seconded the motion. Motion carried: Ayes – Districts #1, #2, #3, #5; Nays – None; Absent – District #4.



(Continuation of February 7, 2012, County Board Work Session Minutes)

Commissioner Tinquist moved to appeal Judge Jon A. Maturi's order Re: Living Word Bible Camp (LWBC) v Itasca County: Environmental Impact Statement (EIS). Commissioner McLynn seconded the motion. Motion failed: Ayes – Districts #1, #2; Nays – Districts #3, #5; Absent – District #4.

Commissioner Mandich moved to remand the completion of a new Environmental Assessment Worksheet (EAW) for Living Word Bible Camp (LWBC) to the Minnesota Pollution Control Agency (MPCA), as recommended by Judge Maturi. Commissioner Trunt seconded the motion. Motion carried: Ayes – Districts #1, #3, #5; Nays – District #2; Absent – District #4.

There being no further business, the meeting was adjourned by Chair McLynn at 3:42 p.m.

Respectfully submitted,  
Amanda Schultz  
Deputy Clerk of the County Board



**RESOLUTION  
OF THE  
COUNTY BOARD OF COMMISSIONERS  
ITASCA COUNTY, MINNESOTA**

**Adopted February 23, 2010**

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**Commissioner Burthwick moved the adoption of the following resolution:**

**Resolution No. 02-10-06 (Page 1 of 12)**

**RE: ESTABLISHING FINDINGS OF FACT AND ISSUING A POSITIVE DECLARATION  
FOR AN ENVIRONMENTAL IMPACT STATEMENT ON THE DEVELOPMENT  
KNOWN AS THE LIVING WORD BIBLE CAMP**

**STATE OF MINNESOTA  
ITASCA COUNTY  
BOARD OF COMMISSIONERS  
FINDINGS OF FACT AND CONCLUSION**

**WHEREAS**, Itasca County, as a political subdivision, organized and existing under the laws of the state of Minnesota; and;

**WHEREAS**, The Itasca County Board of Commissioners (County Board) has adopted zoning and subdivision regulations, Ordinance for the Management of Shoreland Areas, Subdivision Platting Ordinance for Itasca County, the Comprehensive Land Use Plan for Itasca County, including subsequent amendments, to promote the orderly, economic and safe development and utilization of land within the county; and;

**WHEREAS**, Living Word Bible Camp (LWBC), made a proposal to construct a bible camp/retreat center for children and adults. The development will be located on property along the east shore of Deer Lake. Proposed facilities include a lodge with chapel, office, five cabins (dormitories), activity building, storage buildings, recreational facilities, ballfield, campfire area, and a trail system, and;

**WHEREAS**, The County Board has followed the process outlined in Minnesota rules and detailed in the Minnesota Environmental Quality Board (EQB) document titled EAW Guidelines - Preparing Environmental Assessment Worksheets to complete an Environmental Assessment Worksheet (EAW) for the proposed development by LWBC, and;

**FINDINGS OF FACT**

**WHEREAS**, the Itasca County Board of Commissioners has reviewed the EAW and all public comments, and have made the following findings of fact:

1. On April 12, 2006, Ron and Judy Hunt applied for a planned unit development and conditional use permit (PUD/CUP) for the youth bible camp/retreat and learning center on behalf of the Living Word Bible Camp.

2. On May 5, 2006, a Citizen's Petition from the EQB to complete an EAW for the project was received by the County Environmental Services Department (ESD).
3. The County Board considered the petition on May 23, 2006 and determined an EAW was not required for the project.
4. On August 30, 2006, the Itasca County Planning Commission and Board of Adjustment approved the (PUD/CUP) with many conditions regarding allowed uses in the CUP.
5. Representatives for the petitioner challenged the County Board's EAW petition decision in District Court which determined the County Board erred and should have required that an EAW be completed.
6. The District Court's determination was appealed to the Minnesota Court of Appeals, who agreed with the District Court. The July 31, 2008 Judgment indicated the County Board should complete an EAW and that any decisions on the PUD/CUP be vacated.
7. The County Board hired Widseth Smith Nolting & Associates, Inc. (WSN) in January 2009 to complete the EAW.
8. On February 25, 2009, ESD delivered WSN copies of data, testimony and comments received in connection with the prior EAW Petition and court records concerning the proposed project.
9. LWBC provided a packet of information including a draft EAW to the ESD on October 13, 2009. A copy of the packet was forwarded to WSN on the same day.
10. On November 3, 2009, LWBC submitted their wetland delineation report prepared by their consultant, SEH, to WSN.
11. WSN, on November 10, 2009, notified the proposer that their data submittal was complete.
12. The County Board (3:1) approved the EAW for distribution on December 7, 2009.
13. On December 17, 2009, the EAW, completed by WSN and approved by the County Board, was submitted to the Minnesota Environmental Quality Board (EQB) for publication in *The EQB Monitor* of December 28, 2009.
14. Copies of the EAW were distributed and made available to interested persons for comment.
15. A public meeting was held on January 14, 2010 to answer questions and allow comments.
16. Written public and agency comments were received until January 28, 2010.
17. Fifty-one separate comments and/or data submittals were received during the comment period. Those written comments were provided to each County Commissioner contemporaneous with their receipt in the ESD, and thus were provided to those Commissioners on or shortly after January 27, 2010, the date that the 30 day comment period expired.
18. The comments included a 12-page comment letter from the Minnesota DNR concluding "There is a need to further describe various environmental effects from the project and identify specific

mitigation measures that could be included as requirements of project permitting to minimize negative environmental effects".

The concerns raised included:

- Generally - 1) Lack of a site map to scale showing Conservation Easement area, open space, wetlands, location of the ordinary high water level, proposed septic system including replacement site, buildings, all existing ground water wells, roads and parking areas, ball field, trails, and any other structures or proposed development, including dimensions and setbacks as well as shoreline feet in the project area; 2) Failure to indicate the number of people who could be on the grounds at any time; 3) Need to assure that there will be no future stages of this development; 4) Need to require that 245 acres will remain undeveloped as a condition of the County's Conditional use Permit (CUP), possibly through a conservation easement; 5) Failure to specify potential land use conflicts and specific recommendations for mitigation; 6) Lack of a recommendation of specific conditions to mitigate conflicts over surface water use as a guide for final conditions in the CUP; 7) Need to incorporate avoidance and mitigation for soil limitations in trail planning; 8) Requirement to evaluate past, present, and reasonable foreseeable actions (for which a basis of expectation has been laid) that could have cumulative effects; 9) Need to incorporate proposed mitigation of losses to public resources (such as muskie population) in the total project cost.
- Regarding water quality - 1) Minimal increases in phosphorus concentrations can be detrimental to Deer lake; need to maintain much higher water quality standards than the 30 ug/l cited in Appendix F; Need to know the anticipated phosphorus loading from runoff and identify additional mitigation or remediation, and to highlight surface water runoff effects to the adjacent bay; 2) Lack of an actual ISTS Design with sufficient detail to determine its ability to adequately protect surface and groundwater from phosphorus and nitrates in the wastewater; lack of a phosphorus assessment of the proposed septic system and the need for more information to determine the potential for significant adverse environmental effects; 3) Lack of the required preliminary groundwater evaluation; 4) Lack of a management plan and a state-required replacement area for the wastewater system; 5) Need for phosphorus and nitrate assessment of the wetland and rain gardens; 6) Need to include monitoring in the management of the wastewater system and an operational plan to properly treat wastewater, as well as a cleanup plan for the existing site; 7) Need for soil testing for fertility, pesticides and medicine related to fox and mink waste; 8) Need for nitrate testing of existing ground water wells; 9) Need for additional low-impact development practices that reduce storm

water volumes; 10) Inability of the MINLEAP model to predict water quality impacts from a single PUD.

- Regarding fish, wildlife and plants - 1) Need for an assessment of the impacts of proposed boat use on fish, wildlife and aquatic plants; 2) Importance of the bay area to the muskie population in Deer Lake; lack of actual mechanisms for minimizing and avoiding disturbance of the habitat of other muskie population; 3) Lack of clear measures to mitigate the wildlife disturbance caused by more people and boats; need to address the impact of tours of Wildlife Management Area (WMA) islands on nesting and brood rearing wildlife; lack of specific restrictions suitable for minimizing impacts to the WMA islands; 4) Importance of the uncommonly diverse community of aquatic plants in the shallow bay surrounding Ash Island, which could be negatively affected by extensive boat traffic and sediment disturbance.

19. A letter from the Minnesota Pollution Control Agency contained the following comments on the EAW:

- Item 6 - Fails to fully describe features of the construction process that will cause physical manipulation of the environment, particularly significant movement of soils required by two of the buildings. Stockpiles should not be placed in areas designated for infiltration later on. It is noted that there is no estimate for the amount of soil to be removed or the site locations. There is also concern about proximity of soil stockpiles to the wetlands or the lake.

- Item 12 - is unclear regarding wetland impacts.

- Item 16 - Is confusing, regarding when to use erosion control blankets and rapid stabilization. There is also concern about protecting infiltration areas from sedimentation that might cause them to fail in the long term.

- Item 20 - Demolition of existing structures must comply with state and federal regulations regarding hazardous materials, and structure materials should be recycled to the extent possible.

- General - Claimed elements of the design are not reflected in the EAW, particularly:

- a. Protecting infiltration areas during the construction process;

- b. Designating the parking area to keep runoff out of the wetland area to the east;

- c. Creating a snow removal area away from the wetland; and

- d. Incorporating rain collectors at the west facing downspouts of the lodge building, and using the water for irrigation and perhaps flushing toilets.

20. Extensive comments in support of further study and an EIS were received from professionals in scientific fields with relevant credentials and experience:

- A. John R. Jones, Ph.D and John A. Downing Ph.D. University Professors of Limnology, giving a scientific interpretation of the report by the Proposer's consulting limnologist and opining that the level of risk to Deer lake is substantial enough to warrant a complete EIS.
- B. Richard P. Axler, Ph.D., a professional limnologist with the University of Minnesota-Duluth, opining that the EAW lacks sufficient technical detail and assurances to address the many complex potential impacts posed by a large commercial lakeshore development of this kind.
- C. Cinthia Hagley, M.S., Aquatic Ecology/Limnology, Extension Professor, Minnesota Sea Grant, opining that: The Proposer's limnological report raises more questions than it answers, particularly regarding impervious surface impacts; a better limnological report is needed; and an EIS is clearly warranted in this case.
- D. Mary M. Blickenderfer, Ph.D., Forest Science botanist and plant ecologist, opining that the EAW is incomplete and failed to adequately identify fish and wildlife resources and habitats on or near the site, particularly the aquatic plant community in Kocemba Bay, which contains alga beds extremely sensitive to disturbance, even by a paddle stroke.
- E. Paul Stolen, 1990-2009 Regional Environmental Assessment Ecologist, Minnesota DNR, opining that: the EAW is confusing, has poor technical quality and fails to respond to previous technical input; and the large size of this tract adjacent to a very sensitive lake area justifies an EIS. This 11-page report focuses on: lack of EAW content; non-compliance with EQB rules, including improper reliance on the developer's data and assessment of effects; lack of solid information regarding what is planned for the 253 acres; deference to the Proposer regarding mitigation of potential impacts; decision process for an EIS; and reasons why an EIS should be done.
- F. Mary L. Spratt, Ph.D., Professor of Biology, opining that an EIS is necessary to document the existing plant and animal wildlife and determine the impact of the proposed development.
- G. Alan W. Cibuzar, CEO, A.W. Research Laboratories and Image Engineering, Inc. noting that the EAW does not: measure setbacks from the Ordinary High Water Mark and the Conservation Easement; address the use of jet boats, jet skis, snowmobiles, four wheelers, golf carts or wheelchairs; accurately estimate the traffic count; or accurately estimate the effluent volumes. He recommends that an EIS could address these and other deficiencies in the EAW and that a representative "Environmental Responsibility Committee" be established to oversee that any approved plan is properly executed.
- H. Dennis W. Anderson, Retired MNDNR Regional Fisheries Manager, opining that the EAW fails to adequately address: the potential risk of human disturbance to shallow areas from

having a large number of youth canoeing and kayaking; and the risk to the native, self-sustaining, high quality muskie population in Deer Lake.

I. Randall J. Miles, Ph.D., Associate Professor of Soil Science, regarding the proposed wastewater system, stating that: the sandy soil is the "weak link in the chain" and it is necessary to determine the loading rate to evaluate it; and the estimate of 45 gal/day per capita is probably too low.

21. After receiving public and agency comments, the County Board reviewed the comments to decide whether the need for an Environmental Impact Statement (EIS) existed. The review resulted in a "positive declaration" concerning the need to complete an EIS.

**FINDINGS WITH RESPECT TO THE CRITERIA  
FOR DETERMINING THE POTENTIAL FOR  
SIGNIFICANT ENVIRONMENTAL EFFECTS**

**A. Type, extent and reversibility of environmental effects**

**1) Past Land Use**

Several comments brought up the past use of the property as a mink and fox farm and were concerned about the environmental effects of the manure from this use. The EAW documents that the farm was present over 50 years ago and provides a 1947 aerial photograph showing 12 to 14 pen areas mainly on the east side of the proposed development area. Information received during the comment period indicates the farm had a maximum of 30 fox or mink and 11 cattle at any one time and in later years of operation had no mink or fox, but 4 horses and 5 head of cattle. During the comment period, the proposer submitted analytical results that showed no nitrates in the onsite well and very limited amounts of organic matter in the soil.

**2) Fish and Wildlife Resources**

The existence of a substantial wildlife management area and approximately 180 acres of shallow lake areas near the development are unique to this project. Specifically, the shallow lake areas are known to be spawning areas for a native population of muskies and resting/feeding areas for waterfowl and other birds. There is a potential for the development and the lake use by campers attending LWBC to have effects on the fish and wildlife use of this area. The extent of these effects needs further study because the effects are not reversible if continued use occurs. There are many other similar camps in Minnesota including church camps and outdoor learning centers such as Deep Portage Learning Center in Cass County and Long Lake Conservation Center in Aitkin County. Additional study can include observing how these camps affect fish and wildlife resources and evaluating potential mitigation measures that could be implemented to limit these effects. The additional



study can include how the residential area immediately north of Kocemba Bay affects the shallow water areas and how the effects could be cumulative with the LWBC proposed development. The study can try to answer the question on how many visits by student tour groups would have an impact on use by fish and wildlife and what damage would occur to vegetation and fish and wildlife habitat by canoes and kayaks. Further study can also include working with the DNR to identify measures that the agency would agree would limit effects of the development.

### 3) Boat Traffic

Concerns have been expressed by some commenters that boat traffic will affect the shallow water areas north of the development. This issue can be addressed in further study by looking at the potential effects of student tour groups on the fish and wildlife resources. The study, however, can also examine what specific conditions should be included to mitigate surface water use conflicts with other boaters.

### 4) Surface Water Runoff

Many of the comments received were concerned about surface water runoff to the lake and the affect on water quality of the lake. Some of the comments suggest the stormwater plan was not a detailed engineering design and further design work needed to be completed to address surface water runoff. The Hydrological Summary included in the EAW as Appendix E was prepared by an engineer using standard hydrological engineering methods and software (HydroCAD®) and provides detailed layouts of infiltration areas and wet detention ponds. The Summary is an engineering report that contains detailed delineation of drainage (subcatchment) areas within the development and calculations on the volume and depth of runoff for 2-year, 10-year, and 100-year runoff events. It provides a discussion on the affects of the proposed development on each of the areas. The report documents a post development reduction in the amount of direct runoff to the lake and equal amounts of runoff to the wetland east of the development. The project design includes leaving vegetated buffers along the lakeshore and treating runoff in basins and ponds. As is standard engineering practice, some of these treatment features are designed to overflow to the wetlands, where the runoff will be further treated. Limnologist, Carolyn Dindorf, has agreed the lake is sensitive to nutrient inputs, but indicates "the phosphorus input to the lake from site runoff is expected to (be) minimal to none". The Itasca County Soil and Water Conservation District (SWCD) in their EAW review comment letter indicated the development has sound land use management practices that would reduce nutrient loads to Deer Lake. Even so, further study can look at alternatives that locate the development area farther from the lake, where no direct runoff to the lake can occur.

5) Water Quality Wastewaters

Several of the comments received were concerned about the capability of the soils to handle wastewater disposal on the site. The EAW pointed out that a groundwater mounding assessment needs to be completed to assess the design of the system and that MPCA be contacted to determine if a phosphorus assessment needs to be completed. These items can be completed as part of a study and alternative site developments can be explored and compared to the proposed development. Alternative locations for the subsurface sewage treatment system can also be assessed during further study.

6) Visual Impacts

There is a potential for some long term visual impacts due to the lodge and activity building being 30 feet and over in height in a natural setting. Further study can look at options that might reduce this impact.

7) Traffic

Some of the commenters were concerned about the potential traffic on Baker Road. Further study can assess the effects the different alternatives may have on traffic on Baker Road. Additionally, further study can also provide more information on traffic volumes and patterns by looking at other similar camps and outdoor learning centers.

**B. Cumulative potential effects of related or anticipated future projects**

Cumulative potential effects are significant and will need to be identified by further study. The fact that additional buildings are permitted without review and previous plans submitted indicate reasonable expectation of future development on the site. The number and regularity of permits and variances and subdivisions applied for through the Environmental Services Department should be reviewed as an indication of historical and future development on Deer Lake.

**C. The extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority**

The CUP process can mitigate some of the environmental effects the project could have by putting conditions in the CUP that limit use or development area. Further study can assess the effectiveness of different conditions of the CUP. Additional study can also assess how other permits, such as the NPDES Construction Stormwater Permit, can be used to provide mitigation to specific environmental effects and assess what alternative may be the easiest to permit.

- D. The extent to which environmental effects can be anticipated and controlled as a result of other environmental studies undertaken by public agencies or the project proposer, or of EIS's previously prepared on similar projects.**

The Itasca County SWCD has recently received a grant to look at nutrient loading in Deer Lake. This study may be of use during any further studies for LWBC. An EIS completed for the Blue Heron Bay development on Dead Lake in Ottertail County has a study on boat use and mitigation options for a proposed development near a shallow natural environment portion of Dead Lake that could be used to augment the information and conditions in any CUP for LWBC.

- E.** During the meeting, Commissioner McLynn provided her written analysis of the factual information developed in the process, together with her conclusions on the environmental impacts arising from the project, to the remaining commissioners. She asked that the Commissioners join with her analysis by including her findings and conclusions as part of the Board's findings and conclusions. The Board upon a vote of 3:1 agreed to that request. Commissioner McLynn's analysis and conclusions are set forth in Exhibit A and are incorporated by reference into these findings and conclusions.

**NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners of Itasca County, Minnesota, as follows:**

1. The County Board has jurisdiction in determining the need for an EIS on this project.
2. Areas where the potential for significant environmental effects exists have been identified through the EAW process.
3. Based on the criteria established in Minn. R. 4410.1700, the LWBC project has the potential for significant environmental effects.
4. Additional study of certain environmental issues in these Findings of Fact should be considered as part of an EIS.

**Commissioner McLynn seconded the motion for the adoption of the resolution and it was declared adopted upon the following vote:**

Yeas <u>  3  </u>	Nays <u>  1  </u>	District #1 <u>  Y  </u>	District #2 <u>  Y  </u>
Other <u>  1  </u>		District #3 <u>  Y  </u>	District #4 <u>  ABSENT  </u>
		District #5 <u>  N  </u>	

STATE OF MINNESOTA  
Office of County Coordinator  
ss. County of Itasca

I, IRENE C. KOSKI, Coordinator of County of Itasca, do hereby certify that I have compared the foregoing with the original resolution filed in my office on the 23rd day of February A.D. 2010, and that the same is a true and correct copy of the whole thereof.

WITNESS MY HAND AND SEAL OF OFFICE at Grand Rapids, Minnesota, this 23rd day of February, A.D. 2010.

Irene C. Koski / by Katherine  
Coordinator Kelly

By \_\_\_\_\_ Deputy

**EXHIBIT A**

To: Board of Commissioners  
Re: LWBC EIS and Findings of Fact  
Date: February 22, 2010

From: Catherine McLynn, Commissioner District 2 Catherine McLynn

After reviewing public comments on EAW for Living Word Bible Corporation's proposed commercial planned unit development on Deer Lake, I have found evidence of the potential for significant negative and irreversible environmental effects which may or may not be effectively mitigated. Ordering an EIS is warranted for the following reasons as identified and more fully detailed in the EAW and/or public comment letters.

**Item 6** Project description is not complete. (DNR, MPCA, Stolen, Newton, John Erickson, Maxeiner, Duxbury, Widen, Axler, Hagley, McLynn, Cibuzar, LeWin, Hunt, Nemeth, Ratzlaff and Bogenrief)

- a. Maps are not to scale and/or lack detail or are conflicting in detail.
- b. Number of acres is uncertain due to conflicting information.
- c. Ordinary High Water Mark is not identified and needs to be delineated for entire acreage.
- d. Construction operations are not detailed.
- e. Wetlands need to be delineated for entire acreage.
- f. Trail and footpath design and construction needs to be detailed. Number of ball fields is not clear.

**Item 8** Need for a resort license confirms the level of expected commercial operation. (EAW, McLynn)

**Item 9** Land uses, current and recent past, indicate that the proposed project has a potential for significant environmental effects. (EAW, DNR, Newton, Maxeiner, Duxbury, Agvise, Cibuzar, DLA Pres. Routt, Nemeth)

- a. Past land use included animal farming possibly contributing to high phosphorus and nitrate levels. Additional soil testing in the construction area and well water testing are needed to determine if there is the potential contamination of drinking water and the water quality of Deer Lake.
- b. Seasonal cabin use by Maxeiners limited activities and use of lakeshore. Project is a major change.
- c. Conservation easement with Minnesota Land Trust est. 2001 prohibits commercial use
- d. Acquisition and establishment of AMA/Kocemba Bay are evidence of historical protection of sensitive bay and islands.

**Item 11** Impacts on fish, wildlife and ecologically sensitive resources, shoreland and habitat are one of the most consistently identified issues that needs to be more completely analyzed and assured mitigation measures detailed. (EAW, DNR, Minnesota Land Trust, Stolen, Newton, John Erickson, Maxeiner, Duxbury, Peters, Meland, Spratt, Axler, Blickenderfer, Dziuk, Hagley, Thompson, Osgood, Kavanaugh, Sundin, Widen, Detrick Realty, Cibuzar, D. Anderson, Jones, ICOLA, DLA-Routt, Nemeth, Holmbeck)

**Item 12** Impact on water resources especially the interior wetlands that are part of the flow to the lake needs to be fully studied and assured mitigation measures taken. (Many of the same as #6 and #11)

**Item 13** Water use of the proposed project is proposed to be significant increase over past use i.e. private single family to public use. Groundwater evaluations, aquifer levels need to be determined, variance for the well and hydrology license must be applied for or plans for alternatives need to be determined. (EAW, MPCA, DNR, McLynn, Spratt, Newton, Cibuzar, LeWin)

**Item 14** Land use district incompatibility needs to be resolved. (Stolen, Newton, John Erickson, McLynn)

**Item 15** Water surface use is a major change from past uses with significantly impacts as noted in #11 above.

**Item 16** Erosion and sedimentation are likely to be significant and will contribute to #11 and #12. Detailed and correctly constructed basins and other safeguards during and after construction need to be determined. (MPCA, DNR, Stolen, Maxeiner, Duxbury, Peters, Spratt, Voedisch)

**Item 17** Water quality of Deer Lake and adjacent wetlands will be significantly affected by surface runoff and assured mitigation measures need to be identified. A SWPPP needs to be designed by professional engineer using appropriate and accurate hydrology reports. Soil tests indicate high phosphorus levels. (EAW, DNR, Stolen, Newton, John Erickson, Dziuk, Axler, Hagley, Duxbury, Peters, Spratt, Dindorf, Hunt-Agvis, Cibuzar, LeWin, Jones, Osgood, Downing, Voedisch)

**Item 18** Water quality of Deer Lake and adjacent wetlands will be significantly affected by wastewater. The size and location of the septic system for such a large project, tree and vegetation removal for construction, numbers of individual users, management and maintenance plans need to be identified and assured mitigation measures determined. (EAW, DNR, MPCA, Stolen, Newton, John Erickson, Spratt, Peters, Maxeiner, Duxbury, Peters, Widen, Dindorf, Newton, Miles, Cibuzar, LeWin, Jones, Downing)

**Item 19** Soil conditions need to be clearly identified as they affect rates of nutrient absorption and surface runoff that will significantly impact #11, 17 and 18 above.

**Item 20** Hazardous wastes disposal during demolition and storage tanks were identified as issues that needed further study. The above ground storage of 600 gallons of gasoline has the potential for pollution or explosion. (MPCA, John Erickson, McLynn, Widen)

**Item 21** Traffic on Baker Road, parking roads within the project need to be clearly identified and impervious surface determined. (EAW, Newton, Youngberg, Maxeiner, Duxbury, Widen, Cibuzar, LeWin, Voedisch)

**Item 24** Noise levels need to be studied and assured mitigation measures identified. (Newton, Youngberg, Spratt, Duxbury)

**Item 25** Unique resources are nearby and within the direct impact area. They will be significantly affected by camp activities and proposed tours into the sensitive areas. (Stolen, Newton, John Erickson)

**Item 26** Visual impacts will require assured mitigation measures. (EAW)

**Item 27** Compatibility with plans and land use regulation is clearly a big issue that needs to be resolved. Inconsistency with the Comprehensive Land Use Plan and restrictions in the 1998 ordinance need to be addressed. (Stolen, Newton, John Erickson, McLynn, Dziuk, Widen, Detrick Realty, Allen, Voedisch)

**Item 28** The proposed project is requiring and will continue to require increased demand on public services including but not limited to Itasca County Environmental Services, Highway, Attorney and Sheriff departments to implement zoning and permitting, road work, dust control, resolve legal issues, fire and emergency response and law enforcement, respectively. Additional increased services are being demanded of MPCA, MDH, DNR and SWCD. (EAW, DNR, SWCD, MPCA, MDH, Medure, Newton, McLynn, Widen, Spratt)

**Item 29** Cumulative potential effects are significant and will need to be identified by further study. The fact that additional buildings are permitted without review and previous plans submitted indicate reasonable expectation of future development on the site. The number and regularity of permits and variances and subdivisions applied for through the Environmental Services Department should be reviewed as an indication of historical and future development on Deer Lake. (EAW, DNR, SWCD, Stolen, Newton, Nemeth, John Erickson, Widen, Spratt, Peters)

**From:** [James Peters](#)  
**To:** [Patton, Bob \(MDA\)](#); [Craig Howse](#)  
**Cc:** [Frederickson, Dave \(MDA\)](#); [mford@quinlivan.com](mailto:mford@quinlivan.com); [Winters, Kathleen](#)  
**Subject:** Re: RGU Request: Living Word Bible Camp  
**Date:** Monday, May 07, 2012 8:45:12 AM  
**Attachments:** [Brief Cover Deer Lake.doc](#)  
[Brief Table of Contents Deer Lake.doc](#)  
[Brief Deer Lake.doc](#)

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Dear Mr. Patton:

Good Monday morning.

- As you know from my February 2012 letter, I represent neighboring landowners with regard to the Itasca County RGU Request regarding the EAW on the LWBC project.

- I write to submit filings in advance of the next EQB meeting on this issue.

- I also write to respectfully request that, if the EQB decides to grant the County's RGU request at the urging of LWBC, that the EQB designate the Minnesota DNR as the RGU for the new EAW proposed by LWBC.

- I make the filings at this time in the event that the EQB will meet on May 16th to discuss the RGU request.

- Minn.R. 4410.0500 requires that the RGU be the agency with the greatest expertise concerning a project.

- Other than Itasca County, MN DNR has the greatest expertise regarding the LWBC project for the reasons I have previously provided to the EQB with regard to this matter, including expertise with shoreland zoning, the state shoreland rules, the pilot project on new shoreland rules, and specific actions on Deer Lake.

- Moreover, the EQB should make findings that this second EAW is at the request and sole risk of LWBC and without prejudice to an EIS if ordered by the Minnesota Court of Appeals.

- EQB should make findings and conclusions regarding the potential duplication of the environmental review process due to the LWBC urging.

- Because LWBC wishes to move forward with the potentially duplicative environmental review, the EQB should find and conclude that the duplication is at the sole risk and expense of LWBC and is without prejudice to the possible EIS that the Court of Appeals may order.

- It is maintained in the Court of Appeals that LWBC under Minnesota law should complete an EIS on the project based upon the prior EAW and the administrative record that was before Itasca County at the time of decision.

- The EAW and the record before Itasca County support the EIS order and it is respectfully maintained that the District Court erred as a matter of law in reversing that order and suggesting reassignment of the RGU to MPCA.

- Attached please find for your review and files a copy of the Brief in the Minnesota Court of Appeals that has been submitted asking the COA to reverse the District Court and reinstate the County's order for an EIS.

- The double tracking of environmental review, which the new EAW process represents, is proposed at this time by LWBC and does not prejudice the potential rights to the EIS which the COA proceedings represent.

- It also appears premature for the EQB to reassign the RGU at this time without a newly completed data portion of an EAW.

- Minn.R. 4410.0500 contemplates that LWBC should have submitted the completed data portions of the EAW prior to the assignment of a different RGU for the EAW.

- Please let me know the date and time when the EQB will hear the RGU request in this

matter.

- Your attention to this matter is appreciated.

James P Peters

Law Offices of James P Peters PLLC

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NO. A12-281

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State of Minnesota  
**In Court of Appeals**

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Pamela J. Brown, et al.,

*Appellants,*

v.

Living Word Bible Camp,

*Respondent,*

v.

County of Itasca,

*Respondent.*

---

**APPELLANTS' BRIEF AND APPENDIX**

---

JAMES P PETERS (#0177623)  
Law Offices of James P Peters PLLC  
460 Franklin St N #100  
Glenwood, MN 56334  
(320) 634-3778

*Attorney for Appellants*

G CRAIG HOWSE (#208607)  
Howse & Thompson PA  
3189 Fernbrook Lane North  
Plymouth, MN 55447  
(763) 577-0150

*Attorney for Respondent LWBC*

MICHAEL J FORD (#3082X)  
Quinlivan & Hughes PA  
PO Box 1008  
St. Cloud, MN 56302-1008  
(320) 251-1414

*Attorneys for Respondent Itasca County*

DAVID G HOLMBECK (Pro Se)  
614 Walter Avenue  
Grand Rapids, MN 55744  
(218) 326-3025

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## STATEMENT OF ISSUES

### I. STANDARD OF REVIEW.

The Court of Appeals reviews the proceedings before Respondent County, not the findings of the District Court, to determine whether Respondent County’s decision was made based upon substantial evidence or upon an error of law or was arbitrary, capricious.

*Citizens Advocating Responsible Development v. Kandiyohi County Board of Commissioners*, 713 N.W.2d 817, 833 (Minn. 2006).

- II. Appellants are neighboring landowners with statutory standing in environmental review actions brought under Minn.Stat. Sec. 116D.04, subd. 10. As neighbors to the proposed Project in this District of the County, Appellants have differing interests from the County demonstrated by the decision of the County not to appeal herein. The District Court erred in denying the intervention.**

The District Court denied the intervention.

Minn.R.Civ.P. 24.01.

*Carl Bolander & Sons Co. v. City of Minneapolis*, 502 N.W.2d 203 (Minn. 1993).

- III. The administrative record before the County on the EAW included detailed and supported comments and reports from pertinent state officials, highly respected scientists, and citizens that overwhelmingly supported an EIS. No proper motion was made and granted in the District Court to supplement the administrative record. Substantial evidence in the administrative record demonstrates that the proposed project has the potential for significant environmental effect so that the County properly required an EIS.**

The District Court vacated the EIS decision stating that the record could support either a positive or a negative declaration.

Minn.Stat. Sec. 116D.04, subd. 2a.

Minn.R. 4410.1700, subp. 7.

*CARD*, 713 N.W.2d at 833.

*White v. Minnesota Department of Natural Resources*, 567 N.W.2d 724 (Minn.App. 1997).

- IV. The County took a hard look at the problems involved, genuinely engaged in reasoned decision-making, issued a decision that reflected compliance with applicable law, and made appropriate findings requiring an EIS on the proposed Project.**

The District Court held that Commissioner McLynn acted arbitrarily and capriciously, voided her vote, and vacated the decision of the County.

Minn.Stat. Sec. 116D.04, subd. 2a.

Minn.R. 4410.1700, subp. 7.

*CARD*, 713 N.W.2d at 833.

*White v. Minnesota Department of Natural Resources*, 567 N.W.2d 724 (Minn.App. 1997).

*In re North Metro Harness, Inc.*, 711 N.W.2d 129, 138-139 (Minn.App. 2006).

- V. A majority of citizens elected Commissioner McLynn to represent District 2 of Itasca County. Commissioner McLynn’s actions in the EAW process were lawful and consistent with the Minnesota EQB rules and guidelines for environmental review set forth in Minn.R.Ch. 4410. The District Court improperly took away the vote for an EIS of Commissioner McLynn, improperly banned Commissioner McLynn from further proceedings on the remand for another EAW, and failed to respect the separation of powers.**

The District Court took away McLynn’s vote and banned Commissioner McLynn from all further proceedings.

*State ex rel. Friends of Riverfront v. City of Minneapolis*, 751 N. W. 2d 586 (Minn. 2008).

*In re Rahr Malting Co.*, 632 N.W.2d 572, 576 (Minn. 2001).

*O’Neill v. Kallsen*, 222 Minn. 379, 381-82, 24 N.W.2d 715, 716 (1946).

- VI. Minn.R. 4410.0500 establishes the procedures by which the responsible governmental unit is selected for an EAW/EIS. The District Court improperly granted the motion of LWBC to the extent that the order remanded the EAW to the Minnesota Pollution Control Agency to repeat the EAW process.**

Minn.R. 4410.0500.

- VII. Respondents LWBC and the County both timely filed Motions for Amended Findings in the District Court. Appellants timely commenced this appeal from the Order on the Tolling Motions.**

Minn.R.Civ.App.P. 104.01, subd. 2.

*Madson v. Minnesota Min. & Mfg. Co.*, 612 N.W.2d 168 (Minn. 2000).



## **STATEMENT OF THE CASE**

This appeal is from the order dated December 15, 2011 issued by Judge Jon A. Maturi of the Itasca County District Court and involves the environmental review process applied to a controversial commercial planned unit development project proposed on Deer Lake in Itasca County (“Project”). The December 15, 2011 order determined the underlying action, denied again Appellant’s intervention as of right and granted in part and denied in part the cross motions for amended findings brought by both Respondents Itasca County and Living Word Bible Camp (“LWBC”). The December 15, 2011 order also cancelled an evidentiary hearing, vacated a trial schedule, and reversed as a matter of law the decision of the County Board to require an environmental impact statement (“EIS”) on the proposed Project. The decision amended the July 25, 2011 order of the District Court, which had denied Appellants’ intervention on different grounds and ordered an evidentiary hearing into proceedings before the County Board on the quasi-judicial process by which the County ordered the EIS.

Appellants maintain that this Court of Appeals should reverse the decision of the District Court, hold that the intervention was proper under Minn.R.Civ.P. 24.01, vacate the District Court order, and reinstate the February 23, 2010 decision of the County Board requiring the EIS on the Project. This is a relatively straightforward appeal of an agency decision to require an EIS on a proposed land use Project. Appellants, who are neighboring landowners to the proposed Project,

intervened as of right in a limited intervention eight months prior to adjudication of rights in this environmental law appeal. Neighboring landowners commonly participate in these. Appellants introduced no new issues in the action that would unfairly prejudice any party. The County Board is in a different position than any particular neighbors, neighborhood, or area of the County. As a matter of law, the intervention as of right is appropriate and proper.

The analysis of the District Court in this case in reversing the order for an EIS ignored the substantial deference and presumption of correctness afforded to decisions of administrative agencies, especially in a case such as this with overwhelming substantial evidence in support of the decision. LWBC introduced a number of procedural errors in the District Court review process on motion for summary judgment, including improperly submitting evidence outside the administrative record of decision with affidavits and an expert report prepared over 1 year after the February 2010 decision. LWBC brought no motion to supplement the administrative record and the District Court did not properly analyze the evidence outside the administrative record. The District Court ordered that the involvement of one Commissioner, McLynn, in the preparation of the EAW and the vote for an EIS was arbitrary and capricious, vacated her vote, and *sua sponte* barred that Commissioner from further proceedings. The District Court analysis ignored the applicable administrative rules and guidelines that required McLynn's active participation, identified no legal authority exceeded by McLynn, improperly

applied a judicial standard of conduct on the County, and second-guessed technical environmental issues from the bench. District Courts infrequently see environmental review actions. The County followed the appropriate process and procedure under the Minnesota Statutes and Rules applicable to environmental review without exceeding legal authority and the decision was sound.

For the reasons set forth herein, Appellants respectfully request that this Court of Appeals reverse the orders of the District Court, vacate the lower court orders, and reinstate the February 23, 2010 order of the County requiring an EIS.

### **STATEMENT OF FACTS**

The factual background on this appeal of an administrative decision brought pursuant to Minn.Stat. Sec. 116D.04, subd. 10, is set forth in the administrative record of decision of Respondent County as of the date of decision, February 23, 2010. Respondent County filed the ROD and an Amended Index to ROD, dated April 15, 2011 (“ROD”). There was neither a motion to supplement the record nor any order granting a motion to supplement. The following is a summary of the facts pertinent to this appeal with references to the ROD and/or Appellants’ Appendix.

**A. The Parties. Appellants.** Appellants are neighboring property owners to the proposed Project, are concerned about the potential significant environmental impacts of the Project to water quality, fisheries, and wildlife, among other things, and participated in the EAW process on the proposed Project.

**Respondent County.** Respondent County operates through a publicly elected board that exercises the powers of the County of Itasca pursuant to Minn.Stat. Sec. 373.02, including shoreland zoning. The Minnesota Environmental Quality Board (“EQB”) assigned the County as the responsible governmental unit (“RGU”) for conducting the environmental review process on the proposed Project pursuant to Minn.Stat. Ch. 116D and Minn.Rules 4410.0100, et.seq. The County completed the environmental assessment worksheet (“EAW”) process on the proposed Project and on February 23, 2010, approved the issuance of a positive declaration on the need for an EIS, from which decision this appeal arises.

**Respondent LWBC.** LWBC is a domestic nonprofit corporation existing under the laws of the State of Minnesota with a registered office and agent located in the City of Ramsey, Minnesota. There is limited public information on LWBC.

**B. The proposed Commercial PUD Project.** LWBC proposes to construct a commercial planned use development on about 253 acres on the east shore of Deer Lake, Itasca County. A1-12. The proposed Project holds itself out as a bible camp/retreat/ center, with a lodge, meeting space, commercial kitchen, dining room, five dormitories, activity building, business office and other structures. Id. The area is zoned as seasonal residential, rural residential and farm residential. A conservation easement with the Minnesota Land Trust prohibits construction on about 84 acres and 2,000 feet of shoreline. The County would be responsible for, among other things, a conditional use permit, PUD, and a sewage treatment system permit. Id.

C. **EAW.** LWBC submitted to the County a draft EAW on the Project in about November 2009. ROD 0010-0177. Revisions took place and multiple drafts of the EAW are contained in the ROD reflecting the give and take. The County Board held a special meeting on December 7, 2009 regarding the EAW and the EIS decision, a transcript of which hearing is ROD 0249-0266. The agenda for this special meeting is at ROD 1165. The EAW is dated December 2009, is certified for accuracy by the County, and is located in the record as ROD 1303-1500. The County then published notice of the availability of the EAW for taking public comment.

Numerous organizations and individuals provided written comments to the County on the EAW and the need for an EIS. The record contains a listing of the written comments. ROD 1687. The following is a summary of some of these.

MN DNR submitted extensive comments to the County regarding the EAW and on the need for an EIS. ROD 1690-1701; A62-73. These comments are detailed, professional, speak for themselves and were referenced at length in the County Resolution that later ordered the EIS on the Project. A1-12.

Deer Lake Association (“DLA”) submitted written comments on the need for an EIS and requested an EIS for several reasons. ROD 1688-1689; A74-75. DLA commented on the significance of the Non-Game Wildlife Management Area established in 1959 and the Aquatic Management Area. These comments highlighted the significant public investment in this particular area, which has been ongoing for decades and existed long before LWBC purchased land for development.

The Minnesota Land Trust (“MLT”) submitted written comments to the County on the need for an EIS and an aerial photo. ROD 1923-1928; A76-78. MLT commented to the County on the conservation easement it holds over 84 acres of the LWBC property and the importance of the easement to the sensitive shoreline, habitat, and vegetation. MLT requested that the County require an EIS.

The Itasca County Coalition of Lake Associations (“COLA”) submitted written comments to the County requesting an EIS. ROD 1860-1863; A79. The COLA noted the establishment of the Non-game Wildlife Management Area and the Aquatic Management Area in Kocemba Bay on Deer Lake and the ongoing and significant public investment in this area which these designations represent.

Professionals submitted comments on the EAW, provided detailed analysis of the potential for significant environmental effects, and requested the preparation of an EIS. Professors Jones (U of Missouri, Columbia) and Downing (ISU, Ames) submitted extensive comments on the limnology of Deer Lake and commented that the Project posed a risk to Deer Lake that: “is substantial enough that a complete EIS is needed to evaluate the plan . . .”. ROD 1682-1922; A80-87. Richard Axler, a professional limnologist for over 30 years (U of MN, Duluth) submitted comments on the limnological impacts of the proposed Project and concluded that the EAW lacks “sufficient technical detail and assurances”. ROD 1653-1663; A88-97. Cynthia Hagley, a professor of extension in Aquatic ecology and limnology, (Minnesota Sea Grant), commented: “in my professional opinion that an EIS is very clearly warranted in this case . . .”. ROD 1781-1786; A98-99.

Others commenting on the EAW and requesting an EIS included the following: Dennis W. Anderson, Regional Fisheries Manager, MN DNR, Retired; ROD 1648-1652; A100-103; Mary Blickenderfer, Ph. D., Botany/Plant Ecology, Associate Professor, University of Minnesota Extension; ROD 1664-1674; A104-105; Paul Stolen; M.S., Northwest Regional Environmental Assessment Ecologist, MN DNR Retired; ROD 2070-2103; A106-107-118; Mary L. Spratt, Ph. D., Professor of Biology, William Woods University, Fulton, Missouri; ROD 2104-2113; A119-126; Alan W. Cibuzar, Research Scientist, CEO, A.W. Research Laboratories, Inc.; ROD 1675-1685; Margaret Maxeiner Duxbury, DVM, College of Veterinary Medicine, University of Minnesota and David B. Duxbury, DVM; ROD 1722-1728; A127-133; Donald P. Le Win, M.D.; ROD 1929-1967; A134-137; Randall J. Miles, Ph. D., Associate Professor of Soil Science, University of Missouri; ROD 1976-1981; A150-151; James F Walsh, Hydrogeologist, Minnesota Department of Health; ROD 1974; Harold E. Dziuk, D.V.M., Ph. D.; ROD 1730-1734; A152-156; Madeline Maxeiner, Association Vice Chancellor, External Relations, University of MN, Morris; ROD 1735-1736; A138-139.

The ROD also includes photos of the area. ROD 1324-1335; A180.

**D. February 23, 2010 Decision Requiring an EIS.** The Assistant County Attorney prepared and submitted a Memorandum dated February 8, 2010, referencing the standard of review and criteria for decision. ROD 0231-0232; A13-14. The County prepared a February 16, 2010 request for board action on the

decision. ROD 0223-0224. The County adopted a 12 page Resolution No. 02-10-06 to document the decision requiring an EIS on the Project. ROD 0276-0287; A1-12.

**E. District Court Action.** In March 2010, Respondent LWBC commenced the underlying declaratory judgment appeal in the Itasca County District Court challenging the decision. A15-27. (Today, such an appeal would go directly to the Court of Appeals. Minn.Stat. Sec. 116D.04, subd. 10 (2011).) Respondent County filed an Answer to Complaint denying liability. A28-32. Intervenors filed a Notice and Amended Answer in Limited Intervention. A34-35; 36-40. Respondents filed cross motions for summary judgment for hearing on May 2, 2011. A33.

There was no motion to supplement the administrative record. LWBC submitted evidentiary affidavits and an expert report on the motions, including the Affidavit of Rob Bouta dated January 28, 2011. The Bouta Affidavit attached an extensive expert report for LWBC dated January 27, 2011 by Westwood Professional Services (“Westwood Report”).

The summary judgment and intervention hearing took place in the District Court in Grand Rapids on May 2, 2011. On July 25, 2011, the District Court issued its Order and Memorandum which, among other things, denied the cross motions for summary judgment, relied upon material outside the administrative record, scheduled an evidentiary hearing into the proceedings before the County, allowed scheduling orders, and denied intervention. A42-51.

In August 2011, the County and LWBC filed motions for amended findings and Appellants brought a motion for reconsideration. A52-53. The hearing took



place on September 19, 2011. On December 15, 2011, the District Court issued its order and memorandum, which vacated the order for an EIS, cancelled the evidentiary hearing and trial schedule, concluded that the record supported either a positive or negative declaration on the need for an EIS, granted the motion for amended findings in part by remanding the matter back to the County or MPCA to repeat the EAW process, denied the intervention and issued a writ of prohibition against McLynn's participation in the remanded process. A54-58.

**F. The Instant Appeal.** Appellants commenced the instant appeal by filing a Notice of Appeal with this Court in February 2012. A59-61.

## **ARGUMENT**

### **I. STANDARD OF REVIEW.**

De novo review applies to District Court orders regarding intervention as a matter of right brought pursuant to Minn.R.Civ.P. 24.01. *State Fund Mut. Ins. Co. v. Mead*, 691 N.W.2d 495, 499 (Minn.App. 2005); *Norman v. Refsland*, 383 N.W.2d 673, 676 (Minn. 1986).

Decisions of administrative agencies receive a presumption of correctness and courts give substantial deference to the agency's decision, including on the need for an EIS. *Reserve Mining Co. v. Herbst*, 256 N.W.2d 808, 825 (Minn. 1977). Courts review the proceedings before the RGU de novo, and give no special deference to the findings of the District Court. *Iron Rangers for Responsible Ridge Action v. Iron Range Res.*, 531 N.W.2d 874, 880 (Minn. App. 1995), *review denied* (Minn. July 28, 1995). Jurisdiction is now directly in the

Court of Appeals on the need for an EIS. Minn.Stat. Sec. 116D.04, subd. 10 (2011). Where substantial evidence supports a RGU decision and no errors of law affected the decision, the Courts will affirm. *Minnesota Center for Environmental Advocacy v. Minnesota Pollution Control Agency*, 644 N.W.2d 457 (Minn. 2002); *White v. Minnesota Department of Natural Resources*, 567 N.W.2d 724 (Minn.App. 1997); *Iron Rangers for Responsible Ridge Action v. Iron Range Res.*, 531 N.W.2d 874, 880 (Minn. App. 1995), *review denied* (Minn. July 28, 1995).

Where the decision of the RGU is effected by an error of law, or is arbitrary, capricious or unsupported by substantial evidence, the Courts will reverse and order additional environmental review. *Citizens Advocating Responsible Development v. Kandiyohi County Board of Commissioners*, 713 N.W.2d 817, 833 (Minn. 2006); *Pope County Mothers v. Minnesota Pollution Control Agency*, 594 N.W.2d 233 (Minn.App. 1999); *Trout Unlimited v. Minn. Dep't. of Agric.*, 528 N.W.2d 903, 907 (Minn.App. 1995), *review denied* (Minn. Apr. 27, 1995).

De novo review applies to disqualification of public officials when those officials have a direct pecuniary interest in the outcome and not for remote contingencies. *State ex rel. Friends of Riverfront v. City of Minneapolis*, 751 N.W. 2d 586 (Minn. 2008). De novo review applies to the issuance of a writ of prohibition directed against an individual or agency who will exercise quasi-judicial power. *In re Rahr Malting Co.*, 632 N.W.2d 572, 576 (Minn. 2001); *O'Neill v. Kallsen*, 222 Minn. 379, 381-82, 24 N.W.2d 715, 716 (1946).

**II. Appellants are neighboring landowners with statutory standing in environmental review actions brought under Minn.Stat. Sec. 116D.04, subd. 10. As neighbors to the proposed Project in this District of the County, Appellants have differing interests from the County demonstrated by the decision of the County not to appeal herein. The District Court erred in denying the intervention.**

This Court of Appeals should reverse the decision of the District Court denying the limited intervention as of right by Appellants in this EIS appeal.

Minn.R.Civ.P. 24.01 provides for intervention as of right as follows:

“Upon timely application anyone shall be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.”

Minnesota courts favor intervention and liberally apply the rules on intervention of right because public policy supports intervention in civil actions. Where no rights have been adjudicated and no new issues introduced, courts approve intervention as of right. A party must show (1) an interest relating to the property or transaction that is the subject of the action; (2) as a practical matter, disposition of the action may impair or impede the party's ability to protect that interest; (3) the party is not adequately represented by the existing parties; and (4) the motion was timely. *Carl Bolander & Sons Co. v. City of Minneapolis*, 502 N.W.2d 203 (Minn. 1993). Where no rights have been adjudicated and no new issues introduced, courts allow intervention even where the action has been pending for 10 months prior. *Engelrup v. Potter*, 302 Minn. 157, 165-66, 224

N.W.2d 484, 488-89 (Minn. 1974). There is no unfair prejudice where an intervenor timely applies prior to adjudication of rights and supports issues raised in the proceedings by the existing pleadings. *B E & K Constr. Co. v. Peterson*, 464 N.W.2d 756, 758 (Minn.App. 1991).

The general rule on intervention as of right has particular application in environmental review and land use cases, where our Courts have allowed intervention because the variously situated parties have differing interests as to the land use proposal. The state, local units of government, and neighboring landowners all have differing interests as they relate to a land use project. *Carl Bolander & Sons Co. v. City of Minneapolis*, 502 N.W.2d 203, 208-09 (Minn. 1993). In *Bolander*, the State was allowed to intervene in the action under Rule 24.01, where the action concerned the need for an EAW and a claim for denial of equal protection by the proposed project. The Minnesota Supreme Court noted the differing interests of each of the different participants in the EAW process in part as follows: “the local governmental unit is charged with the implementation of a statewide-effective policy, while the state is charged with the management of the public policy in a broader sense.” 502 N.W.2d at 208. Duties of the state regarding environmental policy are set forth in Minn.Stat. Sec. 116D.02. The District Court analysis below did not analyze *Bolander*. The analysis did cite that landowners may intervene in a permitting case to protect their property rights. *Jerome Fairbo Farms v. County of Dodge*, 464 N.W.2d 568 (Minn.App. 1990).

Post-trial intervention is not viewed favorably because of the potential prejudice to the original parties from allowing an intervener to sit by until the case is decided and only then ask to participate when things go against them. The court may deny intervention in a conditional use permit appeal where the homeowners association sits by and fails to intervene until after entry of a final judgment.

*Omegon, Inc. v. City of Minnetonka*, 346 N.W.2d 684 (Minn.App. 1984).

Even where the neighboring landowners sit by until after a settlement is reached, however, Courts should allow limited intervention in an environmental rights case. *SST, Inc. v. City of Minneapolis*, 288 N.W.2d 225, 231 (Minn. 1979).

Here, the District Court reasoned that if Respondent County did not pursue an appeal of the December 15, 2011 order vacating the order for an EIS, Appellants would not be prejudiced because Appellants could nevertheless participate in a repeat EAW process. This was error. Appellants properly and timely intervened in a limited manner asserting their rights regarding the EIS order. Appellants are neighboring property owners, participated in the EAW process, and accordingly have an interest and legal rights relating to the review process before the County and the decision of February 23, 2010 to require an EIS pursuant to Minn.Stat. Sec. 116D.04, Subd. 2a and Minn.R. 4410.2000, Subp. 3A. Appellants have rights to see an EIS on the proposed Project as ordered by the County. The EIS will provide additional information about the impact of the proposed Project on the environment near property in this part of Itasca County.

Appellants are active in DLA, which is a member of the Minnesota Lakes Association. Their interest and extra efforts in protecting the environment, which includes property that Appellants' own and treasure, are well documented on their website, which is: [www.deerlakeassociation.org](http://www.deerlakeassociation.org).

Disposition of the action without the intervention would have allowed the District Court reversal of the EIS order to stand. Without the intervention, Appellants would lose their rights in the EIS decision of February 23, 2010. The County decided, for any number of reasons, not to appeal to this Court of Appeals. Appellants have statutory legal rights in and to appeal. Minn.Stat. Sec. 116D.04, subd. 10, provides that a "person aggrieved by a final decision on the need for an environmental . . . impact statement . . . is entitled to judicial review of the decision . . .". Numerous Minnesota cases involve neighboring property owners asserting their rights to an EIS order. See, *Citizens Advocating Responsible Development v. Kandiyohi County Board of Commissioners*, 713 N.W.2d 817, 833 (Minn. 2006). Without intervention, disposition of this action would impair Appellants' ability to protect their interests and rights in the order for an EIS.

The District Court erred in denying the intervention on the grounds that a repeat EAW process was a substitute. A repeat EAW ignores the significant effort in the EAW process to date, discounts the comments from professionals and experts, ignores the many public hearings, and demeans the process. This is particularly true here, where citizen participation has been obstructed. LWBC brought a SLAPP suit against citizens for lawful participation in the EAW petition

process, which SLAPP suit was dismissed by the Courts, including on appeal, as unfounded and contrary to law. ROD 0305-0315.

The County does not adequately represent the interests of Appellants under Minnesota law. The County acts as the RGU with implementing state-wide environmental policies. Appellants are property owners concerned with the environment, particularly in proximity to their own property. Minn.Stat. Sec. 116D.04, subd. 10, provides the neighboring property owners and other individuals with standing on the need for an EIS. The State, the County, and the neighboring property owners have differing interests in the environmental review, as recognized by the Supreme Court in *Bolander*.

That Appellants sought limited intervention also favors allowing intervention. The analysis below of the District Court in the July 25, 2011 memorandum included reference to *SST*, which recognized a role for limited intervention in an environmental rights case. That analysis failed to apply *SST*, however, and then dropped the citation altogether in the December order.

The limited intervention was timely. Appellants intervened in April 2011, about 3 months prior to the July 25, 2011 District Court order, which did not finally adjudicate the action in any event. The intervention took place almost 8 months prior to the final adjudication of rights in December 2011. Appellants raised no new issues and sought intervention for the limited purpose of the EIS.

Respondent LWBC argues in its Statement of the Case that Appellants are “non-parties” who have no standing to appeal. This is without merit. A party who

timely files Notice of Intervention has standing to appeal. *Norman v. Refsland*, 383 N.W.2d 673, 676 (Minn. 1986).

In conclusion, the Court of Appeals should reverse the District Court and hold that Appellants properly intervened as of right under Minn.R.Civ.P. 24.01.

**III. The administrative record before the County on the EAW included detailed and supported comments and reports from pertinent state officials, highly respected scientists, and citizens that overwhelmingly supported an EIS. No proper motion was made and granted in the District Court to supplement the administrative record. Substantial evidence in the administrative record demonstrates that the proposed project has the potential for significant environmental effect so that the County properly required an EIS.**

As a matter of law, the District Court erred when reversing the February 23, 2010 decision of Respondent County to require an EIS. Substantial evidence in the administrative record supports the EIS order and due deference to the expertise of the County Board and a presumption of correctness in that decision requires reversing.

The Minnesota Environmental Policy Act ("MEPA") MEPA requires that agencies taking permit or other action on a proposed project must first consider the project's environmental consequences. Minn. Stat. § 116D.04, subds. 1a(d), 2a.

The EAW is only a "brief document which is designed to set out the basic facts necessary to determine whether an environmental impact statement is required for a proposed action." Minn.Stat. Sec. 116D.04, subd. 1a(c). Minn.Stat. Sec.

116D.04, subd. 2a, provides in part regarding the EAW/EIS process:

“Where there is potential for significant environmental effects resulting from any major governmental action, the action shall be preceded by a detailed environmental impact statement prepared by the responsible governmental unit. The environmental impact statement shall be an



analytical rather than an encyclopedic document which describes the proposed action in detail, analyzes its significant environmental impacts, discusses appropriate alternatives to the proposed action and their impacts, and explores methods by which adverse environmental impacts of an action could be mitigated. The environmental impact statement shall also analyze those economic, employment and sociological effects that cannot be avoided should the action be implemented.”

The RGU in the EAW process to decide on the need for an EIS applies the criteria adopted in Minn. R. 4410.1700, subp. 7, to determine whether the project has the PSEE. Minn. Stat. § 116D.04, subd. 2a(c); Minn. R. 4410.1700, subp. 7. If the RGU decides that the EAW describes a project that does have the PSEE, the RGU is required to issue a “positive declaration” requiring an EIS. Minn. R. 4410.1700, subps. 1, 3. The RGU makes that decision based upon the EAW on the Project, together with any written comments received by the RGU during the public comment period. Minn.Stat. Sec. 116D.04, subd. 2a(b). Minn.R. 4410.1700, subp. 7, provides:

Subp. 7. **Criteria.** In deciding whether a project has the potential for significant environmental effects, the following factors shall be considered:

- A. type, extent, and reversibility of environmental effects;
- B. cumulative potential effects of related or anticipated future projects;
- C. the extent to which the 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 EISs.

The EIS is a comprehensive environmental review process, which the proposing party conducts at its own expense with independent experts involved.

Minn. R. 4410.2000, subp. 1; Minn. R. 4410.2300; Minn. Stat. § 116D.045.

There is no Minnesota reported decision in which an agency ordered an EIS upon an administrative record supporting the EIS decision, the District Court reversed, and that District Court order withstood further review.

Courts provide substantial deference to the underlying agency and its decision on environmental review. *Reserve Mining Co. v. Herbst*, 256 N.W.2d 808, 825 (Minn. 1977). Minnesota cases have affirmed an agency decision where the agency issued a negative declaration on the need for an EIS based on substantial evidence. *Minnesota Center for Environmental Advocacy v. Minnesota Pollution Control Agency*, 644 N.W.2d 457 (Minn. 2002); *White v. Minnesota Department of Natural Resources*, 567 N.W.2d 724 (Minn.App. 1997); *Iron Rangers for Responsible Ridge Action v. Iron Range Res.*, 531 N.W.2d 874, 880 (Minn. App. 1995), *review denied* (Minn. July 28, 1995).

Here, this Court of Appeals should affirm the order for an EIS because the administrative record contains substantial evidence supporting that decision. The EAW process was extensive and involved the County reviewing and verifying the accuracy of the EAW prior to public notice and comment. The comments of experts and citizens provided substantial evidence in support of the need for an EIS, including comments of the MN DNR (A62-73), DLA (A74-75), the Minnesota Land Trust (A76-78), the Itasca COLA (A79), various professionals and experts (A80-126; 134-137; ), and landowners (A127-133; 138-139; 150-156).

The County received a legal memorandum from the Assistant County Attorney advising the Board on the standard for decision, the criteria for the decision and the process following a decision. A13-14.

The County documented its decision by an appropriate Resolution that was 12 pages long and made findings of fact, which summarized the comments, including those of the MN DNR, MPCA, and other professionals. A1-12. The Resolution referenced the appropriate environmental issues and cited sources, such as the comments of MN DNR. The Resolution applied the proper criteria under Minn.R. 4410.1700, referencing the fish and wildlife resources, boat traffic, surface water runoff, wastewater, visual impacts and traffic. Id. The Resolution analyzed cumulative potential effects and ongoing regulatory authority, among other things. Id. The Resolution came to the appropriate conclusions.

The December 15, 2011 order and memorandum of the District Court stated that it did not rely on materials outside of the administrative record. The July 25, 2011 order and memorandum clearly did and tainted the appeal. There was no motion to supplement the administrative record. LWBC improperly introduced the affidavit of Bouta with the Westwood Report prepared on January 27, 2011, which was over a year after the Resolution. It was error for the District Court to consider matters outside the record, such as the prior EAW litigation, the tax proceedings regarding LWBC, the Westwood Report, and to schedule an evidentiary hearing. This was a very irregular method of deciding an administrative decision and a diversion by the District Court. The extensive fact finding by the District Court in

both orders was not properly based upon the administrative record. While the Court recanted in the December 15, 2011 order, the analysis relied upon the Westwood Report, which improperly formed the basis for concluding that McLynn acted with bias and resulting in the writ of prohibition. The December 2011 order, at page 3, appears to rely on the critique of the Westwood Report regarding McLynn's participation in reviewing, revising and certifying the EAW prior to publication and wholly ignores applicable administrative rules and guidelines. The error of law was introduced from the Westwood Report. The order's comment about "other actions and comments is vague and has no meaning. The order's references to edits regarding future stages of development and gross floor space improperly rely upon the Westwood Report, which was extra record material after the fact that should not have been submitted or considered.

The District Court analysis below gave no substantial deference to the expertise of the County in the environmental review process, improperly substituted the Court's own judgment for that of the County as to the environmental impacts of the proposed Project, and *sua sponte* improperly effectively issued a retroactive writ of prohibition against McLynn. The decision to require an EIS was sound on the merits and must be reinstated.

**IV. The County took a hard look at the problems involved, genuinely engaged in reasoned decision-making, issued a decision that reflected compliance with applicable law, and made appropriate findings requiring an EIS on the proposed Project.**

The District Court orders fundamentally misunderstood the role of the County as the RGU under Minnesota law in the EAW process, mistook alleged bias by McLynn for diligence, expertise and experience, and improperly substituted the Court's own judgment and standard of conduct for that of the County. This Court of Appeals should reverse the District Court with an order that reinstates the EIS requirement on the proposed Project because the District Court analysis erred when it failed to identify the appropriate administrative rules applicable to the County in the EAW process, failed to recognize that the County was following those quasi-judicial administrative rules, and improperly instead held the County to a standard of judicial conduct.

Where substantial evidence supports a decision and the agency follows applicable rules, the court will affirm an EIS order. *Minnesota Center for Env. Advocacy v. Minnesota Pollution Control Agency*, 644 N.W.2d 457 (Minn. 2002); *White v. Minnesota Department of Natural Resources*, 567 N.W.2d 724 (Minn.App. 1997); *Iron Rangers for Responsible Ridge Action v. Iron Range Res.*, 531 N.W.2d 874, 880 (Minn. App. 1995), *review denied* (Minn. July 28, 1995).

Courts have reversed decisions refusing to require an EIS where the agency committed legal errors in the review process or failed entirely to take a hard look at salient issues. *Citizens Advocating Responsible Development v. Kandiyohi County Board of Commissioners*, 713 N.W.2d 817, 833 (Minn. 2006); *Pope County Mothers v. Minnesota Pollution Control Agency*, 594 N.W.2d 233 (Minn.App. 1999); *Trout Unlimited v. Minn. Dep't. of Agric.*, 528 N.W.2d 903, 907

(Minn.App. 1995), *review denied* (Minn. Apr. 27, 1995). In the *CARD* decision, the County Board erred by applying an incorrect legal standard regarding cumulative impacts and effects and failed to conduct environmental review as to those issues. In the *Pope County Mothers* decision, MPCA erred as a matter of law and procedure by failing to consider the cumulative impacts from connected and phased actions. In *Trout Unlimited*, the Department of Agriculture also failed as a matter of law and procedure to analyze all significant environmental impacts presented by an additional irrigation project in the vicinity.

The District Court orders herein below erred by their failure to identify any legal standard violated by McLynn or the County. The orders nowhere reference any legal standard and instead rely upon pronounced judicial standards of conduct and smoke blown by the Westwood Report. This was error by the Court. Where there is a failure to identify any specific legal standard which the agency allegedly violated in a quasi-judicial proceeding, the Court of Appeals will affirm the agency decision where substantial evidence otherwise supports that decision. *In re North Metro Harness, Inc.*, 711 N.W.2d 129, 138-139 (Minn.App. 2006). *North Metro Harness* is instructive though it represents a general agency law case and is not an environmental review case. Relator challenged on the grounds, among others, that the commissioners allegedly engaged in “off-the-record communications”. The Court of Appeals agreed that there had been off-the-record communications and noted that: “although it would have been better for the commissioners to have refrained from engaging in off-the-record communications,

relator fails to provide any authority that the commissioners may not rely on these communications . . .” 711 N.W.2d at 139. The Court of Appeals affirmed and in the process noted that there was not a contested case hearing and were no guidelines prohibiting ex parte communications.

Moreover, quasi – judicial proceedings are not judicial proceedings and standards governing judicial proceedings are different and do not govern quasi – judicial proceedings. *Handicraft Block Limited Partnership v. City of Minneapolis*, 611 N. W. 2d 16 (Minn. 2000).

Here, the District Court *ex post facto* vacated the vote of McLynn for an EIS on the grounds that McLynn herself acted arbitrarily and capriciously through active participation and alleged bias in the preparation of the EAW and voting for an EIS. The District Court did not cite a single law or rule that the County allegedly violated and essentially held the County commissioners to a standard for judicial proceedings or for a contested case hearing.

The Minnesota Rules on environmental review allow and encourage a commissioner, such as McLynn, to take an active role in the review process in the preparation and verification of the EAW. The District Court order of December 15, 2011 talks of being an “impartial judge” and about not “consulting public opinion”. This was error. The District Court order of July 25, 2011 ordered that Commissioner McLynn did not have a “neutral and detached mind”, “was not capable of fairly judging the controversy on its own circumstances”, and “exhibited a closed mind when voting for an EIS.” The July 25, 2011 order was

based upon actions of Commissioner McLynn regarding: 1) evidence outside the record on revoking the tax exempt status of LWBC; 2) evidence outside the record supporting the EAW petition because it was submitted by a constituent; 3) reviewing the draft EAW with her constituents; 4) relying upon opponents of the LWBC proposed Project in review of the draft EAW; and 5) editing the proposed EAW to include additional or different information.

The District Court inferred bias from the actions of a conscientious public servant attempting to have an accurate EAW prepared consistent with EQB Guidelines. The tax exempt status proceedings were well outside of the administrative record and improperly consulted. With regard to the 2006 EAW petition process, the Court took isolated comments out of context. On the vote for the EAW in 2006, the County received a valid citizen's petition, a proposed road expansion was included that triggered the need for an EAW, and a DNR letter expressed concerns about environmental impacts. The decision on the petition was upheld by the Court of Appeals.

The District Court erred by criticizing McLynn for her work on the EAW here in reviewing the draft EAW, taking input on the draft, and editing the draft EAW. This error was induced by the Westwood Report and arguments of counsel at the hearing of May 2, 2011, both of which are outside of the administrative record and contrary to law. Minnesota law encourages and guides officials in the EAW process to review the draft, to consult with others about the draft, and to edit the draft prior to certifying the accuracy of the EAW. This is the exact opposite of



the order. In controversial cases such as this, the EQB has indicated in guidance documents that public access to environmental documents is encouraged.

A review of the applicable administrative rules governing the environmental review process reveals that the County here followed those rules and guidance and did not violate any. Minn.Stat. Sec. 116D.04, subd. 5a, authorized the adoption of administrative rules to establish and direct the environmental review process. The Minnesota Rules on environmental review were adopted and are presently set forth in Chapter 4410, which requires active participation and certification for accuracy by the RGU in the EAW drafting.

These rules require, among other things, review, input and certification by the RGU on the initial draft EAW during the EAW process prior to any vote on the need for an EIS. The District Court below assumed that the County was like a reviewing court required to stay out of the drafting and certification of the EAW. This was an error. With regard to the data portion and content of an EAW, the rules required the County and McLynn to review the data portions, to take input on the salient issues, to consult with others, and be responsible for certification of the accuracy of the EAW. Minn.R. 4410.0400, Subp. 2, provides: “RGU’s shall be responsible for verifying the accuracy of environmental documents and complying with environmental review processes in a timely manner.” Minnesota law required the County and McLynn to review and verify the accuracy of the contents of the EAW prior to certification of the EAW and publishing notice of the EAW for public comment. Minnesota law allowed the County and McLynn to consult with

any other person, including constituents, in obtaining information for an accurate EAW. Minn.R. 4410.0400, Subp. 3, provides as follows: “When environmental review documents are required on a project, the proposer of the project and any other person shall supply any data reasonably requested by the RGU which the proposer has in his or her possession or to which the proposer has reasonable access.” The administrative rules required the County and McLynn to accurately identify all potential environmental impacts from the proposed Project in the EAW. Minn.R. 4410.1200 establishes the content requirements for an EAW. The requirements are fairly detailed and include sections identifying potential environmental impacts from a proposed project. Minn.R. 4410.1200E, provides in part: “major issues sections identifying potential environmental impacts and issues that may require further investigation before the project is commenced, including identification of cumulative potential effects”.

The administrative rules required the County and McLynn to prepare and evaluate the accuracy of the EAW prior to public notice and comment. Minn.R. 4410.1400 provides in part as follows: “The EAW shall be prepared by the RGU or its agents . . . The RGU shall determine whether the proposer’s submittal is complete within 30 days . . . The RGU shall be responsible for the completeness and accuracy of all information.” The Rules do not prohibit communications between the RGU, on the one hand, and constituents or others, on the other hand, as ruled by the District Court. The orders of the District Court failed to afford deference to the fact that, in discharging these duties, McLynn has particular

experience and expertise with environmental issues, including a B.A. degree in chemistry and employment with the US EPA for 6 years and also with the US Forest Service. McLynn has, for example, conducted water quality research to reverse eutrophication of lakes in Minnesota and has extensive volunteer participation in community associations and water quality initiatives and education in the community. McLynn was commissioner for several years preceding the EAW and was familiar with the history of the Project.

The Minnesota EQB has published guidance documents that support the plain and ordinary language of the rules. One of the guidance documents is:

<http://www.eqb.state.mn.us/documents/eawrules.pdf>

This guidance document provides in pertinent part as follows:

The RGU is legally responsible for the accuracy and completeness of the information presented in the EAW. After the RGU notifies the proposer that the submittal is complete, the RGU has 30 days to add additional information, revise the text as necessary and approve the EAW for public distribution. In controversial cases, the RGU governing body, a council or board, often authorizes release of the EAW, but it is not required by the EQB rules. Even if the proposer's data submittal seems complete and accurate, the RGU must exercise independent judgment about the information. The RGU must be in charge of any conclusion-type responses that discuss the significance of impacts or the adequacy of mitigation. If the RGU fails to exercise independent review of the proposer's information, it could lose a legal challenge and have to repeat the EAW process. A177.

The guidance document specifically instructed McLynn to exercise judgment to add additional information, to revise the text as necessary and to release the EAW for comments from others. Minnesota law required McLynn to exercise independent judgment about the content of the EAW prior to certification.

Another EQB guidance document is:

<http://www.eqb.state.mn.us/documents/preparingeaws.pdf>

This guidance document provides in part as follows:

Steps 9 and 10 illustrate the importance of understanding whether or not an EAW data submittal is complete. Once an RGU verifies a proposer's submittal is complete, it only has 30 days (according to the rules) to finalize and edit the document. RGUs should make certain they have all needed information and conducted any analyses or studies prior to notifying the proposer that the data submittal is complete.

When reviewing and editing an EAW, here are some helpful tips:

RGU staff should specifically designate someone to be the EAW coordinator. This person will be responsible for making sure the EAW gets to all necessary staff members and that their input will be incorporated in into the final draft of the EAW.

If an RGU has hired a consultant to assist in the review process, it should make certain the consultant receives the EAW data and documents as soon as possible. The RGU may even want to have the consultant review the data submittal before making it available for editing by RGU staff, as an experienced consultant can often identify potential problems more quickly, as well as recommend solutions.

RGUs will likely want to have all the necessary staff members reading/editing the EAW at the same time, rather than one at a time (and then handing it off to the next person). Afterwards, a meeting can be scheduled to get everyone together and discuss staff concerns and/or needed corrections. This may lead to some duplication, ex. three people identifying the same issue that needs to be addressed, but will ensure a faster review process in the end. A179.

The District Court erred in concluding that the process before the County in evaluating and revising the EAW prior to publication violated some sort of judicial bias standard. The District Court analysis simply failed to recognize the applicable process. The administrative rules as a matter of law required the County to

complete the give and take discussions and revisions over the EAW content. The District Court analysis failed to recognize that this entire process takes place prior to the “judging” of the need for an EIS based on the EAW, the public comments, and the public hearing. After the EAW is completed and certified for accuracy by the RGU, public notice is given that the EAW is available for public comment and a public hearing. There is a 30 day period by rule for public comments on the EAW and then the requirement of a public hearing. After taking the public comments and holding the public hearing, only then does the RGU make a decision on the need for an EIS on: “the information gathered during the EAW process and the comments received on the EAW.” Minn.R. 4410.1700, Subp. 3.

In neither the July 25 nor the December 15 orders and memoranda does the District Court identify a single administrative law, rule, or guideline that was violated. There is no citation to any legal authority. The District Court simply erred by not analyzing and understanding the administrative rules and how they applied to the review process on LWBC’s Project.

**V. A majority of citizens elected Commissioner McLynn to represent District 2 of Itasca County. Commissioner McLynn’s actions in the EAW process were lawful and consistent with the Minnesota EQB rules and guidelines for environmental review set forth in Minn.R.Ch. 4410. The District Court improperly took away the vote for an EIS of Commissioner McLynn, improperly banned Commissioner McLynn from further proceedings on the remand for another EAW, and failed to respect the separation of powers.**

The District Court erred as a matter of law in taking away McLynn’s vote and *sua sponte* excluding McLynn from future proceedings by the December 15,

2011 order, which order essentially represents a declaratory judgment where the issue was not plead before the court and/or was an improper writ of prohibition.

The District Court effectively removed McLynn from office by “disqualifying” her and her vote and by “excluding” her from further environmental review proceedings on this Project. The issue was not properly before the court in the complaint or on motion. Minnesota law allows for disqualification of public officials only when those officials have a direct pecuniary interest in the outcome and not based upon remote contingencies. *State ex rel. Friends of Riverfront v. City of Minneapolis*, 751 N. W. 2d 586 (Minn. 2008); *Lenz v. Coon Creek Watershed Dist*, 278 Minn. 1, 153 N. W. 2d 209, 219 (1967); *Nolan v. City of Eden Prairie*, 610 N. W. 2d 697, 700 (Minn.App. 2000). The power of removal generally is not held by the judiciary, but instead is held by the people, specifying a process by which such removal, after petition and debate and vote by the people, occurs. See, Minn.Stat. Sec. 351.14.

In addition to holding McLynn to a higher standard of performance than any single quasi – judicial decision maker has ever been held, that of “judge” [see, e.g., *Schwardt v. County of Watonwan*, 656 N. W. 2d 383 (Minn. 2003); quasi – judicial proceedings do not have to meet full judicial standards], the District Court also (1) lacked subject matter jurisdiction to “disqualify” McLynn’s vote in support of a positive EIS declaration, (2) the District Court’s decision was itself arbitrary, capricious, unreasonable and contrary to law, and (3) the District Court’s orders, including its “suggestion” that another RGU be assigned and the District

Court's *obiter dicta* regarding the weight of the evidence supporting a positive declaration, should be reversed and McLynn's vote and the governmental unit's decision and determination for a positive EIS declaration should be "restored" by appropriate remand to the District Court, with specific directions.

Any other result will turn our quasi – judicial proceedings, and their appeals into our courts, into a quagmire of vote by vote assessment for feigned, real and putative "arbitrariness" and "capriciousness," from which we will see a broad invitation to speculation on the "effects" of such individual voter behaviors on the body as a whole, motions for augmentation (lacking here) and an elevation of incivility in the exchange of accusations not uncommonly found in quasi – judicial proceedings.

Moreover, the District Court order effectively *sua sponte* issued a writ of prohibition against McLynn, despite that this equitable remedy was neither appropriate or before the court. Writ of prohibition is an extraordinary remedy that will issue to prohibit prospective quasi-judicial action in excess of, or going beyond, the legal authority or jurisdiction of an individual or agency. *In re Rahr Malting Co.*, 632 N.W.2d 572, 576 (Minn. 2001); *O'Neill v. Kallsen*, 222 Minn. 379, 381-82, 24 N.W.2d 715, 716 (1946). A writ of prohibition represents an equitable remedy that issues only in limited circumstances. The Minnesota Supreme Court stated:

"A writ of prohibition may be issued when: (1) an inferior court or tribunal is about to exercise judicial or quasi-judicial power; (2) the exercise of that

power is unauthorized by law; and (3) the exercise of power will result in injury for which there is no adequate remedy.” 632 N.W.2d at 576.

The Court in the case of *In re Rahr Malting* declined to issue a writ of prohibition because the proposed actions were not an unauthorized exercise of power by the tax court and an adequate remedy existed upon remand in the form of an in camera review of potential trade secrets or other proprietary information. Where an individual or agency will act within its legal authority and a legal remedy exists, a writ of prohibition will not issue. The Court in *O’Neill* noted that a writ of prohibition does not issue to restrain or prohibit individuals or agencies from performing legislative or administrative actions.

Here, the County and McLynn followed the law. Nowhere is any allegation of any direct pecuniary interest. Demonstrating a misunderstanding of the administrative rules and not showing any background or experience in limnology, the District Court order should be reversed and vacated. McLynn performed her actions within the scope of legal authority in the administrative EAW process, within Chapter 4410, and consistent with EQB Guidance. The District Court erroneously ordered that Commissioner McLynn “conflated her usual duty to represent her constituents and their interests with her duty to be a ‘judge’ of the facts as presented in the EAW. . . and that there is no way to put the cat back into the bag. Therefore, the Court is compelled to exclude her from taking part in that process on remand.” This *sua sponte* judgment and/or writ of prohibition against McLynn appears to have its genesis in the Westwood Report belatedly prepared,



not part of any supplemented record, and filed nonetheless by LWBC. In any event, LWBC has a legal remedy in that LWBC could comment upon the EAW, participate in the public hearing on the EAW, and to appeal the decision on the need for an EIS to the District Court under Minn.Stat. Sec. 116D.04, subd. 10. The Court of Appeals should reverse the order of the District Court and vacate all portions of the orders regarding the vote of McLynn and the involvement of McLynn in the future review process.

**VI. Minn.R. 4410.0500 establishes the procedures by which the responsible governmental unit is selected for an EAW/EIS. The District Court improperly granted the motion of LWBC to the extent that the order remanded the EAW to the Minnesota Pollution Control Agency to repeat the EAW process.**

To the extent that the District Court order of December 15, 2011 allows the County to refer the remanded EAW process to MPCA, the District Court erred as a matter of law. Under Minnesota Rule 4410.0500, the Minnesota Environmental Quality Board (“EQB”) is the agency which assigns RGUs to handle an EAW process. Minn.R. 4410.0500 establishes the RGU Selection Procedures and directs the EQB to assign EAWs to the agency with the most permitting authority over a proposed project. If there is a dispute, Subp. 6 allows the EQB to designate a different RGU if they have greater expertise. Rule 4410.0500 does not authorize the RGU to make a referral of the EAW on the LWBC Project to another. The County might erroneously send the EAW to the MPCA (and indeed that is what the County Board voted to do on February 7, 2012). That portion of the District Court order suggesting that authority should be vacated.

**VII. Respondents LWBC and the County both timely filed Motions for Amended Findings in the District Court. Appellants timely commenced this appeal from the Order on the Tolling Motions.**

LWBC argues in its Statement of the Case that Appellants failed to file and timely serve this appeal in the Minnesota Court of Appeals. This is without merit.

In determining the time to commence an appeal, all parties may rely upon all timely filed tolling motions in the District Court. Minn.R.Civ.App.P. 104.01, subd. 2. The policies for this rule include to provide, as much as possible, for a single appeal from a final order or judgment, to reduce uncertainty, and to reduce premature or ineffective notices of appeal. *Madson v. Minnesota Min. & Mfg. Co.*, 612 N.W.2d 168 (Minn. 2000).

Appellants filed the instant appeal in the Minnesota Court of Appeals within 60 days of notice of decision. Appellants filed their Notice of Appeal on February 16, 2012. A59-61. Notice of order appealed from was given on December 20, 2011. The Notice of Appeal was filed within 60 days of the December 20, 2011 letter giving notice of the filing of the December 15, 2011 Order. The December 15, 2011 Order itself decided two timely filed tolling motions, including motions for amended findings heard by the District Court on September 19, 2011 and both of these were timely filed by Respondent County and Respondent LWBC regarding the July 25, 2011 order.

**CONCLUSION**

The intervention here was timely and proper as a matter of law, as was the instant Notice of Appeal. Substantial evidence in the administrative record before

the County at the time of decision supports the February 23, 2010 decision to require an EIS on the Project. Respondent Itasca County and McLynn followed Minnesota statutes, the administrative law rules, and the EQB guidance documents in the EAW process. It was clear error to go outside the administrative record without granting a proper motion to supplement, to take away McLynn's vote and ban McLynn for future proceedings. The Court of Appeals must reinstate the decision of February 23, 2010 requiring an EIS on the proposed Project.

For the foregoing reasons, Appellants respectfully request that this Court of Appeals reverse the decisions of the District Court, vacate the orders entirely, and reinstate the February 23, 2010 order that requires an environmental impact statement on the Project of Respondent Living Word Bible Camp.

LAW OFFICES OF JAMES P PETERS PLLC

Dated: March 15, 2012

By: \_\_\_\_\_  
James P Peters #0177623  
Attorneys for Appellants  
460 Franklin Street N Suite 100  
PO Box 313  
Glenwood MN 56334  
(320) 634-3778



**From:** [James Peters](#)  
**To:** [Patton, Bob \(MDA\)](#)  
**Subject:** Re: RGU Request: Living Word Bible Camp  
**Date:** Friday, June 08, 2012 12:51:07 PM

---

Dear Mr. Patton:

- Please consider the items previously submitted by me on this matter of the remanded EAW on the LWBC project in Itasca County.
- Any prejudice or expense to LWBC pursuing a new EAW is at the risk of LWBC, which the EQB should note.
- Also, the Minnesota Court of Appeals has scheduled oral arguments on the appeal of the Itasca County Board order for an EIS for July 25, 2012.
- An order from the COA reinstating the EIS order (or not reinstating) will come by October 25, 2012.
- Nothing more to add in writing at this time.
- Your attention to this matter is appreciated.
- Please do not hesitate to contact me with questions or comments.

Jim

Law Offices of James P Peters PLLC

---

**From:** "Patton, Bob (MDA)" <bob.patton@state.mn.us>  
**To:** Craig Howse <chowse@howselaw.com>; "mford@quinlivan.com" <mford@quinlivan.com>; "jim@peterslawfirm.us" <jim@peterslawfirm.us>  
**Cc:** "Frederickson, Dave (MDA)" <dave.frederickson@state.mn.us>; "Winters, Kathleen (AAG)" <kathleen.winters@ag.state.mn.us>; Jake Grassel <jgrassel@howselaw.com>  
**Sent:** Wednesday, June 6, 2012 5:58 PM  
**Subject:** RE: RGU Request: Living Word Bible Camp

Greetings:

Jake Grassel of the Howse and Thompson law firm brought to my attention an error in the deadlines for submittal of materials for the June EQB meeting. For the June 20<sup>th</sup> EQB meeting:

1. If you wish EQB staff to review the filings prior to preparing findings, conclusions, and recommendations, we will need to receive the materials by 9 am, Monday, June 11<sup>th</sup> (not 13<sup>th</sup>).
2. Otherwise, we will need the materials by the close of business, Tuesday, June 12<sup>th</sup> (not 14<sup>th</sup>).

Of course, early submittals are appreciated.

I apologize for any confusion.

Sincerely,

Bob Patton  
Executive Director  
Environmental Quality Board  
520 Lafayette Road North





QUINLIVAN &  
HUGHES, P.A.  
ATTORNEYS AT LAW

Writer's Email: mford@quinlivan.com

Writer's Direct Dial: (320) 258-7848

**VIA U.S. MAIL & EMAIL**

June 12, 2012

Kevin A. Spellacy  
Michael J. Ford\*  
Michael T. Feichtinger\*  
Steven R. Schwegman\*\*\*  
Michael D. LaFontaine  
Ronald W. Brandenburg  
Bradley W. Hanson\*  
Kenneth H. Bayliss  
Michael C. Rajkowski  
Dyan J. Ebert°  
Luke M. Seifert  
Robert P. Cunningham  
Melinda M. Sanders  
Thomas J. Christenson□  
John H. Wenker  
Shelly M. Davis  
James S. McAlpine\*  
Laura A. Moehrle  
Cally R. Kjellberg  
W. Benjamin Winger  
Garin L. Strobl  
Sarah R. Jewell

*Of Counsel:*  
John J. Hoefs\*

*Retired:*  
John D. Quinlivan  
Keith F. Hughes  
Gerald L. Thoreen  
Dennis J. (Mike) Sullivan

\*Qualified ADR Neutral  
\*MSBA Certified Civil Trial Specialist  
\*American College of Trust & Estate Counsel  
°Also licensed in South Dakota  
□Also licensed in North Dakota  
\*Also licensed in Wisconsin

Robert Patton  
Executive Director  
Environmental Quality Board  
520 Lafayette Road North  
Saint Paul, MN 55155

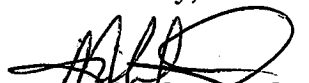
RE: Living Word Bible Camp v. County of Itasca  
Court File #31-CV-10-885  
Claim #102GL1015392JS  
Date of Loss: 2-23-2010  
Our File #19243.18518

Dear Mr. Patton:

Itasca County does not plan to submit any written findings, conclusions, or recommendations prior to the June 20, 2012 meeting. However, counsel for Itasca County will be present at the June 20<sup>th</sup> meeting in order to support the County's position that the EQB appoint another Responsible Government Unit to revisit the positive declaration of the need for an Environmental Impact Statement and possibly prepare, or revise, the Environmental Assessment Worksheet as ordered by the District Court.

The Itasca County Board voted to have the EQB appoint another Responsible Government Unit to carry out the remand order of the District Court. The County understands that the issue of whether the positive declaration for an Environmental Impact Statement was supported by the record is currently on appeal, but the County wants to be clear that it wishes another Responsible Government Unit be appointed to carry out the process ordered by the District Court.

Sincerely,

  
Michael J. Ford  
Cally R. Kjellberg  
Attorney at Law  
CRK/mal/821674

Mail & Fax Center  
PO Box 1008  
St. Cloud, MN 56302  
Fax 320.251.1415  
www.quinlivan.com

Saint Cloud Office  
Wells Fargo Center  
400 South First Street, Suite 600  
St. Cloud, MN 56301  
Phone 320.251.1414

Little Falls Office  
First Street Suites  
107 First Street SE, Suite 105  
Little Falls, MN 56345  
Phone 320.632.0440

C: Craig G. Howse  
Howse & Thompson, P.A.  
3189 Fernbrook Ln. N.  
Plymouth, MN 55447

James P. Peters  
Law Offices of James P. Peters, PLLC  
PO Box 313  
Glenwood, MN 56334

John J. Muhar  
Michael Haig  
County Attorney  
Itasca County Attorney  
123 N.E. 4th St.  
Grand Rapids, MN 55744-2600





3189 FERNBROOK LANE  
PLYMOUTH, MN 55447  
telephone 763.577.0150  
facsimile 763.577.0151

**HOWSE & THOMPSON, P.A.**

ATTORNEYS AT LAW

*Providing counsel to individuals and businesses*

G. CRAIG HOWSE  
JEFFREY C. THOMPSON  
JACOB R. GRASSEL

June 12, 2012

Bob Patton  
Environmental Quality Board  
520 Lafayette Road North  
Saint Paul, MN 55155

**RE: The RGU Designation for the Environmental Review of the Living Word Bible  
Camp project on Deer Lake in Itasca County**

Dear Mr. Patton:

I write this letter on behalf of the project proposer, Living Word Bible Camp ("LWBC"). LWBC is a 501(c)(3) non-profit organization that operates a bible camp for children in grades 3-8 each summer, as well as adult marriage retreats and other Christ-centered activities.

LWBC purchased the property in September of 2000. In its attempt to develop the property since 2000, LWBC has faced numerous obstacles including continuous litigation from project opponents. Following the Minnesota Court of Appeals decision in 2006 allowing for the rezoning of the property, LWBC applied for the necessary building permits. At this time, project opponents filed a Citizen's Petition with the EQB to complete an EAW for the project.

The County Board considered the petition and determined that an EAW was not required on the property. After subsequent litigation, an EAW was ordered and the process started in the summer of 2009.

As discussed in the recent rulings by Judge Maturi in the Itasca County District Court, the EAW process was filled with irregularities and a bias against the project proposer. Therefore, Judge Maturi ordered a new EAW be conducted with a recommendation that an independent state agency conduct the new EAW process.

As you know, Judge Maturi's order was not appealed by the County of Itasca but was appealed to the Minnesota Court of Appeals by attempting intervenors, who were denied intervention by the District Court. However, this does not stop the new EAW process from moving forward..

The existence of the appeal is not a bar for continued progress on the EAW and any delay in the proceedings would unduly prejudice the project proposer. The Court has not issued a stay in the case pending the outcome of litigation nor has the Appellants, or any Party, requested such a stay or posted the required bond for a stay. To the extent the Appellants petition the EQB to table the decision or to further delay the proceedings in any way is unwarranted and in effect is an attempt to achieve a backdoor "stay" without having to petition the court or post a bond. Therefore, the pending appeal should not stall the appointment of a new RGU.

Moving forward, the first step in the new process is for the EQB to assign a new RGU to the project. It would be prudent for the EQB to respect the vote of the Itasca County Board declining to serve as RGU for the new EAW and assign the project to the state agency with the most expertise in the area.

Following Judge Maturi's order, the Itasca County Board of Commissioners voted to send the EAW to the MPCA, but later amended the decision to send the EAW selection to the EQB to determine a new RGU such as the MPCA. Normally under the Minnesota environmental review rules, particularly Rule 4410.0500, the County of Itasca would be the RGU. However, in this situation the County Board has voted to remove itself from the process and relinquish the label of RGU.

As noted through Judge Maturi's recent orders and as evidenced by the decade of litigation, this project has stirred passions and has had a taint of bias throughout, therefore we feel at this point any hint of bias should be removed from the process.

By assigning the MPCA as the Responsible Governmental Unit for the EAW the EQB will be assigning the proper entity under Minnesota Rule 4410.0500, subpart 6 and removing any hint of bias in this contentious process.

Minnesota Rule 4410.0500, subpart 5 states that the government unit with the greatest overall authority over the project shall be named the RGU. As previously stated, Itasca County would be normally be the government unit with the greatest overall authority; however, they have removed themselves from the process and therefore, the EQB must determine the next government unit with the most authority. That government unit is the Minnesota Pollution Control Agency.

While the Minnesota Department of Natural Resources has water quality concerns and fish and habitat concerns with any project in Minnesota, they do not have permitting authority over the development of the property. Rather, the main concerns with the property relate to wastewater and sewage systems, as well as drainage and runoff. These areas are under the purview of the Minnesota Pollution Control Agency.

Additionally, as previously stated, this project has been contentious and the original decision on the EAW was overturned due to improper bias. It is important that the new RGU not have any bias or appearance of bias. Due to the lack of bias or appearance of bias the Minnesota Pollution Control Agency is the best suited RGU. This cannot be said of the DNR.

Mr. Bob Patton  
June 12, 2012  
Page 3

LWBC respects the work of the DNR and the work they do to protect our natural resources. However, the current and former staff of the DNR have been improperly and heavily involved in testifying and submitting commentary on this project. One of those was Current Area Fisheries Supervisor, Chris Kavanaugh, whom has provided his opinion in opposition to the development of the property since the outset, including the discussions on rezoning the property. Mr. Kavanaugh has provided commentary in both his official capacity as a staff member of the DNR and as a private citizen.

Further, project opponents have attempted to bolster their arguments by heavily relying upon the written submission of a retired DNR official Paul Stolen as representing the testimony of the Minnesota DNR in their appeal of Judge Maturi's rulings. Mr. Stolen has worked closely with project opponents utilizing his background as a DNR official, including the submission of a 13-page report opposed to the development in the original EAW. Mr. Stolen has made sure to send his written submissions to the DNR as well as the County.

Finally, project opponents have publicly stated in newsletters and other formats that the DNR is opposed to this project.

The past involvement of current and former members of the DNR writing and testifying in opposition to the project, as well as project opponents claims of the DNR's opposition could lead a person to question their impartiality and further taint the process. Therefore, it would be wise of the EQB to designate the government unit with the most authority and expertise, the MPCA, as the RGU.

Sincerely,



Craig Howse

GCH/jrg

Enclosures



STATE OF MINNESOTA

IN DISTRICT COURT

COUNTY OF ITASCA

NINTH JUDICIAL DISTRICT

---

Living Word Bible Camp,

File #: 31-CV-10-885

Plaintiff,

vs.

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
ORDER and  
MEMORANDUM**

County of Itasca,

Defendant.

---

The above-entitled matter came on for hearing before the undersigned Judge of District Court, on May 2, 2011 pursuant to the parties' cross motions for summary judgment on plaintiff's declaratory judgment action challenging Itasca County's positive declaration for an EIS. In addition, the issue of intervention is before the court based upon a notice of intervention filed on behalf of neighboring landowners. Plaintiff, Living Word Bible Camp, was represented by Craig C. Howse, Attorney at Law. Defendant, County of Itasca, was represented by Michael J. Ford, Attorney at Law. The proposed intervenors were represented by James P. Peters, Attorney at Law.

Based on the arguments and memoranda and the file and proceedings herein, this Court makes the following:

**ORDER**

1. An evidentiary hearing shall be scheduled for an evidentiary hearing to determine whether Commissioner McLynn's partiality and improper actions rendered the County Board's positive declaration for an EIS arbitrary and capricious.
2. A scheduling hearing shall be held on August 4, 2011 at 8:30 a m.
3. Defendant County of Itasca's motion for summary judgment as to plaintiff's equal protection claim is granted.
4. The Notice of Intervention, filed April 21, 2011, is denied.
5. The issue of costs and disbursements is reserved.

6. All other claims by either party not addressed herein are dismissed.

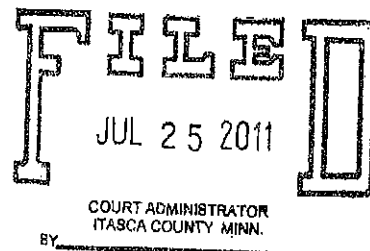
Let the attached Memorandum be made a part hereof.

IT IS SO ORDERED:

Dated this 25<sup>th</sup> day of July 2011.

BY THE COURT:

  
Jon A. Maturi  
Judge of District Court



## MEMORANDUM

### Statement of Facts

In April of 2006, Ron and Judy Hunt applied on behalf of plaintiff Living Word Bible Camp ("LWBC") for a planned unit development ("PUD") and a conditional use permit ("CUP") to establish a youth/bible camp on Deer Lake, located in Itasca County, Minnesota. In May of 2006, a citizen's petition seeking to have an Environmental Assessment Worksheet ("EAW") completed on the LWBC project was filed with the Environmental Quality Board ("EQB"). An EAW is a "brief document which is designed to set out the basic facts necessary to determine whether an environmental impact statement is required for a proposed action." Minn. Stat. § 116D.04, Subd. 1a(c). The EQB referred the matter to Itasca County as the responsible governmental unit ("RGU").

When preparing the EAW, the RGU applies certain criteria set forth in Minn. R. 4410.1700, Subp. 7, to determine whether the project has "potential for significant environmental effects." Minn. Stat. § 116D.04, Subd. 2a(c); Minn. R. 4410.1700, Supb. 7. If, after reviewing the EAW, the RGU decides that the project does have the potential for significant environmental effects, the RGU is required to issue a "positive declaration" indicating that an Environmental Impact Statement ("EIS") must be completed. Minn. R. 4410.1700, Subp. 1 & 3. An EIS is an exhaustive environmental review that the party proposing the project must conduct at its own expense. See Minn. R. 4410.2000, Subp. 1; Minn. R. 4410.2300; Minn. Stat. § 116D.045.

The Itasca County Board of Commissioners ("County Board") determined that an EAW was not required for the project. The only vote for an EAW was Commissioner Catherine McLynn, who indicated that she was voting for the EAW because the petitioners were constituents and taxpayers in her district. The petitioners challenged the decision in District Court. Based upon the record, both the District Court and the Minnesota Court of Appeals concluded that the County Board acted arbitrarily and capriciously in not ordering an EAW. The matter was remanded to the County Board with direction to order an EAW.

In January of 2009, the County Board hired Widseth Smith Nolting & Associates, Inc., ("WSN") to complete the EAW. Brian Ross of WSN worked on completing the EAW. On October 13, 2009, completed data portions of the EAW prepared by LWBC were forwarded to WSN. On November 10, 2009, WSN notified LWBC that their data submittal was complete. The EAW was approved for distribution following a contentious County Board meeting on December 7, 2009. The EAW was published in the EQB Monitor on December 28, 2009. The deadline for public comment was January 27, 2010. On January 14, 2010, Mr. Ross facilitated a public meeting on the EAW petition. The County Board received roughly 40 comments on the EAW, some in support of the EAW, some against. The EAW and the comments comprised the record upon which the County Board was to make its decision. This court based its decision upon the roughly 2300 pages that comprise the entire Record of Decision ("ROD"). The evidence in the record that could arguably support either a finding that an EIS was necessary or that an EIS was not necessary, depending upon what evidence the individual County Board members chose to rely upon to reach their decision.

On February 23, 2010, the County Board voted 3-1 in support of a resolution, supported by findings of fact, which made a positive declaration for the need for an EIS.

Commissioner McLynn, in whose district the majority of Deer Lake is located, was closely involved throughout the entire EAW process and it is her involvement that is at the center of the present dispute. She voted in favor of an EIS. Plaintiff LWBC alleges that Itasca County Board's positive declaration for the need for an EIS was arbitrary and capricious, not supported by the evidence and full of irregularities because Commissioner McLynn did not approach the decision with a neutral and detached mind, failed to act in good faith, was not capable of fairly judging the controversy on its own circumstances, and/or took a position in opposition to the LWBC project and exhibited a closed mind when voting for an EIS.

#### **Standard of Review**

The parties agree that decision of a county board in determining whether to require an EAW is quasi-judicial in nature. In other words, the board members must act as judges and not as representatives or advocates. It is certainly understandable that it may sometimes be difficult for the members of a political body, like a county board, to put aside political considerations and act in a quasi-judicial capacity that requires that board members determine facts presented by opposing sides and make a decision based upon findings of fact and application of the appropriate legal criteria and standard, rather than simply doing what is in their own self interest, or that which serves the interests or desires of the member's constituents.

When acting in a quasi-judicial capacity, county boards are subject to more extensive judicial oversight than when making zoning decisions. *Honn v. City of Coon Rapids*, 313 N.W.2d 409, 416-17 (Minn.1981). Reviewing courts must defer to county board decision unless the decision reflects an error of law, is arbitrary and capricious, or is unsupported by substantial evidence. *Citizens Advocating Responsible Development v. Kandiyohi County Board of Commissioners*, 713 N.W.2d 817, 833 (Minn. 2006) ("CARD"). An RGU's determination regarding an EIS is arbitrary and capricious if the decision represents "its will, rather than its judgment." *Pope County Mothers v. Minn. Pollution Control Agency*, 594 N.W.2d 233, 236 (Minn.App. 1999). Alternatively stated, an RGU's decision is arbitrary and capricious if it (1) is based on factors that the legislature did not intend for the RGU to consider; (2) entirely fails to address an important aspect of the problem; (3) offers an explanation that is counter to the evidence; or (4) is so implausible that it could not be explained as a difference in view or the result of the RGU's decision-making expertise. *CARD* at 833.

In *CARD*, the Minnesota Supreme Court stated that the scope of review in environmental review cases is as set forth in the Minnesota Administrative Procedure Act ("MAPA") § 14.69. *Id.* at 832. That statute permits a reviewing court to affirm, remand, reverse, or modify the agency's decision. But in *Iron Rangers for Responsible Ridge Action v. Iron Range Resources*, 531 N.W.2d 874, 880 (Minn.App. 1995), the Court cited *Swanson v. City of Bloomington*, 421 N.W.2d 307, 313 (Minn.1988), as directing application of the arbitrary and capricious standard when reviewing county board decisions that are based on the record. *Swanson* goes on to state that if the proceedings have not been fair, the parties are entitled, under *Honn v. City of Coon Rapids*, 313 N.W.2d 409 (Minn.1981), to augment the record with evidence introduced to the district court.



**Commissioner McLynn's Actions Were Improper and an Evidentiary Hearing is Necessary to Determine Whether the Decision of the Itasca County Board to Require an EIS was Arbitrary and Capricious**

The record as a whole establishes that Commissioner McLynn consistently favored those who were seeking a positive declaration for an EIS. Although there are some statements in the record that would enable one to make an argument that Commissioner McLynn did have an open mind on this issue, her actions do not support such a conclusion that she approached the EAW process, including the decision for an EIS, with a neutral and detached mind as is required of County Board members when acting in a quasi-judicial capacity.

Evidence outside the record, including Commissioner McLynn's efforts to revoke the tax exempt status of LWBC and her statement at the November 16, 2009 hearing on whether to order an EAW, is relevant to show McLynn's alignment with opponents of the LWBC project. Commissioner McLynn's ultimately successful attempts to change the tax exempt status of the LWBC property, like McLynn's past involvement with members of the Deer Lake Association ("DLA") in matters relating to LWBC, are circumstantial evidence that bolsters the conclusion that McLynn did not approach the EAW process with an open mind. Commissioner McLynn's reason for voting to require an EAW- that the petitioner was a constituent- is not part of the present record of decision, but it is relevant to the issue of her advocacy on behalf of LWBC opponents as well as McLynn's disregard of her obligation to act in a quasi-judicial capacity on this issue by making decisions based upon the facts rather than on political considerations.

Even more significant than Commissioner McLynn's statement that she was voting for an EAW because the petitioner was a constituent, was McLynn's insistence that she be able to review the EAW with her constituents to help her determine if the EAW was complete and ready for public comment. (ROD # 2326, 2328). Commissioner McLynn's insistence on having persons opposed to the LWBC project help her determine whether to deem the EAW complete was, as she was informed by other commissioners and Brian Ross of WSN, inappropriate. That McLynn improperly relied upon LWBC opponents in determining whether the EAW was complete raises the question of whether McLynn relied on LWBC opponents in voting to require an EIS.

From the beginning of the EAW process, McLynn consistently sought to remove from the EAW statements and conclusions that were favorable to LWBC and she sought to include statements and information that were unfavorable to LWBC. She accomplished this through numerous e-mails with Brian Ross, whom the County had hired to prepare the EAW, and during County Board meetings. In support of her efforts, McLynn made incorrect statements, including: "Statements drawing conclusions are very specifically not to be included in the EAW." (ROD # 998); "conclusory statements are NOT appropriate in an EAW." (ROD # 996); and she complained that the "EAW is full of references to promises, indications, expectations and proposed conditions NONE of which are in force as mitigation measures YET." (ROD 996) The statements were incorrect because the EAW specifically asks for information on "proposed mitigation measures" (ROD 324) and for discussion of measures to minimize or avoid impacts (ROD 330).

Brian Ross of WSN expressed concern to the County Board that McLynn's proposed changes sought to take away some of the conclusions and professional opinions

that were specifically asked for in the EAW and which are normally part of an EAW. (ROD 249, 258). McLynn and Ross went back and forth over proposed changes to the EAW. (ROD #250-51) McLynn sought to include a conclusion that there "may be prior environmental hazards" from prior use. Ross countered that there was no evidence of any hazards as a result of prior use.<sup>1</sup> McLynn also sought to remove language from the EAW stating that LWBC had agreed to protect a larger area of shoreline. (ROD # 257). McLynn sought to remove this language, arguing in essence that LWBC's promises mean nothing. The Board disagreed with McLynn, eventually agreeing to include language that LWBC has "made representations" about protecting shoreline.

Commissioner McLynn succeeded in removing appropriate conclusions and discussions from the EAW despite the numerous specific requests in the EAW for the preparer to draw conclusions, discuss effects, and discuss potential or proposed mitigation measures. Notably, the conclusory statements and discussion that McLynn had removed from the EAW consisted of statements and discussion that were favorable to LWBC in that they tended to either be neutral or suggest that there would not be significant environmental effects. Changes that McLynn succeeded in having made to the EAW include the following:

- The EAW specifically asks for a description of how plants and other ecological resources would be affected by the project (ROD # 324), but McLynn had a statement regarding their effect removed (ROD #994);
- The EAW specifically asks for a comparison of runoff quality before and after the project (ROD #325), but McLynn sought and received removal of a statement about the quality of runoff water before and after the project (ROD # 992);
- The EAW specifically asks for an estimate of the impact on traffic congestion (ROD #328), but McLynn sought and received removal of statements on traffic congestion (ROD # 995);
- The EAW specifically asks about the impact of the project on nearby historical resources (330), But McLynn sought and received removal of a statement indicating that the Voight-Baker house, a historical site located nearby, would not be affected by this project or related activities (ROD #995);
- The EAW specifically asks about the impact of the project on scenic views and vistas and other unique resources (ROD #330), but McLynn sought and received removal of a statement indicating that two scenic and natural areas, each located about one mile away from the project, would not be impacted by the project (ROD # 995);

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<sup>1</sup> Evidence in the record regarding the prior use of the property shows that a small number of mink were kept there for a number of years. The claims made by LWBC opponents exaggerate the size and duration of the mink farming and their supporting "evidence" of potential harm is not on point in that they attempt to equate the potential harm from a long-term, large scale commercial mink operation with the small, relatively short-term, farm that had some mink over 50 years earlier.

- The EAW specifically asks about cumulative potential effects and asks for a summary of available information relevant to determining whether there is a potential for significant environmental effects due to these cumulative effects (ROD # 331), but McLynn sought and received removal of a statement that relied upon information received from the Minnesota Department of Natural Resources which concluded that the project should not impact certain resources (ROD # 995);
- In its summary section, the EAW specifically asks for a discussion of alternatives or mitigation measures that have been or may be considered for the issues raised, "including those that have been or may be ordered as permit conditions." (ROD # 332), but McLynn sought and received removal of a statement indicating that proposed permit conditions limited the number of boats to be used by LWBC and prohibited the use of jet boats and jet skis (ROD 995);

While there is support in the record for some of McLynn's changes, particularly after McLynn was successful in having documents from those opposed to LWBC added as appendices, there is no legitimate basis for other changes affected by McLynn. In contrast, there was factual support in the record for the statements that McLynn had removed. In addition, all of the changes McLynn sought and had made to the EAW, other than typographical changes (affect v. effect, for example) changed statements that were more favorable to LWBC's position into statements that were either facially neutral or more favorable to those opposed to LWBC's position.<sup>2</sup> All of the changes to the EAW affected by McLynn are significant because they could have affected the public comments, and ultimately, the consideration and votes of other commissioners. The removal of discussion and conclusions that are supposed to be a part of the EAW may have resulted in an arguably inaccurate presentation of the LWBC project and permitted greater, and therefore less accurate, speculation about the potential environmental effects that such a project might have.

The extent of Commissioner McLynn's partiality is shown by unsuccessful attempts to change the EAW in favor of those opposed to LWBC. McLynn unsuccessfully sought to change the EAW to incorrectly note that future stages of development were planned or likely to happen even though LWBC had abandoned plans for future development and she unsuccessfully sought to have the EAW state that an EAW was mandatory. She also sought unsuccessfully to change Finding of Fact # 6 of Resolution # 2-10-06, the positive declaration for an EIS. McLynn sought to include language prohibiting any PUD or CUP permits from being "considered" until the completion of the EAW/EIS process. As Assistant County Attorney Michael Haig explained in a memorandum to the County Board recommending that the Board not adopt McLynn's proposed change, the change proposed by McLynn was "troubling" and

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<sup>2</sup> This court uses the term "facially neutral" because while the absence of certain statements could be read to be neutral, the effect of issuing an EAW with missing information served to invite comments pointing out the inadequacy of the EAW. The changes unreasonably and unfairly increased uncertainty about the County's ability to add conditions and restrictions on LWBC.

"inaccurate" because the finding could be interpreted as an incorrect statement of the law. (ROD# 2171-72).

Commissioner McLynn's partiality can be inferred from the way in which she reacted to certain events. On January 14, 2010, Brian Ross facilitated a public meeting regarding the EAW pursuant to Minn.R. 4410.1600. The next morning, Commissioner McLynn, who had attended the meeting, walked into Itasca County employee Nadine Hopkins' office "very upset" with the previous night's meeting. (ROD # 986). She ordered that a transcript of the meeting not be prepared because comments on EAW were to be in writing. (Id). She also questioned why county employees had been present at meeting. (Id.) McLynn may have been upset because the meeting was dominated by persons opposed to the need for an EIS and that Dave Holmbeck, a retired DNR employee, made specific arguments supported by evidence that undermined claims of the potential for significant environmental effects and he pointed out that some of the information provided to the district court before it made its April 27, 2007 decision on the need for an EAW had been misleading.

On another occasion Commissioner McLynn became upset upon learning that Mr. Ross had communicated with counsel for LWBC regarding suggestions and changes to the draft EAW. (ROD #996-97). It is interesting to note that McLynn was seeking to incorporate information provided by those opposed to LWBC into the EAW as appendices and she wanted to let her constituents, who are opposed to LWBC, offer input and help her decide whether the EAW was complete, but she became upset and resorted to use of all caps in her emails when she learned that Mr. Ross has been speaking with the attorney for LWBC about the EAW. This disparate treatment of the two opposing sides and Commissioner McLynn's perception of Mr. Ross' attempted objectivity as bias are a concern.

Commissioner McLynn arguably took inconsistent positions with respect to LWBC's development plans. She argued that LWBC's prior proposal for a larger project, which was abandoned, is relevant to the EAW, (ROD#700-701), but that LWBC's current promises to engage in or refrain from certain actions, including further development, are irrelevant. (ROD #257). Although Commissioner McLynn's position on what is and is not relevant evidence appears inconsistent, what remains consistent is her support of those who oppose the LWBC project.

An additional reason for questioning Commissioner McLynn's lack of an open mind is evidence that, despite her close involvement with the EAW process, she was not familiar with the information relied upon in the draft EAW. At the County Board meeting on December 7, 2009, almost a month after the County Board members received a draft EAW that included as an appendix a report from limnologist Carolyn Dindorf, Commissioner McLynn, who had suggested numerous changes to the draft, some of which are discussed above, stated that she was not aware of Ms. Dindorf's report. This is significant because Ms. Dindorf's report, unlike much of the criticism of the EAW and the LWBC project, uses facts and data specific to Deer Lake and supports the position that an EIS is not necessary. From the December 7, 2009 transcript and the record as a whole, one can infer that Commissioner McLynn is knowledgeable about information that would support the need for an EIS, but that she had not bothered to familiarize herself with the entire draft EAW even though it was she who was suggesting significant changes.

The evidence in the record clearly establishes that Commissioner McLynn did not take a hard look at the issues, relied upon factors she was not permitted or intended to consider, aligned herself with LWBC opponents, and took a position in opposition to LWBC before the EAW process was complete. What is unclear is what, if any, effect Commissioner McLynn's improper actions and partiality had upon the fairness and regularity of the process and/or upon the votes of the other county board members.

That two other board members also voted for an EIS could, depending upon facts adduced at an evidentiary hearing, support a finding that the decision was reasonable. Commissioner Burthwick proposed significant substantive findings of fact in support of her vote and her findings are supported by substantial evidence in the record and Commissioner Dowling cited the DNR's comment letter as support for her positive vote. Given the other Board Members' facially objective and independent reasons for voting for an EIS, it would be entirely speculative for this Court, on this record, to conclude that McLynn's involvement so tainted the process that the decisions of the other Board Members were rendered arbitrary and capricious. On the other hand, had Commissioner McLynn not acted improperly, the EAW would likely have been different and the comments to the EAW, including the DNR letter relied upon by Commissioner Dowling, may have been different. With a different EAW and different comments, the votes of the other County Board members may have been different as well.

For all of the foregoing reasons, this matter shall be scheduled for an evidentiary hearing to determine whether Commissioner McLynn's partiality and improper actions rendered the County Board's positive declaration for an EIS arbitrary and capricious.

The Court did not grant LWBC's request for a negative declaration under its EAW because even without Commissioner McLynn's improper actions, there appear to be sufficient facts and concerns to justify an EIS. Likewise, the record would seem to support a negative declaration. Because the record before the Court could support either a positive or a negative declaration for an EIS, it is impossible to speculate as to what the result would have been absent Commissioner McLynn's partiality and improper conduct.

#### **EQUAL PROTECTION**

The Equal Protection Clause of the Fourteenth Amendment requires that the government "treat all similarly situated people alike." *Barstad v. Murray County*, 420 F.3d 880, 884 (8<sup>th</sup> Cir. 2005). The Minnesota Constitution contains a similar equal protection clause requiring equal treatment of those similarly situated. *State v. Fraizer*, 649 N.W.2d 828, 837 (Minn. 2002). The burden is on the party claiming an equal protection claim to submit evidence necessary to establish the claim. *See Kottschade v. City of Rochester*, 537 N.W.2d, 301, 307 (Minn.App. 1995) (determining that a realtor's equal-protection claim failed when realtor "failed to show any similarly situated property owners whom the city treated differently from [realtor]"), *review denied* (Minn. Nov. 15, 1995).

The threshold inquiry is whether the party claiming a denial of equal protection was "similarly situated" to others who were treated differently. *Barstad* 420 F.3d at 884. The applicant must then demonstrate that there was no rational basis for differential treatment. *Id.* Being similarly situated to those allegedly receiving disparate treatment is "an essential element" of any equal-protection claim. *In re Welfare of M.L.M.*, 781 N.W.2d 381, 390 (Minn.App. 2010). A person is not similarly situated to another person

unless they are alike in all relevant respects. *St. Cloud Police Relief Ass'n v. City of St. Cloud*, 555 N.W.2d 318, 320 (Minn.App. 1996), *review denied* (Minn. Jan. 7, 1997).

LWBC has failed to meet its burden on the threshold requirement that it identify any similarly situated camps or commercial developments. LWBC's claim that Camp Hiawatha and other institutional projects are similarly situated but treated differently fails to explain how they were similarly situated. There is no evidence in the record that Camp Hiawatha, or any other similar entity, has sought approval of a similar development. Even if there were such a circumstance, LWBC would have to establish that its project and the other proposed project were so similar in almost all aspects to invoke equal protection concerns. Given the evidence in the record alleging the unique characteristics of the property involved and the support in the record for concluding that this project will have significant environmental effects, which supports the decision for an EIS, it seems unlikely that LWBC would be able to point to any similarly situated camp or commercial development. Each parcel of property is different and the construction and operation of a camp or commercial development on one parcel may have no noticeable environmental effects while the construction on another parcel might significantly affect the environment. Because the record in this case could support a finding of the potential for significant environmental effects and because LWBC has failed to identify others who are similarly situated, LWBC's equal protection claim must be dismissed.

#### **INTERVENTION**

Minnesota Courts are to encourage all legitimate interventions. *Costley v. Caromin House Inc.*, 313 N.W.2d 21, 28 (Minn. 1981). The only burden that persons seeking intervention as of right must meet is the "minimal" showing that the existing parties might not adequately represent their interests. *Minneapolis Star & Tribune Co., v. Schumacher*, 392 N.W.2d 197, 207 (Minn.1986). The interest of neighboring landowners in preventing a decline in their property values has been deemed sufficient to permit intervention in an action regarding a turkey farm's application for a conditional use permit. *Jerome Fairbo Farms v. County of Dodge*, 464 N.W.2d 568 (Minn.App. 1990). If a court determines that full intervention is not appropriate, the court may permit limited intervention if doing so will not prejudice the parties. *SST, Inc., v. City of Minneapolis*, 288 N.W.2d 225, 230 (Minn. 1979).

Because County Board as the RGU, is required to act in a quasi-judicial manner, and, because the evidentiary hearing before the district court will be limited to whether Commissioner McLynn's partiality and actions rendered the process unfair and irregular and whether any other members of the board were influenced by Commissioner McLynn's partiality and actions or by other improper considerations, the intervenors' interests will be adequately represented by the county and the Notice of Intervention is, therefore, denied.

**J.A.M.**

STATE OF MINNESOTA

IN DISTRICT COURT

COUNTY OF ITASCA

NINTH JUDICIAL DISTRICT

Living Word Bible Camp,

File #: 31-CV-10-885

Plaintiff,

vs.

**CONCLUSIONS OF LAW,  
ORDER and  
MEMORANDUM**

County of Itasca,

Defendant.

The above-entitled matter came on for hearing before the undersigned Judge of District court, on September 12, 2011 pursuant to the motions for amended findings of both plaintiff Living Word Bible Camp and defendant County of Itasca. The court also considered a motion for reconsideration filed by the proposed intervenors.

Plaintiff, Living Word Bible Camp, was represented by Craig C. Howse, Attorney at Law. Defendant, County of Itasca, was represented by Michael J. Ford, Attorney at Law. The proposed intervenors were represented by James P. Peters, Attorney at Law.

Based on the arguments, memoranda, and the file and proceedings herein, this court draws the following:

**CONCLUSIONS OF LAW**

1. The evidence in the record supports a finding that Commissioner McLynn acted arbitrarily and capriciously in voting for a positive declaration for an EIS whether or not evidence outside the record is considered. Evidence outside the record was not material to this court's determination that McLynn acted arbitrarily and capriciously. Because Commissioner McLynn acted arbitrarily and capriciously, her vote for a positive declaration for an EIS should not count. Without Commissioner McLynn's vote, there can be no positive declaration for an EIS.
2. This court erred in its prior Order of July 25, 2011 when it upheld the positive declaration of the County Board based upon the votes of only two County Board members. Pursuant to Minn. Stat. § 375.07, the County Board can not pass any resolution unless a majority of County Board members vote in favor of the resolution. The disqualification of Commissioner McLynn means that the measure did not pass.
3. The record could support either a positive or negative declaration for an EIS.
4. Because Commissioner McLynn's actions and involvement may have affected the whole EAW process and the extent of her improper influence cannot be determined, it is necessary that the EAW process be completed anew.

5. The disposition of this action does not impair or impede the interests of the proposed intervenors.

Based upon the foregoing Conclusions of Law, this court makes the following:

### ORDER

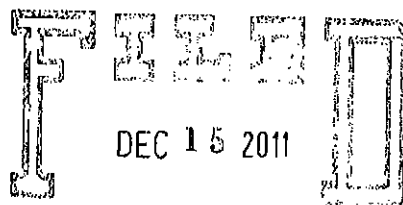
1. The defendant's motion for amended findings, which asks that this court affirm the decision of the Itasca County Board, is denied.
2. The plaintiff's motion for amended findings is denied in part and granted in part. The portion of the motion asking that this court make a negative determination for an EIS based upon the record is denied. The portions of the plaintiff's motion asking that this matter be remanded to Itasca County or the MPCA to repeat the EAW process and that this court exclude Commissioner McLynn from participating in that process, are granted.
3. The prior Order is amended to remand the matter to Itasca County in order to conduct a new EAW process. This court strongly recommends that Itasca County and LWBC refer the EAW to the MPCA or other appropriate entity, if possible.
4. Commissioner McLynn is enjoined from any decisions in the subsequent EAW process involving Living Word Bible Camp.
5. The proposed intervenors' motion asking that the court permit their intervention is denied.
6. The pretrial hearing/settlement conference scheduled for January 23, 2012, and the evidentiary hearing scheduled for February 13, 2012, are cancelled.
7. The motion of David G. Holmbeck, filed October 7, 2011, in which Mr. Holmbeck seeks to intervene as a plaintiff, is denied as untimely.

The attached Memorandum is made a part hereof.

IT IS SO ORDERED:

Dated this 15<sup>th</sup> day of December 2011.

BY THE COURT:



  
Jon A. Maturi  
Judge of District Court



### **Motions for Amended Findings**

The plaintiff's motion argues that the court should have found that Commissioner McLynn's actions rendered the EAW process unfair and arbitrary and capricious and that the plaintiff is, therefore, entitled to a negative EIS determination or, alternatively, to have the matter remanded to the county board or MPCA for a new EAW. The plaintiff is also asking that Commissioner McLynn be precluded from participating in the future EAW process. The Defendant's motion simply asks that this court affirm the County Board's positive declaration for an EIS.

After considering the parties' motions, reviewing parts of the record, and reconsidering the July 25, 2011 , Findings of Fact, Conclusions of Law, Order and Memorandum, this court stands by the prior determination that Commissioner McLynn's vote for a positive declaration for an EIS was arbitrary and capricious and should not be considered, but this court also acknowledges that it would be inappropriate to let the positive declaration stand in light of the fact that without McLynn's vote there were not enough votes to pass the resolution for a positive declaration for an EIS.

For the purposes of this order, the court did not consider Commissioner McLynn's role in the tax exemption procedure and this court never considered the Westwood report. The only action this Court has considered that is arguably outside of the record is Commissioner McLynn's vote on whether to require an EAW and the reasons she expressed for that vote. Although technically not part of this record of decision, that vote and the reasons that she gave for her vote were part of the process that led to the vote on the EIS and, therefore, may be considered by the Court.

The Court notes that it does not take lightly the conclusion that Commission McLynn did not perform her duties in this matter in a proper quasi-judicial manner. The Court does not question either her sincerity or her concern for the environment. The problem is that she conflated her usual duty to represent her constituents and their interests with her duty to be a "judge" of the facts as presented in the EAW. There are no better illustrations of this than her vote on the EAW wherein she voted for the EAW because the petitioner was her constituent and her later statement that she had to consult with her constituents to help her determine if the EAW was complete and ready for public comment. These actions, particularly when considered in light of her other actions and comments that are a part of the record, establish her role as an advocate throughout the EAW proceedings. In her capacity as a quasi-judicial official, these actions were no more appropriate than if this Court consulted public opinion on an issue before making its decision in a case. The Court appreciates the difficulty that county commissioners have in their dual roles and that there may be times when it is hard to know which role is the correct one. This is particularly true where the matter under consideration is in the commissioner's district and constituents become involved and express their concerns and positions. As for Commissioner McLynn's future role in this EAW process, unfortunately there is no way to put the cat back into the bag. Therefore, the Court is compelled to exclude her from taking part in that process on remand.

This Court is remanding the matter because Minnesota law requires that no business may be done by a county board "unless voted for by a majority of the whole board." Minn.Stat. §375.07. Commissioner McLynn's disqualification, which is supported by the record as a whole (even if the additional evidence from outside the record is not considered), means that a majority of the whole Itasca County Board did not vote for a positive declaration for an EIS.

The decision of whether an EIS should be required still needs to be made. The issue is whether the project has the potential for significant environmental effects, not whether any party has the right to a certain outcome. See Minn.R. 4410.1000, subp. 1 (stating the purpose of an EAW). LWBC does not have a right to have to a negative declaration just because the County Board's decision-making process was flawed. Nor is an EIS automatically required simply because evidence in the record could support such a decision. The evidence could also support a determination that an EIS is not necessary. The primary consideration is the environmental law and that law must be complied with. See *No Power Line, Inc., v. Minnesota Environmental Quality Council*, 262 N.W.2d 312, 327 (Minn.1977)(stating, in the context of preparation of an Environmental Impact Statement, that agencies conducting environmental review must make impartial decisions based upon environmental considerations).

Because the record could potentially support either a positive or negative declaration for an EIS, it is appropriate to remand this matter so that the EAW process can be repeated. See *Citizens Advocating Responsible Development v. Kandiyohi County Board of Commissioners*, 713 N.W.2d 817, 832 (Minn. 2006)(scope of review is as set forth in Minn.Stat. §14.69, which states that a reviewing court may affirm, remand, reverse, or modify the decision). This court strongly recommends that LWBC and Itasca County agree to have the MPCA, EQB, or other entity handle the EAW process on remand if possible. Having another governmental unit oversee the EAW process may eliminate some of the political pressure associated with this particular EAW and may permit the process to focus exclusively on the environmental concerns. Given the exclusion of Commission McLynn, it would be more fair and equitable to have an outside entity act as the RGU as opposed to a county board without one of its members. If the parties cannot agree, or if it is not possible that another governmental unit assume responsibility for the EAW, then Itasca County shall be the RGU.

#### **Intervention**

The proposed intervenors represented by James P. Peters, Attorney at Law, are seeking to intervene in this action as of right. They are asking that this court affirm the County Board's positive declaration for an EIS. The rule regarding intervention of right reads as follows:

Upon timely application anyone shall be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Minn.R.Civ.P. 24.01. The rule can be broken down into four elements, each of which the party seeking to intervene must meet:

- (1) a timely application for intervention;
- (2) an interest relating to the property or transaction which is the subject of the action;
- (3) circumstances demonstrating that the disposition of the action may as a practical matter impair or impede the party's ability to protect that interest; and
- (4) a showing that the party is not adequately represented by the existing parties."

*Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197, 207 (Minn. 1986). The rule on intervention of right is to be liberally construed to allow intervention. *Luthen v. Luthen*, 596

N.W.2d 278 (Minn.App. 1999). The interest of neighboring landowners in preventing a decline in their property values has been deemed sufficient to permit intervention in an action regarding a turkey farm's application for a conditional use permit. *Jerome Fairbo Farms v. County of Dodge*, 464 N.W.2d 568 (Minn.App. 1990).

This court originally denied the request to intervene based upon a finding that the proposed intervenors' interest was adequately represented by Itasca County. Because the proposed intervenors had, in essence, prevailed, there was no need to permit an intervention.

Following the parties' motions for amended findings, this court has determined that the positive declaration for an EIS cannot stand and that the matter must be remanded for the completion of a new EAW. This is a significant change, but it does not mean that the proposed intervenors are entitled to become parties to this action.

Itasca County may or may not appeal this Order to remand. If Itasca County appeals this decision and prevails, it will have adequately represented the proposed intervenors' interests. If Itasca County appeals and does not prevail, or chooses not to appeal, then the disposition of this action by remand has not impaired or impeded the proposed intervenors' ability to protect their interest because the matter would be remanded for a new EAW. As part of a new EAW process, the proposed intervenors will be able to participate in the process by commenting and that process may result in a favorable outcome for the proposed intervenors in that there may be a positive declaration for an EIS. If a new EAW process results in a negative declaration, the proposed intervenors may challenge that determination by intervening in any challenge or by commencing their own action. *See* Minn.Stat. § 116B.03 (stating that any person may bring a civil action for the protection of air, water, land or other resources). Finally, even if this matter is not appealed there can be no action by LWBC that would adversely affect the proposed intervenors' interests until the EAW process has been completed and any appeals resolved, thus there is no risk of the intervenors' interests being harmed by a denial of intervention at the present time.

The motion for intervention of David G. Holmbeck is denied as untimely. The existing parties' motions for amended findings and the proposed intervenors' request for intervention were all heard on September 19, 2011, but Mr. Holmbeck's motion was not filed until October 7, 2011.

**J.A.M.**



**ITASCA COUNTY BOARD OF COMMISSIONERS  
WORK SESSION  
FEBRUARY 7, 2012**

Pursuant to adjournment, the Itasca County Board of Commissioners met on Tuesday, February 7, 2012, in the Itasca County Boardroom with the following members present: Chair Catherine McLynn (District #2), and Commissioners Davin Tinquist (District #1), Leo Trunt (District #3) and Mark Mandich (District #5). Commissioner Rusty Eichorn (District #4) was absent.

**CALL TO ORDER**

Chair McLynn called the meeting to order at 2:00 p.m.

**\* APPROVAL OF AGENDA**

Commissioner Tinquist moved to add the items Re: 2012 Association of Minnesota Counties (AMC) 4-H Community Leadership Award Application and Golden Electronic Training and Support, LLC Contract and to approve the agenda, as amended. Commissioner Trunt seconded the motion. Motion carried: Ayes – Districts #1, #2, #3, #5; Nays – None; Absent – District #4.

**INFORMATIONAL/UPDATE**

Crissy Krebs presented the October and November 2011 Trial Balance. This item was informational only.

**\* MINUTES**

Commissioner Mandich moved to accept the minutes of the January 17, 2012 Work Session. Commissioner Trunt seconded the motion. Motion carried: Ayes – Districts #1, #2, #3, #5; Nays – None; Absent – District #4.

**CONSENT AGENDA**

The following items were recommended for the February 14, 2012 Consent Agenda:

- a) Policy Updates
- b) Abolish Administrative Services Supervisor Position
- c) Appointment – Extension Committee
- d) Changes to Storage Area Network (SAN) Project Request for Proposal (RFP)
- e) Applications for Cancellation of Forfeiture
- f) Parking Lot Plan Amendment
- g) Final Payment – CSAH 26 Bridge Replacement
- h) Final Payment – CSAH 35 Bridge Replacement
- i) County Support of Grant Application – Routes of Regional Significance
- j) Schedule Meeting – Five-Year Plan for Highway Construction
- k) Kunze Land Exchange
- l) Land Replacement Purchase – 39.5 acres (future Consent Agenda item)
- m) Request to fill Itasca Resource Center (IRC) Custodian – Head Vacancy
- n) Request to fill Fraud Prevention Investigator Vacancy
- o) Food Service Management Agreement – Amendment Number Two
- p) Request for Out of State Travel
- q) Grant Application – Bureau of Justice Grant
- r) Grant Application – Community Crime Prevention Grant

**SACKETT CARTWAY**

Bob Scheierl presented information relative to the Sackett Cartway Continued Public Hearing, confirming that an agreement between the parties has been reached. The Continued Public Hearing will be held on Tuesday, February 14, 2012 at 3:10 p.m. This item was informational only.

**\* 2012 AMC 4-H COMMUNITY LEADERSHIP AWARD APPLICATION**

Robbie Radaich requested the approval of a letter of support for the 2012 Association of Minnesota Counties (AMC) 4-H Community Leadership Award and authorization of the signature of Chair McLynn as the Itasca County Extension Committee board representative.

Commissioner Mandich moved to approve an application and letter of support for the 2012 AMC 4-H Community Leadership Award and authorized the signature of Chair McLynn as the Itasca County Extension Committee board representative. Commissioner Tinquist seconded the motion. Motion carried: Ayes – Districts #1, #2, #3, #5; Nays – None; Absent – District #4.

**GOLDEN ELECTRONIC TRAINING AND SUPPORT, LLC CONTRACT**

Trish Klein requested the approval of a Support Services Agreement between Itasca County and Golden Electronic Training and Support, LLC for IFS software training add-on service in the amount of \$30.00 per month and authorization of a reduction in insurance requirements. This item was recommended for consent agenda.

**ASSESSOR DATA ON PUBLIC WEBSITE**

Joe Udermann requested the approval of additional assessor data being added to the public website including number of bedrooms, extra bath fixtures, year built, first floor square footage, gross square footage, basement finish, garage type, garage size, lot size, front feet of lake shore and last sale date. This information is already public and available internally. Placement on the public website will reduce counter and phone traffic and increase public access to public data. This item was recommended for consent agenda.

**SCHEDULE PUBLIC HEARING RE: COUNTY-WIDE ZONING MAP AMENDMENTS**

Don Dewey requested the scheduling of a Public Hearing Re: County-Wide Zoning Map Amendments pursuant to provisions of Minnesota State Statutes and the Itasca County Zoning Ordinance to discuss and adopt proposed zoning map amendments. This item was recommended for consent agenda.

**ENVIRONMENTAL ASSESSMENT (EA) – SHOAL LAKE**

Don Dewey requested acceptance of the Environmental Assessment (EA) for the Shoal Lake 115kV Substation and Transmission Line and authorization for the Environmental Services Department to issue the zoning permit for the installation of the substation as set forth in the EA, which would also allow the installation of the transmission line which is an essential service and a permitted use in the Itasca County Ordinance. This item was recommended for consent agenda.

**LEGISLATIVE PLATFORM – TRANSPORTATION ISSUES**

Dave Christy requested direction regarding the transportation related items on the legislative platforms adopted by the Association of Minnesota Counties (AMC) and Minnesota County Engineers Association (MCEA). Dave Christy was asked to narrow the scope to the top 5-10 legislative priorities. This item was recommended for regular agenda, as amended.

**GRANT APPLICATION AND ACCEPTANCE POLICY UPDATE**

The Grant Application and Acceptance Policy Update issue was continued to the March 13, 2012 Work Session.

**DISCUSSION ITEMS – MAGNETATION**

Commissioner Trunt addressed the Board relative to Magnetation and the siting of a Magnetation pellet plant. Commissioners Trunt and Mandich agreed to work with Administrator Klein to work with Magnetation to clarify the road blocks and see how the County can be of assistance. Administrator Klein will contact newly appointed President/CEO of the Itasca Economic Development Corporation (IEDC), Joe Broking, to schedule a meeting.

**COMMITTEE REPORTS**

Commissioner Tinquist – Mississippi Headwaters Board and Association of Minnesota Counties (AMC) Leadership Development Academy

Commissioner Trunt – Solid Waste, Western Mesabi Mine Planning Board (WMMPB), Itasca Water Legacy Partnership (IWLP), Health & Human Services Redesign and Range Association of Schools and Municipalities (RAMS)

Commissioner Mandich – Arrowhead Economic Opportunity Agency (AEOA) Board of Directors and HOME Consortium

Commissioner McLynn – Transportation Enhancements, Law Library, City/County Cooperative Committee, Itasca Water Legacy Partnership (IWLP), Arrowhead Regional Development Commission (ARDC) and Precinct Caucuses

**RECESS**

Chair McLynn recessed the meeting at 3:00 p.m.

**RECONVENE**

The County Board Work Session was reconvened at 3:36 p.m.

**\* CLOSED SESSION – LIVING WORD BIBLE CAMP**

Board members present: Chair Catherine McLynn (District #2), and Commissioners Davin Tinquist (District #1), Leo Trunt (District #3) and Mark Mandich (District #5). Commissioner Eichorn (District #4) was absent.

Others present: MCIT Appointed Attorney Michael Ford (via teleconference), County Attorney Jack Muhar, Assistant County Attorney Michael Haig, Environmental Services Administrator Don Dewey, Assistant Planning/Zoning/Sanitation Administrator Dan Swenson, County Auditor/Treasurer Jeff Walker and County Administrator Trish Klein

Commissioner Mandich moved to go into Closed Session. Commissioner Tinquist seconded the motion. Motion carried: Ayes – Districts #1, #2, #3, #5; Nays – None; Absent – District #4.

The purpose of the Closed Session was to consult with attorney in reference to pending litigation Re: Living Word Bible Camp (LWBC) v Itasca County: Environmental Impact Statement (EIS) Declaratory Judgment, pursuant to Minn. Stat. § 13D.05, Subd. 3(b), and 13D.05, Subd. 1(d) [based upon Attorney Client Privilege, Minn. Stat. § 595.02, Subd. 1(b)].

Commissioner Mandich moved to go back into Open Session. Commissioner Trunt seconded the motion. Motion carried: Ayes – Districts #1, #2, #3, #5; Nays – None; Absent – District #4.

(Continuation of February 7, 2012, County Board Work Session Minutes)

Commissioner Tinquist moved to appeal Judge Jon A. Maturi's order Re: Living Word Bible Camp (LWBC) v Itasca County: Environmental Impact Statement (EIS). Commissioner McLynn seconded the motion. Motion failed: Ayes – Districts #1, #2; Nays – Districts #3, #5; Absent – District #4.

Commissioner Mandich moved to remand the completion of a new Environmental Assessment Worksheet (EAW) for Living Word Bible Camp (LWBC) to the Minnesota Pollution Control Agency (MPCA), as recommended by Judge Maturi. Commissioner Trunt seconded the motion. Motion carried: Ayes – Districts #1, #3, #5; Nays – District #2; Absent – District #4.

There being no further business, the meeting was adjourned by Chair McLynn at 3:42 p.m.

Respectfully submitted,  
Amanda Schultz  
Deputy Clerk of the County Board



**ITASCA COUNTY BOARD OF COMMISSIONERS  
OFFICIAL PROCEEDINGS  
FEBRUARY 28, 2012**

Pursuant to adjournment, the Itasca County Board of Commissioners met on Tuesday, February 28, 2012, in the Itasca County Boardroom with the following members present: Chair Catherine McLynn (District #2), and Commissioners Davin Tinquist (District #1), Leo Trunt (District #3) and Rusty Eichorn (District #4). Commissioner Mark Mandich (District #5) was absent.

Chair McLynn called the meeting to order at 3:00 p.m. with the Pledge of Allegiance.

**MINUTES**

Commissioner Eichorn moved to approve the draft 2 minutes of the February 14, 2012 County Board meeting. Commissioner Tinquist seconded the motion. Motion carried: Ayes – Districts #1, #2, #3, #4; Nays – None; Absent – District #5.

**AMEND/APPROVE CONSENT AGENDA**

Commissioner Trunt moved to approve the Consent Agenda as delineated below. Commissioner Tinquist seconded the motion. Motion carried with the following roll call vote: Ayes – Districts #1, #2, #3, #4; Nays – None; Absent – District #5.

1. Approve Commissioner Warrants with a check date of March 2, 2012. [\$724,078.18]
2. Accept service agreement from Waste Management for waste removal services for the Courthouse and Itasca Resource Center and authorize necessary signatures for service agreement.
3. Approve the sale of the Grand Rapids/Itasca County Airport's existing Rolba Snowblower and the purchase of a SnowGo Snowblower attachment.
4. Set the following dates and times for the 2012 Itasca County Board of Appeal and Equalization: Monday, June 11, 2012 (2:00 p.m. – 7:15 p.m.) and Monday, June 18, 2012 (2:00 p.m.).
5. Schedule a coop session with the County Board, Planning Commission/Board of Adjustment (PC/BoA) and Staff on April 10, 2012 at 11:00 a.m. in the County Board room to discuss issues and goals or the 2012 Comprehensive Land Use Management Plan update.
6. Schedule a Coop session with the Itasca County Agricultural Association (ICAA) on March 20, 2012 at 3:30pm or immediately following the County Board Work Session in the Itasca County Boardroom -- West Venue to discuss fairgrounds capital improvement plan, budget overview and 2012 funding request.
7. Award the contract for containerized seedlings for the Spring 2014 planting season to the lowest responsible bidders: Itasca Greenhouse, Inc., Red Pine - \$35,542.50; North Central Reforestation, Inc., White Spruce - \$13,796.25, Jack Pine (Spring 2014) - \$9,897.25 and Jack Pine (Spring 2013) - \$24,017.25 to be paid from Forest Resource Fund 12 for the total amount of \$83,253.25 and authorize necessary signatures.

8. Award 2012 Site Prep Contract to Future Forests, Inc., in the amount of \$69,211.00, to be paid from the Forest Resource Fund 12 and authorize necessary signatures.
9. Award 2012 Tree Planting Contract to Superior Forestry, Inc. in the amount of \$43,896.75 to be paid from Forest Resource Fund 12 and authorize necessary signatures.
10. Approve the minutes of the February 7, 2012 Land Classification Committee meeting.
11. Approve acting as legal sponsor for the Driftskippers snowmobile club application for a 2012 DNR Snowmobile Trails Assistance Program - Capital Improvement Grant (CAP Grant) and upon a successful award, name the County Auditor-Treasurer as fiscal agent and enter into an agreement with the State of Minnesota to comply with all applicable laws and regulations as stated in the CAP Grant agreement.
12. Approve sponsoring a proposed 75/25 matching grant from the DNR Regional Trail Grant Program and naming County Auditor as fiscal agent and authorize necessary signatures for the purchase of a new groomer by the Driftskippers Snowmobile Club with the understanding that the Club has secured 25% matching funds and is the owner of the equipment and agrees to maintain the equipment for no less than 20 years or until such time as appropriate disposition actions are approved by the State of Minnesota.
13. Authorize the Transportation Department to purchase two (2) tandem trucks, one (1) motor grader, two (2) full size pickup trucks, one (1) mid-size pickup truck and one (1) mid-size truck topper from the State contract to be paid from the 2012 budget.
14. Approve classifications, per document entitled "2012 Classification List - 2/7/2012", subject to approval by respective cities and townships and authorize the Real Estate Specialist to seek approval of classifications from the respective cities and townships.
15. Approve lease of tax-forfeited lands within S1/2 NW1/4, Section 22, T56N, R24W, for a water pump site, subject to conditions stated in attached lease agreement and authorize County Auditor to sign lease.
16. Allow for the change in allocation of one (1) currently vacant full-time Care Coordinator position to one (1) part-time (20 hours per week) Care Coordinator position and allow for the external posting of said position, if no internal applications are received.
17. Approve the creation of an additional system technician position within the IMCare unit, and subsequent internal and external posting if no internal applicants.
18. Approve the purchase agreement for acquisition of approximately 39.5 acres of replacement forest land at a cost of \$33,000, to be paid from the Itasca County Land Replacement Trust Fund, and authorize County Board Chair and County staff to sign agreement and necessary closing documents.
19. Authorize the Auditor/Treasurer's Department to apply for the 2012 Help America Vote Act (HAVA) Grant.

20. Adopt the Resolution Re: Support for Legislation Modifying Wetland Replacement Requirements. (Resolution #02-12-04)

21. Adopt the Resolution Re: Support for Funding to Complete the Cross Range Expressway. (Resolution #02-12-05)

#### **AMEND/APPROVE REGULAR AGENDA**

Commissioner Eichorn moved to approve the Regular Agenda as amended. Commissioner Tinquist seconded the motion. Motion carried: Ayes – Districts #1, #2, #3, #4; Nays – None; Absent – District #5.

#### **EMPLOYEE RECOGNITION**

The following employees were recognized:

Russel Montgomery - transferred from his position of Mechanic-Mechanic/Welder to Machinist-Mechanic/Welder, District #5, Road & Bridge Division, Transportation Department, effective February 6, 2012, due to a retirement.

Max Benolken - promoted from his position of District Foreman (District #5 - Nashwauk Garage) to Field Maintenance Coordinator, Road & Bridge Division, Transportation Department, effective February 13, 2012, due to a retirement and change in allocation.

Gwendolyn Rutherford - promoted from her position of Office Support Aide, Clerical Unit, to Eligibility Specialist, Family Services Division, Health and Human Services Department, effective February 23, 2012, due to a newly created position.

Jason Johnson - transferred from his position of Fraud Prevention Investigator, Business/Fiscal Division, to Eligibility Specialist, Family Services Division, Health and Human Services Department, effective February 23, 2012, due to a newly created position.

Debra Lantz - retiring from her position of Deputy Sheriff/Records Deputy, Sheriff's Department, after 20+ years of service, effective February 29, 2012 (last working day); March 30, 2012 (retirement date).

#### **SOLID WASTE SITE SUPERVISION CONTRACT**

Commissioner Tinquist moved to reject all bids for the Site Supervision of ten (10) solid waste/canister sites, two (2) solid waste/canister/demo transfer sites (Bray & Spring Lake) and one (1) demolition landfill (Cohasset), as recommended by the County Attorney due to improper advertising procedures and no requirement of a performance bond; and authorize extension of the existing contract with DJV, Inc. until April 15, 2012 to allow time for the contract to be revised and rebid. Commissioner Trunt seconded the motion. Motion carried with the following roll call vote: Ayes – Districts #1, #2, #3, #4; Nays – None; Absent – District #5.

#### **MOTION AMENDMENT**

Commissioner Tinquist moved to amend the February 7, 2012 motion made by Commissioner Mandich and seconded by Commissioner Trunt to read as follows: That the completion of a new

Living Word Bible Camp Environmental Assessment Worksheet (EAW) be referred to the Environmental Quality Board (EQB) for the selection of a Responsible Government Unit (RGU) in place of Itasca County such as the Minnesota Pollution Control Agency (MPCA) or such other appropriate entity as the EQB may appoint. Commissioner Eichorn seconded the motion. Motion carried: Ayes – Districts #1, #3, #4; Nays – District #2; Absent – District #5.

#### **PUBLIC HEARING**

Commissioner Eichorn moved to open the Public Hearing Re: Northwoods Regional All-Terrain Vehicle (ATV) Trail Corridor Trail Application. Commissioner Tinquist seconded the motion. Motion carried: Ayes – Districts #1, #2, #3, #4; Nays – None; Absent – District #5.

Chair McLynn recessed the above Public Hearing to March 27, 2012 at 3:10 p.m.

#### **FORESTRY EDUCATION AND AWARENESS PROGRAM (FEAP)**

Commissioner Tinquist moved to approve submission of grant applications to the Blandin Foundation for up to \$50,000 and the Legislative-Citizen Commission on Minnesota Resources (LCCMR) for up to \$200,000 to support and expand the Forestry Education and Awareness Program (FEAP), with the County share of \$25,000 to come from the Forest Resource Fund 12. Commissioner Eichorn seconded the motion. Motion carried: Ayes – Districts #1, #2, #3, #4; Nays – None; Absent – District #5.

#### **COMMISSIONER COMMENTS**

Commissioner Trunt wished to thank Dave Christy and other County staff for their part in Itasca County being awarded funding from the State of Minnesota's "Routes of Regional Significance" program.

Commissioner Eichorn wished to thank recent retiree Bill Matzdorf for his service to Itasca County.

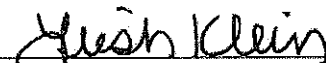
#### **ADJOURNMENT**

Chair McLynn adjourned the meeting at 3:54 p.m.

#### **ATTEST**



Catherine McLynn, Chair of the County Board



Trish Klein, Clerk of the County Board

**RESOLUTION  
OF THE  
COUNTY BOARD OF COMMISSIONERS  
ITASCA COUNTY, MINNESOTA**

Adopted February 28, 2012

Commissioner Trunt moved the adoption of the following resolution:

Resolution No. 02-12-04 (Page 1 of 1)

**RE: SUPPORT FOR LEGISLATION MODIFYING WETLAND REPLACEMENT REQUIREMENTS**

**WHEREAS**, State Representative Anzelc has authored legislation modifying wetland replacement requirements in counties with 80% or more of their pre-settlement wetlands remaining, officially known as House File No. 2105; and

**WHEREAS**, Itasca County has an excess of 80% of its pre-settlement wetlands remaining; and

**WHEREAS**, current state law regulating replacement of wetlands affected by building activities creates undue hardship for economic development activities in Itasca County; and

**WHEREAS**, modification of wetland replacement requirements in Itasca County would enhance local economic development activities; and

**WHEREAS**, the provisions of HF 2105 are in full compliance with statutory requirements that Minnesota retain an overall no net loss of wetlands policy.

**NOW, THEREFORE, BE IT RESOLVED** that Itasca County supports House File No. 2105, modifying wetland replacement requirements, as proposed by State Representative Anzelc.

Commissioner Tinquist seconded the motion for the adoption of the resolution and it was declared adopted upon the following vote:

Yeas 4    Nays 0

District #1 Y    District #2 Y

Other 1

District #3 Y    District #4 Y

District #5 ABSENT

STATE OF MINNESOTA  
Office of County Administrator  
ss. County of Itasca

I, TRISH KLEIN, Administrator of County of Itasca, do hereby certify that I have compared the foregoing with the original resolution filed in my office on the 28th day of February, A.D. 2012, and that the same is a true and correct copy of the whole thereof.

WITNESS MY HAND AND SEAL OF OFFICE at Grand Rapids, Minnesota, this 28th day of February, A.D. 2012.

  
\_\_\_\_\_  
Administrator

By \_\_\_\_\_ Deputy

**RESOLUTION  
OF THE  
COUNTY BOARD OF COMMISSIONERS  
ITASCA COUNTY, MINNESOTA**

Adopted February 28, 2012

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Commissioner Trunt moved the adoption of the following resolution:

Resolution No. 02-12-05 (Page 1 of 1)

**RE: TRUNK HIGHWAY 169 CROSS-RANGE EXPRESSWAY**

**WHEREAS**, Trunk Highway 169 is the major thoroughfare along the length of the Mesabi Iron Range, from Grand Rapids to Virginia, Minnesota; and

**WHEREAS**, there are several major industrial projects being proposed or in progress in Itasca County including Essar Steel Minnesota, Excelsior Energy, Magnetation, and the Clay Boswell Improvement Project; and

**WHEREAS**, it is our belief that the accumulated effect of construction and operation of these major projects is already negatively impacting the remaining two-lane section of Trunk Highway 169 between Bovey and Pengilly, Minnesota by increasing traffic amounts and turning movements; and

**WHEREAS**, there are no reasonable alternative traffic routes available to the above mentioned projects; and

**NOW THEREFORE, BE IT RESOLVED:** Itasca County strongly supports the completion of the Trunk Highway 169 Cross-Range Expressway.

Commissioner Tinquist seconded the motion for the adoption of the resolution and it was declared adopted upon the following vote:

Yeas 4    Nays 0

District #1 Y    District #2 Y

Other 1

District #3 Y    District #4 Y

District #5 ABSENT

---

STATE OF MINNESOTA  
Office of County Administrator  
ss. County of Itasca

I, TRISH KLEIN, Administrator of County of Itasca, do hereby certify that I have compared the foregoing with the original resolution filed in my office on the 28th day of February, A.D. 2012, and that the same is a true and correct copy of the whole thereof.

WITNESS MY HAND AND SEAL OF OFFICE at Grand Rapids, Minnesota, this 28th day of February, A.D. 2012.

  
Administrator

By \_\_\_\_\_ Deputy

#11

From: "Chris Kavanaugh" <chris.kavanaugh@dnr.state.mn.us>  
To: "Howard Christman" <HOCHRIST@dnr.state.mn.us>  
Date: 3/27/01 2:10PM  
Subject: Deer Lake - Living Word Bible Camp

Howard,

There are a number of concerns with this proposed development. The zoning classification change from farm/residential to commercial has the potential for future consequences on the property. The density of development and potential impact to the shoreline from trail development and use leading to erosion is significant. Trails need to be constructed and maintained properly to avoid and minimize impacts.

The number of proposed units at this time are well below the maximum allowed for a PUD. However, the number of structures on the lakeshore exceeds what would be allowed as individual lots. Also, it would be expected that a large number of people would be using this facility through the summer, thereby intensifying the impacts. One of the proposed structures appears to be very close to the conservation easement area.

The plan does not appear to address docking facilities. We have generally been opposed to any type of fill strip for access on lakes that have a public access, instead requiring a boardwalk. Are any other waterfront developments planned, such as a beach? This area of Deer Lake provides critical habitat for a number of fish species and life stages. The islands adjacent to this shore are State Wildlife Management Areas, additional traffic may have negative impacts on the quality of habitat provided.

It would be especially valuable to have the opportunity to view this shoreline during snow-free conditions to really assess the potential impacts.

Please feel free to contact me if you have any questions.

Chris.

C: Ron Hunt  
PC BA

RECEIVED  
MAR 29 2001

Zoning/Solid Waste Dept.

A06-1374

IC-0844

## Exhibit 30

Area Fisheries Office, 1201 East Highway 2, Grand Rapids, MN 55744  
(218) 999-7821

May 5, 2006

Don Dewey  
Itasca County Planning Commission  
123 NE 4<sup>th</sup> Street  
Grand Rapids, MN 55744

Re: Deer Lake -- Living Word Bible Camp

Dear Commissioners:

Staff from the Division of Fish and Wildlife have reviewed the proposed Conditional Use Permit Application for the Living Word Bible Camp and would like to make the following comments. The area in question provides unique and valuable fish and wildlife habitat. The area is used by a variety of species, such as; loons, bald eagle, waterfowl, heron, otters and other furbearers, walleye, smallmouth bass, muskie, and other fish species. Our comments focus on the potential impacts to these resources from the proposed development and consider impacts if the area were developed as residential units. Any type of development will have a negative impact on these resources, however, the proposed development is likely to have a much greater negative impact than single family homes and we recommend this Conditional Use Permit should be denied.

The lake is generally shallow in this area with several islands designated as Wildlife Management Areas located within the bay. The shoal water soils vary from rubble and sand to marl. Rubble provides spawning habitat for a variety of fish. The marl substrate is an important substrate for different vegetation, notably chara, which is important spawning habitat for muskellunge.

The principal fisheries habitat value of this area is as a muskie spawning area. Deer Lake presently has an excellent muskie population sustained exclusively by natural reproduction. In our most recent spring assessment netting done in 2003, 30% of the muskies sampled on the lake came from the nets set in this area. Muskies spawn in the early spring and require specific habitat for successful spawning.

In addition to the muskie spawning habitat this area also provides spawning habitat for a number of other species, including smallmouth bass and walleye. A number of non-game fish species also rely on the type of habitat found here for several life history stages. The applicant has stated that their activities would be during a time period after the spring spawning season. Disturbance of the habitat at any time of the year could potentially affect the suitability for spawning the following spring.

The marl substrate is particularly sensitive to disturbance. Marl, by definition, is precipitated calcium carbonate, and is very fine and easily displaced. Chara is a green algae and does not have a defined root system. Disturbance or destruction of this habitat could be detrimental to the overall health and sustainability of muskies in Deer Lake. Furthermore, recent research has shown that many species of fish are negatively

A06-1374

IC-1273



affected by the loss of both riparian and aquatic vegetation.

Deer Lake – Living Word Bible Camp  
Page 2  
May 5, 2006

Clustering the buildings and leaving a large portion of the tract undeveloped as proposed certainly has a definite advantage over standard lot and block residential development. With a standard development there would be considerable more forest disturbance and impervious surface. The amount of impervious surface and associated runoff could be managed through a stormwater plan that would avoid and minimize impacts to water quality. Standard residential development there would be more forest fragmentation, to the detriment of many wildlife species. This is somewhat dependent on the degree of modifications necessary to develop the hiking trails and the influence of human disturbances caused by use of the trails.

Thank you for the opportunity to provide these comments relative to the fisheries and wildlife habitat value of this area. The proposed project would have an intensity of use that could not be supported on this site and should be denied. Please feel free to contact me if you have any questions.

Sincerely,

Christopher M. Kavanaugh  
Area Fisheries Supervisor

c. Ronald Hunt  
Holly Newton

A06-1374

IC-1274



Minnesota Department of Natural Resources  
Area Fisheries Office, 1201 East Highway 2, Grand Rapids, MN 55744

(218) 999-7821

May 5, 2006

Don Dewey  
Itasca County Planning Commission  
123 NE 4<sup>th</sup> Street  
Grand Rapids, MN 55744

Re: Deer Lake – Living Word Bible Camp

Dear Commissioners:

Staff from the Division of Fish and Wildlife have reviewed the proposed Conditional Use Permit Application for the Living Word Bible Camp and would like to make the following comments. The area in question provides unique and valuable fish and wildlife habitat. The area is used by a variety of species, such as; loons, bald eagle, waterfowl, heron, otters and other furbearers, walleye, smallmouth bass, muskie, and other fish species. Our comments focus on the potential impacts to these resources from the proposed development and consider impacts if the area were developed as residential units. Any type of development will have a negative impact on these resources, however, the proposed development is likely to have a much greater negative impact than single family homes and we recommend this Conditional Use Permit should be denied.

The lake is generally shallow in this area with several islands designated as Wildlife Management Areas located within the bay. The shoal water soils vary from rubble and sand to marl. Rubble provides spawning habitat for a variety of fish. The marl substrate is an important substrate for different vegetation, notably chara, which is important spawning habitat for muskellunge.

The principal fisheries habitat value of this area is as a muskie spawning area. Deer Lake presently has an excellent muskie population sustained exclusively by natural reproduction. In our most recent spring assessment netting done in 2003, 30% of the muskies sampled on the lake came from the nets set in this area. Muskies spawn in the early spring and require specific habitat for successful spawning.

In addition to the muskie spawning habitat this area also provides spawning habitat for a number of other species, including smallmouth bass and walleye. A number of non-game fish species also rely on the type of habitat found here for several life history stages. The applicant has stated that their activities would be during a time period after the spring spawning season. Disturbance of the habitat at any time of the year could potentially affect the suitability for spawning the following spring.

The marl substrate is particularly sensitive to disturbance. Marl, by definition, is precipitated calcium carbonate, and is very fine and easily displaced. Chara is a green algae and does not have a defined root system. Disturbance or destruction of this habitat could be detrimental to the overall health and sustainability of muskies in Deer Lake. Furthermore, recent research has shown that many species of fish are negatively affected by the loss of both riparian and aquatic vegetation

A06-1374

IC-1036

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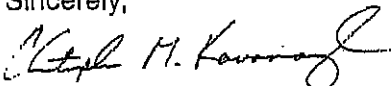
Deer Lake – Living Word Bible Camp  
May 5, 2006

Page 2

Clustering the buildings and leaving a large portion of the tract undeveloped as proposed certainly has a definite advantage over standard lot and block residential development. With a standard development there would be considerable more forest disturbance and impervious surface. The amount of impervious surface and associated runoff could be managed through a stormwater plan that would avoid and minimize impacts to water quality. Standard residential development there would be more forest fragmentation, to the detriment of many wildlife species. This is somewhat dependent on the degree of modifications necessary to develop the hiking trails and the influence of human disturbances caused by use of the trails.

Thank you for the opportunity to provide these comments relative to the fisheries and wildlife habitat value of this area. The proposed project would have an intensity of use that could not be supported on this site and should be denied. Please feel free to contact me if you have any questions.

Sincerely,



Christopher M. Kavanaugh  
Area Fisheries Supervisor

c. Ronald Hunt  
Holly Newton

A06-1374  
IC-1037

**From:** "Chris Kavanaugh" <Chris.Kavanaugh@dnr.state.mn.us>  
**To:** <don.dewey@co.itasca.mn.us>  
**Date:** 6/12/2006 2:43:00 PM  
**Subject:** Deer Lake -LWBC

Don,

Attached is another letter regarding the decision on the LWBC. After the meeting in May I felt it was necessary to reiterate some key points just to be clear.

As always, please feel free to contact me if you have any questions. I don't know if I'll be able to attend the meeting on Wednesday as I have a field commitment earlier that morning and I don't know when I'll be done.

Chris

A06-1374  
IC-1217

Area Fisheries Office, 1201 East Highway 2, Grand Rapids, MN 55744

(218) 999-7821

June 12, 2006

Don Dewey  
Itasca County Planning Commission  
123 NE 4<sup>th</sup> Street  
Grand Rapids, MN 55744

Re: Deer Lake -- Living Word Bible Camp

Dear Commissioners:

I would like to take this opportunity to provide additional comments following the May 10, 2006 Planning Commission Meeting. This is a complex issue which requires careful consideration of not only the benefits but also the costs to the long-term health and well being of the lakeshore, near shore habitat, and overall quality of the lake.

The commissioners indicated that since the camp will operate primarily from mid-June through August there would be minimal disruption to fish spawning activity. However, the impact of habitat disturbance during non-spawning periods has high potential to carry-over to the following spring when spawning activity is taking place. The incremental, cumulative impact of this habitat change may not result in immediate changes, but over time, perhaps many years, subtle changes can result in significant impacts to the quality of the habitat.

The best spawning habitat for muskies is in an area north of the proposed beach. As stated in the meeting, the entire bay in Section 34 provides excellent habitat for muskies and other fish. Concentrating the disturbance and isolating it from the most critical areas is commendable. The bay receives very little recreational use at the present time and our concern is what the future use will be. It was suggested to possibly designate the bay as a spawning area and thereby restrict use. This is still a possibility in the future if use increases and there is evidence of impacts, however, we have to carefully consider the impacts to recreational opportunity.

Thank you again for the opportunity to provide comments on this project. Please feel free to contact me if you have any questions.

Sincerely,

Christopher M. Kavanaugh  
Area Fisheries Supervisor

c. Ronald Hunt  
Holly Newton

C: PCBFA

A06-1374  
IC-1216



January 26, 2010

37603 370<sup>th</sup> Av. SE  
Fosston, MN 56542

Ms. Karen Burthwick, Chair  
Itasca Board of Commissioners  
Itasca County Courthouse  
123 NE 4<sup>th</sup> Street  
Grand Rapids, MN 55744

Mr. Don Dewey, Environmental Services Administrator  
Itasca County  
123 NE 4th Street  
Grand Rapids, MN 55744

**Re: Comments on "Living Word Bible Camp" EAW, on Deer Lake**

Dear Ms. Burthwick and Mr. Dewey:

Enclosed are comments on this EAW entitled "Report: Comments on the EAW for the proposed Living Word Bible Camp EAW on Deer Lake including both a review of the technical content as well as compliance with the Minnesota Environmental Policy Act and governing Minnesota Environmental Quality Board (MEQB) administrative rules." This letter and attached materials also provides information to the Itasca County Board regarding this project; therefore, I am also addressing it to Ms. Burthwick with a request to have copies distributed to other Board members.

I am the sole author of this report, and, as such, I am not under financial or any other retention by any entity. My personal interest in this project is that Minnesota's Environmental Policy Act (MEPA) be appropriately applied because of a clear belief in its importance to our natural environment. It is crystal clear that its guidance is especially appropriate to landscapes such as represented by Deer Lake and its surrounding area, which still retain so much biodiversity with so little ongoing damage.

This Report has a two-fold purpose.

First, the Report provides a review of compliance with the key parts of MEQB rules and procedures based on my familiarity with them, and with state and federal case law and the policies that have arisen because of this litigation. In addition, I did this review because of the strikingly confusing content of the EAW, its poor technical quality, and its lack of response to previous technical input to the Itasca County Board as to what the EAW should address. This review includes reference to MEQB guidance documents, which are quite helpful for preparing environmental reviews on controversial projects in environmentally sensitive areas.

Second, this Report provides technical comments on the EAW based on a careful look at it and from obtaining site information from other sources and from resource professionals more

familiar with the site and lake than I am. As such, this section of the report is focused primarily on issues related to the main purpose of the EAW, which is to determine whether or not an Environmental Impact Statement (EIS) should be prepared.

My scientific background is fisheries, wildlife, and animal behavior. As indicated by Attachment 1, Professional Expertise, I have a broad knowledge of impact assessment methodology and policy on many types of projects, and including familiarity with many landscape types, such as lakes and streams, rare plant communities, stormwater impacts, wetlands, prairies, mountainous terrain, and so forth. I also bring to these comments direct expertise in environmental review policies, having participated on a team that modernized the Department of Natural Resources environmental review approach and conducted a nationwide review of state environmental programs prior to writing regulations on these topics.

I have been approached by a number of citizens for information about conducting impact assessments for this lakeshore development. I firmly believe these citizens have genuine concerns beyond self-interest, because I have verified them from my own experience, from discussions with resource professionals quite familiar with the site and Deer Lake, and from looking at data, maps, and aerial photos. As noted in Section II of the Report, I advised them originally to objectively communicate factual concerns to the Itasca County Board prior to the completion of the EAW, and assisted them by providing written guidance on types of information based on my experience base.

It is evident that there are many hard feelings around this project. It may well be the project proposer has no long range plans beyond the eight acres the EAW contends is the only part of the 253 acres that are to be developed. However, this is not established in the EAW according to the standards necessary for environmental review rules and practices. (There is even confusion as to the total acreage to be included, since part of the EAW says it is 280 acres in size rather than 253 acres.)

Based on my review of the project, the large size of this tract adjacent to a very sensitive lake area, and on my experience, I believe an Environmental Impact Statement on this project is justified in order to achieve the purposes of Minnesota law. I look forward to Itasca County's decisions on this project.

Sincerely,

Paul Stolen

enclosures:

1. Professional expertise of Paul Stolen
2. "Working with Consultants: A Guide for Local Governments."
3. MEQB "Guide to Minnesota Environmental Review Rules" (cumulative impacts excerpt)

c: Rian Reed, DNR  
Holly Newton  
Janna Nemeth



**Report**  
**Comments on the EAW for the proposed Living Word Bible Camp EAW on Deer Lake**  
**including both a review of the technical content as well as compliance with the Minnesota**  
**Environmental Policy Act and governing Minnesota Environmental Quality Board**  
**(MEQB) administrative rules**

**I. INTRODUCTION.**

This report is intended to be a comment on the EAW on this project, as well as an attempt to inform the Itasca County Board about applying Minnesota law and administrative rules for this project. It is evident that there is much confusion about this project and its review. In my view, the EAW adds to the confusion and adds to the controversy about this project, rather than diminishes it.

The purpose of Minnesota's law on environmental review has been stated by the Legislature in quite straightforward terms, which is a good guide for the County Board. It is a "sunshine" law requiring state and local government entities to understand impacts prior to making decisions. Its intent, explained in detail in MEQB rules and supporting guidance documents, is to allow this understanding to prevent impacts from occurring, or reduce the severity of impacts.

According to Minnesota's Environmental Policy Act (MEPA), these purposes "...are: (a) to declare a state policy that will encourage productive and enjoyable harmony between human beings and their environment; (b) to promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of human beings; and (c) to enrich the understanding of the ecological systems and natural resources important to the state and to the nation." (Chapter 116D, "Stat Environmental Policy", Section 116D.01)

This Report focuses on six topics: (1). The fact that important questions legitimately communicated to Itasca County about the content of the EAW prior to the publishing of the EAW have not been addressed in it, (2) Non-compliance with important requirements of MEQB rules for EAWs, (3) The lack of solid information regarding what is planned for this 253-acre parcel containing and surrounded by important natural resources, and (4) Deference to the project proposer regarding the key issue of mitigation of potential impacts, and (5) The decision process for an EIS, and (6) A summary of the reasons I recommend that an EIS should be done on this project.

**NOTE:** Comments III.A and III.B. provide recommendations to the Itasca County Board and are not comments on the EAW. The rest of this Report is comments on the EAW needing to be addressed in any Record of Decision.

**II. November 17, 2009 letter to Karen Burthwick, Chair, Itasca County Board of Commissioners, from 16 individuals entitled "EAW Preparation, Deer Lake, Living Word Bible Corporation Proposed Commercial Planned Unit Development."**

As noted in the cover letter to this Report, I was approached by a number of individuals about this project because of my expertise with environmental review policies and projects. I advised them to communicate their concerns about the project in detail and in a factual manner to the County Board prior to the EAW being prepared. I provided them with substantial specific written information for inclusion, and also assisted with editing because of the addition of other material. My recommended material was included in the November 17<sup>th</sup> letter.

At the time, I was not aware that the County Board appears to have delegated responsibility for preparing the EAW to WSN, although I am still not certain if this is the case. I have informally been told that WSN chose not to address the contents of the November 17<sup>th</sup> letter in the EAW. Based on my experience with environmental review, there was no justification for this.

I have examined the EAW and it is apparent it does not adequately address the issues raised in the November 17<sup>th</sup> letter. I have also reviewed the final copy of the letter, and do not find disagreement with additions I did not author. (I am least familiar with the shoreland and zoning issues.)

Therefore, I incorporate the November 17<sup>th</sup> letter into this Report by reference, and indicate the letter to be part of my comments on the EAW. Rather than repeat the points made in the letter, I will also reference specific points for emphasis in the comments below, noting that parts not referenced in this Report are still part of my comments on the EAW. Hereinafter, I will refer to this letter as the "11/17/2009 letter to the County Board."

### **III. IS THE EAW IN COMPLIANCE WITH MEQB RULES AND BEST PRACTICES REGARDING PREPARATION OF AN EAW ON A CONTROVERSIAL PROJECT?**

**III.A. General comment on the EAW.** The EAW and accompanying documents are very lengthy. The problem is, much of the bulk is not relevant to the EAW purpose. More importantly, the project is not adequately described and the EAW does not adequately address the key natural resource issues pertinent to this purpose. MEQB guidance documents clearly indicate the purpose: "The EAW is defined by state statute as a "brief document which is designed to set out the basic facts necessary to determine whether an EIS is required for a proposed action." (see MEQB guidance document "Environmental Assessment Worksheet Process", p. 1.)

As you will see in my comments, under the law, the evidence is that this proposal needs to be examined in a greater context than the apparently simple and small eight-acre "bible camp" portrayed in the current version of the proposal that appears in the EAW under review.

I recommend that the Itasca County Board insist that any further environmental review documents follow the MEQB guidance quoted above. This means insisting on an accurate project description and analysis of future expansion potential, accurate figures and maps that depict project facilities in relation to all sensitive resources, and address the key natural resource effects and binding mitigation measures.

**III. B EAW preparation, management, and compliance with Minnesota law and MEQB rules.** This comment is focused on an attempt to understand why the EAW has so many

problems with technical quality, incoherence, inadequate and confusing maps and figures, and failure to address the key natural resource issues raised by this project. MEQB rules do allow an RGU to hire a consultant to prepare an EAW and findings; however, MEQB guidance documents provide advice to RGUs as to how to accomplish this, including when projects are controversial. (See Attachment 2, "Working with Consultants: A Guide for Local Governments.")

I have looked at a copy of the contract between Itasca County and Widseth, Smith, Nolting (WSN) regarding preparation of the EAW, and have been informed of the meetings held this fall and recently. I have also viewed the draft EAW submitted to Mr. Dewey by the project proposer earlier last fall. The contract does not appear to have taken advantage of the guidance provided by Attachment 2. In addition, based on my experience with such contracts and such projects (such as managing such contracts and writing Scopes of Work, etc), the dollar amount of the contract would seem to be quite inadequate for such a complicated project. (For instance, when I worked at BRW, Inc., almost 25 years ago, they charged about \$10,000 then for relatively routine subdivision projects, see Attachment 1.)

In such circumstances on projects of which I am familiar, insufficient funds can result in over-reliance on the project proposer's analysis and data.

Frankly, based on my years of experience with environmental review documents and lawsuits, I would advise the Itasca County Board to obtain advice from a neutral legal counsel that has broad experience in MEQB rules and litigation to advise them on how to sort out this project before proceeding with decisions and spending additional county funds, including a review of the WSN contract.

**III.C. MEQB rules on potential future stages of the project and cumulative impacts and applicability to this project.** There appears to be major confusion in the EAW as to zoning issues and plans as compared to environmental review mandatory categories, how much of the 253 acres needs to be covered in the assessment of effects and mitigation development, and the new MEQB rule concerning cumulative impacts because of the Minnesota Supreme Court Card decision. Hopefully the following discussion will help.

III.C.1. MEQB rules regarding mandatory categories and how to address development within the project site. Under MEQB rules, the fact that the 253 acres is under one ownership means that the EAW must include the entire acreage in the review, with respect to mandatory categories. However, the 253 acre figure needs to be checked to see if there is adjacent acreage under the same ownership, based on the MEQB rule cited in this comment. According to Appendix F and a copy provided to me of a web page from the Living Word Bible Camp, the parcel is 280 acres rather than 253 acres. In addition, this web page describes the land: "The land has many steep hills and valleys and is almost totally wooded with pine, spruce, fir, cedar, tamarack, maple, poplar....."

If a portion of the acreage is put into categories that achieve long-term protection via conservation easements or permanent county decisions to protect it, these areas and reasons should be described in the EAW. This is complicated for this project because the proposal appears to cover at least two EAW categories, residential (See Exhibit 2 of Appendix A) and also

the institutional category. (As noted below the residential area is included in one Site Plan but not the other.)

MEQB rules governing residential development indicate that "...the total number of units potentially buildable on all contiguous land owned or under an option by the proposer be considered (in calculating mandatory categories), regardless of whether the whole area or only a part is proposed for immediate development." (MEQB "Guide to Minnesota Environmental Review Rules", page 11.)

Under the rules, "Land may be excluded only if it is identified for a future use other than residential development by an adopted comprehensive plan, zoning ordinance, or other official local government action such as a resolution or agreement." (MEQB "Guide to Minnesota Environmental Review Rules", page 11.)

There have been lawsuits and requests for zoning changes so it is unclear as to the status of the area both with respect to protecting its natural resources and to determining expansion plans. Resolution of these issues can affect the scope of the environmental review. The 11/17/2009 letter to the County Board asked for a full explanation of these zoning requirements, and resolution as to what type of project this is. (See pages 1, 8-12, and the bottom of p. 16.) Depending on resolution of these issues, it may be that MEQB 4410.4300, subp. 19, and 4410.4400 subp. 14 apply to the project.

II.C.2. Cumulative impacts. The 11/17/2009 letter to the County Board (Section II.B, II.C.4, II.D.2 and 3) directly discussed this topic. Attachment 3 is a section of the MEQB "Guide to Minnesota Environmental Review Rules" that describes how cumulative impacts are to be addressed in light of the recent Card decision. The EAW does not contain an adequate discussion of cumulative impacts. The most glaring absence is the lack of discussion of the potential cumulative impacts of future development of the 161 acres outside of the initial 8 acres plus the 84 acres in a Conservation Easement. In addition, the contention in Appendix F that the project site is 280 acres rather than 253 acres needs addressing.

Other issues relating to cumulative impacts are found throughout the 11/17/2009 letter to the County Board.

III.C.3. Potential future stages. There are a number of indications that the project will be larger than that proposed. This Report and the 1/17/2009 letter to the County Board contain these indications. There are others. For example, I looked at a draft proposer-prepared EAW in the Itasca County Board offices this fall, and it contained much more detailed and extensive plans for recreational trips to environmentally sensitive areas in the lake than is now portrayed in the EAW. These plans were extensive enough so as to indicate that motorized escorts could well accompany non-motorized watercraft.

III.C.4. Three-year "look back" rule. I have been informed that the WSN, Inc contact person informed Itasca County that there was an MEQB rule concerning determining whether there were expansion plans for a project that involving looking back three years to determine if such plans exist. I was not present, so am not certain as to what exactly was said; however, the only

place in MEQB rules where there is such a rule is for expansion of an existing project rather than a new proposal. Therefore, this rule does not apply to this project (See 4410.4300 Sub. 1)

**III.D. Project is not adequately described in the EAW.** Adverse environmental effects are caused by changes the project directly or indirectly cause, such as earthmoving, changes in runoff patterns, vegetation removal, and so forth. Such effects cannot be determined without an accurate project description; therefore, the criteria in the rules regarding an EIS determination cannot be accurately applied.

III.D.1. MEQB guidance on this topic. EAW Sections 5-8, and 10 (especially 6), are intended to provide a full description of the project. MEQB guidance on this topic is as follows:

--Section 6 of the EAW (Project Description ), according to MEQB rules, "**. . is the single most important item in the EAW**, and care should be taken to ensure that it is completed thoroughly and accurately."

"The site plan should provide a graphic "close-up" of the project in sufficient detail to identify the key physical construction features, including roads, utilities, buildings, wells, drainage structures, cut and fill areas, materials or waste storage areas, parking lots, and project boundaries. **Significant natural features should also be indicated.**"

(Emphasis added, both quotes from page 6 of MEQB "EAW Guidelines. Preparing Environmental Assessment Worksheets".)

III.D.2. Examples of inadequate description of the project in the EAW. There are many examples, and note that the focus on these examples is with respect to the EAW purpose of determining whether an EIS is necessary:

--Section 6 indicates that the project site is 253 acres, while Appendix F indicates it is 280 acres. Which is it, and why the discrepancy?

--The project acreage is very large, with a long shoreline, and with potential for future development, yet very little of this acreage is specifically described ecologically. Only generic descriptions are given that apply to the surrounding area as well as the 253 (280?) acres.

--The Site Plan only covers a small portion of 253 acres, does not appear to be to scale, and does not include significant natural features such as wetlands, "open water" (see next item), lake access, trails, stormwater ponds in relation to wetlands, setbacks from wetlands, and grading plans.

--The lengthy wetlands report (Appendix D) does not contain wetland delineations for wetland features in very close proximity to proposed features, such as stormwater ponds, trails, and other features. The map scale is woefully inadequate to confirm whether wetlands are directly or indirectly impacted by project features. In fact, there are two locations indicated as "open water", one of which looks to be only a few feet from a "gravel centerline", with no wetland delineation around the open water. There is no explanation in the EAW as to what these water features are. (See Figures B and C in Appendix D.) In my own experience with wetland

delineation, there is almost always jurisdictional wetlands above and surrounding the elevation of open water.

--The Site Plan does not include a surveyed Ordinary High Water, nor an accurate wetland delineation (only straight lines between way points for a portion of the property). Both such environmental features qualify as "significant" natural features.

--A portion of the 253 acres will be used to construct a residence, yet this is not included in the Site Plan. (See Site Plan in Appendix A which indicates future construction of a residence.) The intended use of the entire 253 acres needs to be described and accurately depicted, including any protection measures applied to each section.

--One figure for the Site Plan (Appendix A) indicates a play area that, according to the text, will be "graded", yet the other Site Plan (Figure 3) does not show it.

--Parking lot size appears to be undersized for the amount of peak use. In addition, there is a statement that a "turf road" will be used for traffic. Both of these issues lend support that the project is not adequately described, and that future expansion or changes affecting the environment will be necessary.

--Terrain at the site is steep enough so that grading is necessary to construct trails, stormwater retention ponds, and roads. In fact, it appears as if at least a couple of stormwater ponds are to be located on hillsides, resulting in extensive grading. There is language indicating grading of trails, and also construction of a retaining wall, but there is no grading plan included.

--There is no stormwater plan; rather, there is a hydrologic concept plan based on hydrologic models drawn on a rough computer map, even though the terrain is steep, and stormwater runoff will reach the lake. It appears that wetlands may be used for stormwater treatment, which would likely not be allowed, although it is very difficult to make comparisons between poorly drawn concept maps and the large-scale Site Plan (s). Many EAWs I have reviewed for projects such as this have completed grading plans included in the EAW. Completion of such plans has a two-fold positive effect: resolution of conflicts between project features, and allowance of proper public and natural resource agency review of the plans..

--The Conservation Easement was in place when the project proposer purchased the property. A recreational trail is proposed through it with no explanation as to compatibility with the easement. No wetland delineation occurred in this area, according to the Appendix.

**III. E. Itasca County must not use a developer-prepared EAW.** An examination of the EAW clearly shows that this EAW greatly relies on developer-prepared documents. In fact, contrary to MEQB rules and guidance, the EAW contains developer-prepared assessment of impacts rather than "data," as specifically pointed out below.

**III.E.1. MEQB rules and guidance documents on this topic.** These rules and documents contain either outright statements that an RGU **must independently provide an assessment of potential effects in an EAW and must not entirely rely on the developer** for information. These rules and guidance documents clearly say that **the developer is to supply the data portions of the**

**EAW, rather than the assessment of effects.** Furthermore, the RGU is responsible for independently verifying that the data portion. I have personal experience that over the years, MEQB has strengthened these portions of the rules in order to address the inherent conflict of interest issues that have come up time and time again. Note the following MEQB guidance statements, which are often more helpful than the rules themselves because they reflect past results of litigation of the rules and law:

“The project proposer is required to submit the Ear’s completed *data* portions to the (RGU).”

“In preparing the submittal the proposer *should refrain from offering conclusions*, rather should focus on supplying data and other factual information.”

“Even if the proposer’s data submittal seems complete and accurate, the RGU *must exercise independent judgment about the information.*”

“The RGU *must be in charge of any conclusion-type responses that discuss the significance of impacts or adequacy of mitigation.*”

“If the RGU fails to exercise independent review of the proposer’s information, it could lose a legal challenge and have to repeat the EAW process.”

(Emphasis added; quotes are from page 5 of MEQB “EAW Guidelines. Preparing Environmental Assessment Worksheets” .)

III.E.2. Direct evidence of over-reliance on project proposer’s material. Note the following, keeping in mind the MEQB rules and guidance:

--Appendix B and Appendix F are applicant prepared documents containing substantially more than data, and contain opinions and conclusions that have been transferred to the EAW. There are many references to proposer intent to protect natural resources, but little or no reference to the mitigation measures necessary for a decision as to whether an EIS is necessary (See Comment IV below.) The EAW references these documents as if they were definitive.

--Many of the possible mitigation measures in the EAW, and noted Comment V.3. below, are also assertions by the project proposer without being given a critical look as to whether they are actual measures.

--Section 31 of the EAW, summary of issues, contains an outrageous statement that “The main concern is the affect on fish spawning in the shallow bays, specifically muskie spawning habitat. . . .The DNR also has the ability to stock muskies to augment the population, something that it has done in many lakes.” Essentially, this section is implying that if the project causes a decline in muskie spawning habitat, public funds should be spent to restore the population. Furthermore, the EAW didn’t attempt to even assess whether such adverse effects would occur.

**IV. Inadequate information on natural resources and on effects on these resources within the 253 (280?) acre project site, as well as adjacent wetlands and lake.**

This topic was extensively covered in the 11/17/2009 letter to the County Board, so I will only add a few comments here. While the EAW does contain some information on fish and wildlife habitats and species generally inhabiting forests, lakeshores, and Deer Lake, it makes little or no attempt to provide site-specific information. Here are some of the types of information that should be included, beyond that mentioned in the 11/17/2009 letter to the County Board:

--There are indications that project site wetlands contain very healthy and large stands of white cedar. In my experience, such stands are found in groundwater discharge zones. Such zones can be affected by landscaping and earth-moving on slopes above such discharge areas. Such a feature is not described in the EAW.

--Mare's Tail, (*Hippuris vulgaris*) is found in Deer Lake adjacent to the project site. While not a species listed on DNR's official list of rare species, it is an uncommon plant. According to a DNR botanist who has conducted surveys for rare aquatic plants, this species was found 63 of the 1613 lakes across north central Minnesota, and 12 times in 287 surveys in Itasca County. (Personal communication, Karen Myhre, January 13, 2010. While it is not known conclusively to be the case at all, Ms. Myhre indicated it was her impression that locations where the plant was found seemed to be associated with groundwater discharge areas.

--A proper site assessment of this project, with two possible plant indicators of groundwater discharge zones, would mean checking for other more obvious indicators of groundwater discharge within the project boundaries, and an attempt to determine the extent and magnitude, and whether the project might affect such areas.

--Deer Lake and the shoreline and adjacent upland (253-280 acres) constitute a large landscape area with eminently valuable natural resource features that are sensitive to lakeshore development and boat traffic. The shallow bays in the area are important to the lake as a whole, not just a portion of it.

## **V. Decision on the need for an EIS**

The defects in the EAW noted above make it very difficult to apply MEQB rules on this project; but the rules do help clarify the problems with the EAW, as follows:

**V.A MEQB rule on the decision as to whether an EIS is necessary.** The rule is as follows:

*"Subp. 6. Standard. In deciding whether a project has the potential for significant environmental effects the RGU shall compare the impacts that may be reasonably expected to occur from the project with the criteria in this part.*

*Subp. 7. Criteria. In deciding whether a project has the potential for significant environmental effects, the following factors shall be considered:*

*A. type, extent, and reversibility of environmental effects;*

*B. cumulative potential effects. The RGU shall consider the following factors: whether the cumulative potential effect is significant; whether the contribution from the project is significant when viewed in connection with other contributions to the cumulative potential effect; the degree to which the project complies with approved mitigation measures specifically designed to address the cumulative potential effect; and the efforts of the proposer to minimize the contributions from the project;*



C. *the extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority. The RGU may rely only on mitigation measures that are specific and that can be reasonably expected to effectively mitigate the identified environmental impacts of the project; 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 EISs.*

**V.B. MEQB guidance for applying this rule.** As noted elsewhere in this Report, the EAW does a poor job of describing the project, which makes it difficult to understand the types of impact that can occur. In addition, impacts within and adjacent to the 253 acre site are also poorly described and are generic in nature. Therefore, it is even more difficult to apply the first criteria.

The topic relevant to the EIS decision that is most frequently mentioned in the EAW concerns mitigation. This is appropriate, since three of the four criteria contain reference to mitigation. However, the key question is whether this EAW topic uses mitigation measures in a manner appropriate for the EIS decision. In fact, it does not, as I demonstrate below.

MEQB guidance in interpreting these decision criteria is as follows (MEQB "EAW Guidelines. Preparing Environmental Assessment Worksheets," p. 3):

"Among the four criteria, the first and the third are usually the most relevant. The first deals with the nature and significance of the environmental effects that will or could result from the project. It relies directly on the EAW information *and may be augmented by information from the comments and responses.*" (emphasis added)

"The third criterion is frequently the main justification for why an EIS is not required. Projects often have impacts that could be significant if not for permit conditions and other aspects of public regulatory authority. However, *the RGU must be careful to rely on ongoing public authority to prevent environmental impacts only where it is reasonable to conclude that such authority will adequately handle the potential problem.*" (emphasis added)

**3. Reference to mitigation measures in the EAW are mostly to possible measures rather than assured mitigation of adverse effects.** As the rule and this guidance indicates, the extent of **assured** mitigation is key to making the decision as to whether an EIS is necessary. I have gone through the EAW, and this assurance is not evident. In fact, there are many references to mitigation measures that are vague statements of intent by the developer that have not been examined according to the RGU responsibilities noted above. Note the following examples:

--The EAW states that only 245 of 253 acres will be developed; with 84 acres in Conservation Easement, and no documentation as to the means by which the other 161 acres will remain undeveloped. Therefore, until it is clear how the 161 acres are to be preserved, this cannot be used in the as a measure to reduce environmental effects according to Criteria 3. (And what about the 280 acre project total?)

--"The County may mitigate potential conflicts with conditions in a CUP that limit further development, building development, building location, lake usage, stormwater runoff, vegetation disturbance, and hours of activity." (EAW p.4.) According to the contract with

WSN, it is acting as the RGU for Itasca County; therefore, should not these important mitigation topics be resolved prior to EAW completion? Is Itasca County going to now direct WSN on these topics prior to a Record of Decision? Note that the MEQB guidance document in Attachment 2 indicates how important such discussions are. The EAW list **are not** mitigation measures, these **are only potential** mitigation measures; therefore, they cannot be used in Criteria 3 to reduce environmental effects.

--"The Camp has also agreed to limit the number of boats and to limit use of Kocemba Bay. The Camp has no plans to remove vegetation from the lake, even in the development area." (EAW, p. 5) How is this measure binding, and not subject to a change of mind by the Camp operators? In it's present form, this is not a mitigation measure useful in Criteria 3, especially the statement about limiting use of Kocemba Bay.

--In a section on efforts to minimize impacts to wildlife and wildlife habitat, the EAW points out that the Conservation Easement covers 84 acres and will be protected "in perpetuity." The next few sentences talk about intent to use vegetated buffers, and intent to confine the development to the "partially cleared area.) (EAW, top of page 6.) However, there is no mention made of how this "intent" is to be assured, as there is with the perpetual easement. Therefore, these statements cannot be used in their present form in Criteria 3.

--The response to EAW question 15 indicates the CUP will limit the number of boats to two out-board pontoons, one out-board lifeguard boat, and 20 non-motorized watercraft. The County does have the authority to limit these numbers, however, it does not have the authority to control their specific use on Deer Lake, nor is there assurance that expansion will not occur in the future, based on other available information. Furthermore, the draft EAW submitted to Itasca County by the project proposer a few months ago had much more ambitious appearing boat trips planned. Therefore, this measure does not provide adequate assurance concerning reducing impacts to the sensitive shallow nearby areas.

--The stormwater concept plan in the EAW is based on generic stormwater requirements, and is not an engineered site-specific plan. The EAW does not provide documentation that it can operate or be implemented on site without changes in location of basins, since there is inadequate wetland and grading information in the vicinity of conceptual features. Furthermore, the findings in section 17b are based on the project proposer's opinions expressed in Appendices E and F, and are primarily based on a statement of intent to comply with regulations. Therefore, this measure cannot yet be regarded as sufficient to apply to Criteria 3.

--Section 18 of the EAW indicates that the sewage treatment system under study still has major questions surrounding it. In fact, it says that "... a groundwater mounding assessment needs to be completed to determine if the design is suitable for soil permeability. Because the MSSTS is within 500 feet of the lake, MPCA should be contacted to determine if a phosphorous assessment needs to be completed." These topics normally would be addressed in the EAW; in addition, this indicates the design, location, and size are not yet completely determined. Changes could influence the location of other proposed facilities. In addition, the findings appear to be based on an intent to comply with regulations, not actual compliance. Therefore, this is not a mitigation measure useful for determining Criteria 3.

--EAW section 25 (p. 12) indicates that there are unique natural resources present that are potentially effected. There is a statement about theoretical mitigation of effects: "The County

may impose conditions that restrict the size of the development, areas of vegetation removal, and buffer zones. . . ." Again, if WSN is supposed to be operating as the RGU, these issues should have been resolved earlier. Therefore, these theoretical measures are not applicable to Criteria 3.

--This section of the EAW discusses a 35 acre sensitive area of Deer Lake adjacent to the project site, and says that "The County may impose restrictions on lake usage that will minimize adverse impacts on this wildlife management area." The County does not have the authority to restrict lake usage by the proposed Camp; rather, it would need to enact a lake usage ordinance affecting all users. Therefore, as written, this is only a theoretical measure not applicable to Criteria 3.

**V.C Mitigation discussion in 11/17/2009 letter to the County Board\_** This letter contains comments about project mitigation related to these same issues (pp. 15-17) and contain further elaboration on these topics.

## **VI Summary of EIS recommendation.**

Based on my knowledge of similar projects, the large project area containing and adjacent to sensitive and important natural resources, the contents of this Report, the contents of the 11/17/2009 letter to County Board, and my knowledge of MEQB decision rules as to when to conduct an EIS, I feel an EIS is necessary for this project.

Donald Dewey  
Itasca County Environmental Services Administrator  
123 NE Fourth Street  
Grand Rapids, MN 55744

Dear Mr. Dewey:

I have attached my comments on the LWBC EAW in a short report. For the record, I am not a Deer Lake shoreline owner and have no vested interest in Deer Lake. My interest comes from my career as a Fisheries Biologist and a Fisheries Regional Manager for the MNDNR. I was a field biologist from mid-December 1969, until August of 1987. During my field years, I performed investigations on fisheries management projects from waters near the Twin Cities to the trout streams of southeastern Minnesota to the Brainerd lakes area. I served as Fisheries Regional Manager at the Grand Rapids office from August 1987, until August 2002, when I retired. I am not employed by any interested party in the LWBC issue. Most of my input in the attached report will be limited to fisheries and the aquatic environment, where I have some expertise. I will try to limit my comments to areas of potential environmental risk. My interest in this issue is that environment risk is properly assessed and that the best decision can be reached for this special resource.

In the interest of getting to the right answer, I am more than willing to meet with anyone with the same interest. If you or members of the County Board wants to grill me in the spirit of making the best possible decision, I am at your service.... free.

Sincerely,

Dennis W. Anderson  
MNDNR Regional Fisheries Manager, RETIRED

37098 Woodland Drive  
Cohasset, MN 55721  
Ph: (218) 999-7754

Cc:  
Lori Dowling  
Karen Burthwick  
Catherine McLynn  
Mark Mandich  
Rusty Eichorn

A100

Jan 23, 2010

Dennis W. Anderson

Report on the LWBC EAW

First a few general comments:

The document should be restricted to comments regarding environmental risk. In the fields that I know something about, namely limnology and fisheries, there is much conjecture, much innuendo and what could be called "finger pointing". Please, I believe it is irrelevant how this property could be developed by other interests. It is irrelevant that the DNR has issued permits for aquatic plant control in some lakes or other parts of Deer Lake. What is relevant is the risk associated with this development. The serious discrepancies that I can detect (some specifics below) in topics where I have some expertise, put in doubt the entire document. The document is exceedingly wordy, argumentative and biased (for the development). That is unfortunate because it makes a poor basis for arriving at a good decision. That said, with or without a better document, there is clearly significant environmental risk.

O.K., I said I would stick to mostly risk concerns so...

Phosphorous: Deer Lake is classed as an "oligotrophic" lake. That means that it is infertile, and has cold, deep water containing good concentrations of oxygen during the warm summer months. Phosphorous is widely considered to be the critical nutrient that limits plant growth in freshwater lakes. Any addition of phosphorous above the natural background levels increases the rate at which an oligotrophic lake is driven in the direction of high fertility (eutrophic). Plant and animal remains accumulate in all parts of the lake but when they fall into the deep, cold areas, decomposition of that material consumes oxygen that cannot be replaced at those depths until the lake "turns over" during fall and spring. There is a risk that oxygen will be depleted in the deep parts of the lake during summer as phosphorous loads increase. Fish species like whitefish and ciscoe (tullibee) would suffer summer kill when that happens and a significant change would occur in the Deer lake ecosystem. The environmental risk caused by additional phosphorous has not been adequately addressed. It is not appropriate to simply indicate expected phosphorous production for the project area and declare it safe. In the limnology appendix, numerical predictions of phosphorous production were presented. Those predictions and statements of potential risk to the lake need to be corroborated.

Human disturbance of shallow areas: I did not find any discussion of risk potential associated with the large number of youth that could be canoeing, kayaking, except to say such disturbance wouldn't happen. There was much discussion about how other kinds of development would cause disturbance if the land was not used for the proposed project. That is a separate issue that should be dealt with separately, not in this EAW. This sensitive, shallow water area is adjacent to the project shoreline. The sheer force of the number of people as large groups come and go throughout the season needs to be addressed. Discussion of what happens in other parts of the lake is not the issue.

Muskellunge(muskie): The risk to the native, self-sustaining, high quality muskie population in Deer Lake is not adequately addressed. It is known that muskie, during spring spawning time, heavily use the extensive shallow water habitat adjacent to the proposed project area. This shallow area represents a significant part of this kind of habitat present in Deer Lake.

Muskie fisheries of this quality are not found in many places, certainly not in Minnesota.

A suggestion is made, in Appendix B, that muskie can be stocked to sustain a fisheries. That statement seems to say it is unnecessary to protect muskie early life stages because of the stocking alternative. That would indicate that the level of environmental degradation sufficient to cause the muskie population to collapse would be acceptable because of the muskie stocking alternative. It is wrong in an EAW to condone degradation sufficient to cause the collapse of a vigorous, "heritage" fish population. The muskie population under consideration is a native (no records to refute the status of "native"), self-sustaining, very high quality fishery. It could be at risk but the level of risk is not determined in the EAW.

Walleye population: The appendix states that walleye decline is likely caused by over fishing and habitat degradation. That is probably not the case. Oligotrophic lakes like Deer Lake typically have low populations of self-sustaining walleye. It is widely believed that the deep water, slow to warm in spring and early summer, nature of these kinds of lakes, make for poor conditions for early life stages of walleye. When these types of lakes are fished, they lack the resiliency to maintain high populations. Stocking has been implemented to sustain a more productive fishery. I do not know how the walleye discussion is relevant to the EAW.

The long-winded discussion of marl and how it is deposited is perhaps interesting (and I believe generally accurate) but, again, what is the relevance to environmental risk? Marl is a very loose, easily suspended material and could be

readily stirred up by virtually any kind of activity. If instability of marl is the issue, then the shallow water activities of the proposed development become a risk factor. The far ranging, wordy discussion in the EAW appendix did not really make any risk assessment

Vegetation removal permits are issued to riparian landowners in a strictly regulated permit process. Such permitting is very minimal on Deer Lake and doesn't seem to have any bearing on risk from the proposed project.

I believe that not enough information has been presented to provide guidance in making a decision. A lot of irrelevant information has been presented. There is much innuendo and long-winded discussion that seems intended to make the project look like a better development alternative than other kinds of development. I believe that the proposed development needs to stand alone as risk is assessed. Other developments need to do likewise. I also believe that there is significant risk to the aquatic environment, especially to the heritage muskie population, deep-water fish populations and the shallow water habitats.





**STATE OF MINNESOTA  
ENVIRONMENTAL QUALITY BOARD**

In the Matter of Requests to Designate a  
Different Responsible Governmental Unit  
For Preparation of an  
Environmental Assessment Worksheet for a  
Proposed Recreational Development in  
Shoreland (Living Word Bible Camp)

FINDINGS OF FACT,  
CONCLUSIONS AND  
ORDER

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The above-captioned matter came before the Minnesota Environmental Quality Board (EQB) at a regular meeting on February 20, 2013, pursuant to requests to designate a different responsible governmental unit (RGU) for preparation of an Environmental Assessment Worksheet (EAW) for the Living Word Bible Camp on Deer Lake in Itasca County, including:

1. a request by Itasca County to reassign the RGU from Itasca County to “the Minnesota Pollution Control Agency (MPCA) or such other appropriate entity as the EQB may appoint;”
2. a request from the project proposers to reassign the RGU from Itasca County to the MPCA; and
3. a request from neighboring landowners to reassign the RGU from Itasca County to the Minnesota Department of Natural Resources (MDNR).

Based upon all of the proceedings herein, the Minnesota Environmental Quality Board makes the following:

**FINDINGS OF FACT**

1. The proposed project is a bible camp/retreat center on a 253 acre site on the east shore of Deer Lake in Itasca County. The proposed project includes a lodge with a chapel, an office, five dormitories, an activity building, storage buildings, recreational facilities, a ball field, a campfire area, and a trail system. The site consists of mostly undeveloped woodlands except for four residential buildings (a house and three accessory buildings).
2. On April 12, 2006, the project proposers (Living Word Bible Camp: Ron and Judy Hunt) applied to Itasca County for planned unit development approval and a conditional use permit.
3. In May 2006, a petition for an EAW was filed with the EQB.
4. On May 5, 2006, EQB staff determined that Itasca County was the appropriate responsible governmental unit to decide the need for an EAW and transmitted the petition to Itasca County.

5. On May 23, 2006, the Itasca County Board determined an EAW was not required for the proposed project and denied the petition.
6. The petitioners challenged Itasca County's denial of the petition in Itasca County District Court.
7. The District Court determined Itasca County erred in its decision to deny the petition.
8. On appeal, in a decision dated July 31, 2008, the Minnesota Court of Appeals affirmed the decision of the District Court.
9. In December 2009, Itasca County published the EAW.
10. On February 23, 2010, the Itasca County Board decided whether an Environmental Impact Statement (EIS) was required and issued a positive declaration on the need for an EIS.
11. The positive declaration was appealed by the project proposers to Itasca County District Court.
12. By an Order dated December 15, 2011, the District Court (Judge Jon A. Maturi) remanded "the matter to Itasca County to repeat the EAW process," In addition, the Order stated, "[t]his court strongly recommends that Itasca County and LWBC refer the EAW to the MPCA or other appropriate entity, if possible."
13. On February 16, 2012, neighboring landowners appealed the decision of the District Court to the Minnesota Court of Appeals.
14. The Itasca County Board considered the matter on February 7, and 28, 2012, and on February 28, 2012, approved an amended February 7, 2012 motion to refer the Living Word Bible Camp EAW "to the Environmental Quality Board (EQB) for the selection of a Responsible Governmental Unit (RGU) in place of Itasca County such as the Minnesota Pollution Control Agency (MPCA) or such other appropriate entity as the EQB may appoint."
15. In letters dated February 15 and 21, 2012 from attorney James P. Peters, neighboring landowners requested the EQB designate MDNR as the new RGU for the proposed project.
16. A June 12, 2012 letter from attorney G. Craig Howse, sent on behalf of the project proposers, stated, "it would be wise for the EQB to designate the government unit with the most authority and expertise, the MPCA, as the RGU."

17. At its June 2012 meeting, the EQB tabled the matter until final resolution of the matter before the Court of Appeals.
18. On September 27, 2012, the Minnesota Court of Appeals affirmed the District Court decision.
19. In October 2012, the neighboring landowners appealed the Court of Appeal's decision by petitioning the Minnesota Supreme Court for review.
20. On November 27, 2012, the Minnesota Supreme Court denied the neighboring landowners Petition for Review.
21. On February 20, 2013, the EQB removed the matter from the table.
22. In their letter dated June 12, 2012, the project proposers stated:

[a]s discussed in the recent rulings by Judge Maturi in the Itasca County District Court, the EAW process was filled with irregularities and a bias against the project proposer. Therefore, Judge Maturi ordered a new EAW be conducted with a recommendation that an independent agency conduct the new EAW process....[a]s noted through Judge Maturi's recent orders and as evidenced by the decade of litigation, this project has stirred passions and has a taint of bias throughout, therefore we feel at this point any hint of bias should be removed from the process....[b]y assigning the MPCA as the Responsible Governmental Unit for the EAW the EQB will be assigning the proper entity under Minnesota Rule 4410.0500, subpart 6 and removing any hint of bias in this contentious process....[a]dditionally, as previously stated, this project has been contentious and the original decision on the EAW was overturned due to improper bias. It is important that the new RGU not have any bias or appearance of bias. Due to the lack of bias or appearance of bias the Minnesota Pollution Control Agency is the best suited RGU. This cannot be said of the MDNR.

23. Additionally, in their letter dated June 12, 2012, the project proposers stated:

Minnesota Rule 4410.0500, subpart 5 states that the government unit with the greatest overall authority over the project shall be named the RGU. As previously stated, Itasca County would be normally the government to unit with the greatest overall authority; however, they have removed themselves from the process and therefore, the EQB must determine the next government unit with the most authority. That government unit is the Minnesota Pollution Control Agency.

24. Minnesota Rule 4410.0500, Subp. 5 reads:

For any project where the RGU is not listed in part 4410.4300 or 4410.4400 or which falls into more than one category in part 4410.4300 or 4410.4400, or for which the RGU is in question, the RGU shall be determined as follows:

A. When a single governmental unit proposes to carry out or has sole jurisdiction to approve a project, it shall be the RGU.

B. When two or more governmental units propose to carry out or have jurisdiction to approve the project, the RGU shall be the governmental unit with the greatest responsibility for supervising or approving the project as a whole. Where it is not clear which governmental unit has the greatest responsibility for supervising or approving the project or where there is a dispute about which governmental unit has the greatest responsibility for supervising or approving the project, the governmental units shall either:

(1) by agreement, designate which unit shall be the RGU within five days of receipt of the completed data portion of the EAW; or

(2) submit the question to the EQB chairperson, who shall within five days of receipt of the completed data portions of the EAW designate the RGU based on consideration of which governmental unit has the greatest responsibility for supervising or approving the project or has expertise that is relevant for the environmental review.

Minn.R. 4410.0500, Subp. 5 (2011).

25. The EQB finds that Minn.R. 4410.0500, Subp. 5 provides a process for determining an RGU for any project “for which the RGU is in question.”
26. The EQB finds that, according to the EAW for the Living Word Bible Camp issued December 2009, on page 3, permits and approvals are required from Itasca County and six other local, state, or federal agencies; therefore, there is no “single governmental unit” that “proposes to carry out or has sole jurisdiction to approve the project”; therefore, the standard for determining the RGU in Minn.R. 4410.0500, Subp. 5, paragraph A. does not apply, and the EQB now considers standard for determining the RGU in Minn.R. 4410.0500, Subp. 5, paragraph B.
27. The EQB finds that where two or more governmental units propose to carry out or have jurisdiction to approve the project, the first test for determining an RGU in Minn.R. 4410.0500, Subp. 5, paragraph B. is that “the RGU shall be the governmental unit with the greatest responsibility for supervising or approving the project as a whole.”

28. The EQB finds that proposed project will likely need a permit from MPCA and MDNR.
29. The EQB also finds: that, according to the EAW for the Living Word Bible Camp issued December 2009, page 3, the project requires a conditional use permit, a preliminary planned unit development approval, a shoreland alteration permit, and subsurface treatment permit from Itasca County; that the conditional use permit preliminary planned unit development approval, and shoreland alteration permit are local land-use approvals.
30. The EQB also finds these multiple land use approvals constitute “the greatest responsibility for supervising or approving the project as a whole,” and therefore that Itasca County has “the greatest responsibility for supervising or approving the project as a whole” and shall be designated as RGU.
31. The EQB finds that its careful review of Minn. R. 4410.0500, Subp. 5 did not find actual or perceived bias in the EAW process, or the intent of the RGU to remove itself from the EAW process, to be standards for determination of an RGU.
32. Minn. R. 4410.0500, Subp. 6 reads:
- Notwithstanding subparts 1 to 5, the EQB may designate, within five days of receipt of the completed data portions of the EAW, a different RGU for the project if the EQB determines the designee has greater expertise in analyzing the potential impacts of the project.
- Minn.R. 4410.0500, Subp. 6 (2011).
33. The EQB finds the Minnesota Court of Appeals remanded the matter to Itasca County to repeat the EAW process, and therefore, a new EAW must be prepared.
34. The EQB further finds, because the new EAW has not yet been started, no completed data portion of the new EAW has yet been received by an RGU, or EQB.
35. The EQB finds that in its history of applying Minn. R. 4410.0500, Subp. 6, in every known instance, no EAW data submittal had been made.
36. The EQB finds that, to designate a different RGU than Itasca County, under Minn. R. 4410.0500, Subp. 6, the EQB must determine that the designee has greater expertise in analyzing the potential impacts of the project.
37. The EQB finds that its careful review of Minn. R. 4410.0500, Subp. 6 did not find actual or perceived bias in the EAW process, or the intent of the RGU to remove itself from the EAW process, to be standards for designation of an RGU.

38. The EQB finds the mandatory category that most closely matches the proposed development is “resorts, campgrounds, and RV parks in shorelands.” (Minn. R. 4410.4300, Subp. 20a.)
39. The EQB finds the 1982 Statement of Need and Reasonableness (SONAR) for the “recreational development” mandatory category, the predecessor for the “campgrounds and RV parks” (Minn. R. 4410.4300, Subp. 20) and “resorts, campgrounds, and RV parks in shorelands” mandatory categories, makes clear that the local government is presumed to have the greatest expertise in land use. Like the “resorts, campgrounds, and RV parks in shorelands” mandatory category, the “recreational development” mandatory category designates the local government as the RGU. The SONAR states:
- This category area is proposed because recreational developments are typically proposed adjacent to areas with significant natural resources. Such development may significantly increase human activity in sensitive areas. These developments often are very controversial locally and may have significant impacts on local land use....
- ....Projects of this nature may be proposed to facilitate hunting, snowmobiling, hiking, horseback riding, bike riding, etc. These activities may have significant impacts on local land use.
40. The EQB finds Itasca the County has greater expertise in local land use and on the particular facts, history, and circumstances than the other potential designees, the MPCA or the MDNR.

Based on the foregoing Findings of Fact, the Minnesota Environmental Quality Board makes the following:

### **CONCLUSIONS OF LAW**

1. Any of the foregoing Findings of Fact more properly designated as Conclusions of Law are hereby adopted as such.
2. The Environmental Quality Board has jurisdiction over the subject matter of this proceeding pursuant to Minnesota Statutes chapter 116D and Minnesota Rules 4410.0500, Subparts 5 and 6.
3. Since the Minnesota Court of Appeals remanded the matter to Itasca County to repeat the EAW process, a new EAW must be prepared.
4. The multiple requests for EQB to decide the question whether to designate a different RGU for the proposed project were properly brought to the EQB Board.

5. The EQB concludes Itasca County has “the greatest responsibility for supervising or approving the project as a whole,” and shall be designated as RGU.
6. The EQB concludes, based upon its examination of other possible RGUs to designate, none has greater expertise in analyzing the potential impacts of the proposed project, than Itasca County.
7. The EQB concludes, based upon EQB’s consideration of Minn. R. 4410.4300, Subp. 20a and its SONAR and EQB’s application of Minn. R. 4410.0500, that Itasca County is the appropriate RGU for the proposed project.

Based on the Findings of Fact, Conclusions and the entire record of this proceeding, the Minnesota Environmental Quality Board hereby makes the following:

### **ORDER**

The EQB hereby denies the requests to designate a different responsible governmental unit for preparation of an Environmental Assessment Worksheet for the proposed project, a recreational development in shoreland (Living Word Bible Camp).

Approved and adopted this 20th day of February, 2013.

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David J. Frederickson, Chair  
Minnesota Environmental Quality Board





**SAMPLE**

**RESOLUTION OF THE**

**MINNESOTA ENVIRONMENTAL QUALITY BOARD**

Decision Regarding the Possible Designation of Different Responsible Governmental  
Unit for Preparation of an Environmental Assessment Worksheet  
for Proposed Recreational Development in Shoreland (Living Word Bible Camp)

BE IT RESOLVED, that the Minnesota Environmental Quality Board denies requests for designating a new responsible governmental unit (RGU) for the environmental review of the proposed recreational development in shoreland (Living Word Bible Camp) in Itasca County, Minnesota; and

BE IT FURTHER RESOLVED, that David J. Frederickson, Chair of the Board, is authorized to sign Findings of Fact, Conclusions and Order.



**4410.0500 RGU SELECTION PROCEDURES.**

Subpart 1. **RGU for mandatory categories.** For any project listed in part 4410.4300 or 4410.4400, the governmental unit specified in those rules shall be the RGU unless the project will be carried out by a state agency, in which case that state agency shall be the RGU. For any project listed in both parts 4410.4300 and 4410.4400, the RGU shall be the unit specified in part 4410.4400. For any project listed in two or more subparts of part 4410.4300 or two or more subparts of part 4410.4400, the RGU shall be determined as specified in subpart 5.

Subp. 2. **RGU for discretionary EAW's.** If a governmental unit orders an EAW pursuant to part 4410.1000, subpart 3, item A, that governmental unit shall be designated as the RGU.

Subp. 3. **RGU for petition EAW's.** If an EAW is ordered in response to a petition, the RGU that was designated by the EQB to act on the petition shall be responsible for the preparation of the EAW. The EQB chair or designee shall determine an RGU to act on the petition as follows:

A. if a state agency proposes to carry out the project, it shall be the RGU;

B. for any project of a type for which a mandatory category is listed in part 4410.4300, the RGU shall be the governmental unit specified by the mandatory category for projects of that type, unless the project will be carried out by a state agency; or

C. for any project of a type for which there is no mandatory category listed in part 4410.4300 and which will not be carried out by a state agency, the RGU shall be selected in accordance with subpart 5.

In applying items A, B, and C, the EQB chair or designee shall not designate as the RGU any governmental unit which has already made its final decisions to grant all permits or approvals required from it to construct the project. If as a result, the RGU cannot be designated under item A, B, or C, the RGU shall be designated pursuant to subpart 5, except that no completed data portions of an EAW shall be required for the determination.

Subp. 4. **RGU for EAW by order of EQB.** If the QB orders an EAW pursuant to part 4410.1000, subpart 3, item C, the EQB shall, at the same time, designate the RGU for that EAW.

Subp. 5. **RGU selection generally.** For any project where the RGU is not listed in part 4410.4300 or 4410.4400 or which falls into more than one category in part 4410.4300 or 4410.4400, or for which the RGU is in question, the RGU shall be determined as follows:

A. When a single governmental unit proposes to carry out or has sole jurisdiction to approve a project, it shall be the RGU.

B. When two or more governmental units propose to carry out or have jurisdiction to approve the project, the RGU shall be the governmental unit with the greatest responsibility for supervising or approving the project as a whole. Where it is not clear which governmental unit has the greatest responsibility for supervising or approving the project or where there is a dispute about which governmental unit has the greatest responsibility for supervising or approving the project, the governmental units shall either:

(1) by agreement, designate which unit shall be the RGU within five days of receipt of the completed data portion of the EAW; or

(2) submit the question to the EQB chairperson, who shall within five days of receipt of the completed data portions of the EAW designate the RGU based on a consideration of which governmental unit has the greatest responsibility for supervising or approving the project or has expertise that is relevant for the environmental review.

Subp. 6. **Exception.** Notwithstanding subparts 1 to 5, the EQB may designate, within five days of receipt of the completed data portions of the EAW, a different RGU for the project if the EQB determines the designee has greater expertise in analyzing the potential impacts of the project.

**Statutory Authority:** *MS s 116D.04; 116D.045*

**History:** *11 SR 714; 21 SR 1458*

**Posted:** *November 30, 2009*

## CHAPTER 473H

### METROPOLITAN AGRICULTURAL PRESERVES

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#### 473H.01 CITATION; POLICY; PURPOSE.

Subdivision 1. **Citation.** Sections 473H.02 to 473H.17 may be cited as the "Metropolitan Agricultural Preserves Act."

Subd. 2. **Policy; purpose.** It is the policy of the state to encourage the use and improvement of its agricultural lands for the production of food and other agricultural products. It is the purpose of sections 473H.02 to 473H.17 to provide an orderly means by which lands in the metropolitan area designated for long-term agricultural use through the local and regional planning processes will be taxed in an equitable manner reflecting the long-term singular use of the property, protected from unreasonably restrictive local and state regulation of normal farm practices, protected from indiscriminate and disruptive taking of farmlands through eminent domain actions, protected from the imposition of unnecessary special assessments, and given such additional protection and benefits as are needed to maintain viable productive farm operations in the metropolitan area.

**History:** 1980 c 566 s 1

#### 473H.02 DEFINITIONS.

Subdivision 1. **Terms.** For purposes of sections 473H.02 to 473H.17 the terms defined in this section shall have the meanings given them.

Subd. 2. **Agricultural preserve or preserve.** "Agricultural preserve" or "preserve" means a land area created and restricted according to section 473H.05 to remain in agricultural use.

Subd. 3. **Agricultural use.** "Agricultural use" means the production for sale of livestock, dairy animals, dairy products, poultry or poultry products, fur-bearing animals, horticultural or nursery stock, fruit, vegetables, forage, grains, or bees and apiary products. Wetlands, pasture and woodlands accompanying land in agricultural use shall be deemed to be in agricultural use.

Subd. 4. **Authority.** "Authority" means the unit of government exercising planning and zoning authority for the land specified in an application as provided under section 473H.05 and pursuant to sections 394.21 to 394.37, 462.351 to 462.364, or 366.10 to 366.19. Where both a county and a township have adopted zoning regulations, the authority shall be the unit of government designated to prepare a comprehensive plan pursuant to section 473.861, subdivision 2.

Subd. 5. **Certified long-term agricultural land.** "Certified long-term agricultural land" means land certified pursuant to section 473H.04 as eligible for designation as agricultural preserves.

Subd. 6. **Covenant.** "Covenant" means a restrictive covenant initiated by the owner and contained in the application provided for in section 473H.05 whereby the owner places the limitations on specified land and receives the protections and benefits contained in sections 473H.02 to 473H.17.

Subd. 7. **Long-term agricultural land.** "Long-term agricultural land" means land in the metropolitan area designated for agricultural use in local or county comprehensive plans adopted and reviewed pursuant to sections 473.175, and 473.851 to 473.871, and which has been zoned specifically for agricultural use permitting a maximum residential density of not more than one unit per quarter/quarter.

Subd. 8. **Metropolitan area.** "Metropolitan area" has the meaning given it in section 473.121, subdivision 2.

Subd. 9. **Owner.** "Owner" means a resident of the United States owning land specified in an application pursuant to section 473H.05, and includes an individual, legal guardian or family farm corporation as defined in section 500.24, having a joint or common interest in the land. Where land is subject to a contract for deed, owner means the vendor in agreement with the vendee.

Subd. 10. **Quarter/quarter.** "Quarter/quarter" means one quarter of one quarter of any section in the rectangular land survey system.

Subd. 11. [Repealed, 1999 c 11 art 1 s 72]

**History:** 1980 c 566 s 2; 1982 c 523 art 32 s 1,2; 1999 c 11 art 1 s 8

#### **473H.03 REQUIRED SIZE OF PARCEL; EXCEPTIONS.**

Subdivision 1. **40 acres or more.** Long-term agricultural land comprising 40 or more acres shall be eligible for designation as an agricultural preserve.

Subd. 2. **If noncontiguous.** Noncontiguous parcels may be included to achieve the minimum acreage requirement in subdivision 1, provided that each parcel is at least ten acres in size and provided that all separate parcels are farmed together as a unit.

Subd. 3. **35-acre exception.** The minimum acreage requirement in subdivision 1 may be reduced to 35 acres provided the land is a single quarter/quarter parcel and the amount less than 40 acres is due to a public road right-of-way or a perturbation in the rectangular survey system resulting in a quarter/quarter of less than 40 acres.

Subd. 4. **20-acre exception.** Contiguous long-term agricultural land comprising not less than 20 acres and surrounded by eligible land on not less than two sides shall be eligible for designation as an agricultural preserve provided the authority by resolution determines that: (i) the land area predominantly comprises Class I, II, III, or irrigated Class IV land according to the Land Capability Classification Systems of the Soil Conservation Service and the county soil survey; (ii) the land area is considered by the authority to be an essential part of the agricultural region; and (iii) the parcel was a parcel of record prior to January 1, 1980, or the land was an agricultural preserve prior to becoming a separate parcel of at least 20 acres.

Subd. 5. **Two or more authorities.** Contiguous long-term agricultural land meeting the total acreage requirements of this section but located in two or more authorities so that the

minimum acreage requirement is not met in one or more of the authorities shall be eligible by joint resolution of the affected authorities.

Subd. 6. **Owner's adjoining preserve parcel.** Contiguous long-term agricultural land not meeting the total acreage requirements of this section but under the same ownership as an agricultural preserve adjoining it on at least one side shall be eligible for designation as an agricultural preserve.

**History:** 1980 c 566 s 3; 1989 c 313 s 9

#### **473H.04 AUTHORITY MUST CERTIFY ELIGIBLE PRESERVE LANDS.**

Subdivision 1. **With maps; published notice.** Each authority in the metropolitan area having land classified agricultural pursuant to section 273.13 shall certify by resolution using appropriate maps which lands, if any, are eligible for designation as agricultural preserves. Maps shall be in sufficient detail to identify eligible lands by property boundaries. At least two weeks before the resolution is to be adopted, the authority shall publish notice of its intended action in a newspaper having a general circulation within the area of jurisdiction of the authority. No additional lands shall qualify for designation as agricultural preserves until the authority certifies qualification.

Subd. 2. **When eligibility ends.** Land shall cease to be eligible for designation as an agricultural preserve when the comprehensive plan and zoning for the land have been amended so that the land is no longer planned for long-term agricultural use and is no longer zoned for long-term agricultural use, evidenced by a maximum residential density permitting more than one unit per 40 acres. When changes have been made, the authority shall certify by resolution and appropriate maps which lands are no longer eligible. At least two weeks before the resolution is to be adopted, the authority shall publish a notice of its intended action in a newspaper having a general circulation within the area of jurisdiction of the authority.

Subd. 3. **Maps to Met Council.** The authority shall provide the Metropolitan Council with suitable maps showing any lands certified eligible pursuant to subdivision 1 or decertified pursuant to subdivision 2. The Metropolitan Council shall maintain maps of the metropolitan area showing all certified long-term agricultural lands.

**History:** 1980 c 566 s 4; 1982 c 523 art 32 s 3,4

#### **473H.05 APPLICATION; COVENANT AGREEMENT.**

Subdivision 1. **Before June 1 for next year's taxes.** An owner or owners of certified long-term agricultural land may apply to the authority with jurisdiction over the land on forms provided by the commissioner of agriculture for the creation of an agricultural preserve at any time. Land for which application is received prior to June 1 of any year shall be assessed pursuant to section 473H.10 for taxes payable in the following year. Land for which application is received on or after June 1 of any year shall be assessed pursuant to section 473H.10 in the following year. The application shall be executed and acknowledged in the manner required by law to execute and acknowledge a deed and shall contain at least the following information and such other information as the commissioner deems necessary:

(a) Legal description of the area proposed to be designated and parcel identification numbers if so designated by the county auditor and the certificate of title number if the land is registered;

(b) Name and address of owner;

(c) An affidavit by the authority evidencing that the land is certified long-term agricultural land at the date of application;

(d) A statement by the owner covenanting that the land shall be kept in agricultural use, and shall be used in accordance with the provisions of sections 473H.02 to 473H.17 which exist on the date of application and providing that the restrictive covenant shall be binding on the owner or the owner's successor or assignee, and shall run with the land.

Subd. 2. **May be fee.** The authority may require an application fee, not to exceed \$50, to defray administrative costs.

Subd. 3. [Repealed, 1999 c 11 art 1 s 72]

Subd. 4. **Reenrolling.** If an owner's property was initially granted agricultural preserve status under subdivision 1 but the owner filed an agricultural preserve termination notice on that property, the owner may reenroll the property in the program as provided in this subdivision. In lieu of the requirements in subdivision 1, the county may allow a property owner to reenroll by completing a one page form or affidavit, as prepared by the county. The county may require whatever information is deemed necessary, except that approval by the city or township, in which the property is located, shall be required on the form or affidavit.

The county may charge the property owner a reenrollment fee, not to exceed \$10, to defray any administrative cost.

Reenrolling property under this subdivision shall be allowed only if the same property owner or owners wish to reenroll the same property under the same conditions as was originally approved under subdivision 1.

**History:** 1980 c 566 s 5; 1982 c 523 art 32 s 5,6; 1986 c 444; 1994 c 587 art 5 s 24; 1999 c 11 art 1 s 9; 2010 c 389 art 1 s 24

#### **473H.06 NOTIFICATION.**

Subdivision 1. **Application.** Upon receipt of an application, the authority shall determine if all material required in section 473H.05 has been submitted and, if so, shall determine that the application is complete. When used in this chapter, the term "date of application" means the date the application is determined complete by the authority. Within five days of the date of application, the authority shall forward the completed and signed application to the county recorder, and copies to the county auditor, the county assessor, the Metropolitan Council, and the county soil and water conservation district.

Subd. 2. **Recording; memorialization.** The county recorder shall record the application containing the restrictive covenant and return it to the applicant. If the land is registered, the registrar of titles shall memorialize the application containing the restrictive covenant upon the certificate of title. The authority shall be notified by the recorder or registrar of titles that the application has been recorded or memorialized.

Subd. 3. **Taxes.** The county auditor, for taxes payable in the following year and thereafter for the duration of the preserve, shall determine local tax rates, assessments and taxes involving the preserve according to the provisions of section 473H.10.

Subd. 4. **Validation, assessment.** The county assessor, for taxes payable in the following calendar year and thereafter for the duration of the preserve, shall value and assess the agricultural preserve according to section 473H.10.



Subd. 5. **Maps; reports.** The Metropolitan Council shall maintain agricultural preserve maps, illustrating (a) certified long-term agricultural lands; and (b) lands covenanted as agricultural preserves. The council shall make yearly reports to the Department of Agriculture and such other agencies as the council deems appropriate.

Subd. 6. **Monitoring.** County auditors shall maintain records of the taxes assessed and paid on agricultural preserves in a manner prescribed by the commissioner of revenue for the orderly monitoring of the program.

Subd. 7. **Conservation problem statements.** The county soil and water conservation district may prepare an advisory statement of existing and potential conservation problems for the agricultural preserve land. The statement shall be forwarded to the owner of record and a copy of the statement shall be forwarded to the authority.

**History:** 1980 c 566 s 6; 1981 c 356 s 242,248; 1982 c 523 art 32 s 7-9; 1983 c 289 s 115 subd 1; 1987 c 312 art 1 s 26 subd 2; 1988 c 719 art 5 s 84; 1Sp1989 c 1 art 2 s 11; 1993 c 163 art 1 s 33; 1999 c 11 art 1 s 10,11

#### **473H.07 COMMENCEMENT OF PRESERVE.**

A land area shall be deemed an agricultural preserve and subject to all the benefits and restrictions of sections 473H.02 to 473H.17 commencing 30 days from the date of application.

**History:** 1980 c 566 s 7

#### **473H.08 DURATION.**

Subdivision 1. **Till expiration started.** Agricultural preserves shall continue until either the landowner or the authority initiates expiration as provided in this section.

Subd. 2. **Expiration by landowner.** A landowner may initiate expiration by notifying the authority on a form provided by the commissioner of agriculture. The notice shall describe the property for which expiration is desired and shall state the date of expiration which shall be at least eight years from the date of notice. The notice and expiration may be rescinded by the owner at any time during the first two years following notice.

Subd. 3. **Expiration by authority.** The authority may initiate expiration by notifying the landowner by registered letter on a form provided by the commissioner of agriculture, provided that before notification (i) the comprehensive plan and the zoning for the land have been officially amended so that the land is no longer planned for long-term agriculture and is no longer zoned for long-term agriculture, evidenced by a maximum residential density permitting more than one unit per quarter/quarter, and (ii) the authority has certified such changes pursuant to section 473H.04, subdivision 2. The notice shall describe the property for which expiration is desired and shall state the date of expiration which shall be at least eight years from the date of notice.

Subd. 4. **Notice to others.** Upon receipt of the notice provided in subdivision 2, or upon notice served by the authority as provided in subdivision 3, the authority shall forward the original notice to the county recorder for recording, or to the registrar of titles if the land is registered, and shall notify the county auditor, county assessor, the Metropolitan Council, and the county soil and water conservation district of the date of expiration. Designation as an agricultural preserve and all benefits and limitations accruing through sections 473H.02 to 473H.17 for the preserve shall cease on the date of expiration. The restrictive covenant contained in the application shall terminate on the date of expiration.

**History:** 1980 c 566 s 8; 1982 c 523 art 32 s 10; 1999 c 11 art 1 s 12

**473H.09 EARLY TERMINATION.**

Termination of an agricultural preserve earlier than a date derived through application of section 473H.08 may be permitted only in the event of a public emergency upon petition from the owner or authority to the governor. The determination of a public emergency shall be by the governor through executive order pursuant to sections 4.035 and 12.01 to 12.46. The executive order shall identify the preserve, the reasons requiring the action and the date of termination.

**History:** 1980 c 566 s 9

**473H.10 AD VALOREM PROPERTY TAXES.**

Subdivision 1. **Valuation, assessment.** Real property within an agricultural preserve shall be valued and assessed pursuant to chapter 273, except as provided in this section.

Subd. 2. **No nonagricultural factors.** All land classified agricultural and in agricultural use, exclusive of buildings, shall be valued solely with reference to its appropriate agricultural classification and value, notwithstanding sections 272.03, subdivision 8, and 273.11. In determining the value for ad valorem tax purposes the assessor shall not consider any added values resulting from nonagricultural factors.

Subd. 3. **Computation of tax; state reimbursement.** (a) After having determined the market value of all land valued according to subdivision 2, the assessor shall compute the net tax capacity of those properties by applying the appropriate class rates. When computing the rate of tax pursuant to section 275.08, the county auditor shall include the net tax capacity of land as provided in this paragraph.

(b) The county auditor shall compute the tax on lands valued according to subdivision 2 and nonresidential buildings by multiplying the net tax capacity times the total local tax rate for all purposes as provided in paragraph (a).

(c) The county auditor shall then compute the tax on lands valued according to subdivision 2 and nonresidential buildings by multiplying the net tax capacity times the total local tax rate for all purposes as provided in paragraph (a), subtracting \$1.50 per acre of land in the preserve.

(d) The county auditor shall then compute the maximum ad valorem property tax on lands valued according to subdivision 2 and nonresidential buildings by multiplying the net tax capacity times 105 percent of the previous year's statewide average local tax rate levied on property located within townships for all purposes.

(e) The tax due and payable by the owner of preserve land valued according to subdivision 2 and nonresidential buildings will be the amount determined in paragraph (c) or (d), whichever is less. The state shall reimburse the taxing jurisdictions for the amount of the difference between the net tax determined under this paragraph and the gross tax in paragraph (b). Residential buildings shall continue to be valued and classified according to the provisions of sections 273.11 and 273.13, as they would be in the absence of this section, and the tax on those buildings shall not be subject to the limitation contained in this paragraph.

The county may transfer money from the county conservation account created in section 40A.152 to the county revenue fund to reimburse the fund for the tax lost as a result of this subdivision or to pay taxing jurisdictions within the county for the tax lost. The county auditor shall certify to the commissioner of revenue on or before June 1 the total amount of tax lost to the county and taxing jurisdictions located within the county as a result of this subdivision and the extent that the tax lost exceeds funds available in the county conservation account. Payment

shall be made by the state on December 26 to each of the affected taxing jurisdictions, other than school districts, in the same proportion that the ad valorem tax is distributed if the county conservation account is insufficient to make the reimbursement. There is annually appropriated from the Minnesota conservation fund under section 40A.151 to the commissioner of revenue an amount sufficient to make the reimbursement provided in this subdivision. If the amount available in the Minnesota conservation fund is insufficient, the balance that is needed is appropriated from the general fund.

**History:** 1980 c 566 s 10; 1984 c 593 s 41; 1985 c 300 s 26; 1986 c 398 art 28 s 4; 1986 c 444; 1987 c 396 art 7 s 4; 1988 c 719 art 5 s 84; 1989 c 329 art 13 s 20; 1Sp1989 c 1 art 2 s 11; art 9 s 78; 1990 c 604 art 3 s 42; 1992 c 511 art 2 s 40; 1993 c 375 art 3 s 44

#### **473H.11 LIMITATION ON CERTAIN PUBLIC PROJECTS.**

Notwithstanding chapter 429, construction projects for public sanitary sewer systems and public water systems benefiting land or buildings in agricultural preserves shall be prohibited. New connections between land or buildings in agricultural preserves and sanitary sewers or water systems shall be prohibited. Public sanitary sewer systems, public storm water sewer systems, public water systems, public roads, and other public improvements built on, adjacent to, or in the vicinity of agricultural preserves after August 1, 1993, are deemed of no benefit to the land and buildings in agricultural preserves.

For purposes of this section, "public storm water sewer systems" means any wholly or partially piped system which is owned, operated, and maintained by the authority, that is designed to carry storm water runoff, surface water, or other drainage primarily for the benefit of land which is not in agricultural preserves.

**History:** 1980 c 566 s 11; 1993 c 141 s 1

#### **473H.12 PROTECTION FOR NORMAL FARM PRACTICES.**

Local governments and counties shall be prohibited from enacting or enforcing ordinances or regulations within an agricultural preserve which would, as adopted or applied, unreasonably restrict or regulate normal farm structures or farm practices in contravention of the purpose of sections 473H.02 to 473H.17 unless the restriction or regulation bears a direct relationship to an immediate and substantial threat to the public health and safety. This section shall apply to the operation of farm vehicles and machinery in the planting, maintenance and harvesting of crops and in the care and feeding of farm animals, the type of farming, and the design of farm structures, exclusive of residences.

**History:** 1980 c 566 s 12; 1993 c 141 s 2

#### **473H.13 [Repealed, 1982 c 512 s 17]**

#### **473H.14 ANNEXATION PROCEEDINGS.**

Agricultural preserve land within a township shall not be annexed to a municipality pursuant to chapter 414, without a specific finding by the chief administrative law judge of the state Office of Administrative Hearings that either (a) the expiration period as provided for in section 473H.08 has begun; (b) the township due to size, tax base, population or other relevant factors would not be able to provide normal governmental functions and services; or (c) the agricultural preserve would be completely surrounded by lands within a municipality.

This section shall not apply to annexation agreements approved under proceedings authorized by chapter 414 prior to creation of the preserve.

**History:** 1980 c 566 s 14; 1982 c 523 art 32 s 11; 2003 c 2 art 5 s 13; 2008 c 196 art 2 s 11

#### **473H.15 EMINENT DOMAIN ACTIONS.**

Subdivision 1. **Follow procedures here.** Any agency of the state, any public benefit corporation, any local, county or regional unit of government, or any other entity possessing powers of eminent domain under chapter 117, shall follow the procedures contained in this section before (1) acquiring any land or easement having a gross area over ten acres in size within agricultural preserves; or (2) advancing a grant, loan, interest subsidy or other funds for the construction of dwellings, commercial or industrial facilities, or water or sewer facilities that could be used to serve nonfarm structures within agricultural preserves.

Subd. 2. **Notice of intent to EQB.** At least 60 days prior to an action described in subdivision 1, notice of intent shall be filed with the Environmental Quality Board containing information and in the manner and form required by the Environmental Quality Board. The notice of intent shall contain a report justifying the proposed action, including an evaluation of alternatives which would not require acquisition within agricultural preserves.

Subd. 3. **EQB review.** The Environmental Quality Board, in consultation with affected units of government, shall review the proposed action to determine the effect of the action on the preservation and enhancement of agriculture and agricultural resources within the preserves and the relationship to local and regional comprehensive plans.

Subd. 4. **EQB order.** If the Environmental Quality Board finds that the proposed action might have an unreasonable effect on an agricultural preserve or preserves, the Environmental Quality Board shall issue an order within the 60-day period for the party to desist from such action for an additional 60-day period.

Subd. 5. **Hearing.** During the additional 60-day period, the Environmental Quality Board shall hold a public hearing concerning the proposed action at a place within the affected preserve or otherwise easily accessible to the preserve upon notice in a newspaper having a general circulation within the area of the preserves, and individual notice, in writing, to the municipalities whose territory encompasses the preserves, the agency, corporation or government proposing to take the action, and any public agency having the power of review of or approval of the action, in a manner conducive to the wide dissemination of the findings to the public.

Subd. 6. **Joint review.** The review process required in this section may be conducted jointly with any other environmental impact review conducted by the Environmental Quality Board.

Subd. 7. **AG may sue to enjoin.** The Environmental Quality Board may request the attorney general to bring an action to enjoin any agency, corporation or government from violating the provisions of this section.

Subd. 8. **Does not apply to emergency.** This section shall not apply to an emergency project which is immediately necessary for the protection of life and property.

Subd. 9. **EQB suspension.** The Environmental Quality Board shall be empowered to suspend any eminent domain action for up to one year which it determines to be contrary to the purposes of sections 473H.02 to 473H.17 and for which it determines there are feasible and prudent alternatives which have less negative impact on the agricultural preserves.

Subd. 10. **When agricultural preserve ends.** The agricultural preserve designation and all benefits and limitations accruing through sections 473H.02 to 473H.17 for the preserve and the restrictive covenant for that portion of the preserve taken, shall cease on the date the final certificate is filed with the court administrator of district court in accordance with section 117.205.

**History:** 1980 c 566 s 15; 1982 c 523 art 32 s 12; 1Sp1986 c 3 art 1 s 82

#### **473H.16 CONSERVATION.**

Subdivision 1. **Unsound conservation practices described.** Land within an agricultural preserve shall be farmed and otherwise managed according to sound soil and water conservation management practices. Management practices which are not sound shall be any use of the land resulting in wind or water erosion in excess of the soil loss tolerance for each soil type as found in the United States Soil Conservation Service, Minnesota Technical Guide.

Subd. 2. **Enforcement.** The authority shall be responsible for enforcing this section. Upon receipt of a written complaint stating the conditions or land management practices which are believed to be in violation of this section, the authority shall consult with the county soil and water conservation district. The district shall determine the average soil loss in tons per acre per year for each field cited in the complaint according to the universal soil loss equation and the wind erosion equation, and shall return to the authority a report showing the average soil loss in tons per acre per year for each field and a list of alternative practices that the landowner can use to reduce the soil loss to the limit allowed in subdivision 1. After consultation, and if in the judgment of the authority the land is not being managed properly as required by this section, the authority shall adopt a resolution to this effect and shall seek corrective measures from the owner. At the request of the landowner, the district shall assist in the planning, design and application of the practices selected to reduce the soil loss to an acceptable level and shall give such landowners a high priority for providing technical and cost share assistance.

Subd. 3. **Civil penalty.** Any owner who fails to implement corrective measures to the satisfaction of the authority within one year of notice from the authority shall be subject to a civil penalty of not more than \$1,000. The authority may recover the penalty by a civil action in a court of competent jurisdiction.

Subd. 4. **Costs.** Costs incurred by the authority in the enforcement of this section may be charged to the property owner. Charges not timely paid may be placed on the tax rolls and collected as a special assessment against the property.

**History:** 1980 c 566 s 16; 1982 c 523 art 32 s 13

#### **473H.17 LAND USE.**

Subdivision 1. **For agricultural production.** Land within an agricultural preserve shall be maintained for agricultural production. The average maximum density of residential structures within an agricultural preserve shall not exceed one unit per 40 acres. The location of any new structure shall conform to locally applicable zoning regulations. Commercial and industrial uses shall not be permitted except as provided in subdivision 2 after the user is issued a permit by the authority. The authority shall be responsible for enforcing this section.

Subd. 1a. **Allowed commercial and industrial operations.** (a) Commercial and industrial operations are not allowed on land within an agricultural preserve except:

(1) small on-farm commercial or industrial operations normally associated with and important to farming in the agricultural preserve area;

(2) storage use of existing farm buildings that does not disrupt the integrity of the agricultural preserve; and

(3) small commercial use of existing farm buildings for trades not disruptive to the integrity of the agricultural preserve such as a carpentry shop, small scale mechanics shop, and similar activities that a farm operator might conduct.

(b) "Existing" in paragraph (a), clauses (2) and (3), means existing on August 1, 1987.

Subd. 2. **Density restriction after subdivision.** When a separate parcel is created for a residential structure, commercial, or industrial use permitted under subdivision 1, the parcel shall cease to be an agricultural preserve unless the eligibility requirements of section 473H.03 are met. However, the separate parcel shall remain under the maximum residential density restrictions in effect for the original preserve at the time it was placed into the preserve until the agricultural preserve status for the original parcel ends.

**History:** 1980 c 566 s 17; 1987 c 396 art 7 s 5-7

#### **473H.18 TRANSFER FROM AGRICULTURAL PROPERTY TAX LAW TREATMENT.**

When land which has been receiving the special agricultural valuation and tax deferment provided in section 273.111 becomes an agricultural preserve pursuant to sections 473H.02 to 473H.17, the recapture of deferred tax and special assessments, as provided in section 273.111, subdivisions 9 and 11, shall not be made. Special assessments deferred under section 273.111 shall continue to be deferred for the duration of the preserve. For purposes of this section, "deferred special assessments" shall include the total amount of deferred special assessments under section 273.111 on the property, including any portion of the deferred special assessments which have not yet been levied at the time the property transfers to the agricultural preserves program under this chapter. All special assessments so deferred shall be payable within 90 days of the date of expiration unless other terms are mutually agreed upon by the authority and the owner. In the event of early termination of a preserve or a portion of it under section 473H.09, all special assessments accruing to the terminated portion plus interest shall be payable within 90 days of the date of termination unless otherwise deferred or abated by executive order of the governor. In the event of a taking under section 473H.15 all special assessments accruing to the taken portion plus interest shall be payable within 90 days of the date the final certificate is filed with the court administrator of district court in accordance with section 117.205.

**History:** 1982 c 523 art 32 s 14; 1Sp1986 c 3 art 1 s 82; 1994 c 587 art 5 s 25