

No. A08-1264

~~OFFICE OF  
APPELLATE COURTS~~

~~SEP - 2 2008~~

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STATE OF MINNESOTA  
IN COURT OF APPEALS

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~~FILED~~

FRIENDS OF TWIN LAKES,

Appellant,

v.

CITY OF ROSEVILLE, MINNESOTA,

Respondent.

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BRIEF OF APPELLANT

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## INTRODUCTION

This case involves the efforts of appellant Friends of Twin Lakes to require respondent City of Roseville ("City") to conduct appropriate environmental review for a massive expansion on the main campus of Northwestern College ("College") through an application to amend the College's Planned Unit Development ("PUD") that may have the potential for significant adverse environmental impacts on Lake Johanna and Little Lake Johanna and the surrounding environment. This case also involves the City's deliberate disregard of state environmental laws and regulations in approving the College's amended PUD. These actions forced appellant to bring this action under Minnesota Environmental Policy Act ("MEPA"), Minn. Stat. §§ 116D.01, *et seq.*

Despite several comments regarding the incompleteness of environmental review of this project raised by state agencies, city council members, and numerous residents, the City refused to conduct proper environmental review. Instead, it approved the incomplete environmental assessment worksheet ("EAW") and issued a negative declaration for the need of an environmental impact statement ("EIS"), thus violating MEPA. The City also determined that it would simply deal with any further environmental issues surrounding the College expansion project during the PUD approval process and future agency oversight.

Ignoring MEPA's statutory requirement that the responsible governmental unit ("RGU") is obligated to ensure the completeness and accuracy of the EAW, the district court granted the City's motion for summary judgment and dismissed appellant's MEPA claim. Additionally, the district court ignored MEPA's express requirement that

environmental impacts must be examined *before* a project is approved, and disregarding clear authority from this Court prohibiting deferral of the analysis of environmental impacts to future permitting proceedings and agency oversight.

**STATEMENT OF LEGAL ISSUES**

- I. Whether Appellant provided evidence that is part of the administrative record the City utilized when making its decision as to whether an environmental impact statement was needed for the Northwestern College expansion plan.

**District Court Ruling:** The district court held that it would consider only the evidence that is part of the administrative record created during the proceedings in which the RGU considered the EAW, and not the submission of the 1986 PUD documents by appellant.

**Relevant Authorities:**

Trout Unlimited v. Minn. Dept. of Agriculture, 528 N.W.2d 903 (Minn. Ct. App. 1995)

Minn. Stat. § 14.60

Minn. Stat. § 14.68

- II. Whether the City's negative declaration that an EIS was needed violated MEPA because the EAW was incomplete and inaccurate.

**District Court Ruling:** The district court held that the College provided sufficient information concerning the gross floor space of the planned construction and expansion on the campus, and that the appellant did not provide evidence that the estimation was unreasonable. Additionally, the district court found that the City provided specific mitigation measures by providing deference to the City's expertise.

**Relevant Authorities:**

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

In re Block, 727 N.W.2d 166, 178 (Minn. Ct. App. 2007)

Minnesota Power & Light Co. v. Minn. Public Utilities Commission, 342 N.W.2d 324, 328 (Minn. 1983)

Reserve Mining Co. v. Herbst, 256 N.W.2d 808 (Minn. 1977)

- III. Whether the City violated MEPA when: (1) it deferred proper environmental review and mitigation to future permitting proceedings and agency oversight; and (2) whether the mitigation measures contained in the PUD Agreement were vague statements of good intentions.

**District Court Ruling:** The district court held that the City provided specific mitigation measures.

**Relevant Authorities:**

National Audubon Society v. Minn. Pollution Control Agency, 569 N.W.2d 211 (Minn. Ct. App. 1997)

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

**STATEMENT OF THE CASE**

Appellant filed this lawsuit August 22, 2007, challenging the City's failure to conduct proper environmental review for the Northwestern College expansion project. Respondent moved for summary judgment on the MEPA claim based on the administrative record compiled by the City. AA-172<sup>1</sup>.

In an order entered on May 30, 2008, the district court granted respondent's motion for summary judgment under MEPA. AA-176. The district court held that: (1) the review of the City's negative declaration is confined to the administrative record created during proceedings which the RGU considered the EAW and whether an EIS was

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<sup>1</sup> References to "AA-\_\_" are to Appellant's Appendix. All other references are to the administrative record compiled by the City and filed with the district court in connection with the respondent's motion for summary judgment.

required, and that it would not consider evidence that is outside of the record. AA-181; (2) because of the size and number of buildings being proposed by the College, sufficient information was supplied for the City to confirm the gross floor space estimate required in the EAW; and (3) the City's determination that the potential environmental impacts acknowledged by the EAW may be mitigated using the measures identified in the City's findings. AA-181-184.

Appellant filed its Notice of Appeal on July 28, 2008, seeking review of the district court's order under Minn. R. Civ. App. P. 103.3(a), granting respondent's motion for summary judgment. AA-188.

### **STATEMENT OF FACTS**

#### **I. Parties and Procedural Background**

This case is the result of the College's application to the City to amend its PUD to expand its main campus with the construction of seven new structures, additions to two buildings and the construction of a new parking facility.<sup>2</sup> The appellant, Friends of Twin Lakes, is a nonprofit corporation located in Roseville, Minnesota, and is comprised of residents concerned about the environment in and around Lake Johanna and Little Lake Johanna. A majority of its members are current residents of the neighborhood, and visit Lake Johanna and Little Lake Johanna on a regular basis to enjoy the wildlife, solitude, and recreational opportunities these amenities provide, which will be directly and adversely impacted by the City's actions that are the subject of this lawsuit.

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<sup>2</sup> Northwestern College owns approximately another 13 acres of property that is not contiguous with its main campus, which comprises roughly 94.64 acres. This lawsuit involves the 94.64 acres comprising the main campus. AA-178, fn 1.

Appellant understands that the projected increase in student enrollment will require the construction of new buildings and the additions to existing buildings. However, under Minnesota law, no proposed development may be approved without proper environmental review and appellant has filed this lawsuit to ensure the City undertakes such necessary and appropriate review.

## **II. MEPA And MEQB Rules Governing Environmental Review**

MEPA and the rules promulgated by the Minnesota Environmental Quality Board (“MEQB”) require RGUs to conduct an environmental review of proposed actions by governments, including governmental approvals of private projects, in the form of an EAW or EIS to analyze potential adverse environmental impacts and possible mitigation measures associated with the proposed project. See Minn. Stat. § 116D.04, subd. 2a. “MEPA’s purpose is ‘to force agencies to make their own impartial evaluation of environmental considerations before reaching their decisions.’” Iron Rangers for Responsible Ridge Action v. Iron Range Resources, 531 N.W.2d 874, 880 (Minn. Ct. App. 1995) (citing No Power Line, Inc. v. Minn. Environmental Quality Council, 262 N.W.2d 312, 327 (Minn.1977)). The RGU conducts the review to disclose information about environmental effects and ways to minimize and avoid them. See MEQB: Guide to Minnesota Environmental Rules, 1. The EAW is a brief document designed to set out the basic facts necessary to determine whether there is the potential for significant environmental impacts, and is intended to help determine if a proposed project will require an EIS. See Minn. Stat. § 116D.04, subd. 1a(c) (2008); Minn. R. 4410.1000, subp. 1 (2006). The EIS, on the other hand, is a much more detailed document use to

study all factors contributing to a significant impact on the environment. See Iron Rangers for Responsible Ridge Action, 531 N.W.2d at 880 (Minn. Ct. App. 1995) (comparing Minn. Stat. § 116D.04, subd. 1a(c) with § 116D.04, subd. 2a (1992)). The EIS provides information about the extent of the potential environmental impacts and how they may be avoided or minimized. See MEQB: Guide to Minnesota Environmental Review Rules, 4. The EIS also requires the RGU to consider alternatives, including the “no-build” alternative. Id.

### **III. Northwestern College’s Application for an Amendment to its Planned Unit Development**

In 1986, the City created a PUD for the College’s fourteen-year expansion on its campus as part of the “Master Planning” process initiated by the College. The City prepared an EAW for the PUD. Despite comments by reviewing agencies and concerned citizens that the EAW was incomplete, the City Council approved the EAW and no further environmental review was required. Following the approval, the College would apply for five-year extensions to its PUD. In August 2001, following the grant of another 5-year extension, the City informed the College that the PUD was complete and it would no longer grant extensions. If the College wished to further update its PUD, it must apply for an amendment to the existing 1986 PUD.

In 2003, the College created a new Master Plan, predicting the increase in enrollment which would require the construction of eight new structures and additions to several existing structures over the course of the next 12 to 20 years. In November 2006, the College submitted a request to the City of Roseville to amend its PUD. In early 2007,

following two public hearings, the Roseville Planning Commission recommended the City Council approve the PUD amendment subsequent to the completion of an EAW. In April 2007, the City determined it would be the RGU for the expansion project and on May 11, 2007 the College submitted its EAW to the City. The City received written public comments between May 21, 2007 and June 20, 2007, and during that time, written responses were prepared for the comments received.

On July 23, 2007, the City held a Council meeting to determine whether an EIS was needed. The City Council, after a 3-2 vote, issued a negative declaration, determining that the Northwestern College EAW met the required environmental review, and an EIS would not be needed. Subsequently, on October 8, 2007, the City approved the College's PUD application.<sup>3</sup>

### ARGUMENT

The district court's decision to grant respondent's motion for summary judgment is erroneous as a matter of law because it failed to recognize that the City violated its mandate under MEPA in three significant respects. First, the City violated MEPA because it failed to review its own 1986 PUD documents. Second, the City improperly allowed incomplete information to justify its decision to not require an EIS. Lastly, the City conducted improper environmental review because it impermissibly relied on the PUD Agreement and future oversight from regulatory agencies to mitigate environmental

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<sup>3</sup> The PUD Agreement was not under review by the district court. However, as will be discussed below, because the EAW was approved with the understanding that the PUD Agreement will contain mitigation measures, appellant challenges the mitigation measures provided in the PUD Agreement.

impacts. Despite this Court's clear direction that deferring environmental study to future permitting violates MEPA, the district court failed to even acknowledge this precedent.

**I. The District Court Erred When It Determined The Evidence Appellant Presented Was Outside The Administrative Record.**

**A. Standard of Review for MEPA Decisions**

This Court reviews the governmental body's EAW determination on the basis of whether it was unreasonable, arbitrary, or capricious, without according deference to the district court's review. Watab Tp. Citizen Alliance v. Benton County Bd. of Com'rs, 728 N.W.2d 82, 89 (Minn. Ct. App. 2007). A governmental agency's decision is arbitrary or capricious if (a) the agency relied on factors the legislature never intended it to consider, (b) it entirely failed to consider an important aspect of the problem, (c) it offered an explanation for the decision that runs counter to the evidence, or (d) the decision is so implausible that it could not be ascribed to a difference in view or the result of agency expertise (citations omitted).<sup>4</sup> In re Block, 727 N.W.2d 166, 178 (Minn. Ct. App. 2007) (quoting Pope County Mothers v. Minn. Pollution Control Agency, 594 N.W.2d 233, 236 (Minn. Ct. App. 1999)).

**B. The Administrative Record**

Generally, when reviewing agency action, this Court determines whether the agency has taken a "hard look" at the problems involved and has engaged in reasoned

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<sup>4</sup> Here, of course, unlike the Minnesota Pollution Control Agency or the Minnesota Department of Natural Resources, or other agencies with specialized expertise, the City has no expertise in specialized environmental issues such as soil and groundwater contamination and wildlife impacts. Accordingly, there is no basis for the Court to subordinate its judgment to the City and provide the same level of deference it would a state agency with expertise in the relevant areas.

decision making. Reserve Mining Co. v. Herbst, 256 N.W.2d 808, 825 (Minn. 1977). Under the Minnesota Administrative Procedure Act, this Court may affirm the decision of the agency or remand the case for further proceedings, or reverse or modify the decision if the decisions of the agency are unsupported by substantial evidence in view of the entire record as submitted or is arbitrary or capricious. In re Expulsion of N.Y.B., 750 N.W.2d 318, 323 (Minn. Ct. App. 2008) (citing Minn. Stat. § 14.69 (2006)). “Substantial evidence consists of: (1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than ‘some evidence’; (4) more than ‘any evidence’; and (5) evidence considered in its entirety.” Citizens Advocating Responsible Development v. Kandiyohi County Board of Commissioners, 713 N.W.2d 817, 832 (Minn. 2006) (citing Reserve Mining, 256 N.W.2d at 825.). “A responsible governmental unit’s decision on the need for an EIS must be based on ‘the environmental assessment worksheet and the comments received during the comment period.’” Trout Unlimited v. Minn. Dept. of Agriculture, 528 N.W.2d 903, 907 (Minn. Ct. App. 1995) (quoting Minn. Stat. § 116D.04, subd. 2a(b) (2006)). Nevertheless, this Court has determined that “documents” not only include what the agency reviewed, but also what was available and in the possession of the agency at the time of the review. Trout Unlimited, 528 N.W.2d 903, 908. The documents in dispute, the 1986 PUD for the College, are the City’s own documents and were available, to the City for the review of the EAW.

Alternatively, should the 1986 PUD documents themselves not be considered part of the administrative record, numerous references to this document were given to the City

during the EAW review process. For example, comments received from concerned citizens referred to the 1986 PUD and detailed how to obtain the document from the Metropolitan Council. AA-54. Additionally, references were made to the architectural drawings of the dormitory as the same drawings introduced in the 1986 PUD documents . AA-58. RUN also discusses several letters received from commenting agencies in 1986 that the EAW is incomplete. AA-60-61. Furthermore, during the July 23, 2007 City Council meeting, another concerned citizen stated that the College inserted the same designs for the dormitory and the Fieldhouse as in the 1986 documents. Appellant has more than met its burden in proving that the 1986 PUD documents were in the possession of the City during the EAW review process and therefore part of the administrative record.

**II. The District Court Erred in Upholding the City's MEPA Decision Because the City Must Provide Complete and Accurate Information When Conducting Environmental Review.**

**A. Gross Floor Space for Buildings Not Provided**

The Minnesota Environmental Policy Act ("MEPA") requires that an RGU consider a project's environmental consequences prior to taking action on a proposed project. CARD, 713 N.W.2d 817, 823 (Minn. 2006, citing Minn. Stat. § 116D.04, subds. 1a(d), 2a (2004)). The environmental review process is designed to avoid and minimize damage to environmental resources caused by public and private actions. To accomplish this, the process requires certain proposed projects to undergo special review procedures prior to obtaining approvals and permits. See MEQB: Guide to Environmental Review Rules, 1. The RGU assigned to conduct the review must use "a standardized public

process designed to disclose information about environmental effects and ways to minimize and avoid them.” *Id.* The two documents used in this process are the EAW and the EIS. *Id.* An EAW is a brief document designed to set out the basic facts necessary to determine whether there is the potential for significant environmental impacts. Minn. Stat. § 116D.04, subd. 1a(c) (2008); Minn. R. 4410.1000, subp. 1 (2006). The RGU must order an EIS to be prepared if, after reviewing the EAW and comments submitted by agencies and interested parties, it determines the project has the potential for significant environmental impacts. Minn. R. 4410.1700, subp. 1, 3 (2006).

As stated above, the agency decision will be reversed or modified if the decisions of the agency are unsupported by substantial evidence in view of the entire record as submitted or is arbitrary or capricious. The Minnesota Supreme Court has analyzed whether substantial evidence exists separately from the adequacy of the findings by the RGU. See Minnesota Power & Light Co. v. Minn. Public Utilities Commission, 342 N.W.2d 324, 328 (Minn. 1983) (citing People for Environmental Enlightenment and Responsibility v. Minn. Environmental Quality Council, 266 N.W.2d 858, 872 (Minn. 1978)). The substantial evidence test is not based solely on the quantity of evidentiary support for an administrative finding, but also whether the agency has adequately explained how it derived its conclusion and whether that conclusion is reasonable on the basis of the record. See Minnesota Power and Light, at 330 (citing Washington Public Interest Organization v. Public Service Commission, 393 A.2d 71, 77-78 (D.C. 1978)).

Despite the fact that four of the seven proposed buildings do not contain gross floor space (“gfs”) amounts, the district court held that, without evidence of an obvious

defect in the RGU's calculations, the EAW provided sufficient information for the City to base its negative declaration for the need of an EIS. AA-182. However, the MEQB rules state that the RGU is responsible for the completeness and accuracy of all information. Minn. R. 4410.1400 (2006). The MEQB has provided guidance documents for RGUs detailing the information required when preparing an EAW. See MEQB: EAW Guidelines: Preparing Environmental Worksheets. The EAW requires a *total* of the gfs for any project of a commercial, industrial or institutional nature. The EAW provides only an estimation of what the gfs of all seven buildings will total. Further, even if the data submittal appears complete and accurate, the RGU must exercise independent judgment about the information. See id., 2 (emphasis added). "[W]here the governing body has not taken a 'hard look' at the problems involved, this court should not defer to its decision." In re Block, at 180 (citing CARD, 713 N.W.2d 817, 838 (Minn. 2006)). Additionally, a governing body's decision is arbitrary and subject to reversal where it failed to consider an important aspect of the problem. Id. (citing Minnesota Center for Environmental Advocacy v. City of St. Paul Park, 711 N.W.2d 526, 534 (Minn. Ct. App. 2006)). "If the agency's decision represents its will, rather than its judgment, the decision is arbitrary and capricious." Pope County Mothers, 594 N.W.2d 233, 236 (Minn. Ct. App. 1999) (citing Trout Unlimited, at 907). The City's decision to approve the EAW when it contains incomplete information is arbitrary and capricious and not supported by substantial evidence.

## **B. Mandatory Threshold Levels**

The MEQB rules detail mandatory EIS categories if the project meets or exceeds certain threshold levels. For a second-class city, the threshold level for a mandatory EIS is if the project is in excess of 750,000 square feet.<sup>5</sup> Minn. R. 4410.4400 subp. 11(B) (2006). The actual calculations of gfs provided by the College account for only 92,000 gfs, yet the EAW expresses, and the City accepts the arbitrary amount of gfs to be 414,600. The City states, and the district court agrees, that, because this is a concept plan intended to be implemented over the course of the next 12 to 20 years, the information supplied by the College is sufficient. However, the environmental impacts will be different from an estimation standpoint to an actual gfs total given. For example, the planned dormitory lists 500 beds, 84 suites and three levels, nonetheless, no gfs is provided. The plans submitted are exactly the same as the plans the College submitted in its 1986 PUD, yet the 1986 plans account for 228 students. The environmental impacts of a building that will be at least twice the size as the plans submitted have not been analyzed by the City, and therefore the information provided is incomplete. Additionally, the College is planning an Academic General/Science Building *with square footage to be announced*. The plan for the Visitor/Alumni Center also states the square footage is to be announced. Lastly, the new plan for the Fieldhouse lists dimensions for the buildings, but again, no gfs is provided. There is no indication that the mandatory EIS threshold levels have been met, *but* there is clearly no indication that the mandatory EIS threshold

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<sup>5</sup> Roseville is classified as a second-class city, having more than 20,000 and not more than 100,000 inhabitants. Minn. Stat. § 410.01.

levels have *not* been met. Here, appellant has more than met its burden to require at least a revised EAW for the Northwestern College expansion to obtain complete and accurate information.

**III. The District Court Erred when it Concluded that the City Appropriately Relied on Future Mitigation Measures to be Determined in the PUD Agreement and Future Agency Oversight.**

Appellant is not challenging the 2007 PUD because, as the district court and respondent correctly state, the 2007 PUD was not part of the Complaint. AA-185-86. Appellant is challenging the reliance by the City on the PUD to specify mitigation measures when it approved the 2007 EAW. Additionally, appellant is challenging the reliance by the City on future permitting procedures to provide oversight.

The City's negative declaration that an EIS is not necessary should be reversed because the City justified its decision not to prepare an EIS for the Northwestern College expansion project on grounds it could deal with mitigation measures through the PUD Agreement and future regulatory oversight. Prior MEPA decisions by this Court and the Minnesota Supreme Court are crystal clear that a government body may not rely on future monitoring, study, or administrative oversight as a substitute for environmental review under MEPA. See CARD, 713 N.W.2d at 834-35; Trout Unlimited, 528 N.W.2d at 909; Pope County Mothers, 594 N.W.2d at 237-38. Despite this authority, the district court determined that the City provided specific mitigation measures.

In Trout Unlimited, the Commissioner of the Department of Agriculture noted concerns expressed by the DNR, MDH and MPCA that chemicals applied through an irrigation project could leach in to a creek. Id. at 908-09. Rather than requiring an EIS

based on this concern, however, the Commissioner ultimately concluded that monitoring and permit conditions could be used to deal with the problem at a later time. Id. at 909. In reversing the decision not to prepare an EIS, this Court unequivocally stated that the very purpose of environmental review is to determine the potential for significant impacts before they occur; to defer the issue to later proceedings is an “abandonment” of duty under MEPA. Id.

Similarly, in Pope County Mothers, although the MPCA expressed concern in the EAW regarding the emission of hydrogen sulfide gases from feedlot operations, it stated that it would rely on post-EIS modeling during the permitting process to predict the level of air emissions from the facility rather than conduct more environmental review. Pope County Mothers, 594 N.W.2d at 237. In reversing the MPCA’s decision, this Court stated that to determine the emissions had no potential for significant environmental effects “was premature and based on inadequate information” without modeling results obtained during the environmental review process. Id. at 238.

An RGU may reasonably consider mitigation measures as offsetting the potential for significant environmental effects under the MEQB Rules implementing MEPA only if those measures are specific, targeted, and *are certain to be able to mitigate* the environmental effects. CARD, 713 N.W.2d at 835 (emphasis added) (citing Minn. R. 4410.1700). MEPA requires that an RGU determine whether a given project has the potential for environmental effects *before* approving the project. CARD, 713 N.W.2d at 834 (emphasis added). An RGU must have some concrete idea as to *what* problems may

arise and how they may be specifically addressed by ongoing regulatory authority. Id. (emphasis added).

During the July 16, 2007 public hearings to consider the need for an EIS, the City Planner stated that mitigation measures were not needed as part of the EAW but would be part of the approved PUD Agreement. At the July 23, 2007 City Council meeting where Findings and Conclusions were presented to the Council, Finding 16 stated:

Several commenting parties asserted that the project would negatively impact surface waters by creating a risk of erosion during and after construction. This potential impact does not create a reasonable expectation of a significant environmental effect on surface water. Regulatory oversight under NPDES and RCWD permits will mitigate any potential environmental effects in this regard.

This is illustrative of the improper reliance on future regulatory controls when the City is required to have some idea of what impacts could occur before approval.

The 1986 PUD documents contain a letter from the Metropolitan Council (“Met Council”) stating, that although an EIS would not be necessary, the 1986 EAW was incomplete due to the lack of assessment of the impact of the development on the water quality of Lake Johanna and Little Lake Johanna. The Met Council continued with the concern that the City should better assess the potential for water quality degradation in the lakes and implement mitigative measures if necessary. The 2007 EAW contains the same statement: although an EIS is not required, the EAW is incomplete. Here, the Met Council, referencing the 1986 EAW and the lack of information in that document, again states that it is unable to determine impact to water quality of increased runoff due to development proposed in 1986, and no baseline water quality has been collected to date.

The EAW responses to comments from the Met Council on this subject first misstate the concerns of the Met Council by eliminating this specific concern, and then only state that the comment is acknowledged. However, the City states that there will be no significant environmental impacts to water quality. This is simply an inappropriate and inaccurate mitigation strategy.

The City based its July 23, 2007 decision on 37 Findings stating that the mitigation strategies will be addressed specifically as part of the PUD. However, in reviewing the PUD Agreement for implementation of these “mitigation measures”, it is unclear as to (1) what the environmental impact will be, and therefore (2) what mitigation plans the City intends to use to diminish any impact. For example, the wording of the PUD Agreement itself states that if the Plans submitted are not consistent with the terms of the PUD, the “terms” control. However, if the Plans that are submitted address something not in the terms of the PUD Agreement, then the Plans control. “An RGU may not rest its EIS determination decision on ‘mitigation’ that amounts to only ‘vague statements of good intentions,’” CARD, 713 N.W.2d at 834 (quoting National Audubon Society v. Minn. Pollution Control Agency, 569 N.W.2d 211, 217 (Minn. Ct. App. 1997)).

As the City has consistently stated, this expansion project will cover the next 12 to 20 years. If the College submits Plans not covered by this Agreement, the Plans will govern and any “mitigation” proposed in the PUD will not apply. Moreover, the language of the PUD is permissive in nature. For example, the PUD Agreement states that “[a] tree preservation plan shall accompany the grading plan for any phase. This tree

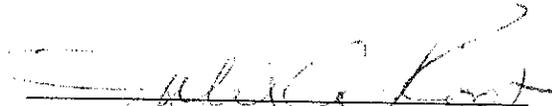
preservation plan shall identify all trees 8 inches in diameter or greater on the redevelopment property. A preservation plan shall be created and implemented that protects all trees determined to be preserved.” This was stated even after concerns were mentioned by both the Minnesota Department of Natural Resources and the U.S. Fish and Wildlife Service. Simply, this is not a proper mitigation measure as required by MEPA. The conclusory statements approved by the City are clearly not based on the substantial evidence required by MEPA. Here, appellant has more than met its burden showing that the City has not taken a “hard look” at the problems, and the decision by the district court should be reversed, and the City be required to conduct proper environmental review.

### **CONCLUSION**

For the reasons set forth above, appellant Friends of Twin Lakes respectfully requests that the Court: (1) reverse the district court’s order granting respondent City of Roseville’s motion for summary judgment; (2) direct the district court to issue an injunction ordering the City to prepare an accurate and complete EAW; (3) direct the district court to issue an injunction enjoining the City from granting any further approvals related to the College expansion project; and (4) direct the district court to invalidate all approvals for the College expansion project issued to date as in violation of MEPA and as arbitrary, capricious, and contrary to law.

Dated: August 27, 2008

By

  
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