

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Margaret Radke,

Complainant,

vs.

Dennis Walsh,

Respondent

**NOTICE OF DETERMINATION OF  
PRIMA FACIE VIOLATION  
AND  
NOTICE OF AND ORDER FOR  
PROBABLE CAUSE HEARING**

On October 3, 2016, Margaret Radke (Complainant) filed a Fair Campaign Practices complaint with the Office of Administrative Hearings alleging that Dennis Walsh (Respondent) violated Minn. Stat. §§ 211B.04 and 211B.06 (2016) by participating in the preparation or dissemination of false or misleading campaign material that lacked the required disclaimer.

Following a review of the Complaint and the document submitted in support, the undersigned administrative law judge has determined that the Complaint sets forth a prima facie violation of Minn. Stat. § 211B.04. For the reasons detailed in the memorandum below, the Complainant is permitted to proceed to a probable cause hearing on the section 211B.04 claim, but the alleged violation of Minn. Stat. § 211B.06 is dismissed.

**THEREFORE, IT IS HEREBY ORDERED AND NOTICE IS GIVEN** that this matter is scheduled for a probable cause hearing to be held by telephone before the undersigned Administrative Law Judge at **1:30 p.m. on Monday, October 10, 2016**. The hearing will be held by call-in telephone conference. At the appointed time, the parties are directed to:

- (a) Telephone **1-888-742-5095**
- (b) Enter the Conference Code: **454 161 2416#**

The probable cause hearing will be conducted pursuant to Minn. Stat. § 211B.34 (2016). Information about the probable cause proceedings and copies of state statutes may be found online at <http://mn.gov/oah> and [www.revisor.leg.state.mn.us](http://www.revisor.leg.state.mn.us).

At the probable cause hearing, all parties have the right to be represented by legal counsel or appear on their own behalf. In addition, the parties have the right to submit evidence, affidavits, documentation, and argument for consideration by the administrative law judge. By **10:00 a.m. on October 10, 2016**, the parties shall provide to the administrative law judge all evidence bearing on the case, with copies of the same items to the opposing party.

Any document filed with the Office of Administrative Hearings, or any documents that a party wishes to make part of the hearing record, may be filed in one of the following ways: (1) by **e-Filing** through the Office of Administrative Hearings' e-Filing system; (2) by **mail**; (3) by **facsimile** (if less than 50 pages total); or (4) by **personal delivery**. (See 2015 Minn. Laws. Ch. 63, § 7; Minn. R. 1400.5550, subp. 5 (2015)).

The e-Filing system is accessible at: <http://mn.gov/oah/forms-and-filing/efiling/>

The Office of Administrative Hearings' facsimile number is: (651) 539-0310.

At the conclusion of the probable cause hearing, the administrative law judge will either: (1) dismiss the complaint based on a determination that the complaint is frivolous, or that there is no probable cause to believe that the violation of law alleged in the complaint has occurred; or (2) determine that there is probable cause to believe that the violation of law alleged in the complaint has occurred and refer the case to the chief administrative law judge for the scheduling of an evidentiary hearing. Evidentiary hearings are conducted pursuant to Minn. Stat. § 211B.35 (2016).

If the administrative law judge dismisses the complaint, the complainant has the right to seek reconsideration of the decision on the record by the chief administrative law judge pursuant to Minn. Stat. § 211B.34, subd. 3.

Any party who needs an accommodation for a disability to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the administrative law judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at P.O. Box 64620, St. Paul, MN 55164-0620, or call 651-361-7900 (voice) or 651-361-7878 (TDD).

Dated: October 5, 2016

  
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JAMES E. LAFAVE  
Administrative Law Judge

## MEMORANDUM

The Complainant, Margaret Radke, is seeking re-election to the Orono City Council in the November 2016 general election. The Respondent, Dennis Walsh, is currently an Orono City Councilmember and is a candidate for mayor of Orono in the November 2016 general election.

The Complainant filed a complaint alleging that the Respondent violated Minn. Stat. §§ 211B.04 and 211B.06 by participating in the preparation and dissemination of false and misleading campaign material that lacked a disclaimer.

The Complainant submitted a copy of the campaign material at issue. It is a two-sided document entitled “OronoWatch4U.com, Illuminating Local Government.” It profiles the candidates for Orono mayor and city council and appears to promote Respondent’s candidacy for mayor. The material appears to meet the definition of “campaign material” and is, therefore, required to include a disclaimer “substantially in the form” provided in Minn. Stat. § 211B.04(b) unless it meets one of the exceptions provided at Minn. Stat. § 211B.04(f). The material does not include a disclaimer. It does include a website and email address for “OronoWatch4U.”

### Standard for Prima Facie Determinations

To establish a prima facie violation of the Fair Campaign Practices Act, the complainant must allege sufficient facts to show that a violation of law has occurred.<sup>1</sup> The complaining party must submit evidence or allege facts that, if accepted as true, would be sufficient to prove a violation of chapter 211A or 211B (2016).<sup>2</sup>

For purposes of a prima facie determination, the tribunal must accept the facts that are alleged in the complaint as true, without independent substantiation, provided that those facts are not patently false or inherently incredible.<sup>3</sup> A complaint must be dismissed if it does not include evidence or allege facts that, if accepted as true, would be sufficient to prove a violation of chapter 211A or 211B.<sup>4</sup>

### Disclaimer Requirement

Minnesota Statutes section 211B.04 makes it unlawful to prepare or disseminate most types of campaign material without prominently disclosing the person or committee causing the material to be prepared or disseminated. The statute provides, in relevant part:

- (a) A person who participates in the preparation or dissemination of campaign material other than as provided in section 211B.05, subdivision 1, that does not prominently include the name and address of the person

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<sup>1</sup> Minn. Stat. § 211B.32, subd. 3 (2016).

<sup>2</sup> *Barry and Spano v. St. Anthony-New Brighton Independent School District 282*, 781 N.W.2d 898, 902 (Minn. Ct. App. 2010).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

or committee causing the material to be prepared or disseminated in a disclaimer substantially in the form provided in paragraph (b) or (c) is guilty of a misdemeanor.

(b) Except in cases covered by paragraph (c), the required form of disclaimer is: “Prepared and paid for by the ..... committee, ..... (address)” for material prepared and paid for by a principal campaign committee, or “Prepared and paid for by the ..... committee, ..... (address)” for material prepared and paid for by a person or committee other than a principal campaign committee. If the material is produced and disseminated without cost, the words “paid for” may be omitted from the disclaimer.

...

(d) This section does not apply to fund-raising tickets, business cards, personal letters, or similar items that are clearly being distributed by the candidate.

(e) This section does not apply to an individual or association that is not required to register or report under chapter 10A or 211A.

(f) This section does not apply to the following:

(1) bumper stickers, pins, buttons, pens, or similar small items on which the disclaimer cannot be conveniently printed;

(2) skywriting, wearing apparel, or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impracticable; and

(3) online banner ads and similar electronic communications that link directly to an online page that includes a disclaimer.

...

“Campaign material” is defined as “any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election.”<sup>5</sup> The purpose of the disclaimer requirement is to “identify who or what committee prepared, disseminated and paid for the campaign material.”<sup>6</sup>

Accepting the facts alleged in the complaint as true, the Administrative Law Judge concludes that the complainant has set forth a prima facie violation of Minn. Stat. § 211B.04. This allegation will proceed to a probable cause hearing as ordered.

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<sup>5</sup> Minn. Stat. § 211B.01, subd. 2.

<sup>6</sup> *Hansen v. Stone*, OAH Docket No. 4-6326-16911, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER, (Oct. 28, 2005) at 4.

## False Campaign Material

Minnesota Statutes Section 211B.06 provides in relevant part:

A person is guilty of a gross misdemeanor who intentionally participates in the preparation, dissemination, or broadcast of paid political advertising or campaign material with respect to the personal or political character or acts of a candidate, or with respect to the effect of a ballot question, that is designed or tends to elect, injure, promote, or defeat a candidate for nomination or election to a public office or to promote or defeat a ballot question, that is false, and that the person knows is false or communicates to others with reckless disregard of whether it is false.

Over the years, the Minnesota Supreme Court has interpreted the statute to be directed against false statements of fact and not against unfavorable deductions or inferences based on fact, even if those conclusions might be misleading or incomplete.<sup>7</sup>

In September 2014, however, a panel of the U.S. Court of Appeals for the Eighth Circuit ruled that Minn. Stat. § 211B.06 violates the First Amendment of the U.S. Constitution and is not enforceable.<sup>8</sup> Moreover, the panel concluded that there is no way to narrowly construe the statute to avoid the constitutional violation. The Court concluded generally that Section 211B.06 is not narrowly tailored to achieve the state's asserted interest in preserving fair and honest elections and preventing a fraud on the electorate. The Court found the statute to be simultaneously overbroad and underinclusive, and held that counterspeech is the better means for achieving the state's asserted goal in truthful campaigns.<sup>9</sup>

Because a panel of the U.S. Court of Appeals for the Eighth Circuit has determined that Minn. Stat. § 211B.06 is unconstitutional and unenforceable, this allegation against Respondent must be dismissed.

**J. E. L.**

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<sup>7</sup> *Kennedy v. Voss*, 304 N.W.2d 299 (Minn. 1981); *Bundlie v. Christensen*, 276 N.W.2d 69, 71 (Minn. 1979) (interpreting predecessor statutes with similar language); *Bank v. Egan*, 240 Minn. 192, 194, 60 N.W.2d 257, 259 (1953); *Hawley v. Wallace*, 137 Minn. 183, 186, 163 N.W. 127, 128 (1917).

<sup>8</sup> *281 Care Committee v. Arneson*, 2014 WL 4290372 (8<sup>th</sup> Cir. 2014).

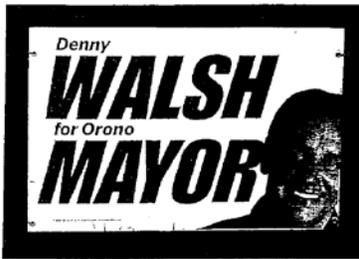
<sup>9</sup> *Id.* (The panel found the statute to be overbroad because nothing prohibits filing a complaint against wholly protected speech, and underinclusive because the statute exempts news items and is limited to paid political advertising or campaign material.)

# OronoWatch4U.com

— Illuminating Local Government —

## The vote for mayor

Council Member Denny Walsh is looking to replace Mayor Lili McMillan. Lili is on a charge to keep her job after 13 years on the Council. The Mayor sets the tone for city council decisions and does influence voting outcomes so the mayor we elect is important. How do incumbent McMillan and challenger Walsh stack up?



### Denny Walsh

Challenge candidate for Orono City Mayor  
Vote4DennisWalsh.com



"I will continue to bring to the city my wealth of Business knowledge and the years of running non-profits. The City of Orono deserves seasoned leadership at the top, and with all my experience taken together with my City Council leadership I will continue to bring positive change to the City of Orono and its citizens as its Mayor"

*"The 15% structural coverage that is imposed upon lots under 2 acres in Orono is regressive and overly burdensome. Why do we put additional requirements on lots less than 2 acres? It does not make any sense and 70% of Orono lots are under 2 acres. The current Mayor wants this burden to continue for all of these lot owners.*

*All the Public Hearings on variances etc. are all held at the Planning Commission. The current Mayor does not want you to see those meetings on tape. I will have these meetings videotaped so you, the public, can see what is happening in your community at your leisure without having to attend or read minutes that are not the whole transcript.*

*Lots of the votes of the City Council are "tallied" at the City Council Work sessions that are held once per month before the 2nd City Council meeting of the month. The current Mayor decided to cancel the note taking at these sessions because she did not want you to know what she is saying and doesn't want what she says held against her. We are public servants working for the citizens and everything we do in a public meeting should be well documented. I will re-instate full notetaking!*

*Well water is a right! The current Mayor decided to take your right to have a well away from you if you*

*have access to city water. I will reinstate the ability to have a well for outside water use for everyone."*

#### BACKGROUND

Dennis S. Walsh is CEO and owner of FTK Properties, Walsh Partners and FTK Construction. 30+ years in the commercial real estate industry. Widely respected in both the brokerage and building-owner communities. Frequently called upon by the real estate media as a speaker for industry meetings and has been honored with several recognitions. FTK Properties was recognized in 2004 as one of the "50 Fastest Growing Companies" in Minnesota by Twin Cities Business Journal. In 2001, the Twin Cities Business Journal (then City Business) also named Dennis as one of their "40 Under Forty."

#### EDUCATION

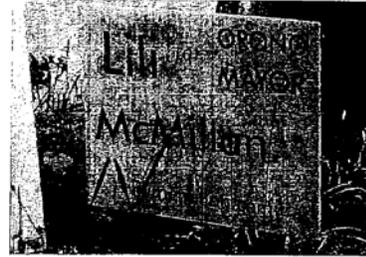
Graduated from the University of Wisconsin, Madison with a BS in Consumer Science and a minor in Real Estate in 1986.

#### CIVIC AND PROFESSIONAL ACTIVITIES INCLUDE

- FBI Citizen's Academy Minneapolis - Board Member & Past President 2011-2012
- Orono Planning Commission, alternate 2011 - 2012
- National FBI Citizens Academy, Past Board Member Jan 2010 - Oct 2012
- Hennepin County Sheriff's Foundation Board, Board Member 201 - Current
- Minnesota Commercial Association of Realtors (MNCAR), Current Member
- Big Brother Big Sisters of Minnesota, past Board Member & Chair of the Membership Committee 2004 - 2007
- Minneapolis Club, Young Members Committee past Chair 1994 - 2004
- Orono City Council Member, Jan 2015 - Present
- Orono Ice Arena Board, Present Jan 2016 - Present

#### VOTING RECORD

- Voted for a vote to enforce all Orono Ordinances
- Voted for Videotaping Planning Commission meetings
- Voted for full note taking during City Council Work sessions
- Voted against city control of owner's well water use
- Voted against city's 15% hardcover formula imposed on less than 2 acres homes
- Voted against making the city fence Ordinance tougher than state law
- Voted against making it illegal to put any structures in the 5 foot side setback



### Lili McMillan

Incumbent Candidate for Orono City mayor  
lilimcmillan.com



*"I am proud of the accomplishments our council and staff have completed during the past six years. I have filed for re-election seeking to continue leading in this direction for another term. Our governing is now more accountable and accessible with the taping, broadcasting and on-demand streaming of council meetings; the availability of more detailed information on our city website; addition of a third newsletter and more citizen input at timely open houses. With your support, I will continue to lead with the principles I outlined when I first ran for Mayor: preserving the values of Orono, protecting with smart planning and respect for the process."*

— Lili McMillan

#### EDUCATION

Brown University Degree, organizational behavior and management

#### CIVIC AND PROFESSIONAL ACTIVITIES INCLUDE

- RCM Committee Co-chair
- Urban Land Institute
- Freshwater Foundation, Board Member

#### VOTING RECORD

- Took action not to enforce all Orono Ordinances
- Voted against Videotaping Planning Commission meetings
- Voted against full note taking during City Council Work sessions
- Voted for city control of owner's well water use
- Voted for city's 15% hardcover formula imposed on home owners of less than 2 acres
- Voted for making the city fence Ordinance tougher than state law
- Voted for making it illegal to put any structures in the 5 foot side setback

Website: OronoWatch4u.com Email: OronoWatch4U@gmail.com

\*\*\*\*\*ECRWSS\*\*\*\*  
 Local  
 Postal Customer  
 PERMIT NO. 2174  
 ECRWSS  
 U.S. POSTAGE  
 PAID  
 EDPM Retail

# City Council candidates

**Richard Crosby**  
 Candidate for Orono City Council  
 crosbyr@stifel.com  
 richardcrosbyfororonocouncil.com



Rich is an interesting guy. He makes a living as a Senior Vice President for Stifel Investments in Wayzata but one of his passions is as a volunteer fireman with the Long Lake Fire Department. He is finishing his 10th year. He is a give-back-to-the-community kind of person. Richard says "My volunteerism was brought to life as a result of the 9/11 tragedy-I lost a friend in Tower One. Serving our local fire department has been an amazing 10 years. I've been involved in scenes and rescues that I could never imagine. I also volunteer for the Salvation Army. I've been an Orono resident since January 2005 and married for 25 years to Patty, the love of my life. My daughters Mandy, Shannon and Erica have attended Orono schools. The parents of Orono have always had high expectations from their students; I believe we should have high expectations for our local government."

**His thoughts on issues;**

- More transparency at the local government level. I am open to video recorded meetings and work sessions posted for the Orono public.
- Balancing budgets without incurring more debt or raising taxes "thoughtful spending".
- We need to listen to our constituent desires and work with them.
- Residential growth while preserving open spaces and the historic feel of Orono. Road repair and maintenance, some roads are in disrepair.
- I would encourage a dialog with the council and DNR on ways to protect our lakes and brainstorm ideas on funding them.

**Victoria Seals**  
 Candidate for Orono City Council  
 victoriaseals@gmail.com



Victoria Seals is a soccer coach and a working mom who loves it when kids achieve their goals while having a great time! She has three kids who will probably have an inside edge on the game of European style football. She wants a place on city council because just like the kids she puts the citizens first. The transparency issue also concerns her. She has a Bachelor of Science in Nursing and a Masters of Business Administration she wants to put to the city's use.

"I grew up in the area and graduated from Orono schools. I want to ensure that my children and future generations after are able to grow up in the same amazing community that I know Orono is. Secondly, I have watched the council meetings online and have noticed the meetings are tense. Some members are not transparent in why they vote on certain issues or don't vote at all. I believe it is the council's responsibility to not only be open about how they come to decisions, but also to be engaged in the act of voting. Residents should be able to easily learn how budgets are established and see how funds are spent at any time. I would work with the council and the city to make sure we had full disclosure statements released

that were widely available, both online and print. I believe in putting all the cards on the table. As a council member, I will work towards getting information out to the community on what we are doing as a council - how we are spending our funds, what we are planning for in the future, and how we are serving our community. This information should be simple to understand and easy to find. I read recently that our council decided not to record meetings. This is odd to me. As public servants, meetings should be made available for all of the public to see and hear regardless of someone's ability to attend meetings."

**Brad Maenner**  
 Candidate for Orono City Council  
 bradmaenner@gmail.com  
 612-655-6776



"Every couple of years, we get a chance to review the status of our local government and get to judge the impact it made on our lives. This year 6 candidates (which might be a record) are running for the open city council seats. This tells me there are more people than just me frustrated by the current council. If elected, I will work hard to put the residents of Orono first, listening to their concerns and making them a priority. Working in the private sector I spend a majority of my time reducing costs for my customers in the hundreds of thousands of dollars. I plan use the same cost-cutting techniques to save money for our city and assure we are fiscally conservative on future spending. Lastly, when it comes to Orono we are all on the same team and we should act like it. Together we need to improve the city council image and, if elected, I will work hard to make working with Orono a positive experience. I would love to hear any concerns you have and please vote Brad Maenner for city council! Thanks Orono!"

Brad graduated from at University of Wisconsin-Stout with degree in industrial Design. He's from Waterloo Wisconsin and now lives in Orono with wife Amanda. She is a Wayzata lawyer specializing in divorce, separation, child custody and support issues. Brad is a distance runner and at 32 is fired up about local politics. He works in the corrugated paper industry.

He is running for city council because he is fed up with the permit process and thinks the community needs to be first.

**Margaret Radke**  
 Candidate for Orono City Council  
 bradmaenner@gmail.com  
 612-655-6776



Margaret is going to bring her professional skills to enhance effective city government. She is an executive coach and management consultant specializing in leadership and organizational effectiveness. She does this for Think & Learn LLC.

She graduated from the University of Minnesota-Twin Cities with a degree in Communications.



**Council member Elizabeth Levang**  
 Incumbent Candidate for Orono City Council

**Voting record**

- Voted against Videotaping Planning Commission meetings
- Voted against full note taking during City Council Work sessions
- Voted for city control of owner's well water use
- Voted for city's 15% hardcover formula imposed on home owners of less than 2 acres and stormed out of a June 13, 2016 council meeting in a pre-arranged huff to make a point
- Voted for making the city fence Ordinance tougher than state law
- Voted for making it illegal to put any structures in the 5 foot side setback
- Walked out of a City Council meeting

1. On Facebook Lizz likes Democrats Occupy movement
2. On Facebook Lizz likes Democrat Senator Chris Coons
3. On Facebook Lizz likes Cryx Truth
4. Lizz is in the Grief therapist business
5. Lived in Orono for 30 years
6. Grew up in International Falls



**Council member Jim Cornick**  
 Incumbent Candidate for Orono City Council

**Voting record**

- Voted against Videotaping Planning Commission meetings
- Voted against full note taking during City Council Work sessions
- Voted for city control of owner's well water use
- Voted for city's 15% hardcover formula imposed on home owners of less than 2 acres
- Voted for making the city fence Ordinance tougher than state law
- Voted for making it illegal to put any structures in the 5 foot side setback

1. Retired Police officer for the city of Orono. Started in 1986 and retired in 2013.
2. His son Paul, played football ball at Orono and was talented enough to play for the Denver Broncos
3. Jim sued the City of Orono that he now serves back in the days when he was an active Police Officer.

## OronoWatch4U.com

Website: [oronowatch4u.com](http://oronowatch4u.com)  
 Email: [OronoWatch4U@gmail.com](mailto:OronoWatch4U@gmail.com)  
**Orono website:**  
<http://www.ci.orono.mn.us/>  
**Council Meeting dates:**  
 Every second and fourth Monday of the month, 7pm  
**Watch council meetings on-line:**  
[http://oronomn.granicus.com/ViewPublisher.php?view\\_id=1](http://oronomn.granicus.com/ViewPublisher.php?view_id=1)  
 (select date and "video")

Website: [OronoWatch4u.com](http://OronoWatch4u.com) Email: [OronoWatch4U@gmail.com](mailto:OronoWatch4U@gmail.com)