

LAW OFFICES OF WILLIAM C. GLEISNER, III

300 COTTONWOOD AVE. STE 3
HARTLAND, WI 53029

WILLIAM C. GLEISNER, III
STATE BAR NO. 01014276

email: wgleisner@sbcglobal.net

PHONE (262) 367-1222
FAX (262) 367-1236

July 29, 2013

By Hand Delivery

Office of the Clerk of Courts
Waukesha County Circuit Court
515 W Moreland Blvd
Waukesha, WI 53188-2411

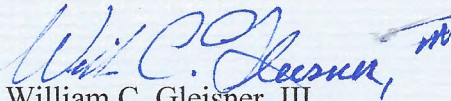
Re: *Reddelien Road Neighborhood Association, et al. v. DNR*, Waukesha County Circuit Court Case No. 10CV5341, which has been consolidated with *NLMD, et al. v. DNR*, Waukesha Court Case No. 12CV1751

Dear Sir or Madam,

Enclosed please find a Wis. Stat. §808.04(1) Notice of Entry of Final Order and Final Order in the above entitled actions. The enclosed Notice is being served on Assistant Attorney General Milligan, Counsel for the DNR, by both Email and U.S. Mail.

We are submitting duplicates of the enclosed Notice of Entry (one for each of the above captioned files). Thank you for your attention to this letter and to the enclosed.

Respectfully,



William C. Gleisner, III
State Bar No. 1014276
William H. Harbeck
Of Counsel

13 JUL 29 PM 2:58

CLERK OF CIRCUIT COURT
CIVIL DIVISION

cc: Diane Milligan, Esq. (by Email & U.S. Mail)
Donald P. Gallo, Esq. (by U.S. Mail)
J. Steven Tikalsky, Esq. (by U.S. Mail)

Reddelien Road Neighborhood Association, Inc. ("RRNA"), et al,

Petitioners,

vs.

Case No. 10-CV-5341

The Department of Natural Resources ("DNR"),

Respondent.

North Lake Management District ("NLMD"), et al.

Petitioners,

vs.

Case No. 12-CV-1751

The Department of Natural Resources ("DNR"),

Respondent.



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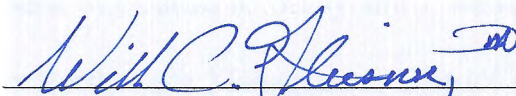
CLERK OF CIRCUIT COURT
CIVIL DIVISION

**WIS. STAT. 808.04(1) FORMAL
NOTICE OF ENTRY OF FINAL ORDER**

To: Assistant Attorney General Diane Milligan
Counsel for the DNR in the above entitled actions
17 West Main Street
Madison, Wisconsin 53707

PLEASE TAKE NOTICE THAT the attached FINAL ORDER was entered in the above entitled actions on July 24, 2013. Therefore, pursuant to Wis. Stat. §808.04(1), an appeal of the said FINAL ORDER must occur within 45 days of the entry of same.

Dated this 26th day of July, 2013.



William C. Gleisner, III, Esq. SBN 1014276
William H. Harbeck, Esq. SBN 1007004
J. Steven Tikalsky, Esq. SBN 1017880
Donald P. Gallo, Esq., SBN 1001278

Reddelien Road Neighborhood Association, Inc. (“RRNA”), et al,

Petitioners,

vs.

Case No. 10-CV-5341

The Department of Natural Resources (“DNR”),

Respondent.

North Lake Management District (“NLMD”), et al.

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vs.

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The Department of Natural Resources (“DNR”),

Respondent.

CLERK OF CIRCUIT COURT
CIVIL DIVISION
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IN CIRCUIT COURT

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CIVIL DIVISION

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FINAL ORDER

The above entitled matters came on for a hearing on May 23, 2013 before Branch 7 of the Waukesha Circuit Court, the Honorable J. Mac Davis presiding. The Reddelien Road Neighborhood Association (RRNA) and related Petitioners appeared by Attorneys William C. Gleisner, III, William H. Harbeck of Quarles & Brady and J. Steven Tikalsky of Raasch & Tikalsky. The North Lake Management District (NLMD) appeared by Carolyn Sullivan of Reinhart, Boerner & Van Deuren. The Wisconsin Department of Natural Resources (DNR) appeared by Assistant Attorney General Diane Milligan.

Based upon the briefs and oral arguments of the Parties and the Record in these proceedings, the Court issued a Bench Decision at the hearing which included the following findings and orders:

FINDINGS

1. Based upon the DNR's stipulation as to navigability at the 2011 hearing before the Administrative Law Judge regarding DNR's November 4, 2010 Manual Code Approval, which is the subject of Case No 12-CV-1751, Chapter 30 of the Wisconsin Statutes applies to the proposed construction of the access road to DNR's boat launch and its requirements should have been evaluated, complied with and applied before issuing a permit.
2. This Court specifically rejects and overturns the DNR's long standing prior practice of ignoring Chapter 30 if it is applying Wisconsin Administrative Code NR 103 (hereafter, "NR 103"), and the Court further finds that the DNR's prior practice is entitled to no deference or any particular weight because it constitutes an erroneous and unreasonable interpretation of law.
3. It was clear error for the ALJ to have ignored the foregoing stipulation as to navigability, and the ALJ's conclusion that DNR need only apply NR 103, and not Chapter 30 was erroneous.
4. The ALJ's determination regarding whether portions of the proposed access road will be constructed on lakebed is confused to the point that it is unsupportable by the record.

5. The issue of DNR's failure to undertake a pre-permit analysis under NR 103 is properly before this Court. The DNR knew that the Petitioners had concerns about the NR 103 analysis for quite some time so the issue is not a surprise to the DNR. In any event the NR 103 issue was newly discovered and subsequently addressed at the remand hearing before the ALJ in April of 2012 and thus is properly before this Court.
6. Necessary work, including evaluation, investigation, and application of judgment and other review under NR 103 must be completed preceding a permit granting process, and there must be a reasonable record maintained so that the citizenry will have a meaningful opportunity of review of government decisions.
7. Here, the DNR failed to adequately document in writing the consideration, investigation, evaluation, and application of judgment required under NR 103. There was no meaningful work, including evaluation, investigation, or application of NR 103 prior to or in conjunction with DNR's issuance on November 4, 2010 of the Storm Water Permit for its proposed boat launch which permit was the subject of Case No. 10-CV-5341.
8. Under the foregoing circumstances the ALJ findings regarding the NR 103 analysis are unsupported because they are based on 20/20 hindsight at the 2012 administrative hearing as opposed to the required pre-permit work-up that is required.

9. As to whether the proposed access road constitutes “new development” or “redevelopment” under NR 151 as it pertains to the total suspended solids removal requirements set forth in NR 151.12(5)(a)(1) and (2), at least the 150 feet of the proposed access road that will be placed completely off the existing track and in the midst of an environmentally sensitive area should be considered “new development” within the meaning of NR 151.12(5)(a). DNR’s conclusion that this 150 feet should be treated as “redevelopment” is not supported by the record and cannot stand.

FINAL ORDER

IT IS HEREBY ORDERED that:

1. Waukesha Circuit Court Case No. 10CV5341 (hereafter, “Case 5341”) and Waukesha Circuit Court Case No. 12CV1751 (hereafter, “Case 1751”) shall be and are consolidated in all respects because they are legally and factually intertwined.

2. The November 4, 2010 Storm Water Permit which is the subject of Case 5341 shall be and the same hereby is vacated and set aside in its entirety, and shall not be remanded.

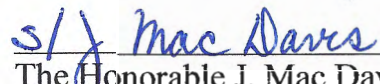
3. The November 4, 2010 Manual Code Approval Permit which is the subject of Case 1751 shall be and hereby is vacated and set aside in its entirety, and shall not be remanded.

4. The May 4, 2012 Decision of ALJ Boldt, which is the subject of Case 1751, shall be and hereby is reversed in its entirety.

5. The July 18, 2012 Decision of ALJ Boldt, which is the subject of Case 5341, shall be and hereby is reversed in its entirety.

This is a Final Order for purposes of appeal under Wis. Stat. 808.03(1).

Dated at Waukesha, Wisconsin this 23 of July, 2013.



The Honorable J. Mac Davis
Circuit Court Judge, Branch 7