

STATE OF WISCONSIN CIRCUIT COURT WAUKESHA COUNTY

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

Petitioners,

vs.

Case No. 10-CV-5341

The Department of Natural Resources ("DNR"),

Respondent.

FILED
IN CIRCUIT COURT

JAN - 6 2012

ORDER

WAUKESHA CO. WI
CIVIL DIVISION

11 DEC 28 PM 1:03

CLERK OF CIRCUIT COURT
CIVIL DIVISION

The Court heard arguments on Petitioners' Motion to Remand and the Respondent's Motion to Strike the Affidavit of Dr. Neal O'Reilly on October 28, 2011 and the Court in addition held a December 12, 2011 hearing at which the Court issued an oral Ruling. Petitioners Reddelien Road Neighborhood Association (RRNA), et al., appeared on both dates by its counsel, William C. Gleisner, III, and Respondent, Wisconsin Department of Natural Resources, appeared on both dates by its counsel, Assistant Attorney General Diane L. Milligan.

Based on the pleadings and the record in this case, the briefs filed by the parties and the arguments by counsel for the parties during the October 28th hearing, and for the reasons stated by the Court on the record at the hearings on October 28, 2011 and December 12, 2011,

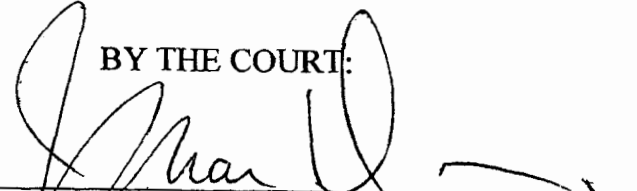
IT IS HEREBY ORDERED that:

1. The Respondent's Motion to Strike the August 23, 2011 Affidavit of Dr. Neal O'Reilly is denied.

2. Petitioners' motion for a remand under Wis. Stat. §227.57(7) for a hearing before the Wisconsin Division of Hearings and Appeals is granted.
3. The hearing on Remand shall be conducted in accordance with the provisions set forth in Wis. Stats. §§ 227.42 to 227.50.
4. In accordance with the Petitioners' Motion to Remand and the briefs in support, and ¶¶ 3 to 6 of the "Wherefore" Clause in the Petition for Judicial Review on file with this Court, the issues to be addressed on Remand shall be those as set forth in the attached Supplement to this Order.
5. This Court shall retain jurisdiction over this matter for purposes of judicial review of the remanded proceedings once they are completed and for any other reason which may arise during the period of remand necessitating the Court' further involvement.

Dated this 6th of Jan. December, 20~~11~~¹².

BY THE COURT:



THE HONORABLE J. MAC DAVIS
Waukesha County Circuit Court, Branch 7

Jan 6 2012
SUPPLEMENT TO JUDGE DAVIS' ~~DECEMBER 2011~~ ORDER

The following issues are to be addressed upon Remand of this matter for a Contested Case Hearing consistent with the foregoing Order:

1. Does the proposed development authorized by the Hartsook Decision comply with Wis. Admin. Code NR § 151.12(5)(a) ? In particular:
 - a) Should the access road proposed in the Permit be considered a new "development" rather than a "redevelopment" under Wis. Admin. Code NR §§151.002(39) and 151.12(5)(a)?
 - b) Does the Permit comply with the TSS Removal standard under NR § 151.12(5)(a)1 or 151.12(5)(a)2?

[Based on Issue 3 in the Petition for Judicial Review]

2. Does the proposed development authorized by the Hartsook Decision comply with Wis. Admin. Code NR §151.12(5)(b)? In particular:
 - a) Are the culverts proposed in the project plans adequate to handle the volume of water that will flow out of the wetland complex on and adjacent to the Kraus Site?
 - b) Will the proposed parking lot act as a stopper, preventing water from the wetland complex on and adjacent to the Kraus Site from draining into North Lake via the Kraus Site and instead divert it onto neighbors to the south of the Kraus Site?
 - c) Will this surcharge septic systems and cause flooding in the Reddelien Road Neighborhood?

[Based on Issues 4 & 5 in the Petition for Judicial Review]

3. Does the Hartsook Decision comply with Wis. Stat. §281.15 and Wis. Admin. Code NR §299.04(1)(b)? In particular:
 - a) Will the storm water treatment system for the roadway remove oils, grease, toxic organic compounds, nitrogen compounds, or de-icing compounds such as salt that are found in roadway runoff?
 - b) Will the failure to do so increase pollution in the Reddelien Road. Neighborhood and to North Lake?

[Based on Issue 6 in the Petition for Judicial Review]



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Docket # 15424272.1