

TO: DULUTH CITY COUNCIL

Request: To Stay the decision of the City Council regarding the reversal of Planning Commission's decision to require an EAW (PL23-053/23-0367R) until the appeal of the City Council's decision is decided by the Court of Appeals.

Date of Meeting: June 26th, 2023

An appeal has been accepted by the Minnesota Appellate Courts.

In reviewing our request for a stay, City Council should act in the public interest without prejudicing either side. Neither party will be substantially harmed in granting a stay. Moreover, a stay falls within the public's interest to seek the Court's decision regarding the process of a Citizens' Petition for an Environmental Assessment Worksheet (EAW). By denying a stay, disturbance of the site would, in all probability, render it unsuitable for an environmental review when the decision is overturned as a result of our appeal.

Please review the attached EAW form [EXHIBIT A]. Highlighted areas emphasize how destruction of the site could be detrimental to a complete and thorough EAW. Concerns include, but are not limited to, surface and ground water effects to impaired Miller Creek, geology, soils and topography, changes in surface hydrology resulting from changes in land use, effects of storm water runoff volume, wetland alterations, soil contamination, and more.

We believe the merits of our appeal are strong. The laws and rules that govern environmental law in Minnesota, and Duluth's own city ordinances, were simply ignored in this matter:

1. The developer appealed Planning Commission's decision to approve the EAW to the City Council, an option that NO OTHER PETITIONER on an EAW decision by the Planning Commission had ever been offered. See attached e-mail from Ryan Pervenance. [EXHIBIT B];
2. The appeal was to the improper unit of government (i.e. Duluth City Council);
3. The improper body of government overturned a decision of the unit of government designated to make environmental review decisions (i.e. Planning Commission); and
4. The decision was made outside of the 30-day statutory time limit.

It is important to note an expedited review was requested of the City to limit the length of the stay. The stay request was presented to the City of Duluth on June 5, 2023. The City did not allow the stay request be added to the June 12th City Council agenda despite the request being made several days before the meeting. Should the Council vote to deny the request of stay, the relator will seek review from the Court of Appeals. *Minn. R. Civ. App. P. 108.02, subd. 6*. Thank you for your thoughtful consideration to this matter.

Rebecca Mulenburg

June 16, 2023

Date



Signature