

IN THE CIRCUIT COURT OF MILLER COUNTY, MISSOURI DEC 10 2013

LAKE OZARK-OSAGE BEACH JOINT)
SEWER BOARD, JACQUELINE ATKISSON,)
MICHAEL ATKISSON, DONALD BAKER,)
LARRY STOCKMAN, VICKY STOCKMAN,)
JUDY TAYLOR, JOHN M. ZAWISLAK,)
MARLENE ZAWISLAK, and)
ROBERT ZAWISLAK,)

Case No. 08ML-CC00106

Division No. I

Petitioners,)

v.)

MISSOURI DEPARTMENT OF NATURAL)
RESOURCES, LAND RECLAMATION)
COMMISSION, and)
MAGRUDER LIMESTONE CO., INC.,)

Respondents.)

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MISSOURI
ATTORNEY GENERAL

PETITIONERS' MOTION FOR LEAVE TO FILE
AMENDED PETITION FOR REVIEW

COME NOW Petitioners Lake Ozark-Osage Beach Joint Sewer Board ("Sewer Board") and Petitioners Jacqueline Atkisson, Michael Atkisson, Donald Baker, Larry Stockman, Vicki Stockman, Judy Taylor, John M. Zawislak, Marlene Zawislak and Robert Zawislak ("Individual Citizens") (collectively with Sewer Board, "Petitioners"), by and through counsel, and move this Court for an order granting Petitioners leave to file their Amended Petition for Review. In support of their motion, Petitioners state as follows:

1. On or about April 18, 2007, Magruder submitted its permit expansion application to engage in surface mining on 205 acres in Miller County, Missouri to the LRC.
2. On July 24, 2008, the LRC issued its Final Order approving Magruder's permit expansion application as to a portion of the 205 acres sought to be quarried by Magruder, with certain specific special conditions, and denying the application as to the remaining acres.

3. On August 15, 2008, Petitioners commenced the instant proceeding by filing their Petition for Review and Application for Expedited Review.

4. On April 3, 2009, this Court reversed the LRC's decision and ordered a new hearing in the matter on the grounds that Hearing Officer Tichenor had erroneously applied the burden of proof.

5. Magruder appealed the decision of this Court. On August 31, 2010, the Missouri Court of Appeals, Western District, affirmed and the matter was remanded to the LRC for a new hearing. *Lake Ozark/Osage Beach Joint Sewer Board v. Missouri Dept. of Natural Resources, et al.*, 326 S.W.3d 38, 43-45 (Mo. App. 2010) (application for transfer denied Dec. 21, 2010).

6. A second formal hearing on this matter was conducted on October 23-26 & 30, 2013, before Commissioner Karen Winn with the Administrative Hearing Commission.

7. On June 27, 2013, Commissioner Winn submitted her Recommended Decision, in which she found Petitioners Sewer Board and Vicky Stockman had met their burden of production to establish an issue of fact as defined by § 444.773 and the LRC's regulations.

8. Commissioner Winn found that Magruder subsequently met its burden of persuasion that activities associated with the permit would not unduly impair the health, safety or livelihood of Petitioners "**if subjected to certain conditions.**"

9. Commissioner Winn went on to identify eight specific conditions she deemed necessary in order for Magruder to meet its burden of persuasion.

10. On September 26, 2013 the LRC met in open session to discuss Magruder's permit expansion application and voted unanimously to approve Magruder's permit expansion, subject to five specific conditions discussed and decided upon in prior closed sessions.

11. The LRC omitted several significant and substantive permit conditions Commission Winn relied upon in finding Magruder had met its burden of persuasion that activities associated with the permit would not unduly impair the health, safety or livelihood of Petitioners.

12. In the absence of all of the conditions set forth by Commissioner Winn in her Recommended Decision, Magruder failed to meet its burden of persuasion that activities associated with the permit would not unduly impair the health, safety or livelihood of Petitioners.

13. On or about October 2, 2013, with no notice provided to Petitioners, the LRC issued Permit 0086 A1 to Magruder Limestone Company, which authorizes a limestone quarry operation on the proposed quarry site, subject to five additional conditions.¹

14. The potential for harm to Petitioners and their property and to taxpayers is enormous in terms of damage to the watershed in the Lake of the Ozarks region, loss of the use of the physical plant and disruption of economic activity in the area served by the plant.

15. The LRC's final decision approving Magruder's permit is invalid as a matter of law and should be set aside.

16. Petitioners seek leave to amend their Petition for Review in order to seek expedited judicial review of the LRC's September 26, 2013, decision approving Magruder's permit to operate a limestone quarry on the proposed quarry site.

17. Rule 55.33 states that leave to amend "shall be freely given when justice so requires." *See Lester v. Sayles*, 850 S.W.2d 858, 869 (Mo. banc 1993) (reversing the trial court's denial of a party's request for leave to amend on the first day of trial).

¹ Petitioners have not received any written documentation from the LRC since the September 26, 2013 hearing that sets forth the final decision of the LRC, the permit as approved or the accompanying conditions. Accordingly, Petitioners can only surmise the permit was granted as to the entire 205 acres and is subject to the conditions discussed and approved by the LRC during open session on September 26, 2013.

18. Plaintiff's request is not sought for any improper purpose or delay, but in the interest of justice.

WHEREFORE, Petitioners respectfully request the Court grant leave for them to file their First Amended Petition for Review, attached hereto as Exhibit A, and for such other and further relief as is just and equitable under the circumstances.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above and foregoing was served via electronic mail on the 5th day of December, 2013 to:

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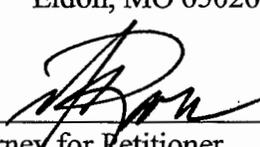
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