

STATE OF MINNESOTA
COUNTY OF CHISAGO

DISTRICT COURT
TENTH JUDICIAL DISTRICT
CASE TYPE: DECLARATORY JUDGMENT

Concerned River Valley Citizens, Inc., a
Minnesota non-profit corporation, and Fred
Willard Carlson, an individual,

Court File No. _____

Plaintiffs,

vs.

SUMMONS

Chisago County, Lent Township, and Sunrise
River Energy, LLC,

Defendants.

THIS SUMMONS IS DIRECTED TO: CHISAGO COUNTY, LENT TOWNSHIP AND
SUNRISE RIVER, LLC, THE ABOVE-NAMED DEFENDANTS.

1. YOU ARE BEING SUED. This Plaintiff has started a lawsuit against you. The Plaintiff's Complaint against you is attached to this summons. Do not throw these papers away. They are official papers that affect your rights. You must respond to this lawsuit even though it may not yet be filed with the Court and there may be no court file number on this summons.

2. YOU MUST REPLY WITHIN 20 DAYS TO PROTECT YOUR RIGHTS. You must give or mail to the person who signed this summons a **written response** called an Answer within 20 days of the date on which you received this Summons. You must send a copy of your Answer to the person who signed this summons located at:

BARNA, GUZY & STEFFEN, LTD.
400 Northtown Financial Plaza
200 Coon Rapids Blvd.
Minneapolis, MN 55433

3. YOU MUST RESPOND TO EACH CLAIM. The Answer is your written response to the Plaintiff's Complaint. In your Answer you must state whether you agree or disagree with each paragraph of the Complaint. If you believe the Plaintiff should not be given everything asked for in the Complaint, you must say so in your Answer.

4. YOU WILL LOSE YOUR CASE IF YOU DO NOT SEND A WRITTEN RESPONSE TO THE COMPLAINT TO THE PERSON WHO SIGNED THIS SUMMONS. If you do not answer within 20 days, you will lose this case. You will not get to

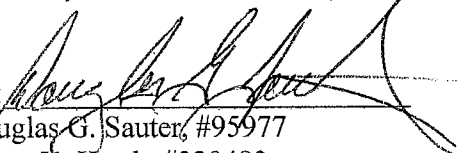
tell your side of the story, and the Court may decide against you and award the Plaintiff everything asked for in the complaint. If you do not want to contest the claims stated in the complaint, you do not need to respond. A default judgment can then be entered against you for the relief requested in the complaint.

5. LEGAL ASSISTANCE. You may wish to get legal help from a lawyer. If you do not have a lawyer, the Court Administrator may have information about places where you can get legal assistance. **Even if you cannot get legal help, you must still provide a written Answer to protect your rights or you may lose the case.**

6. ALTERNATIVE DISPUTE RESOLUTION. The parties may agree to or be ordered to participate in an alternative dispute resolution process under Rule 114 of the Minnesota General Rules of Practice. You must still send your written response to the Complaint even if you expect to use alternative means of resolving this dispute.

Dated: 6/28/2010

BARNA, GUZY & STEFFEN, LTD.

By: 
Douglas G. Sauter, #95977
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STATE OF MINNESOTA

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CASE TYPE: DECLARATORY JUDGMENT

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Minnesota non-profit corporation, and Fred
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Plaintiffs,

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COMPLAINT

Chisago County, Lent Township, and Sunrise
River Energy, LLC,

Defendants.

Plaintiffs Concerned River Valley Citizens, Inc. and Fred Willard Carlson, for their
Complaint against Defendants Chisago County, Lent Township, and Sunrise River Energy, LLC,
state and allege as follows:

THE PARTIES, JURISDICTION, & VENUE

1. Plaintiff Concerned River Valley Citizens, Inc. ("CRVC") is a non-profit
corporation organized under the laws of the State of Minnesota with its registered office and
principal place of business located at 28908 Mindy Court, City of Lindstrom, County of Chisago,
State of Minnesota.

2. CRVC is a citizens group formed in 1995 to promote the sustainable development
of the St. Croix River valley area while protecting and preserving the environment. CRVC
provides information on community matters to citizens and participates in governmental
activities in order to give citizens a voice in how the area is developed.

3. Plaintiff Fred Willard Carlson (“Carlson”) is an individual residing at 10589 Lanesboro Way, City of North Branch, County of Chisago, State of Minnesota.

4. In addition to residing in Chisago County, Carlson also owns 19 lots in a residential development called “Sunrise Trails” which is located entirely in Chisago County.

5. Defendant Chisago County (“Chisago County” or “County”) is a political subdivision of the State of Minnesota.

6. Defendant Lent Township (“Lent Township” or “Township”) is a township located in Chisago County in the State of Minnesota.

7. Defendant Sunrise River Energy, LLC, (“SRE” or “Developer”) is a Delaware limited liability company doing business in the State of Minnesota with its registered office at 100 South 5th Street, #1075, Minneapolis, MN 55402.

8. SRE seeks to construct a natural gas-fired power plant with stored fuel oil as a secondary fuel source on approximately 40 acres of land located within the Township and legally described as follows:

The West Half of the South Half of the Southeast Quarter of Section 1, Township 34 North, Range 21 West, Chisago County, Minnesota, comprising approximately 40 acres.

(the “Project Site”).

9. SRE, as the developer, has entered into a Development Agreement with the County and Township related to construction of the power plant. The Project Site is in a rural area which is zoned agricultural by the Township and the County.

10. The Plaintiffs oppose the construction of the power plant on the Project Site. The Project Site is located in a scenic and environmentally diverse area on a tributary to the Sunrise River which flows into the St. Croix River, a National Scenic Riverway. Plaintiffs’ concerns

include potential environmental damage to the Sunrise River, the Kost Dam Pool, St. Croix National Scenic Riverway, Carlos Avery Wildlife Management Area, Janet Johnson Memorial Wildlife Management Area, the viewshed area affecting the St. Croix National Scenic Riverway, Wild River State Park, St. Croix Scenic Byway and the viewshed extending into Wisconsin including the Ice Age National Scenic Trail, the farm land, forest land and sensitive natural habitat areas near the proposed project, potential harm to the health of local residents, and a devaluation of the local residential property.

JURISDICTION AND VENUE

11. Jurisdiction is in this Court as this action is brought pursuant to Chapter 555 of the Minnesota Statutes, the Uniform Declaratory Judgments Act, and the actions giving rise to this lawsuit arose in the State of Minnesota.

12. Venue in Chisago County District Court is proper as all Defendants can be found in Chisago County or do business in Chisago County, the Development Agreement was entered into in Chisago County, and the Project Site is located in Chisago County.

GENERAL ALLEGATIONS

13. LS Power Group, which includes LS Power Development, LLC, is engaged in the development, acquisition and management of power generation and transmission infrastructure. LS Power Development, LLC (“LS Power”) is an independent power producer engaged in the ownership, development, management and operation of power generation facilities in the United States. LS Power develops natural gas, coal, wind and solar power generation facilities.

14. In February of 2008, LS Power submitted a request to the Midwest Independent Transmission System Operator for a proposed electric generation station/power plant adjacent to the Chisago County Substation, which is an electrical transmission substation with alternating

current voltages located in Chisago County. LS Power proceeded to meet with Chisago County officials to discuss a proposed electric generation station at or near the Chisago Substation site.

15. In December of 2008, LS Power met with Minnesota State Senator Rick Olseen to seek legislation for a personal property tax exemption for a proposed power plant in Chisago County. Sunrise River Energy, LLC (SRE) was organized on or about December 11, 2008 in the State of Delaware.

16. On or about February 20, 2009, LS Power issued a press release announcing that it was “taking steps” to develop a natural gas-fired, with stored fuel oil as a secondary fuel source, electric generating station/power plant in Chisago County.

17. In March of 2009, Senator Olseen introduced Senate File 1671 which was designed to facilitate development of a power plant at the Chisago County Substation site via a personal property tax exemption. In April of 2009, a companion bill, House File 2317, was introduced by Representative Jeremy Kalin and the two files were incorporated via amendment into Omnibus Public Finance Bills HF1298 & SF1257. On May 16, 2009, the Omnibus Public Finance Bills were passed by the House and Senate, signed into law by the Governor and enacted by the 2009 Minnesota Session Laws, Chapter 88, Article 2, section 9, codified as Minn. Stat. §272.02 subd. 92.

18. On or about May 8, 2009, SRE filed in Minnesota as a foreign limited liability company.

19. During May and June of 2009 citizens, concerned about the power plant that was being proposed for construction in Lent Township near the Chisago County Substation, voiced their concerns.

20. In July of 2009, the Lent Township Board of Supervisors convened a public forum to hear citizen concerns. The Chisago County Board of Commissioners convened a similar public forum in October of 2009.

21. The opposition to the power plant was growing and vocal. Concerns included a Development Agreement which was being negotiated between SRE, Chisago County and Lent Township. Pursuant to Minn. Stat. §272.02, subd. 92, in order for SRE to obtain the personal property tax exemption set forth in the legislation passed expressly for that purpose, the County, Township and SRE had to have a signed Development Agreement in place which, among other things, required provisions ensuring that noise and visual impacts of the facility are mitigated and that the facility is designed to use effluent from a wastewater treatment facility. However, the only timing requirement set forth in the personal property tax exemption legislation is that the Development Agreement needs to be in place before the start of construction.

22. Consistent with the provisions of Minn. Stat. §216E.10 which governs the timing of preemption of local zoning laws and ordinances for the siting of power plants by the Minnesota Public Utilities Commission (“PUC”), execution of any Development Agreement prior to the issuance of a site permit and acquisition of the project site by SRE is premature. To date, SRE has not acquired the project site and has not even applied to the PUC for a Certificate of Need or a site permit let alone has a site permit been issued. The PUC has not studied the proposed project or the environmental impact. The County and Township negotiated a complicated Development Agreement with SRE involving questions of financial impact to the community, economic development, environmental and health concerns, zoning issues and public safety, without any input from the PUC or other agencies and organizations that are experts in such fields.

23. Despite the lack of any input from the PUC, SRE proceeded to negotiate a Development Agreement with the County and Township and submitted a final Development Agreement to the County and Township.

24. On or about November 17, 2009, Lent Township received a petition from the requisite number of town electors calling for a Special Town Meeting. The Special Town Meeting was held on December 14, 2009. The Lent Electorate voted against approving the Development Agreement between the County, Township and SRE by a 163 to 43 vote. On or about December 15, 2009 the Lent Board of Supervisors, by a three to zero vote, decided to approve the Development Agreement.

25. On or about February 17, 2010, the Chisago County Board of Commissioners voted on whether to approve the Development Agreement between the County, Township and SRE. The County Board of Commissioners, by a three to two vote, decided not to approve the Development Agreement..

26. On or about March 3, 2010, the Chisago County Board of Commissioners voted on a motion to reconsider their February 17, 2010 vote on the Development Agreement and, on March 17, 2010, the Chisago County Board of Commissioners took another vote on the Development Agreement and approved the Development Agreement with SRE in a four to one vote, despite the fact that there was no material change to the Development Agreement that was rejected earlier.

27. On or about March 23, 2010, the Lent Township board of Supervisors voted three to zero to approve the Development Agreement as approved by the Chisago County Board of Commissioners on March 17, 2010.

28. On or about March 30, 2010, the final Development Agreement, as approved by the County and Township, was signed by SRE.

29. The Project Site as set forth in the Development Agreement is located within Lent Township on 40 acres of land which is zoned "agricultural" by the County and, because Lent Township adopted The Chisago County Zoning Ordinance on or about January 16, 2007, the Township has also zoned the Project site as agricultural.

30. The Chisago County Zoning Ordinance sets forth the purpose of and permitted uses of agricultural districts or land which is zoned agricultural. Pursuant to the Chisago County Zoning Ordinance, the purpose of an agricultural district is "to provide areas to be utilized for agriculture and agricultural related uses and low density residential areas."

31. The Chisago County Zoning Ordinance sets forth 15 permitted uses for agricultural districts, none of which include construction and operation of a gas-fired power plant facility with stored fuel oil as a secondary fuel source.

32. The Chisago County Zoning Ordinance sets forth 24 conditional uses for agricultural districts, none of which include construction and operation of a gas-fired power plant facility with stored fuel oil as a secondary fuel source.

33. The County and Township entered into a Development Agreement for the construction and operation of a gas-fired power plant facility with stored fuel oil as a secondary fuel source which violates their own zoning ordinances and, thus, their own comprehensive plans.

34. Pursuant to Minn. Stat. 216E.10, local zoning, building or land use regulations or ordinances promulgated by regional, county, local and special purpose government are preempted by issuance of a site permit. There has been no issuance of a site

permit by the PUC and, upon information and belief, SRE has not yet even applied for a site permit to construct and operate the power plant at the Project Site.

35. Because no site permit has been issued to SRE, the zoning rules are still vested in the County and Township.

36. At the time the County and Township entered into the Development Agreement, the zoning rules were still vested in the County and Township and the approval of the Development Agreement by the County and Township violates the Comprehensive Plans of the County and Township.

37. Additionally, SRE has not yet acquired the Project Site so although the Development Agreement has been recorded on the title to the Project Site, it has no effect to bind the actual land because the record owner of the land did not sign or consent to the Development Agreement.

38. The County and Township, acting under their respective powers to enter into contracts, has performed an *ultra vires* act by approving a contract (the Development Agreement) which violates their own zoning ordinances and comprehensive plans.

39. The actions of the County and Township whereby they approved and entered into a Development Agreement which violates their own zoning ordinances and comprehensive plans were arbitrary and capricious.

40. As a direct result of the County and Township's *ultra vires* and arbitrary and capricious actions, Plaintiffs have been directly harmed. The approval and adoption of the Development Agreement has materially devalued the 19 lots owned by Plaintiff Carlson, and harmed the property values of other citizens of Chisago County and Lent Township for whom CRVC advocate.

DECLARATORY JUDGMENT

Plaintiffs, as and for their cause of action against Defendants, state and allege as follows:

41. Plaintiffs re-allege the allegations in paragraphs 1 through 40 above and incorporate them by reference herein.
42. CRVC is a citizens group advocating for Chisago County and Lent Township citizens whose interests are adversely affected by the County and Township's disregard for their zoning ordinances and comprehensive plans. CRVC also has its principal place of business in Chisago County and as a corporate citizen of Chisago County, has an interest in Chisago County following its own zoning ordinances and comprehensive plan.
43. Carlson is resident of Chisago County and a landowner whose interests are adversely affected by the County and Township's disregard for their zoning ordinances and comprehensive plans, and who, as a direct result of the County and Township's *ultra vires* and arbitrary and capricious actions, has been directly harmed. The approval and adoption of the Development Agreement has materially devalued 19 residential real estate lots owned by Carlson.
44. The County's act of entering into the Development Agreement which violates the County's own zoning ordinances and comprehensive plan constitutes an *ultra vires* act by the County.
45. The Township's act of entering into the Development Agreement which violates the Township's own zoning ordinances and comprehensive plan constitutes an *ultra vires* act by the Township.
46. Chisago County and Lent Township acted beyond the scope of their powers in entering into the Development Agreement with SRE.

47. The actions of the County and Township whereby they approved and entered into a Development Agreement which violates their own zoning ordinances and comprehensive plans were arbitrary and capricious.

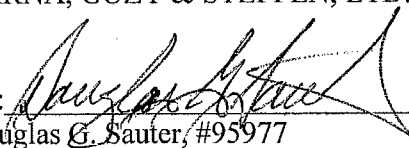
48. The Development Agreement should be declared unlawful and unenforceable and, thus, null and void.

WHEREFORE, the Plaintiffs pray the Court:

1. Declare that the Development Agreement between Chisago County, Lent Township, and Sunrise River Energy, LLC is unlawful and unenforceable.
2. Declare that the Development Agreement between Chisago County, Lent Township, and Sunrise River Energy, LLC is null and void.
3. Award Plaintiffs their costs, disbursements and reasonable attorneys' fees incurred in bringing this action.
4. For such other and further relief as the Court deems just and equitable.

Dated: 6/28/2010

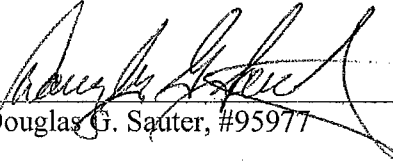
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200 Coon Rapids Boulevard
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Attorneys for Plaintiff

ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements, and reasonable attorney and witness fees may be awarded under Minn. Stat. § 549.21, subd. 2, to the party against whom the allegations in this pleading are asserted.

Dated: 6/28/2010

By: 
Douglas G. Sauter, #95977