

MINUTES OF MEETING
BEAR LAKE, HIGH LAKE, WOLF LAKE
REGIONAL SEWER DISTRICT
AUGUST 3, 1995, 10 A.M.

THOSE PRESENT:

Joe Steele, Rural Economic & Community Development (RECD)
Nick Telliha, RECD
Bradley Thompson, RECD
Bob Deal, RECD
Jim Bowser, East Shore Conservancy District
Bill Spohn, Bonar & Associates, Inc.
Steve Henschen, Bonar & Associates, Inc.

Recorder: Steve Henschen, 219/424-0318, ext. 245

The purpose of this meeting was to review the Bear Lake, High Lake, and Wolf Lake wastewater collection and treatment system project with the State RECD office and to assist the loan applicant in determining the best project size.

1. The meeting started with Steve Henschen providing a brief overview of the location and size of the proposed project. We discussed populations, wastewater flows, and demographics of the proposed sewer district.
2. Jim Bowser then reviewed the history of the project, taking over from Jim's involvement with the East Shore Conservancy District, the East Shore Conservancy District's violation letters with IDEM, and the proposed activities with the County Commissioners to obtain planning funds and ultimately construction funds.
3. It was stated that the Commissioners of Noble County and the East Shore Conservancy District had met twice with the EIWG (Environmental Infrastructure Working Group) in December of 1994 and February of 1995 to develop the best action plan for financing of a proposed project.
4. We discussed the project costs with the group. I indicated that the feasibility study had costs broken down into the various phases. As a key component of this feasibility study, regardless of what the other areas in the proposed regional sewer district did, the East Shore Conservancy District would have to construct some type of project to comply with the IDEM Agreed Order. The project costs discussed were as follows:

Phase I (East Shore) \$1,300,000
Phases I and II (East Shore/North Shore) \$3,300,000
Phases I thru IV (Entire Project) \$6,100,000

5. As a result of the meeting with EIWG in February, it was determined that the best project size to pursue is the Phases I and II project for a total of \$3.3 million. Since that time, additional discussion with Bob Deal has indicated that may have been too large of a project, and the wait for those funds might exceed the applicant's needs.

6. The main purpose of today's meeting was to identify whether the loan and grant application should proceed with the \$3.3 million project, or would they have a better chance of obtaining funds with the \$1.3 million project. After much discussion, it was determined that the loan applicant's best chances for receiving funds in 1996 would be to pursue the \$1.3 million project for Phase I.
7. Joe Steele indicated that requesting funds in this smaller amount would not hurt the proposed sewer district's chances for receiving additional funds in the ensuing years.

Additional comments were made relating to RECD's funding involvement in this project. They are as follows:

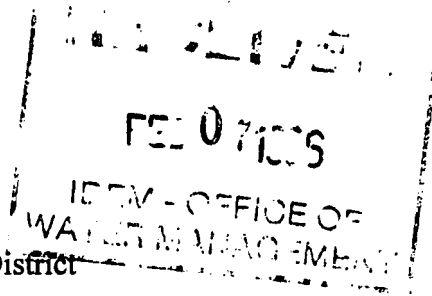
- Jim Bowser indicated that approximately 70% of the dwelling units in this project area are occupied full-time. He feels that number is higher in the East Shore, possibly as high as 80%.
- Jim Bowser indicated a majority of the residents in this area are retired and on fixed incomes.
- Bob Deal and Joe Steele both discussed the fact that if treatment capacity is included for Merry Lea's facility, they may have to pay their share of the treatment costs, to not cause an undue burden on the residents of the Bear Lake area.
- Bradley Thompson stated that an environmental review should take place for the entire proposed project, rather than just the Phase I portion. Bill Spohn responded to Bradley that this is how we are already proceeding to conduct the environmental review.
- Bob Deal discussed with Joe Steele the possibility of using the feasibility study already prepared for the preliminary engineering report, even though the engineering report analyzes the entire regional sewer district. Joe Steele indicated that this is acceptable, as long as a discussion and project costs were provided for the Phase I project.
- Joe Steele said RECD would expect to receive approximately \$15 million in loan money and \$7 million in grant money from the Federal office in October, if things are similar to 1995's budget. He said that they have received a request for over \$85 million in loans and \$50 million in grant funds. Therefore, competition for these funds is very tough. He stressed the importance of completing the full application and environmental review as quickly as possible to have this project proceed.

These minutes reflect my recollection of the items discussed at the meeting. If you have any comments or find any discrepancies, please contact the Recorder. These minutes have been distributed to the following persons:

Joe Steele
Nick Telliha
Bradley Thompson
Bob Deal
Jim Bowser
Bill Spohn
Steve Henschen

MEMO

To: File 1421.11
From: Steve Henschen
Copies to: Jeff Feller, IDEM
Jim Bowser, ESCD
Mr. Jeff Harrell
Subject: Bear Lake, High Lake, Wolf Lake Regional Sewer District
Phone Conversation with Concerned Citizen
Date: February 2, 1996



I received a phone call from Mr. Jeff Harrell on February 1, 1996. Mr. Harrell had sent a letter to IDEM which outlined his concerns regarding the proposed regional sewer district. Jeff Feller faxed me a copy of Mr. Harrell's letter and asked me to respond to the letter. Mr. Harrell and I discussed the following items. The responses are related to the six questions in Mr. Harrell's letter.

Response No. 1:

There has not been an environmental impact study completed in the project area. The county health department has indicated that the area is not suitable for septic systems due some of the reasons listed below:

- Many households stand on ground that was formerly lake bottom. These soil types are not suitable for septic systems
- Small lots do not allow for properly sized absorption fields
- Many absorption fields are connected to tiles that drain to the lakes
- There is a concern for well water contamination due to the close proximity of water wells to septic systems (less than 50 feet)

Response No. 2:

I am not aware if the County has recently tested the water quality of the lakes. I suggested that Mr. Harrell contact Jack Chronister of the Noble County Health Department.

Response No. 3:

The proposed sewer district will be a regional sewer district (RSD). An RSD does not have the authority to levy taxes or assessments on properties or persons. Funds are only generated through user fees typically billed each month to the user or household.

Response No. 4:

Currently, state law requires that if your dwelling is within 300 feet of a sewer, you can be required to connect to the sewer system.

Response No. 5:

Many landowners within the proposed sewer district signed a petition for the formation of a sewer district.

Response No. 6:

I am not able to answer why the IDNR did not wish to use your private drive for a public access. Any proposed sewers in private drives would require an easement from the land owner.

Dear Mr. Henley

JAN 29 1996
OFFICE OF
SEWER DISTRICT MANAGEMENT
This letter is in regard to the "Bear, High, and Wolf Lakes Regional Sewer District." I am a landowner at High Lake and would like more information regarding the Sewer District plan.

I have some specific questions I would like addressed. First, if there has been an environmental impact study done and what timeframe the study covers.

Secondly, have water quality samples been taken at multiple sites on each lake. Thirdly, will there be a monetary change in taxes, sewer fees, road improvements, etc. Fourthly, what are land owners rights and responsibilities. What are my legal rights pertaining to any ramifications from this change. Fifthly, whom are the parties that are backing this type of move, IDEM, Landowners or SPECIAL INTEREST GROUP.

A few years ago I tried to give my property to the IDNR for a public access. Through the process I was informed that the State would not cross over private property. My property is on a PRIVATE DRIVE. Please explain how this situation differs from mine. How is it possible for the Noble County Commissioners to cross private property, but not the State?

Your prompt attention and response to my inquiries will be greatly appreciated. I would like to request notification of any decisions and/or changes that take place here on out regarding the High Lake region.

Thank You,
Jeff Harrell
1768 Co. Rd.
Garrett, IN 46738

Jeff Harrell

EAST SHORE CONSERVANCY DISTRICT

Bear Lake

2169 South Lake Shore Drive
Albion, Indiana 46701

February 13, 1996

CHRONOLOGY OF EVENTS TO ESTABLISH A NEW SEWER FOR THE EAST SHORE CONSERVANCY DISTRICT.

<u>Date</u>	<u>Event</u>
1-31-91	Meeting with Andy Dodzik to review proposed sewage plant.
6-20-91	Meeting with Pollution Control Systems, Inc. regarding a new sewage plant.
9-24-91	Inspection by Richard Holy and Kyle Hendrix of IDEM of current sewer facility.
<u>11-7-91</u>	Letter to Joy LeCount, President of Noble County Commissioners regarding the sewer problems with the East Shore Conservancy District.
2-17-92	Letter to Robert Murphy, Region III-A Planning and Development Commission to start application for funds to obtain a new sewer system.
<u>2-27-92</u>	Mr. Murphy responded to my letter of 2-17-92 advising that an application would be filed on April 3, 1992 if the County Commissioners directed him to do so.
4-6-92	A list of all ESCD residents was sent to Mr. Murphy.
<u>10-13-92</u> <i>mynt mshy</i>	A meeting was held at the Merry Lea Learning center to seek input by the Bear Lake residents at the request of Mr. Murphy. Present were Mr. Murphy, III-A Development; Larry Yoder, Goshen College and Merry Lea; Ray Rhodehmael of Pollution Control Systems; Joy LeCount as a newspaper correspondent; the Directors of the ESCD; and nineteen North Shore Residents.
10-16-92	A list of the north shore residents was mailed to Mr. Murphy.
12-2-92	III-A Planning & Development Commission mailed out income survey cards to all Bear Lake residents.

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- 1-19-93 Directors of the ESCD met with IDEM at Indianapolis to review the situation of our sewer and sewer project.
- 3-1-6-93 Meeting at Noble County Court House with Bob Murphy, III-A Planning & Development Commission. Also present were Joy LeCount, County Commissioner, Frank Ryan and Meg Dolan of the Indiana Department of Commerce, Scott Naltner of III-A, Jim Bowser, Bob Eckert and Ruth Billings, Directors of the ESCD. This meeting was in regards to funding and proposed sewer project.
- 4-7-93 A public hearing was scheduled at 7:00 P.M. by Bob Murphy to review the sewer project. Mr. Murphy did not show and only a few Bear Lake residents plus the board of directors appeared at the meeting.
- 5-12-93 Letter from Bob Murphy to Steve Jacob advising that DOC decided not to announce CFF grant awards until June.
- 7-27-93 Meeting at III-A regarding planning grant. Met with Tim Kelty and we reviewed the procedure to obtain a planning grant.
- 8-9-93 Received word from Kyle Hendrix of IDEM the ESCD had been approved for a planning grant.
- 9-17-93 News paper adds for "Request for Proposal" placed in local newspapers.
9-24-93
10-1-93
- 10-11-93 Meeting with county commissioners to open bids for Planning Grant. Tim Kelty will establish criteria for choosing which firm will be contracted.
- 10-22-93 Met with Tim Kelty to establish criteria. Points will be assigned for various categories of services rendered.
- 10-25-93 Meeting with county commissioners to review bids and assign points based on Tim Kelty's criteria. An interview with the three top firms would be set up. The three chosen were Bonar & Associates, Andy Dodzik and GRW out of Indianapolis.
- 11-8-93 Meeting with county commissioners to interview Bonar & Associates, Andy Dodzik and GRW.
- 11-15-93 Meeting with county commissioners to select engineering firm. Bonar & Associates was the firm chosen.

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- 11-29-93 Meeting with county commissioners, DOC, III-A and Bonar & Associates. A copy of my notes about this meeting is attached for review.
- 11-30-93 Provided Tim Kelty a second list of north shore residents as it appears the first list could not be found.
- 12-2-93 Letter from Tim Kelty, III-A to all Bear Lake residents with an income survey card enclosed, requesting the card be completed and returned.
- 12-15-93 Meeting at Merry Lea Learning Center with Bonar & Associates. Present were Mary Jane Reith, Larry Yoder, Ron Bonar, Steve Henschen, Jim Bowser and Steve Jacob. The purpose of the meeting was to review the sewer project and Merry Lea's involvement.
- 12-21-93 Meeting with III-A Development Commission. Copies of my notes are attached for review if needed.
- 1-7-94 Tim Kelty received a letter from Lisa Ackelburg, DOC, dated 1-3-94 advising to proceed with the planning provided the income survey was completed by 1-29-94.
- 1-24-94 Meeting with county commissioners. A copy of my notes for reference is attached.
- 1-31-94 Returned signed agreement with Indiana C.A.P. Directors Association, Inc. to make grant available for additional planning money.
- 2-8-94 Received signed agreement from Indiana C.A.P. Directors Association, Inc. for preliminary engineering services.
- 2-23-94 County commissioners received letter from DOC advising that application needed further development. Letter dated 2-21-94.
- 3-8-94 Received a phone call from Scott Naltner, III-A that county commissioners received a letter releasing funds from DOC in the amount of \$20,000.00.
- 3-16-94 Phone call from Steve Henschen advising they are re-applying for grant from State Revolving Fund.
- 3-28-94 Letter from Scott Naltner sending copy of letter from DOC dated 1-23-94, received by county commissioners 3-3-94 approving grant.

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6-15-94

Letter from Indiana C.A.P. Directors Association, Inc. changing date of ICDA grant from 7-1-94 to 9-1-94. This date was changed two additional times, one on 8-23-94 and 1-10-94. Apparently this was done at the request of the Indian C.A.P. Directors Association, Inc.

7-11-94

Provided county auditor with a check in the amount of \$4,100.00 as part of the additional funds needed to complete the engineering study.

8-29-94

Meeting with county commissioners and Bonar to review progress and plans by Bonar & Associates.

9-12-94

Meeting with county commissioners and Ron Bonar to review agenda for public meeting on 9-22-94.

9-22-94

Public meeting at Wolf Lake Elementary School regarding the establishment of a regional sewer district.

right
12-19-94

Meeting with county commissioners. Copy of my letter to Jon Owen regarding this meeting is attached for reference.

1-16-95

Meeting with county commissioners. Minutes of this meeting are attached for reference. Minutes furnished by Anita Huff.

1-18-95

Met with Environmental Infrastructure Working Group in Marion, IN regarding funding for sewer project. Noble County Commissioners were represent by Harold Troyer.

1-20-95

Letter to Indiana State Budget Agency submitting FmHA Form 424, Project Description and Support Maps for review by State Clearing House.

1-20-95

Copies of pre-application form 424 submitted to Bob Deal, RECD.

1-24-95

Notice of Pre-application Review denied funding however requested a meeting be set up for 5-31-95 at ESCD.

2-13-95

Public hearing on setting up a regional sewer district was held at the Wolf Lake Elementary School.

right
3-1-95

Letter to Joy LeCount with petitions to form a regional sewer district.

3-10-95

William Spohn of Bonar and Associates sent forms to Robert Deal of RECD that he had requested supporting application for funds.

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- 3-16-95 Mailed documents completed by ESCD to William Spohn needed for application to RECD for funds.
- 3-20-95 Letter from county commissioners to IDEM filing a petition to establish a regional sewer district.
- 5-1-95 Letter from Mylean Huyber, IDEM requesting additional information on cost of operation and maintenance of system. Also need petitions by eligible entities to establish the regional sewer district.
- 5-11-95 An approved, signed Accounting Services Agreement with H.J. Umbaugh & Associates was returned to said organization. This is required by RECD.
- 5-24-95 Notice to Steve Henschen from IDEM changing procedure advising the need for the legal entities to petition the IDEM.
- 5-25-95 Letter by Steve Henschen to IDEM, Mylean Huyber, regarding the notice he received dated 5-24-95.
- 5-31-95 Pre-Application conference requested by RECD. Present were Bob Deal & Paul Neuman of RECD; Bill Spohn & Steve Henschen of Bonar & Assoc.; Jon Owen, attorney for ESCD; John Julian, H.J. Umbaugh, Inc. accounting firm; Jim Bowser, Bob Eckert and Ruth Billings, ESCD Board members.
- 6-27-95 Signed agreement with IU/PU, Fort Wayne, for an archeological survey.
- 7-10-95 Meeting with county commissioners with Bonar to update progress of sewer system.
- 7-12-95 Letter to Scott Naltner, III-A to update him on the progress of our sewer system as requested by county commissioners.
- 8-3-95 Met with RECD staff at Indianapolis to review regional sewer district and funding. A copy of the minutes of that meeting are attached for review if necessary.
- 9-1-95 List of property owners in the area covered by the regional sewer district was mailed to IDEM.

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- 10-16-95 Letter from Mylean Huyber, IDEM requesting petitions from Noble & Wayne Township boards and ESCD. to establish the regional sewer district.
- 11-20-95 Met with Noble Township Board to get petition signed. They refused, wanting to put it on the May primary ballot as a referendum.
- 11-21-95 Letter to county commissioners regarding situation with Noble Township Board.
- 12-4-95 Letter of transmittal of signed petitions from Washington Township and ESCD along with proposed letter for commissioners to IDEM.
- Jan. 1996 IDEM sent notices to all property owners of upcoming public hearing on Feb. 22, 1996.

*Feb 12, 1996. Meeting with Noble County Commissioners
to review agenda for Feb. 22 IDEM
public hearing.*

James C. Bowser
James C. Bowser, E.S.C.D.

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March 6, 1996

VIA UPS - OVERNIGHT

R. J. Henley
Assistant Commissioner
Office of Water Management
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, IN 46206-6015

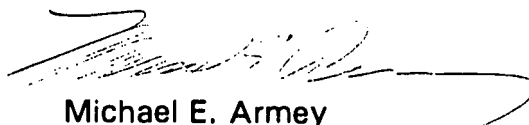
In Re: Petition To Establish The Bear, High, Wolf Lakes Sewer District

Ladies and Gentlemen:

Enclosed herewith are written objections on behalf of Larry Boyd, a property owner in the above proposed district. Mr. Boyd will be forwarding directly to you an additional set of the objections which will be joined in by additional property owners in the district. I would appreciate your including both sets of the objections in the record in this matter.

Thank you for your cooperation in this matter.

Very truly yours,


Michael E. Armey

MEA/kkm

Enclosure

#54

**BEFORE THE
INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

IN RE:)	
PETITION TO ESTABLISH THE)	OBJECTIONS TO ESTABLISHMENT
BEAR, HIGH, WOLF LAKES)	OF SEWAGE DISTRICT
SEWER DISTRICT)	

INTRODUCTION

The Feasibility Study dated March, 1995, for The East Shore Conservancy District, Bear Lake, High Lake and Wolf Lake prepared by Bonar & Associates, Inc. (the "Feasibility Study") and related matters clearly fail to establish either the need for the proposed district or the economic feasibility of the proposed district. Additionally, at the present time, the proposed district has not yet been properly approved by the Noble Township Board as required by I.C. §13-3-2-3(b).

These objections are prepared on behalf of Larry Boyd, Post Office Box 272, Wolf Lake, Indiana 46796 and are joined in by the residents of Wolf Lake and surrounding area whose names, signatures, addresses and telephone numbers are attached hereto, all of whom would be adversely affected by this proposed project. It is directed at the need for including Wolf Lake and its surrounding area and does not attempt to judge the need for the establishment of a sewer district for High Lake and Bear Lake.

NEED FOR THE PROJECT

The Feasibility Study makes its case of the need for the District in Chapter 2 and is based almost entirely upon existing problems with the East Shore Conservancy

District and soil types and housing density problems associated with High Lake and Bear Lake, with no evidence as to what relationship the problems at High Lake and Bear Lake have to Wolf Lake and its surrounding area. Almost as an afterthought, the Feasibility Study notes that shallow wells provide a basis to include the Wolf Lake area. What is remarkable though is that neither the Feasibility Study nor the Health Department Letter in support of the district (Appendix B) indicate the existence of, or problems with, any shallow wells in Wolf Lake. Moreover, there is no indication of any water quality degradation in Wolf Lake nor individual wells. In fact, Wolf Lake has no housing on it and it is up stream from Bear Lake and High Lake and thus is not contaminated by the problems there. The community of Wolf Lake contains houses on lots substantially larger than the High Lake and Bear Lake areas with no apparent septic or well problems. Thus there is no established need for the inclusion of the Wolf Lake area in the district.

A review of Chapter 3 of the Feasibility Study shows the focus of the study to be almost entirely upon Bear Lake. Although there is substantial documentation regarding the existing situation at Bear Lake, the only reference to Wolf Lake refers to census data and the following undocumented assertion:

"These systems include a septic tank and an absorption field. Some homes are thought to have bypassed the absorption field and effluent is discharged to drain tiles which may lead to the lakes. Many of these systems are over 20 years old and have had little or no maintenance activities performed on them. Appendix B includes a letter from the Noble County Health Department describing the type of systems that can be found in the unsewered areas." (Emphasis added).

The letter at Appendix B is directed at situations on Big Lake, High Lake and Bear Lake and does not mention Wolf Lake at all. Clearly the Feasibility Study fails to address the

existing sewerage situation at Wolf Lake. The Feasibility Study in its entirety fails to factually establish any basis for its conclusion regarding the existing and future need for the inclusion of Wolf Lake and surrounding areas in the proposed district.

ECONOMIC FEASIBILITY

The economics as proposed by the Feasibility Study are also suspect in that it assumes to establish rates with 30% to 45% of the cost of designing and constructing the system through outright grants which need not be repaid, without an analysis of whether or not such funds are presently available, what the priority of this project would be in relation to all other communities seeking similar grants and the eligibility of the proposed district for such grants. Notwithstanding this, the economic feasibility is proposed to be determined without including the alternative of a 100% user financed system; which roughly allocating debt service on \$6,100,000 over 35 years at 5.25% over 657 ERC's costs over \$48.00 per ERC per month for a total rate in excess of \$60.00 per month. This is compounded by the fact that the proposed schedule is already several months behind with the attendant cost increases and there are no delays built in for grant and/or loan approvals or for the issuance and sale of bonds, both of which will result in further delays and cost increases.

As with establishing need, the Feasibility Study purports to assume facts and then concludes that the system is economically feasible. This is mere sophistry and not a study performed to establish known existing facts and then base conclusions on those facts. With the ability to assume the facts, it is no problem to come to any conclusion you

desire. As proposed, the petition and the Feasibility Study fail to establish that the proposed project is economically feasible.

REQUIREMENTS

The petition and Feasibility Study as proposed and presented do not meet various of the requirements of law as are necessary and required for the hearing officer to recommend the formation of the district and therefore, the recommendation should be to deny or modify the proposed district by excluding Wolf Lake and surrounding areas.

First, the petition was not authorized by the Noble Township Board as required by I.C. §13-3-2-5(b). The approval by the Noble Township Board was conditioned upon a number of items, one of which stated:

“We concur with the need for a sewer system for Bear Lake and High Lake and would approve of a sewer system for Wolf Lake if left to the discretion of the property owners affected.” Emphasis added.

This is a clear statement that the Noble Township Board did not yet approve the inclusion of Wolf Lake and surrounding area in a Sewer District but only that it would approve the inclusion of Wolf Lake if the property owners so desired. Under this circumstance, no approval has yet been given. Until this defect has been cured, the petition should not even have been heard by the hearing officer and this matter should be resubmitted to the Noble Township Board.

Next, the petition and other relevant facts (the Feasibility Study) must establish the need for the proposed district. I.C. §13-3-2-5(b); I.C. §13-3-2-3(6). As proposed by the petitioners and further outlined by the Feasibility Study, there are

insufficient facts developed to establish the need for any sewage treatment district for Wolf Lake. It is based entirely on speculation with no documentation that there are any existing or future sewage disposal problems in Wolf Lake and surrounding areas.

Last, the petition and other relevant facts (the Feasibility Study) must establish the economic feasibility of the proposed district. I.C. §13-3-2-5(c). This proposal is not based upon facts, but is speculative. This is further compounded by failing to consider any facts related to the availability of grants and not including a zero grant alternative. To fairly present the proposal, it should either factually establish that grants will be available or present the highest and lowest costs to be imposed on the property owners and/or users.

Generally speaking, findings of an administrative agency must be based upon facts and those facts must be based upon substantial evidence in the record. They must be based upon more than mere speculation. Evidence of guess, conjecture, surmise, possibility or suspicion is not sufficient to support an administrative decision. As the record presently exists in this proceeding, the facts are few and far between all of the assumptions and guesses. While agencies have great latitude in interpreting the law and the evidence, they are not entitled to rely upon unsubstantiated assertions.

CONCLUSION

The findings in this matter should be that there is presently insufficient credible evidence in the record to support the granting of the petition at this time and

should recommend that the proposed district be modified by excluding Wolf Lake and surrounding areas or the petition should be denied.

Dated this 14 day of March, 1996.

LEMON, ARMEY, HEARN & LEININGER

By 

(Michael E. Arme) #2449-43
210 North Buffalo Street
P.O. Box 770
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