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NETLEY CREEK GOLF COURSE
REPORT ON A DEVELOPMENT PROPOSAL

BACKGROUND

On March 10, 1987 the Council of The Rural Municipality of St. Andrews granted approval in principal to an application submitted by Mr. Arthur B. Dalman for planning approval to develop a part of his dairy farm for "commercial recreational purposes" as an eighteen hole golf course located near the Village of Petersfield in the NW 1/4 of Section 28, Township 15, Range 4 in the Municipality. This proposal was accepted May 22, 1987 by the Selkirk and District Area Planning Board as being in accordance within the intent of the area development plan notwithstanding advice received from the area Agriculture Department land resources specialist that the application would not be compatible with the plan as it was an intrusion of non-farm development into an agricultural area. Subsequently, after giving notice, the Municipality held a public hearing June 9, 1987 regarding the development proposal and issued a conditional use order June 30, 1987 approving the development. The condition applied to this approval specified that work on the project commence within twelve months of the date of issuance and construction work began in the fall of 1987.

At the end of March, 1988, The Environment Act was proclaimed and became the law of Manitoba. This act required the registration of golf course developments and specified that no construction should take place before the issuance of an environmental licence. By letter dated April 18, 1988, the Environmental Control Programs section of the Environment Department advised Mr. Dalman that he must submit a proposal for his golf course development in accordance with the Environment Act and by letter, dated June 6, 1988, Mr. Dalman submitted his proposal form. The proposal form was received by Environment Control Programs on June 13. On June 24, a representative of the Environment Department requested Mr. Dalman to discontinue work on the project pending completion of the licencing process. On June 25, the Department advertised the development in the Winnipeg Free Press and on June 28 the

advertisement appeared in the Selkirk Journal providing an opportunity for submission of representations from those with an interest in the matter. A number of representations were received by the Department from farmers and residents located on land adjacent to the golf course property as well as from the Keystone Agricultural Producers.

On July 15, 1988, the Honourable Ed Connery, Minister of Environment and Workplace Safety and Health requested The Clean Environment Commission to hold a public hearing on the Netley Creek Golf Course proposal to receive representations and to make a report and recommendations to him as provided in The Environment Act. Because of the circumstances, the Minister requested that the hearing take place as quickly as possible.

The Commission was prepared to hold the hearing in August 1988, but this was delayed at Mr. Dalman's request. Subsequently, the Commission decided on a mid-September hearing date after further consultation with both Mr. Dalman and a number of people who had registered an interest in the hearing. After advertising the hearing in the Selkirk and Winnipeg newspapers and giving written notice to those who had expressed an interest in the matter, the hearing was held in the community hall in Petersfield, Manitoba, September 13, 1988. The date chosen was a compromise between the wishes of interested agricultural producers, who preferred to have a later date so as not to interfere with the harvest, and the developer, who preferred a somewhat earlier date.

The hearing was held pursuant to Sections 6(5) and 11(10) of The Environment Act.

EVIDENCE AND REPRESENTATIONS RECEIVED

Preliminary Motions

At the opening of the hearing, Ms. Judy Slagerman, appearing as the solicitor for Mr. Bruce Dalman and The Netley Creek Golf Course, raised a number of legal points in a written submission which had been filed with the Commission in advance of the hearing. Some of these points dealt with the Commission's jurisdiction under The Environment Act and the fact that the matter had been previously considered by the municipal council of the Rural Municipality of St. Andrews who had held a hearing before granting conditional approval to proceed. Other points had a bearing on the responsibilities and actions of the Environment Department Director under The Environment Act, and questioned the propriety of the proposal registration under the Act as well as the holding of the hearing. The Commission received Ms. Slagerman's letter, with attachments, as an exhibit to the hearing and undertook to attach the exhibit, as an appendix to the Commission's report for further review and consideration by the Environment Department. Ms. Slagerman's letter of September 8, 1988, containing these motions is attached as Appendix "A" to this report.

The Development Proposal

Ms. Slagerman tabled a submission which included a profile of the principal developer Mr. Bruce Dalman, details of the proposed development, an account of the background of the proposal to date and a somewhat abbreviated environmental impact review.

This submission confirmed that Mr. Dalman, as owner of a dairy farm, intends to utilize part of this land for the development of a privately funded eighteen hole golf course in the NW 1/4 of Section 28-15-4 EPM, in the Rural Municipality of St. Andrews, one kilometre northwest of the unincorporated village of Petersfield. Buildings would include a clubhouse with restaurant and pro-shop and, in due course, a maintenance building. Nine holes would be

constructed initially to be in operation by the spring of 1990. The course would be laid out on undulating partly wooded terrain with three foot bridges to be constructed to permit play on both sides of the Netley Creek.

Modification of the site would include the movement, placement and grading of 36,000 cubic metres of clay, topsoil sand and gravel; selective removal of trees, including diseased trees, with the planting of new shrubs and trees; also the tilling and planting of grass in the fairways. A reservoir or sedimentation pond would be excavated, so situated as to draw water from the Creek. Expansion to a full eighteen holes accompanied by the expansion of the buildings, as required, was expected to take place in the early 1990's.

A sum estimated at \$63,750.00 had been invested prior to the hearing on professional fees, site preparation, staff recruitment and training and in opportunity costs. A loss of \$25,000.00 was expected in connection with lost income resulting from delays associated with the licencing process.

The environmental impact statement indicated no endangered species had been found on the site of the operation which would itself provide favourable habitat for birds, deer and small animals. It was also indicated that, while Netley Creek was subject to some deleterious inputs upstream in the form of treated sewage effluent and agricultural runoff, the vegetated golf course area would tend to reduce siltation and creek turbidity. It would, on balance, favour good conditions for fish and not result in any significant reduction in the flow of the Creek. Fertilizer, herbicides and fungicides would be used, as necessary, in the development and operation of the course but at lower concentrations than would be used by agricultural producers in the surrounding area. Most land drainage from the course would be arranged to flow into the water obstacles on the course. The traces of agricultural chemicals in any runoff to the Creek would be negligible compared to highly sedimented and nutrient-rich runoff from tilled soil, according to the environmental impact statement filed on behalf of the applicant. Applications for licences for creek water withdrawals and water crossings would be submitted, as required, to the Department of Natural Resources.

The impact statement also discussed the possibility of conflicts arising between the owners and users of the golf course, on the one hand, and the several neighbouring livestock producers, on the other. The operation was only one kilometre from the Village of Petersfield, a residential and commercial area. The development was taking place with the sanction of the Municipal Council, acting with the approval of the regional development board, which had jurisdiction for planning and land use approval. Mr. Dalman did not believe the introduction of the golf course would result in any more opposition to farming operations than the minimal levels experienced in the past from non-farm residents of the area. Speculation about possible complaints from golfers in future was not a valid concern of the hearing as the golfers would always be free to play elsewhere if they found the operation of neighbouring farms to be obnoxious. The specter of the establishment of future non-agricultural developments, following the licencing of the golf course, was also not a valid concern as these would be dealt with by the Municipality under its existing jurisdiction. The applicant also argued that the land being used for the golf course was largely unsuitable for agriculture, or, at least, for cultivation by modern agricultural equipment due to the uneven terrain and the constrictions resulting from the winding Creek and the wooded areas of land.

Opposition to the Proposal

Opposition to the golf course proposal came from those with a primary interest in the continuation and future development of the agricultural operations, principally livestock raising and feeding farms in the vicinity of the development west of Highway 9 in the Rural Municipality of St. Andrews. These included the owners and operators of the farms, the Manitoba Department of Agriculture, the Manitoba Hog Producers Marketing Board, and the Keystone Agricultural Producers.

The position of the Manitoba Department of Agriculture was presented by Mr. J.R.D. Partridge, Chief of Land Utilization. Mr. Partridge stated that the surrounding farms operated with approximately 2,700 hogs and 400 dairy

cattle with plans for future expansion. He noted that the area was designated in the Selkirk and District development plan as being for unrestricted agricultural development. It was reasonable for the farmers of the area to expect that other types of development would not be allowed to encroach in the area. The proposed development was expected to have a potentially adverse impact on their operations and might preclude the introduction of new farming operations and methods or the expansion of existing production units. Based on the many cases the Commission had been called upon to adjudicate, where livestock operations had been the subject of complaints, the proposed Netley Creek Golf Course had a potential to bring about environmental conflict in the area. Mr. Partridge stated that the existing natural or normal environment in the area was livestock-oriented farming with inherent odours, noise and related activity. A development of the type proposed would bring about an environmental change that would endanger the continuation of normal farming activities in the surrounding area.

Mr. Partridge quoted as an example the case of the Springfield Hog Ranch in which suit was successfully brought in 1975 against the operator by neighbours, allegedly including the Elmhurst Golf Course. True, the Nuisance Act, passed in 1976, would protect livestock operations, as they then existed, from nuisance suits. However, this would not protect them from future by-laws or legislation brought about by lobbying and pressure by encroaching non-farm recreational activities and residential developments nor would it enable them to enjoy continued expansion. There was fundamental environmental incompatibility between the golf course and the intensive livestock production units in the area. The position of Agriculture Mantioba was that the Commission's recommendations should recognize this fact and should recommend that a licence not be granted to permit the golf course development to proceed.

In addressing a matter of less central consequence, but contrary in part to the position maintained by the applicant, Mr. Partridge maintained that the land proposed for the golf course development was prime agricultural land with the exception of the wooded portion near Netley Creek. The topographical differences cited would not generally be obstacles to normal cultivation or other agricultural use. Similar nearby land produced forages,

cereal and oil seed crops. The land where the proposed golf course would be located had been used as agricultural land by the Dalman family for 38 years and there was no reason this use could not be continued. As a matter of principle he deplored the loss of prime agricultural land to other non-agricultural uses.

The other main opposition to the golf course proposal came from families associated with livestock farming operations in the vicinity. One of their representatives was Mr. Robert Currie, a real estate consultant from Winnipeg. He stated that 7,000 to 8,000 acres of land on the immediate vicinity were devoted to livestock production with up to 7,000 hogs and hundreds of cattle being shipped annually and with millions of dollars invested in land, buildings, machinery, equipment and livestock. A number were third and fourth generation operations. Mixed farming was firmly fixed as a way of life. The proposed golf course development would place in serious jeopardy the stability and growth potential of these farms. This development was in conflict with the objective of the Selkirk and District Development Plan which stated, in part, "First and foremost, the Development Plan will seek to support and strengthen agriculture as the primary land use in the district". Also the development would inevitably result in conflict arising from golfers' objections to odours associated with livestock production and livestock wastes. Mr. Currie stated that Mr. Dalman had already approached three of the neighbours to suggest they refrain from spreading manure during tournament occasions and weekends and alleged Mr. Dalman's consultants had suggested the neighbours consider increasing the size of their manure storage facilities, to facilitate less frequent spreading, and purchase liquid manure injector equipment to facilitate less odourous incorporation of animal wastes in the soil. Other nuisances that had a potential to create problems were pesticide spraying, flies, machinery, odour and noise, dust, "smudges" to protect livestock and even "bird poppers". He questioned the effect that the golf course would have on wildlife in the Creek where some nine beaver dams were located

If a licence were granted for the golf course, Mr. Currie felt the value of the livestock component of all adjacent farms would decline. These operations would also be more difficult to finance in future, because buyers and bankers do not like an uncertain situation with regard to the stability of permitted land use development. A change in land use would be perceived in a negative light as non-farm development usually results in higher taxes and restriction of farm operations in some form. Farm oriented buyers could be expected to attempt to discount the price as a hedge against the various possible negatives becoming a reality. Bankers are reluctant to finance farm operations where potential problems exist. With the receipt of the first complaint the values would decline further. Should any residential component of this or a following future development occur, livestock operations in the vicinity would become unmarketable. He concluded that agriculture was an entrenched land use in the area west of Highway 9 in the Netley Creek area and he submitted, on behalf of the farming families, that this should remain unchanged.

The testimony received from Mr. Currie was supported by Mr. Desmond Donohoe whose 300-dairy cattle operation was less than a mile away with the manure being incorporated in fields directly adjacent to the golf course. Other disposal was on a quarter-section directly south where there was a particular need for soil improvement. A total of over 4.5 million litres of manure were spread every six weeks, an average of almost 1100 litres per day. In addition, a custom operator was engaged once a year on a contract basis to remove and dispose of manure from the Donohoes' feedlots. Mr. Donohoe had no control over what days the contractor worked on this task and no opportunity to avoid the days when an unfavourable wind was blowing. Other farmers were located at various points of the compass and whichever way the wind blew the odours were going to be carried to the golf course. This would give rise to complaints by the golfers and from the course operator when players elected to golf elsewhere. This form of "urban expansion" provided all the ingredients for an incompatible situation and Mr. Donohoe asked that an environmental licence not be issued to the golf course.

Mr. Joe Koche-Schulte indicated he farmed with grain and livestock raising, marketing about 1,800 hogs per year with buildings located one mile north of the proposed golf course. He pointed out a golf course needed two things; pleasant surroundings and fresh air. Since the course was partly surrounded by livestock farms there were times when the air could hardly be called fresh. Manure must be spread when the pits were full and when time was available — even on Saturdays and Sundays. A golf course would have difficulty fitting into this type of rural environment where farms have been established for more than fifty years. These were troubled times for many agricultural producers and any additional instability or additional burdens were unwelcome. How would future applications for expansion of farming activities be treated if this incompatible land use were permitted? Mr. Koche-Schulte thought that if any livestock producer tried to start a new operation in a predominantly recreational area, the application would be denied, and for good reason. If this were true why should the farmers of the area be expected to accept the intrusion of this new non-farm development? Approval of this environmental licence would slowly but surely mark the end of intensive livestock production in the area. The golf course should obviously be established elsewhere, where it would be in harmony with its surroundings.

Ms. Rose-Marie Koche-Schulte raised similar objections noting that the Nuisance Act would not provide sufficient protection and that it could not stop the harassment likely to arise out of complaints about agricultural odours. Also this Act was grandfathered and would not protect the expansion of existing farm operations or protect new livestock operations from lawsuits after a golf course or similar non-farm operations were allowed to develop in the area.

Mrs. Brenda Koche-Schulte, a nearby resident, raised a number of socio-economic factors affecting the acceptability of the proposal. Livestock farmers necessarily lived lives different from other non-farmer citizens. They lived and worked in the same place. Their social and business lives were one with their whole identity being tied in to their farms. Theirs was a very small world where good will and harmony were necessary, neighbours working with and depending on neighbours as a tightly-knit group. The farmers

affected had been living together for generations, attending church together, attending each others' socials, weddings and funerals, their children riding the school buses together for hours each day. If the proposal was approved it would introduce something that would be totally incompatible, that would throw these families' lives into chaos and create a potential for extreme conflict. Mental stress was already occurring because of the golf course proposal as friends rejected friends, often because of lack of understanding of the true extent of the impact of the proposed development on the social fabric and lives of residents. Outside recreational participants would reap the benefit but at great cost to the existing community.

There had already been suggestions for modifying the mode of operating the livestock farms which communicated a threat in the perception of the livestock owning families. Other people's lives might be compartmentalized such that this kind of threat would be marginal, but the livestock families would be living, working and operating their business in the face of an unwelcome threat, in a stressful situation 24 hours a day. Mrs. Koche said the golf course proposal had already destroyed much of the good will that was central to the harmony and peace of day-to-day living. She pleaded with the Commission not to recommend allowing the golf course to proceed so the neighbours could live in peace without the continual threat of harassment related to their normal and necessary agricultural practices.

Also appearing as a witness in opposition to the proposal was Mr. Earl Geddes, Chairman of the Keystone Agricultural Producers' Association. He expressed the concern of this organization at the prospects of conflict from the proposed non-agricultural development in an area heavily populated with long established, intensive livestock operations. The question involved was considered one of major importance as it was the first case involving this kind of conflict to appear before the Commission under The Environment Act and was expected to establish a precedent that would influence future judgements on similar cases. Livestock production was particularly vulnerable to non-farm encroachment and could be seriously disrupted or curtailed as the eventual result. His organization had advocated 'right-to farm' legislation to prevent such problems. It would be unwise to grant a licence for the golf

course, firstly as common sense would indicated productive agricultural land should be maintained in production; secondly, it would create a potential for conflict between the two incompatible land uses, especially as this initial development might lead to demand for further development. Neighbouring farmers would find it difficult or impossible to expand and this was inconsistent with the regional development plan objectives. Scattered non-farm development had adverse effects on farming including rising land costs, loss of productive land, incompatibility with farming activities, the changing community structure and the demand for more urban-related services. In such areas the interest in farming should be paramount in any land use decision. Mr. Geddes stated that the Keystone Agricultural Producers strongly advised against granting a licence for the purpose of golf course development.

Mr. Bill Vaags, Chairman of the Manitoba Hog Producers Marketing Board, appeared at the hearing to testify concerning his personal experience concerning the Springfield Hog Ranch case. He stated that the owner of the Ranch had been successfully sued for creating a nuisance, related to odours, by non-farm landowners in the vicinity, including persons associated with the Elmhurst Golf Course. A judgement amounting to \$10,000, plus costs, was brought against the then owner. Mr. Vaags stated the owner then felt very rejected and had a nervous breakdown. Mr. Vaggs had later bought the hog ranch and, when a similar legal action was brought against him, closed down the hog raising operation at that location.

The hog producer's organization had fought hard and succeeded in having The Nuisance Act passed. This provided protection from nuisance suits being brought against operators whose operations were fully in compliance with the health, environmental, zoning and other applicable legislation.

More recently, because of the heavy non-farm population in the Rural Municipality of Springfield, Mr. Vaags reported that the municipality had just passed a by-law stating that any new livestock operation would not be permitted to spread manure whether by air, by injection or by field sprayers, which meant that any new livestock operations could not be established in the Municipality of Springfield. Mr. Vaags sited this occurrence as confirmation

that non-farm oriented activities in a farming area will result in restriction of farm operations and that when politicians change, policies also change in response to new pressures so that the will of today's Council to protect farmers may not prevail in the future if non-farm activities are allowed to develop. (Mr. Partridge undertook to provide the Commission with a copy of this new by-law).

Mr. Vaags stated the hog industry was one of the largest export dollar earners in the Province with over seventy percent of the products being exported. It was necessary to make sure the livestock industry could continue to expand. Mr. Koch, for example, was expecting to double his operation in the vicinity of the proposed golf course by the following year. Would he be allowed to do this? Would the Municipal Council permit any livestock expansion at that time? The economic spinoff from livestock production was some 230 million dollars per year and Manitoba must make sure it did not stop this industry from functioning effectively. Everything had been fine, but he was concerned whether this would be true in future. He did not feel it was his place to oppose the golf course development directly but he wanted to warn what might happen in future if it were approved.

(NOTE: In response to a request made by the Chairperson at the hearing, the Commission received, on September 19, 1988, a copy of By-Law 88-38 of the Rural Municipality of Springfield obtained for them by Mr. J.R.D. Partridge. This By-Law, passed on August 23, 1988, decreed in part, that in the public interest to provide for the comfort and well being of the urban residential areas within the Municipality, no person would be permitted to apply or introduce into designated lands within the Municipality, any "waste . . . in any manner whatsoever whether by solid application, liquid application, aerial application or injection." "Waste" was defined as including "human or animal wastes; solid or liquid manure; or waste products of any kind". In an area where there are a number of livestock operators together with a considerable non-farm population, this had the effect of forbidding farmers from disposing of animal wastes on their property in any except the four most easterly townships in the Municipality. Following

objections, this By-Law was repealed on October 18, 1988 and the matter was understood to be still under discussion within the Municipality at the time this report was prepared.)

Local Support for the Proposal

When the golf course proposal was under consideration by the Rural Municipality of St. Andrews, two petitions were submitted to Council and these were received in evidence by the Commission. The petition opposed to the development appeared to contain signatures of some thirteen to fifteen families, while the petition favouring the golf course contained signatures appearing to represent members of over one hundred families. While a number of people representing this latter point of view appeared to be in attendance at the hearing, not many gave evidence.

Mr. Morley Murray, a resident some two miles west, favoured the proposal golf course development. He testified that he could see no negative environmental impact resulting from the project on what he considered was not a viable piece of land for other uses. He believed the opposition being encountered was not primarily against the golf course but rather against developments that might possibly come in future. However, basing this resistance on what might happen in five or ten years was not logical. Each proposal would require a zoning change and local government approval. He requested the Commission to make two recommendations: that the proposed golf course be approved and that right-to-farm legislation be put in place. Farmers did not have the time and resources to deal with every developer on an individual basis and the confrontations involved were not good for a community. Such legislation would also alleviate some of the difficulties facing developers with proposals in the future.

Mr. Stephen Juba, a resident of the Municipality for 10 to 12 years, questioned the motivation for the opposition to the proposal. He felt that the residents were more concerned about themselves than for the development of the region and considered that their opposition was based on jealousy. This

did not accord with the free enterprise system. Times change. He favoured encouraging the developer and was not impressed by suggestions the golf course should be put in a different location. "We built up under the free enterprise system and if we are to progress we must take into consideration that changes will transpire."

Municipal Government

Mr. Al Shrupka, a member of the Municipal Council of the Rural Municipality of St. Andrews, attended the hearing as the municipal government representative. In this capacity he testified that a conditional use order has been issued for the Netley Creek Golf Course June 30, 1987, and tabled extensive documentation to trace the development of this decision. It was established that the land use status of the development was approved, as a 'conditional use', permitting the operation to proceed in accordance with Mr. Dalman's application.

As background, Councillor Schrupka stated council has been concerned about recreational and other development and had commissioned a consultant's study in 1985 due to unco-ordinated development that had taken place. Many summer cottages were turning into permanent residences. Cottage development along Netley Creek had been confined to the area east of Highway 9. However, there had been strong and persistent pressure to extend this development along the Creek to the west, or upstream side of the Highway, toward the area of the golf course development. This area had been reserved, up to that time, for agricultural use. Mr. Dalman's proposal was welcomed by many members of Council as a way of providing a buffer zone to block further development along the Creek upstream of Highway 9. Council approved the golf course development but was determined that there should be no residential component in any development in that upstream area. Mr. Dalman had been cautioned that, under no circumstances should he look for a housing component in his development plan. Council felt the proposal represented a good use for that property. Mr. Schrupka felt the recreational development fitted in with the surrounding agricultural property use. He was certain that the farmers would receive

approval in any deliberations regarding future farm development proposals including the expansion of livestock operations surrounding the proposed golf course land. Plans for any further subdivisions would be subject to the overall zoning process and, as a result, were well under control. Under questioning he repeated that, in Council's view, the golf course provided an ideal solution to "lock out a housing component on the creek front", and reiterated "no additional recreational land west of Highway 9 is planned for" Mr. Schrupka confirmed there was no appeal mechanism available in connection with the conditional use order granted by the Municipal Council.

The Environment Department

Mr. Douglas Peterson, the Head of Water Pollution Control in the provincial Department of Environment and Workplace Safety and Health tabled a submission compiled by his Division. During the provincial government review of the proposal there had been consultation with a number of government departments including those responsible for agriculture, highways, municipal planning, energy and mines, business development and tourism, urban affairs and environment. Most of the points raised by those departments that had concerns had been passed to the proponent in advance of the hearing and had been addressed during Ms. Slagerman's presentation. These points included concerns by the Water Resources Branch about the possibility of mercury pesticides getting the Creek and the need for licencing by that Branch for any water removal or water crossings planned in order to ensure there was no negative impact. The Department of Agriculture had serious concerns regarding the location of the development in an intensive livestock production area and the departmental representative had addressed these concerns at the hearing. Environmental inspection services had pointed out there should be no introduction of nutrients to Netley Creek from the golf course operation and the same department had cautioned about the use of pesticides and fertilizers to ensure there was no contamination of soil, groundwater or surface water. In particular, the common use of mercuric fungicides on golf course greens was noted and the department recommended against permitting this practice on the proposed golf course because of the proximity of Netley Creek. Public

comments pro and con had been received by the environmental department following their advertisement of the proposal.

There was objection by Ms. Slagerman to the acceptance by the Commission's of a submission from the Historic Resources Branch introduced by Mr. Peterson at the hearing and not previously made available for perusal by the proponent. The Commission decided that, as no previous notice of the document had been given and because of the significance of the submission to the proponent, it would not be accepted as an exhibit of the hearing process. The alternative action would have been to adjourn the hearing to a later date to give the proponent adequate time to consider the document and its ramifications for his proposal.

OBSERVATIONS AND CONCLUSIONS

The proposed Netley Creek golf course operation falls within the category of a Class II Development under the Environment Act. A Class II development is defined as a development "the effects of which are primarily unrelated to pollution or are in addition to pollution". A golf course is named as a specific development in the category of "Recreation" in Regulation 164/88 under the Environment Act.

The definition of "environment" under the Environment Act means:

- (a) air land and water; or
- (b) plant and animal life, including humans;

A "development" is defined under the Act to mean "any project, industry, operation or activity which causes or is likely to cause

- (d) a substantial utilization or alteration of any natural resource in such a way as to pre-empt or interfere with the use or potential use of that resource for any other purpose; or
- (e) a substantial utilization or alteration of any natural resource in such a way as to have an adverse impact on another resource; or
- (g) a significant effect on the environment or will lead to a further development which is likely to have a significant effect on the environment; or
- (h) a significant effect on the social, economic, environmental health and cultural conditions that influence the lives of people or a community in so far as they are caused by environment effects".

It was within the foregoing broad context of the Act that the Commission assessed and considered the environmental impact of the proposal to construct the Netley Creek Golf course and the objections and concerns expressed by neighboring livestock farm operators, a senior representative of the Department of Agriculture, the Chairman of the Manitoba Hog Producers Marketing Board, and the Chairman of the Keystone Agricultural Producers.

The Commission took note of the previous approvals given to the golf course proposal by the Selkirk and District Area Planning Board and the Council of the Rural Municipality of St. Andrews. From the evidence heard, it seemed likely that these bodies were presented with much of the same evidence, argument, and opinion that was received by the Commission during its hearing. The review process of the Rural Municipality of St. Andrews included discussion at a public hearing to consider the requested zoning variation.

At the Commission's hearing, counsel for the proposed golf course developer presented legal argument questioning the propriety of the hearing and the necessity of any further approval than had already been received from the Planning Board and the Municipality. The requirement of registration of the proposal under the Environment Act was also questioned in view of the fact that the development had commenced well before the new Environment Act was passed and the terms of the former Clean Environment Act, in force at the time that construction on the golf course commenced, did not require Environment Department registration or licensing of a golf course development.

The Commission believes that the question of registration and licensing of the proposal, in relation to the prevailing circumstances, is basically one for the consideration of the Environment Department which required the registration of the proposal and directed the Commission to hold a hearing. A copy of the written preliminary motions by counsel for the developer, which were delivered to the Commission prior to the hearing and presented at the hearing, are included in this report, as Appendix "A".

The Commission further believes that, notwithstanding previous approvals of the golf course proposal under authorities provided by the

Municipal or Planning Act, there is a mandate under the Environment Act for the consideration by the Commission of the environmental impacts of the proposal, as outlined by the Act. The Commission does not consider that it is bound or limited by any previous approvals, although it has taken these into consideration, and has conducted its hearing and made its report in accordance with this understanding.

The Commission carefully considered the arguments against licensing of the golf course proposal presented by neighboring farmers, a senior representative of the Manitoba Department of Agriculture, the Manitoba Hog Producers Marketing Board, and the Keystone Agricultural Producers. The Commission noted that at the present time the area in which the golf course is proposed is utilized primarily for livestock operations. The land proposed for golf course development has been utilized for raising dairy cattle by the owner and is good agricultural land, hampered, in some respects by Netley Creek which bisects the property.

There has been a long standing concern about the effects of the encroachment of non-farm developments into farming areas. Some of the past restrictions on farm operations, which have ultimately resulted from the encroachment of environmentally incompatible non-farm developments into agricultural areas, were noted. Provincial Land Use Policy objectives advocate "the retention of prime agricultural lands for crop production" and aim "to protect livestock confinement operations from possible encroachment and potential conflicts" (Provincial Land Use Policies, Provincial Land Use Committee of Cabinet, 1980). The Commission views these as important policies. Neighboring farmers stated that their farming operations were a way of life extending over several generations and shaping their social life and culture. They believed that their way of life would be threatened by the golf course development.

At the hearing, the Councillor representing the Rural Municipality of St. Andrews stated that the policy of the municipality had been to restrict non-farm developments to lands on the east side of Highway No. 9. He stated that the golf course had been approved by Council partly to act as a buffer against the further extension of possible recreational, non-farm developments

along Netley Creek west of Highway No. 9. His opinion was that the policy of the Council of the Rural Municipality of St. Andrews was not to allow, in future, any further non-farm developments such as residential housing, in connection with the golf course development. He also stated his belief that Council would not, in future, impose any restriction on livestock farm operations surrounding the proposed golf course, regardless of any objections that the golf course developer or his golfing customers might raise.

The Commission has concluded that the golf course development would not create any significant threat to the environment in the conventional sense of physical environmental degradation including the release of pollutants. Indeed, aside from the possibility of the use of mercury based fungicides, which are commonly used on golf course greens, there seems to be no doubt that use of the proposed land as a golf course would be beneficial to the water quality of Netley Creek compared to use for a farming operation, the normal run-off of water from which would be likely to contain some soil, pesticide residues, fertilizer nutrients, and livestock wastes.

The only potential threat or harm to the livestock farmers would appear to be the anticipated restrictions on livestock operations brought about by:

- (a) pressure from the golf course owner or golfers on the municipal government to restrict livestock operation development or practices, particularly with regard to the emission of odors.
- (b) further non-farm developments, such as residential development, attracted to the golf course or encouraged to seek approval for establishment by the existence of the non-farm development, which might increase pressure to restrict livestock operations.

Also feared was a potential drop in surrounding farmland values or the ability to sell farmland, caused by the uncertainty of possible future livestock operation restrictions, resulting from the establishment of the golf course.

The Commission accepts that the broad conditions of the new Environment Act legitimize, in an environmental context, the concerns expressed by the Department of Agriculture, farm organizations, and farmers.

In deciding on its recommendations for licensing of the operation, the Commission was heavily influenced by the fact that the proposal developer, Mr. Dalman, had received at the time he started construction, in 1987, all the approval that was then required for his proposal. Subsequently, after the investment and expenditure of considerable time and money by Mr. Dalman, the new Environment Act was proclaimed and he was required to register his proposal under the Environment Act and cease construction. In this situation, the Commission considers Mr. Dalman to be, to a large extent, a victim of circumstances after having proceeded to commence development in a normal manner following the receipt of legal approval for his actions.

Mr. Dalman and the Councillor representing the Rural Municipality stated at the hearing that the golf course operation would not attempt to, or be allowed to, interfere with or restrict the operations or proposed future expansion of surrounding livestock farm activities. Although it is the Commission's advice and belief that a condition which would attempt to restrict the golf course owners right to raise future objections can not be incorporated properly into an environmental license, it is the Commission's strong conviction that the golf course developer should be prepared to proceed with this development at his own risk with the realization that the golf course must operate side by side with existing neighbors without any future attempts to compromise these livestock operations, regardless of inconvenience to or complaints of golfing clientele and the effect on the ultimate success or failure of his golf course enterprise. In this regard, the Municipality should protect the farm operations.

The Commission also wishes to make clear that its recommendation for licensing of this operation should not be taken as a precedent for future golf course development proposals which may be referred to the Commission for licensing recommendations. The recommendations for licensing were made in consideration of all of the unique factors and circumstances which applied to

this particular proposal. The Commission believes that other golf course development proposals could well be presented in a specific situation where either more restrictive conditions for licensing or outright refusal of a license might be recommended by the Commission.

RECOMMENDATIONS

The Clean Environment Commission recommends:

- A. That a license under the Environment Act be issued to the Netley Creek Golf Course.
- B. That the following limits, terms, and conditions be included in the license.
 - 1. The Applicant shall not use any mercury based fungicides on the golf course.
 - 2. The Applicant shall ensure that overburden, trees and other debris are not placed or stored on the banks of the Netley Creek River during construction of the golf course.

Wawrykow, Kohaykewych & Associates

Barristers, Solicitors and Notaries Public

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Telephone
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September 8th, 1988

DELIVERED

The Clean Environment Commission
 Box 17, Room 550
 500 Portage Avenue
 Winnipeg, Manitoba
 R3C 3X1

Attention: Mr. W. R. Stewart, Executive Secretary

Dear Sir:

Re: Netley Creek Golf Course Proposal
Public Hearing: Tuesday, September 13th, 1988,
at Petersfield Community Hall

As you are aware, we act on behalf of Mr. Bruce Dalman, proponent of the above-noted proposal pursuant to section 11(7) of The Manitoba Environment Act.

Pursuant to your request communicated to the writer by telephone on September 2nd, 1988, we hereby notify you of our intention to make the following preliminary motions concerning the above-mentioned hearing:

1. That The Clean Environment Commission hearing on September 13th, 1988 should not be held at all.

Reasons:

- (a) Section 15(3) of The Environment Act that the Act is not intended to compel persons having already obtained approval under The Clean Environment Act to go through another approval process under the new Act. Although the conditional use order granted to Mr. Dalman by the Rural Municipality of St. Andrews was granted pursuant to The Planning Act, and not pursuant to an order under The Clean Environment Act, his proposed development was consistent with and not in contravention of the provisions of The Clean Environment Act at the time he applied for the said conditional use order.

- (b) The hearing conducted by the Rural Municipality of St. Andrews on June 9th, 1987, concerning Mr. Dalman's application for the conditional use order meets the requirements of an "existing approval process" as outlined in section 11(2) of The Environment Act. Present at the said hearing were representatives from the Department of Agriculture and the District Planning Department. As well, presentations were made by a number of concerned citizens from the area, most of whom, it is significant to note, intend to make presentations at The Clean Environment Commission hearing on September 13th, 1988. We understand that at the Municipal hearing relevant environmental issues were addressed. The Municipal Council, after hearing the concerns of all of the representatives, issued the conditional use order to Mr. Dalman which was not subject to any conditions. In light of the fact that Mr. Dalman's plans have already been subjected to this thorough examination and scrutiny, this is an appropriate circumstance for the application of section 11(2).
- (c) Section 1(1) of The Environment Act includes as one of the primary purposes of the Act the recognition of "the responsibility of elected government including municipal governments as decision makers". For The Clean Environment Commission to now go behind the members of the Municipal Council and conduct what will be essentially the same hearing as was held by the Municipal Council flies in the face of the stated purpose of the Act.
- (d) The Clean Environment Commission can be considered a judicial tribunal, or at the very least a quasi-judicial body. The Commission, by conducting a public hearing for a matter which has received prior approval under earlier legislation, is using a procedure which creates a manifest injustice. Even though the said procedure may comply with the enabling legislation, the said procedure is legally invalid because of the manifest injustice to our client which flows as a result. Our client faces injustice in the following ways:
- (i) Time and money expended in obtaining the conditional use order from the Rural Municipality of St. Andrews;
 - (ii) He commenced development of the golf course and expended large amounts of money and time in reliance on the said order;
 - (iii) Citizens who opposed the golf course development at the Rural Municipality hearing now have an opportunity to get a "second kick at the cat";
 - (iv) The time and costs (including legal fees) in attending the present hearing.

- (e) If the provisions of The Environment Act apply retroactively to compel Mr. Dalman to undergo a second approval process, then these provisions offend the rules of natural justice applicable to administrative bodies. Courts in Manitoba have attempted to ensure that the individuals whose rights are affected by administrative bodies are protected and dealt with in a fair and just manner. (See: Watt v. Registrar of Motor Vehicles, Manitoba Court of Queen's Bench, 1957; Re Quinn, Supreme Court of Canada, 1981) It is patently unfair and in violation of our client's rights to compel him to undergo a second hearing, which has the potential consequences of preventing him from continuing with a development on which he has already spent much time and money.

2. That the hearing cannot result in the complete refusal to issue a licence for the proposed development.

Reasons:

- (a) The effect of section 11(6) of The Environment Act appears to be that the legislation applies retroactively to those developments already in existence and operating before the legislation was passed. If such a provision is legally and constitutionally valid--which we maintain it is not--then it appears to restrict the minister to merely changing or adding limits, terms, and conditions to the development and its operation. The provisions of the Act do not appear to allow for the minister to completely prohibit or prevent such a development from continuing to exist, aside from allowing abatement. Because the Netley Creek Golf Course is an existing Class 2 development, the consideration of his proposal filed with the Commission cannot result in a complete disallowance of the proposed golf course, but rather the imposition of appropriate conditions, if any. It is important to note that the Rural Municipality of St. Andrews issued the conditional use order in June of 1987 without imposing any conditions on the development.

3. That if a hearing is allowed to take place, only environmental issues may be addressed.

Reasons:

- (a) The following sections of The Environment Act provide that proposed developments are to be assessed and examined only with respect to environmental issues: s. 1(1)(b); s. 1(2) definition "development"; s. 11(9). According to administrative law, it is improper for an administrative entity, in decision-making or exercising its power, to consider extraneous or irrelevant matters, or to fail to consider matters which the legislation makes expressly relevant. (See: Smith and Rhuland v. R., Supreme Court of Canada, 1953).

- (b) Many of the concerns expressed by citizens in the Petersfield area who responded to the Department of Environment advertisement cannot be said to be environmental issues. In particular, the concern that the proposed development would set a precedent for future non-agricultural development in an agricultural zoned area is a zoning matter, and a matter of policy within the exclusive purview and control of the Rural Municipality of St. Andrews. Development which other individuals may initiate in the future is not a proper subject for examination at this hearing. Secondly, the concern that conflicts may develop between the golf course patrons and resident livestock producers is again not an environmental issue. It can be said to be environmental only insofar as the livestock producers can be said to be harming their environment, which reverses the issue and improperly places the focus of the hearing on the farmers. These residents' farming operations are not subject to the provisions of The Environment Act, so there is no danger of any action in the future by persons seeking to prevent their operations from continuing.

The above outline of our preliminary motions is not intended to serve as a complete elaboration of our arguments in this regard. At present, we do not have our arguments in written form, as we have been faced with time constraints.

We would suggest that members of the Commission who will be presiding at the hearing on September 13th, 1988, consider the contents of this letter at their earliest opportunity. Should the Commission consider any or all of the motions to have serious merit, then perhaps the hearing may have to be postponed in order to allow for further dialogue and/or research.

We look forward to hearing from you shortly, and remain,

Yours truly,

WAWRYKOW, KOHAYKEWYCH, & ASSOCIATES



Judith A. Slagerman

JAS/lk
pc Mr. Bruce Dalman

L I S T O F E X H I B I T S

1. Honourable Ed Connery, Minister of Environment and Workplace Safety and Health, Letter, July 15, 1988.
2. Judith A. Slagerman, Wawrykow, Kohaykewych & Associates, Letter, September 8, 1988.
3. Bruce Dalman et al, Submission, with attachments, September 13, 1988.
4. Bruce Dalman, Map of Golf Course Area.
5. J.R.D. Partridge, Manitoba Agriculture, Brief.
6. Manitoba Agriculture Department, Soil Survey Map, exerpt, golf course area.
7. Al Shrubka, Councillor, R.M. of St. Andrews, Papers.
- 7.1 R.M. of St. Andrews, Minutes of Council Meeting, exerpt, March 10, 1987.
- 7.2 R. Leslie Price, Secretary-Treasurer, R.M. of St. Andrews, Letter, March 11, 1987 to Manitoba Department of Municipal Affairs.
- 7.3 Ralph Sanders, Planner, Municipal Planning, Letter, May 22, 1987 to R.M. of St. Andrews.
- 7.3A. Bryan Yusishen, Farm and Rural Development, Manitoba Agriculture Department, Letter, to R.M. of St. Andrews.
- 7.4 R.M. of St. Andrews, Minutes of Council Meeting, exerpt, June 9, 1987.
- 7.4A Petition, June 6, 1987.
- 7.5 James Thomas, Associate, Hilderman Witty Crosby & Hanna Associates, Letter, June 16, 1987 to R.M. of St. Andrews.
- 7.6 R.W. Koch-Schulte, Submission.
- 7.7A. Petition, June 18, 1987.
- 7.8 R. Leslie Price, Secretary-Treasure, R.M. of St. Andrews, Letter, with attachments, July 8, 1987.

- 7.9 R.M. of St. Andrews, Minutes of Council Meeting, exerpt, June 30, 1987.
- 7.10 C.B. Orcutt, Director, Environmental Management, Department of Environment and Workplace Safety and Health, Environment Act Proposal, June 21, 1988.
- 7.10A. C.B. Orcutt, Director, Environmental Management, Department of Environment and Workplace Safety and Health, Letter of Advertisement, June 21, 1988.
- 7.11 St. Andrews Agricultural Group, Letter, July 5, 1988.
- 7.12 W.R. Stewart, Clean Environment Commission, Letter, July 20, 1988.
- 7.13 W.R. Stewart, Clean Environment Commission, Letter, August 2, 1988.
- 7.14 Larry Strachan, Environmental Management, Department of Environment and Workplace Safety and Health, Letter, August 9, 1988.
- 7.15 R. Leslie Price, Secretary-Treasurer, R.M. of St. Andrews, Letter, July 13, 1988.
8. Keystone Agricultural Producers Inc., Submission, September 13, 1988.
9. Robert Currie, Brief.
10. Morley Murray, Brief.
11. Desmond Donohoe, Brief.
12. Fred Koche-Schulte, Brief.
13. Rose-Marie Koche-Schulte, Brief.
14. Tom Simpson, Brief.
15. Michael Koche-Schulte, Brief.
16. Larry Strachan, Environmental Management, Department of Environment and Workplace Safety and Health, Memorandum, September 8, 1988.
17. F.J. Koch-Schulte, Letter.
18. Brenda Koch-Schulte, Letter.

- 18.A. Brenda Koch-Schulte, Letter.
19. Bill Bardswich, Director of Mines, Memorandum, July 4, 1988.
20. C.B. Orcutt, Director, Environmental Management, Department of Environment and Workplace Safety and Health, Memorandum, July 18, 1988.