

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

CASE TYPE: OTHER - CIVIL

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Rush Creek Golf Club, Ltd.,  
ex rel. State of Minnesota,

COURT FILE NO. 95-14085

Plaintiff,

vs.

**NOTICE OF FILING ORDER**

City of Corcoran, Minnesota; and  
Steven Fraasch,

Defendants.  
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PLEASE TAKE NOTICE that on the 5th day of April, 1996, the Honorable Robert H. Lynn, Judge of District Court, Fourth Judicial District, County of Hennepin, State of Minnesota, issued the attached Order which was duly filed with the Hennepin County Court Administrator on April 15, 1996.

A copy of said order is attached to this Notice and made a part hereof.

DATED: April 16, 1996



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Rush Creek Golf Club, Ltd.,  
ex rel. State of Minnesota,

Plaintiff,

vs.

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER FOR JUDGMENT  
File No.: 95-14085

City of Corcoran, Minnesota;  
and Steven Fraasch,

Defendants.

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The above-entitled matter came on for trial before the undersigned, one of the Judges of the above-named Court, on December 15 and 18, 1995 and on February 5, 1996. Plaintiff moved for an Order of the Court permanently enjoining defendant Fraasch from maintaining a radio tower at his Corcoran residence.

By Order of this Court dated September 11, 1995, plaintiff's motion for a temporary restraining order was denied.

On December 14, 1995 this Court personally observed the tower as well as the surrounding area in the presence of all counsel.

B. Andrew Brown, Esq., appeared on behalf of plaintiff. John B. Bellows, Esq., appeared on behalf of defendant Fraasch. James G. Golenbeck, Esq. and Jeffrey Carson, Esq., appeared on behalf of the City of Corcoran.

Based upon all the files, records and proceedings herein, the Court makes the following:

#### FINDINGS OF FACT

1. Plaintiff Rush Creek Golf Club ("Rush Creek") is a Minnesota corporation that owns a golf course situated adjacent to Goose Lake in the City of Corcoran, Minnesota.

2. Defendant Fraasch resides at 19263 81st Place North, Corocran, Minnesota. Fraasch's property is a nineteen acre site which includes wetlands which are part of Goose Lake.

3. Fraasch is a federally licensed amateur radio operator.

4. On August 10, 1995, the Corcoran City Council approved a Conditional Use Permit authorizing Fraasch to erect a 130 foot amateur radio tower at his home.

5. On or about September 1, 1995, the City of Corcoran issued Fraasch a building permit for a 130 foot tower.

6. On or about September 6, 1995, plaintiff commenced action against defendants seeking to enjoin construction of the tower. The Fraasch Tower was erected to a height of 130 feet by September 17, 1995 after this Court denied plaintiff's motion for a temporary restraining order.

7. Fraasch desires to engage in amateur communications including public service communications. The 130 foot tower is necessary to meet Fraasch's reasonable amateur communications objectives. The alternative antennas proposed by plaintiff's

expert do not meet Fraasch's reasonable amateur communications objectives.

8. The Fraasch tower does not pollute or impair the wetlands of Goose Lake.

9. Plaintiff presented the testimony of Dr. James A. Cooper an Associate Professor of Wildlife at the University of Minnesota. Dr. Cooper testified that there is no known evidence of Trumpeter Swans nesting in the Goose Lake area. In fact there have been only two documented instances of Trumpeter Swans in the Goose Lake area over the past fifteen years.

10. Dr. Cooper testified that he was not aware of a single example of a trumpeter swan colliding with an amateur radio tower or the guy wires extending from radio antennas.

11. The Fraasch tower does not present the potential for significant environmental effects upon birds, including the Trumpeter Swan, which may visit the Goose Lake area.

12. Potential damage to trumpeter swans caused by the Fraasch tower is wholly speculative.

13. The Fraasch tower is visible from surrounding points but does not appreciably impair any scenic or aesthetic resources associated with the Goose Lake wetlands.

14. The Fraasch tower is visible from portions of plaintiff's property but does not interfere with the comfortable enjoyment of the property.

15. The Fraasch tower has far less visual impact on plaintiff's property than the adjacent farmyard filled with rusty old construction equipment as well as a nearby mobile home park.

16. Radio towers, power lines and other similar structures are frequently found near or adjacent to golf courses in the Twin Cities area.

17. Plaintiff failed to present any credible evidence that the Fraasch tower will have any financial impact on plaintiff's golf course.

18. Both plaintiff Rush Creek and defendant Steven Fraasch are private landowners advancing their private interests. It is not the Court's duty to weigh the relative utility of these interests.

#### CONCLUSIONS OF LAW

1. Plaintiff has failed to establish that the Fraasch radio tower poses the risk of an irreparable injury to plaintiff within the meaning of M.R.C.P. 65.

2. Plaintiff has failed to make a prima facie showing that the Fraasch radio tower has or is likely to impair the surrounding natural resources and wildlife within the meaning of Minn. Stat. Sec. 116B.04.

3. Plaintiff has failed to establish that the Fraasch radio tower may have the "potential for significant environmental effects" within the meaning of Minn. Stat. Sec. 116D.04. Said failure to demonstrate significant environmental effects from the

tower obviated the necessity of either an Environmental Impact Statement or Environmental Assessment Worksheet.

4. The City of Corcoran's decision not to require an EAW or EIS was not arbitrary and capricious.

5. The City of Corcoran's decision to issue a building permit for the construction of the tower was not arbitrary and capricious.

6. The Fraasch radio tower does not constitute a nuisance within the meaning of Minn. Stat. Sec. 561.01.

7. Plaintiff is not entitled to injunctive relief mandating removal of the Fraasch radio tower. Accordingly,

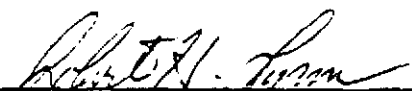
**IT IS HEREBY ORDERED:**

1. That plaintiff's motions for injunctive relief are, in all respects, denied.

2. That defendants are entitled to recover their reasonable costs and disbursements herein.

LET JUDGMENT BE ENTERED  
ACCORDINGLY

BY THE COURT:

  
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Judge of District Court  
Dated: 14/5, 1996