

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

LAKE OZARK/OSAGE BEACH JOINT SEWER BOARD, ET AL.,

Respondents

v.

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

Appellants

DOCKET NUMBER WD71299

DATE: August 31, 2010

Appeal From:

Circuit Court of Miller County, MO
The Honorable Sanford Francis Conley, IV, Judge

Appellate Judges:

Division Four: Lisa White Hardwick, C.J., James Edward Welsh, J., and James W. Van
Amburg, Sp. J.

Attorneys:

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**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**LAKE OZARK/OSAGE BEACH JOINT SEWER BOARD, ET AL., RESPONDENTS, v.
MISSOURI DEPARTMENT OF NATURAL RESOURCES, LAND RECLAMATION
COMMISSION AND MAGRUDER LIMESTONE CO., INC., APPELLANTS.**

WD71299

Miller County

Before Division Four Judges: Lisa White Hardwick, C.J., James Edward Welsh, J., and James W. Van Amburg, Sp. J.

The Missouri Land Reclamation Commission, under the Missouri Department of Natural Resources (referred to collectively as "the Commission"), approved Magruder Limestone Company's application for a permit to expand its quarry operations. The Joint Sewer Board for the cities of Lake Ozark and Osage Beach and thirty-two citizens (referred to collectively as "Petitioners") opposed the expansion permit and sought judicial review of the Commission's decision in the circuit court. The circuit court reversed the Commission's decision after finding that the Commission placed the burden of proof on the wrong party, improperly relied upon evidence outside the record, and erroneously determined that Magruder's application was complete when it was originally filed. Magruder and the Commission appeal.

REVERSED AND REMANDED.

Division Four holds:

(1) Magruder's failure to include a map, which was required by statute and regulation, in its original application packet did not invalidate the Commission's decision. The Commission had all of the required information, including the missing map, before it issued the permit, so its decision complied with 10 CSR 40-10.020(1). Moreover, the absence of the map did not render Magruder's public notice defective, as the neither the map nor information from the map is part of the public notice. Nothing in the record indicates that the absence of the map in Magruder's application packet caused any potential petitioners to submit their requests to join the case outside of the original time limit.

(2) The Commission erred in placing the burden of proof upon Petitioners rather than on Magruder. Pursuant to section 444.773, RSMo Cum. Supp. 2009, and 10 CSR 40-10.080(3)(B), Petitioners bore the burden of production and Magruder bore the burden of proof. The Commission did not distinguish between the burdens of production and persuasion and repeatedly stated that Petitioners bore the burden of proof and that Magruder bore no burden. Because the Commission failed to apply the burden of proof in accordance with the statute and regulation, its decision was made upon unlawful procedure. Therefore, we reverse the Commission's decision and remand the cause to the Commission for a new hearing.

(3) Because we are reversing and remanding for a new hearing, we need not address Petitioners' claim that the Commission erred in relying upon unscientific evidence outside the record in making its decision.

Opinion by: James Edward Welsh, Judge

August 31, 2010

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