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Official newspaper of the city of Winona

## Outside groups to weigh in on sand suit

by CHRIS ROGERS

Now that it has reached the Minnesota Supreme Court, frac sand company Minnesota Sands' lawsuit against Winona County is attracting a lot of outside attention. The League of Minnesota Cities (LMC), the California-based property-rights organization Pacific Legal Foundation, the industry

groups Aggregate and Ready Mix of Minnesota (ARM) and the Minnesota Industrial Sand Council (MISC), and the Land Stewardship Project (LSP) all plan to weigh in on the case in an attempt to represent the many people they believe could be affected by its outcome.

The lawsuit challenges the constitutionality of Winona County's 2016 ban

on new frac sand mines. Minnesota Sands contends that the ordinance violates the U.S. Constitution's interstate commerce clause by outlawing sand mining for out-of-state industrial uses while allowing it for local construction uses. The county argues that its ban was justified in order to protect the health of citizens and the environment and that industrial sand mining and

construction sand mining are not the same thing. Minnesota Sands lost in district court and appellate court. The state's highest court agreed this fall to take the case.

On November 9, the Minnesota Supreme Court gave the four organizations permission to file amicus briefs in the case. Latin for "friend of the court," amicus curiae briefs are legal

arguments filed by interested outside parties in addition to the primary arguments written by attorneys for Minnesota Sands and Winona County.

"The League [of Minnesota Cities] seeks leave to participate as amicus curiae because more is at stake here than the parties' individual interests,"

see **SUIT** page 5a

## A Dream to become the Nutcracker Prince



Center photo by Nathaniel Nelson, photo at left contributed

■ At center, Nolan Livingston, 15, poses in his Nutcracker Prince outfit after a late night rehearsal. This is his fourth time in "The Nutcracker" and his first time as the titular hero. At left, Livingston (right) dances in his first performance of "The Nutcracker" in 2012.

servatory for the Arts' production of "The Nutcracker," the

15-year-old will be accomplishing a goal he has been working toward for half of his dancing career. Livingston, an accomplished hip-hop dancer and budding ballet dancer,

will perform as the Nutcracker Prince himself in his fourth holiday performance.

"My goal when I did 'The Nutcracker' for the second time was to be the Nutcracker," he said. "My ballet teachers set up a plan to help me grow, and learn to perform the best I could. They helped me through the

entire process."

Livingston started out as a hip-hop dancer, inspired by his sister's performances and some videos he saw online. He asked his mother if he could try it, he explained, and that's when everything began.

see **PRINCE** page 5a

## WAPS debates referendum engineer

by NATHANIEL NELSON

Now that Winona Area Public Schools' (WAPS) \$9.42-million referendum was approved by voters, administrators have moved on to the next step in the process — selecting an engineering firm. At the last board meeting, superintendent Rich Dahman presented three firms that had undergone the district's vetting process: Wold, ISG and DLR. Dahman recommended Wold, citing its history with the district and knowledge of the older buildings, but this time, board members seem less inclined to hire the firm at a cost that is markedly higher than its competitors, as it has done in the past.

Had the 2016 \$145-million referendum been approved by voters, the WAPS Board had agreed to hire Wold as its engineer, despite its bid being \$742,000 higher than the other firm vying for the contract.

The information was shared with members of the WAPS Board in preparation for a vote at its first December meeting, when one of the firms is expected to be given the contract and the referendum projects put in motion.

"It's a vital step so that our \$9 million in revenue that taxpayers have paid are used in a successful manner," Dahman

see **ENGINEER** page 5a

## Winona Diocese to file for bankruptcy

by CHRIS ROGERS

In response to child sexual abuse lawsuits, the Diocese of Winona-Rochester (DOWR) will file for bankruptcy later this month, Diocesan officials announced this week.

Bishop John Quinn broke the news in a letter to parishioners distributed at Masses on Sunday.

After acknowledging claims of child abuse by former priests, the

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## GRSF opens new office for Small Business Saturday

by NATHANIEL NELSON

Starting this Saturday on Third Street in downtown Winona, fans of theater, beads, and the local art scene will have a new place to check out — Great River Shakespeare Festival

(GRSF) has moved, and is opening its new office to the public just in time for Small Business Saturday and the release of passes for its 16th season.

Eileen Moeller, marketing and sales

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## After saga, turbines demolished

by CHRIS ROGERS



Photo by Chris Rogers

■ Shattered remains were all that were left last week after two huge wind turbines were demolished outside Altura. Visit the Winona Post Facebook page to see a video of the demolition.

They were over 220 feet tall with rotor blades measuring almost 94 feet long. For around eight years, two 750-kilowatt wind turbines towered over farmland outside rural Altura. Winona County spent years and tens of thousands of dollars developing the project, but the turbines never functioned properly and later broke down. After a multi-million-dollar court battle, the turbines were demolished, cut up, and hauled away earlier this month. The company behind the project hopes to erect a new turbine at the same site next year.

Known at one point as Winona County Wind, Winona County government played a central role in promoting and planning the wind turbine project. Winona County officials began planning work in 2005. At the time, the state legislature had recently passed a new law allowing the "Minnesota

see **DEMOLISHED** page 4a

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# Prince

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Over the next few years, he began improving in his skills and performing with students several years above him, before eventually being asked to take a risk and try out a new dance form.

“I had been taking hip-hop for a few years and my dance teacher asked me to try out for a ballet piece [in which] they were accepting beginner boys,” Livingston recalled. “I tried out, was accepted, and I liked it so I started taking boy’s dance.”

In 2012, Livingston performed in his first “The Nutcracker” as a lower billed ballet dancer, and two years later he returned to the stage for his second. His father, Chris Livingston, remembers Nolan coming to him that time and setting his new goal.

“He decided he wanted to be the Nutcracker [Prince before he turned 17,” Chris said. As it turned out, Nolan would get his chance two years early.

Chris also performs in the dance as Mayor Silverhouse, the father of Clara, the female lead. His first performance was two years ago, when he was dragged on stage by his children to audition for one of the “dad” roles, and is now returning to dance with his kids again.

He recalled the first time Nolan performed in a ballet piece, and how it quickly grew on him, despite his early apprehensiveness to the form. “It was more controlled and he felt that he could breathe — it was a dance form that he could breathe into,” Chris said.

Chris explained that ballet, unlike hip-hop dancing, was watched his son work hard to get where he is, especially in the last year. Earlier this year, Nolan went to a summer dance intensive at the Milwaukee Ballet, where he received a full-tuition scholarship. For the next six weeks, he trained for eight hours a day, every day, under some of the best dancers in the country. “I just trained and did the best that I could the entire time. They got me farther than I thought I was ever going to get,” Nolan said.

When he returned, he was a completely different dancer, Chris explained. Shortly after, he auditioned for “The Nutcracker” and was given the titular role, much to everyone’s surprise.

“We were all surprised that they cast him, but now that I’ve been watching him dance on stage, it doesn’t surprise me,” Chris said.

Being a ballet dancer has its ups and downs, Nolan said, and growing up as a boy in a small town, the push to be in the arts has rarely been on the forefront.

“As a kid, most [boys] are encouraged to do sports and not the arts. It’s not encouraged for guys of any age,” he explained. “I wish there were more guys, because the way guys dance in any role is always much different than women in most cases.”

Saint Mary’s University freshman Kevin Smith, a former musical theater student, said that even in this field, there is a dip in male actors and performers. “The industry of theater is lacking guys. I don’t know if it’s a preconception that guys don’t do theater or that guys don’t dance, but in general the whole industry is lacking,” Smith said.

Smith explained that he has danced before in musicals, but dancing in his first ballet is a different thing entirely. “The Nutcracker” is a big production, and while he will miss out on the next run in 2020 while he studies overseas in London, he wants to continue working on these types of shows.

“The more I see, the more I learn. It’s a scheduled process, especially now during tech week, but it’s a very well-put-together process to put on this fabulous show,” Smith added.

Isaac Meinke and Seamus Schwaba are two of the younger members of the 103-member cast, at 11 and 12 years old respectively, but they embrace the culture in which they have found themselves. Meinke has performed in “The Nutcracker” before, but this time around, he is performing as Fritz, the younger brother of Clara who ends up putting all of the story’s events in motion.

“I’m the smallest one in my family, so [being Fritz] isn’t much different,” he said. “It’s pretty much just having fun and all.”

This is Schwaba’s first performance, but he is already wearing his ballet pride on his sleeve. “If people make fun of me for it, I don’t care. It’s cool. It’s something I’m proud of and I brag about it,” he said.

Nolan explained that performing year after year has helped him develop as a performer, helping him to progressively take on larger roles year after year. Chris explained that through his successes, he has watched his son develop not only as a dancer, but also as an individual.

“If they excel at something, it gives him a lot of confidence. He’s just gotten more confidence in himself, and I think that’s bled into other areas of his life,” Chris said. “If I think about the kid he is in each level, his dancing has gotten better, but he’s also grown as a person.”

With each successive year, Nolan pushed himself to go further and inch closer to his goal. This year, he will finally have a chance to perform in the role he dreamed of years ago, but that won’t stop him from working toward his next big breakthrough.

“I pushed myself for this because where else are you supposed to go but up, if you’re doing something that you love?” he said.

Minnesota Conservatory for the Arts and Saint Mary’s Department of Theatre and Dance will present the Dance Repertory Company’s 10th biennial production of Tchaikovsky’s holiday classic ballet, “The Nutcracker,” at the Page Theater at 6:30 p.m. on November 28 through December 1, and a matinee performance on Sunday, December 2, at 3 p.m. Tickets are \$5 for students and senior citizens and \$12 for adults. For tickets or more information, visit <http://page.smumn.edu/>.

# Suit

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LMC Research Attorney Susan Naughton wrote in a request to the court. LMC represents nearly every city in Minnesota, provides training, and lobbies on their behalf. LMC representatives want to weigh in on this lawsuit in order to support Winona County’s ban and, by extension, the power of local governments. “This appeal’s resolution is important to our members because it will impact local zoning authority to evenhandedly disallow a land use to protect the public health, safety, and welfare,” Naughton stated, adding that the league could provide the court with “a broader perspective of the legal issues and public policies at stake in this appeal.”

While the question of whether the ban violated the interstate commerce clause appeared to be the primary controversy in the Minnesota Court of Appeals’ 2-1 ruling this summer, Pacific Legal Foundation attorneys expressed special interest in a different aspect of the case: whether the ban was an unconstitutional “taking” of private property. Under the U.S. and Minnesota constitutions, the government must

fairly compensate citizens whenever it takes their property — such as in eminent domain cases. Courts have recognized that this right extends to “regulatory takings” — situations where governments regulate private property to the point of effectively taking away its ability to be used. In this case, Minnesota Sands claims to hold leases to mine several Winona County properties containing \$3.6 billion in frac sand deposits, and the Pacific Legal Foundation lawyers plan to argue that the county owes Minnesota Sands just compensation for taking away those lease rights. The appellate court dismissed this argument largely because, before the ban was passed, Minnesota Sands never went through the regulatory process to have its mines permitted. The company had five years to apply for the necessary permits and failed to do so, appellate judge Renee Worke wrote in her opinion, quoting an 1831 case, “What right has any one to complain, when a reasonable time has been given to him, if he has not been vigilant in asserting his rights?”

The appellate court made a mistake and applied the wrong legal standard in its analysis, attorneys for Pacific Legal Foundation contended in their request to the supreme court. “We’re weighing in

with the Minnesota Supreme Court to make sure they get it right,” Pacific Legal Foundation Legal Fellow David Deerson said. If the error is not corrected, it could affect property owners across Minnesota, he stated.

The construction and mining industry groups ARM and MSIC plan to argue in support of Minnesota Sands’ claim that the frac sand mining ban is unconstitutional because it discriminates against certain uses of sand, even though the sand itself and the mining process are identical. The same lawyer, Gary Van Cleve, who represented Minnesota Sands in earlier proceedings also wrote ARM and MSIC’s amicus request. The request does not speak directly to how the ban affects the concrete companies and mining firms that make up ARM and MSIC memberships, but it says that the organization could share special insight into how the county could have used reasonable regulation to address concerns about health and the environment without banning frac sand mining outright.

A Minneapolis-based sustainable agriculture and environmental organization with a local branch in Lewiston, LSP helped organize a citizen campaign that drove the County Board’s decision to pass the mining ban. In its request, attor-

neys for LSP stressed the number of county citizens who participated in the campaign and argued that the court could benefit from LSP sharing its “intimate knowledge of the environmental, health, safety, and economic concerns of Winona County residents as they relate to industrial sand mining operations.”

“Basically, we’re committed as we have been all along to making sure that frac sand mining doesn’t happen here in Winona County, that the land is protected here,” LSP Policy Organizer Johanna Rupprecht stated. “We wanted to take every step that we can in this process to help make sure the ban stays in place,” she added.

Asked about the other organizations interested in the case, Rupprecht said it was unsurprising to see the mining industry groups seeking to weigh in on the case. As for the rest, she stated, “I guess that just shows how significant this issue is that it’s attracting attention from all over.”

Written arguments from Minnesota Sands and the county are due in December and January, respectively. The supreme court has not yet set a date for oral arguments in the case.

Chris@winonapost.com

# Engineer

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According to Dahman, five firms sent in proposals which were narrowed down to the three finalists. Those finalists then met with the directors of building and grounds, information systems, finance and the superintendent for interviews, where they analyzed each firm’s background, team members, relevant projects, approach, schedule, references and fees. Following interviews, the three firms were ranked one to three and shown to the WAPS Board.

All three firms were found to have strong reputations and communication processes, along with experience renovating historical schools. The biggest difference between each firm is the cost. ISG, which administrators rated as the third best pick, estimated its costs at \$498,250 with no reimbursable costs and change-order fees only if the scope of a project changes. DLR, which was estimated at \$533,386 plus reimbursable and change-order costs, was placed in second by district administrators. Wold’s estimated cost was \$571,485, the highest of the three, but would charge no reimbursable or change-order costs.

Each of the estimates was based

on a percentage of estimated constructions costs of \$7,619,806, which include the project costs and 50 percent of contingencies. The percent cost for Wold, DLR, and ISG were 7.5, 7, and 6.5 percent, respectively.

Wold has plenty of experience working with WAPS. For the 2016 facility referendum planning, the firm agreed to cut its engineering costs to just \$20,000 to assist with its planning, hoping to woo the district into a much more valuable construction engineering contract for the \$145-million facility overhaul. After that referendum failed, the firm agreed to work with the district for free on planning for a new facility referendum, which passed on the November ballot. Now, the firm is hoping that its pro-bono work will pay off in a construction engineering contract for the facility upgrades.

While he admitted that Wold was the most expensive of the three, Dahman said the extra funds would be well-spent.

“You want to make sure you’re not acting in a way that’s penny-wise and pound-foolish,” he explained. “I feel strongly that [Wold’s] additional cost is an investment we can make into the future of our facilities.”

However, some members of the board felt differently. With district finances as they are, board chair Ben Baratto expressed doubt in

the the \$73,000 cost difference between Wold and ISG.

“The only thing that worries me about Wold is the cost,” he explained.

Board member Jay Kohner stated that he felt the same, and said that while he recognized and respected Dahman’s recommendation, the price bump was something the board should take into account.

“I’ve been kind of struggling with it a little bit,” Kohner said. “Wold is very capable. But it comes with a premium. Six-point-five percent is more what you’ll find in this market, and considering the circumstances with all the cutting we’ve had to do, and the negotiations that we’ve been doing ... If it were a 10 or 20 thousand [difference], I would go with your recommendation, but I do also know that that \$73,000 can be used in other capital projects.”

Kohner explained that many of the projects in the referendum are not as engineer intensive as past referendums, and the effect of change orders would likely be minimal across the board.

“I would be more inclined to go with ISG. I think they would be very capable of doing what we need,” Kohner said.

Board member Jeanne Nelson expressed support for Wold, explaining that the number one-priority for the projects should be getting them done by the end of summer so they

don’t impact classes. With Wold, she said, the engineers would be more prepared in the event of an issue, and having helped plan the referendum, would be ready to begin earlier than the other firms.

“Time is important here,” Nelson said, “If you get surprises, or if you don’t understand the makeup or something — it does play into it.”

Dahman agreed, and pressed the board to make its decision quickly to get the projects underway. “The sooner we can get a firm hired and get them started on these projects, the more likely we can get this set of projects done by the end of summer 2019,” Dahman said.

Prior to the failed 2017 referendum, the WAPS Board faced a similar decision between Wold and ISG. At that time, Wold had already been hired for \$20,000 in June 2016 to evaluate the district school and assist in the planning process for the \$145-million referendum. “We’ve put a lot of time in this, and it would kill me to have someone come in and finish it,” Wold partner Paul Aplikowski said during the last round of firm interviews.

When the vote came before the board, members voted 5-1 for Wold, despite its \$4,598,900 cost coming up \$742,000 more than ISG. Board member Allison Quam was the lone dissenting vote. Quam was also absent from last week’s meeting.

# GRSF

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director for GRSF, explained that after several months of moving and renovation, the organization is finally ready to open the doors of its new home to the public.

“We are really excited. It’s a great space, and not too far from our old location. It should be easy for people to find,” Moeller said.

Earlier this year, as season 15 was winding down, the theater troupe began moving its costumes, props and sets into the back room of its new location. In October, as renovations on the new building were finally complete, Moeller said members of GRSF began the laborious task of picking up the office and lugging it down Third to the new space. “It’s been quite the process,” Moeller said.

The new headquarters, located at 121 East Third Street, will house the GRSF box office, prop and costume storage, and the organization’s first active gift shop, Moeller explained. On Saturday, visitors will have the chance to take a peek behind the curtain and talk with members of the festival, as well as pick up unique gifts for a timely 16-percent discount.

“If anyone wants to see the space and the costumes, we’ll be happy to give folks tours. It’s a deceptively

large space,” Moeller said.

In addition to the organization’s new home, season passes for GRSF’s upcoming 16th season will also be on sale starting this week, and now, all of the plays have been revealed. The main stage shows, which were announced back in September at the yearly Callithump celebration, will be joined by two different black box shows that take a cue from the experimental.

The first of two black box theater shows is a play called “White Rabbit, Red Rabbit” by Iranian playwright Nassim Soleimanpour and unlike the other plays in season 16, the story isn’t something that can be summed up easily.

“Once you leave the theater, you’re not allowed to talk about it. Once a performer performs it, they cannot perform it again,” she explained.

The play is as minimal as they come. There’s no lighting, no rehearsals, no director — just the actors and the audience. Moeller explained that there will be several actors taking turns for the performances, and when they arrive on set, they get the script and perform without any preparation. Once the performance is done, that’s it.

“We’re excited to see what will happen doing something little more experimental,” Moeller said.

The second black box play is titled “No Child...” written by Nili-jah Sun. The one-woman play tells

the story of a public school teacher in New York City, and shows her experiences in the metropolis’ public school system. “She sort of takes on a bunch of different characters,” Moeller said.

On the main stage, Shakespeare’s tragic masterpiece “Macbeth” will be performed for the first time since season four in 2007. The play is one of Shakespeare’s most popular works, with more than 20 adaptations for the screen, and is also one of his most haunting. It tells the story of Macbeth, a soldier who, after receiving a premonition that he will take the throne as the king of Scotland, takes it into his own hands to make that happen. Eventually, wracked with guilt, he continues causing bloodshed, becoming a tyrannical king before ultimately bringing the tragedy back to himself.

The second of the two Shakespeare plays is “Cymbeline,” a lesser-known comedy from the First Folio, which Moeller explained will be the more light-hearted of the two plays. It is the tale of a king and his journey dealing with the various relationships in his life. “We haven’t done it before, and it’s not commonly performed, so we’re excited to bring it out for audiences,” Moeller said.

“The Servant of Two Masters” will join the two Shakespeare plays on the main stage for the upcoming season, and GRSF will take a

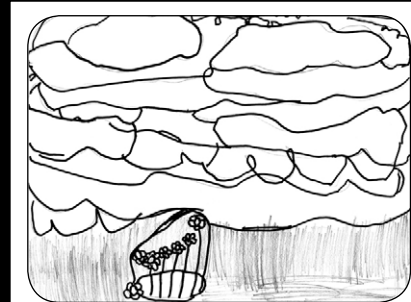
slightly different approach, Moeller explained. The play, written by Carlo Goldoni in 1746, is a classic Italian comedy written not long after Shakespeare’s own oeuvre in the style of commedia dell’arte. Commedia dell’arte is known for its being over-the-top, with masked stock characters to whom audiences can quickly connect.

“The exciting thing is that the woman who is directing it is creating a totally new adaptation of it specifically for the festival,” Moeller said.

Passes for season 16 will be available this weekend at the new GRSF office and include tickets to each of the company’s plays, save for “White Rabbit, Red Rabbit.” But buying passes isn’t the only thing people should be excited about, Moeller added.

“Small Business Saturday is a great way to get people downtown and supporting local businesses,” she said. “We’re excited to have folks visit the new space, and we’re excited to get ready for next season.”

The opening reception at Great River Shakespeare’s new office will occur on Saturday, November 24, from 10 a.m. to 4 p.m. at 121 East Third Street. Refreshments will be provided, and the GRSF gift shop will be open and all items will be 16-percent off. For more information, visit [grsf.org](http://grsf.org).



## WEATHER Forecast

source: weather.com

### WEDNESDAY

Partly Cloudy  
High 29°  
Low 23°

### THURSDAY

Cloudy  
High 36°  
Low 33°

### FRIDAY

Showers  
High 42°  
Low 34°

### SATURDAY

Partly Cloudy  
High 42°  
Low 31°

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