

# Eagle Creek Software Services Asks For Lawsuit To Be Moved To Federal Court

BY DIRK LAMMERS  
Associated Press

A Minnesota-based software company and four of its shareholders are trying to get a lawsuit filed over the business' failure to move into a \$4.2 million technology center built for it moved into federal court.

The Vermillion Area Chamber of Commerce and Development Company had sued Eagle Creek Software Services in October 2014, saying the company breached a contract by not moving into the tech center. The facility was to be the centerpiece of a partnership backed by South Dakota Gov. Dennis Daugaard, but Eagle Creek never moved in, citing issues with economic development incentives.

After the chamber filed an amended lawsuit this month adding Eagle Creek President and CEO Ken Behrendt and three other company shareholders to the case, Eagle Creek petitioned the U.S. District Court in Sioux Falls to

take over the Clay County circuit court case. Attorney Andrew Damgaard wrote in his motion that federal court is the appropriate venue because the chamber is based in South Dakota yet the company and the four shareholders are all based in Minnesota.

The chamber's original lawsuit said the company agreed to move into the building once it was finished, and the building was "substantially complete" in May 2014. It asked the circuit court to award \$144,000 in past rent and \$3.1 million in future rent. The amended lawsuit filed Oct. 5 requests unspecified damages.

Melissa Jelen, an attorney representing the chamber, said in a brief that the company provided written consent for the chamber to amend its lawsuit, and if it wanted to move the case to federal court is should have done so after the initial filing.

"Eagle Creek chose not to exercise its right to remove the matter," Jelen argued. "Instead, Eagle Creek actively

litigated the case and engaged in substantial discovery in state court."

The company has countersued, asking the court to void the lease agreement and award the company unspecified damages.

Eagle Creek said it expanded its Vermillion operations in good faith based on an agreement with the chamber and the Governor's Office of Economic Development that it would receive cash reimbursement economic incentives of just under \$15,000 per employee for up to 200 employees.

Damgaard said in court records that the economic authorities did not intend to pay Eagle Creek the promised reimbursement and intended to divert the money to other purposes. He accused the chamber and economic development office of "attempting to make their proposal look better on paper than it actually was."

Tony Venhuizen, a spokesman for Gov. Daugaard, said Tuesday he could not comment on pending litigation.

## When Available, Winter Wheat Is Attractive For Pheasant Nests

BY BOB MERCER  
State Capitol Bureau

PIERRE – The state Game, Fish and Parks Department sees more winter wheat as a way to produce more pheasants in South Dakota.

That's one of the new recommendations made by GFP upland game biologists in their proposed update to the department's pheasant management plan.

A recent study found winter wheat fields were as effective as idle grasslands for pheasant nesting areas.

GFP officials and other wildlife advocates increasingly expressed concerns in the past decade as farmers began growing crops on tens of thousands of acres that had been idled in the federal Conservation Reserve Program.

Research now suggests winter wheat is an acceptable alternative to CRP grasslands for pheasant nesting and brood rearing.

Winter wheat is planted in the fall, begins to grow and reaches maturity the following summer. It can provide undisturbed cover for pheasants through much of the April-May to July-August nesting period before

crop harvest. Anecdotal, in years when winter wheat failed on a widespread basis in South Dakota, such as 2013 and 2006, pheasant numbers dropped sharply in those same areas.

Crop insurance now is available statewide for winter wheat. But the challenges of producing strong-quality winter wheat dissuade many farmers from keeping it in their crop rotation.

While a South Dakota State University graduate student, Brian Pauly conducted the study in eight townships of Lyman County during 2011 and 2012.

He now works for GFP as a private lands habitat biologist at the department's Huron office.

Pauly used radio tracking systems to monitor hen pheasants as they nested and then to follow their broods after chicks hatched.

His results showed the choice of winter wheat or idle grasslands didn't appear to affect survival of hens during nesting or the survival of their broods after hatching.

"As such, land managers should consider winter

wheat a viable option for pheasant habitat during spring/summer months," Pauly wrote in his 2014 master thesis.

He added, "Winter wheat is planted in the fall, undisturbed during spring, and one of the earliest crops to begin growing; hence, land managers should consider it high quality pheasant nesting cover."

Of the hens collared with radio transmitters, 59 of their were located in idle grasslands, 35 were in winter wheat, 12 in spring wheat, and 17 in other land-use types, Pauly reported.

For comparison, he looked for nest sites of hens that weren't collared.

"Idle grasslands, winter wheat fields, spring wheat fields, and roadways were used for nest sites at higher proportions than available on the landscape," he found.

"Pheasant nest sites occurred in lower proportions in croplands, residential areas, and pasture habitats."

He concluded that winter wheat is not a sustainable alternative to idle grassland nesting cover but should be viewed as a resource capable of adding additional nesting habitat for pheasants.

"Large-scale winter wheat incentives may provide wildlife managers with a means to increase additional nesting acres on the landscape, while providing agricultural producers with an additional profit for planting winter wheat," he wrote.

Pauly didn't find any pheasants that nested in actively growing corn, milo, soybean, or sunflower fields.

"Since row crops do not provide adequate nesting habitat for pheasants, pheasant populations will decline in central South Dakota if row crop acreage continues to increase," he noted.

The proposed management plan is available on the Internet at <http://gfp.sd.gov/hunting/docs/pheasant-mngmnt-planpdf.pdf>.

More information from GFP about pheasants, including an address to send comments about the management plan, is at [http://gfp.sd.gov/hunting/small-game/pheasants.aspx?utm\\_source=iContact&utm\\_medium=email&utm\\_campaign=GFP%20News&utm\\_content=](http://gfp.sd.gov/hunting/small-game/pheasants.aspx?utm_source=iContact&utm_medium=email&utm_campaign=GFP%20News&utm_content=)

## 2015 South Dakota All-State Chorus & Orchestra This Weekend

Over 1,000 of South Dakota's best high school vocal and instrumental musicians will gather in Rapid City for the 63rd Annual South Dakota All-State Chorus and Orchestra on Friday and Saturday October 30-31. The All-State activities will culminate with a Grand Concert at the Rushmore Plaza Civic Center in Rapid City beginning at 7:00 p.m. (MT) on Saturday evening, October 31. Concert tickets can be purchased at [www.gotmine.com](http://www.gotmine.com), by calling 1-800-468-6463, or at the box office in the Rushmore Plaza. The doors of the Barnett Arena will open for the Concert at 5:30 on Saturday evening.

The annual All-State Chorus & Orchestra, co-sponsored by South Dakota High School Activities Association and the South Dakota Music Educators Association, is the largest interscholastic high school music activity held in South Dakota. The 2015 All-State Chorus includes 956 singers representing 151 South Dakota high schools. The All-State Orchestra is comprised of 155 musicians from 30 schools.

The guest conductors for the 2015 All-State Chorus & Orchestra Concert are Dr. Peter Eklund from University of Nebraska, Lincoln and Dr. David MacKenzie from Hilo, Hi. Dr. Eklund will conduct the All-State Chorus while Dr. MacKenzie will lead the 2015 All-State Orchestra.

During the All-State Grand Concert, the South Dakota Music Educators Association will recognize several high schools and individuals for their contributions to music in South Dakota.

Representatives from Vermillion High School include: Anna Van Holland, all state orchestra – horn  
Max Askew, All State Chorus  
Rylan Craig, All State Chorus  
Amanda Finnegan, All State Chorus  
Tyler Hauck, All State Chorus  
Grace Kjelden, All State Chorus  
Alec Leber, All State Chorus  
Sowmya Ragathanan, All State Chorus  
Natalie Swanson, All State Chorus

## SBA's South Dakota Office Accepting Nominations For 2016 National Small Business Awards

SIoux FALLS – For more than 50 years the U. S. Small Business Administration (SBA) has recognized outstanding small business owners for their contribution to the American economy and society during National Small Business Week, which will be celebrated in May 2016.

The SBA's South Dakota District Office is currently accepting nominations for several award categories including the Small Business Person of the Year, Small Business Exporter of the Year, Family-Owned Small Business of the Year, Home-Based Small Business of the Year, Minority-Owned Small Business of the Year, Veteran-Owned Small Business of the Year, Women-Owned Small Business of the Year and Young Entrepreneur of the Year. The South Dakota District Office is also looking for nominations for their SBA Champion Awards which include Financial Services Advocate, Minority Advocate and Small Business Advocate. Nominations can be submitted by almost any entity, including the business owner themselves.

Nominations can now be submitted using the SBA's online portal which will help streamline and simplify the process. This is the fourth year SBA has used the online portal submission process. This dedicated web portal <http://awards.sba.gov> provides information on the various award categories & nomination guidelines and makes it much easier to submit and track submissions of nomination packages. Nominations can still be submitted as a paper document by contacting the South Dakota Small Business Week coordinator for an office address.

All nominations must be submitted online, postmarked or hand delivered to the SBA no later than 2 p.m. CST, Monday, Jan. 11, 2016. For more information, contact the SBA's South Dakota District Office Small Business Week Coordinator at (605) 330-4243.

## W.H. Over

From Page 2

"People did some great quilts. We worked out of Dean Spader's shop. We're hoping to do that again."

While some areas have rules on the placement of barn quilts, it is not the case in Vermillion according to Sample.

"You can put them anywhere you want to here," she said. "We have a lot of them on garages, picket fences, freestanding where they don't want to put them on a building. Louise has a John Deere one that's freestanding. I've seen one where they have an apparatus where they change it every month. I had a lady in my OLLI class that had a house that was beige with blue shutters. She brought paint chips in and we matched it with one for every day and then she came in and made a different pattern in Christmas colors for Christmas Time. If I live long enough I'd like to have two-by-two's all the way across my fence."

According to Sample, the size of the quilt determines how long completion will take but due to the method of painting the quilts, it's hard to tell exactly how long it took to complete the quilts for the museum.

"I had 24 trips as of Friday in to work on it," she said. "Sometimes you'll just put a coat on and you'll be there ten minutes. Then it has to dry. Then you take the tape off and move the tape. Some days it takes a little bit longer. If you add it all up I have no idea how long it takes."



SARAH WETZEL/FOR THE PLAIN TALK

Visitors to the W.H. Over Museum last Sunday had fun with Welcome Fall events such as pumpkin carving, face painting, games and a soup/pie dinner.

When painting the quilts at home, it's definitely a progressive project.

"Nancy took hers home and Erlin has his in his garage," Sample said. "You go out and put a coat of paint on it then you go and do something else. Maybe eight hours later you go out and put another coat of paint on it. It isn't something you work on for six hours and it's done."

## Safety

From Page 1

that don't normally have a lot of foot traffic like downtown and by the dorms and stuff," Kyte said. "You just watch out for that kind of stuff. If we see kids crossing the street we'll stop them and say hey, use the crosswalk or make sure you're looking both ways. This year it falls on the weekend so we try to have more staff on the weekend because it's busy. Usually we have an officer or two go to some of the Halloween parties."

At the Public Safety open house kids not only had the chance to dress up, eat hot dogs and trick or treat but also learn about public safety.

"They have a 911 simula-

tor where the kids can practice calling 911," Kyte said. "They have little cards so they can put their names and address so if they're with their mom or dad and mom or dad has a medical problem they know they can call 911 and they can tell us what their address is."

Other safety tables included DARE and a weapons display.

Kids could also tour a police car, meet a police dog and see how quickly a dummy became ejected from a car rolling over versus a dummy wearing a seat belt.

"That's the stuff we try to push all year round but this is a good way to get everyone to come," Kyte said.

Kyte himself has a nine year old daughter who he wants to know general safety tips as well.

"Knowing how to call 911

and knowing her address and my name," he said of the most important things he would want her to know. "If she's trick-or-treating I want her to know who she can approach. She knows not to go into a house she doesn't know."

Your guard should not be dropped once the Halloween holiday passes according to Kyte.

"That's year round," he said. "There's people out there that have ill intentions and you have to be careful no matter what time of year. People are more careful around this time of year but it's something we have to worry about year round."

For more trick-or-treat and Halloween safety tips visit [www.cdc.gov/family/halloween](http://www.cdc.gov/family/halloween).



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