



LAKE MINNETONKA CONSERVATION DISTRICT

5341 MAYWOOD ROAD, SUITE 200 • MOUND, MINNESOTA 55364 • TELEPHONE 952/745-0789 • FAX 952/745-9085

AGENDA
LAKE MINNETONKA CONSERVATION DISTRICT
Wednesday, October 23, 2019
Wayzata City Hall
600 Rice Street, Wayzata, MN 55391

WORK SESSION
6:00 p.m. to 7:00 p.m.

The purpose of the Work Session is to allow staff to seek input from the Board and for the Board to discuss matters in greater detail than generally available at the formal Board Session. The Board may give staff direction or express a preference, but does not formally vote on matters during Work Sessions. While all meetings of the Board are open to the public, Work Session discussions are generally limited to the Board, staff, and designated representatives. Work Sessions are not videotaped.

1. **No Work Session-** Meeting to start at formal meeting

FORMAL BOARD AGENDA
7:00 p.m. to Adjournment

The purpose of the Formal Session is to allow the Board to conduct public hearings and to consider and take formal action on matters coming before the LMCD.

1. **CALL TO ORDER**
2. **PLEDGE OF ALLEGIANCE**
3. **ROLL CALL**
4. **APPROVAL OF AGENDA**
5. **CHAIR ANNOUNCEMENTS**, Chair Gregg Thomas
6. **APPROVAL OF MINUTES** – (10/09/2019) LMCD Regular Board Meetings
7. **APPROVAL OF CONSENT AGENDA**
A) Audit of Vouchers (10/16/2019 – 10/31/2019)
8. **PUBLIC COMMENTS** – Persons in attendance for subjects not on the agenda (**limited to 5 minutes**). Audience members may provide information to the Board. Please direct all comments to the Board Chair. The Board generally will not engage in public discussion or act on items not on the agenda. The Board may ask for clarifications or direct staff to report back on items at future meetings.

9. PUBLIC HEARINGS

- A) Continued Public Hearing for Caribbean Marina and Restaurant (Tonka Bay Holdings, LLC), new multiple dock license application to reconfigure nonconforming multiple dock facility; variances for dock use area (side setbacks, length, and special density); located on Lower Lake South; 135 Lakeview Avenue, 100 and 110 Sunrise Avenue, Tonka Bay.
- B) Public Hearing for variance adjustment of dock use area (length and side setbacks), 870 Windjammer Lane, Orono

10. OTHER BUSINESS

11. OLD BUSINESS

- A) Watercraft Wastewater Discharge Code Amendment

12. NEW BUSINESS

- A) Renewal of Deicing License with Expansion for City of Excelsior
- B) Appointment of Nominating Committee for 2020
- C) LMCD 2020 Employee Benefits Package

13. TREASURER REPORT

14. EXECUTIVE DIRECTOR UPDATE

- A) Lake Minnetonka Vegetation & AIS Master Plan Progress
- B) Lake Activities

15. STANDING LMCD COMMITTEE / WORKGROUP UPDATE

- Aquatic Invasive Species Taskforce
- Budget Workgroup
- Save the Lake Committee
- Strategic Plan Subcommittee

16. ADJOURNMENT

Future Items – Tentative

- Lake Use Vision and Policy Discussion Continuing Series
 - High Water Declaration Review- January 2020
 - Slow and No Wake Regulations- February 2020
 - Watercraft Density
 - Permanent Docks Discussion
 - Lake Sales and Services

LAKE MINNETONKA CONSERVATION DISTRICT BOARD OF DIRECTORS

7:00 P.M., October 9, 2019
Wayzata City Hall

WORK SESSION

6:00 p.m. to 7.00 p.m.

Members present: Ben Brandt, Mound; Bill Cook, Greenwood; Ann Hoelscher, Victoria; Gary Hughes, Spring Park; Dennis Klohs, Minnetonka Beach; Mark Kroll, Orono; Mike Molitor, Minnetrista; Chris Rich, Woodland; Gregg Thomas, Tonka Bay; Nicole Stone, Minnetonka; Jake Walesch, Deephaven; Deborah Zorn, Shorewood. Also present: Troy Gilchrist, Legal Counsel; Vickie Schleuning, Executive Director Matthew Cook, Environmental Administrative Technician; Steve McComas, Blue Water Science (BWS); Jason Naber, Emmons & Olivier Resources (EOR);

Members absent: Dan Baasen, Wayzata; Vacant, City of Excelsior

Present in Audience: Eric Evenson; Gabriel Jabbour; Tom Jacob; Rob Schatzle; Shawn Wischmeier; Richie Anderson; and others that may not have signed the attendance sheet.

1. Board Update Lake Minnetonka Vegetation & AIS Master Plan

Mr. Naber (EOR) explained that he and Mr. McComas of BWS were providing the Board with an update regarding the progress and remaining timeline for the tasks laid out in their contract with the LMCD.

Mr. Naber noted that the Starry Stonewort (SSW) Protection & Emergency Action Plan, Tasks 1 and 5, has been drafted. He noted that the next steps for the SSW Plan are to have another meeting with the Technical Advisory Group (TAG) review the document and then finalize the document based on the TAG's input and CAGs input.

Mr. Naber said that the Harvesting Program Review, Task 2, has been drafted, and the report will be finalized in the coming weeks.

Mr. Naber stated that EOR and BWS have created GIS Mapping tools for the LMCD, as instructed for Task 3. He noted that EOR plans to update the maps as needed through the rest of their contract term.

Mr. Naber stated that the next steps in the development of the Lake Vegetation & AIS Master Plan, Task 4, are as follows:

- Review of Goals & Roles Memo by LMCD
- Finalization of outline and modules
- Write the Master Plan

Mr. Naber said that the remaining presentations and meetings, part of Task 6, are the second TAG meeting and the coordination of gathering input from the Citizen Advisory Group (CAG).

Naber stated that as part of Task 7, a public survey regarding lake vegetation presence and a Social PinPoint Web Tool had been developed for LMCD to use. He noted that members of the public can access the Web Tool through the LMCD's website.

Mr. McComas stated that EOR and BWS completed a lake vegetation survey spanning 70 miles of lakeshore. He explained that their work, combined with existing surveys of other bays, comprises the first lake-wide vegetation survey dataset for the 125 miles of lakeshore on Lake Minnetonka.

Mr. McComas stated while the abundance of Eurasian watermilfoil (EWM) in specific areas of the lake may vary year to year, the distribution of EWM across the lake may also be changed in the long term due in part to the proliferation of zebra mussels. He explained that zebra mussels enhance the clarity of the water, thereby enabling better penetration of sunlight which enables plant growth.

Mr. McComas stated that in considering the results of the survey and the review of the LMCD Harvesting program, a likely course of action would be to balance the management practices of harvesting and herbicide treatments.

Mr. McComas stated that SSW has been found in nearby Medicine Lake, among others. He explained that SSW is tough to eradicate once introduced, but can be effectively contained. Mr. McComas noted that early detection and rapid response are key components of containment.

Mr. McComas stated that during the survey, flowering rush was generally found in the areas it is already known to be in, and does not appear to have expanded much. He noted that the areas covered by Sagittaria, a native look-alike, have roughly tripled in recent years. McComas said that year-to-year fluctuations of Sagittaria can be significant, whereas flowering rush appears to vary less year-to-year in coverage. He referred to a graph depicting the expansion from lake-to-lake of zebra mussels, EWM, SSW, and flowering rush. Mr. McComas underscored that the curve representing expansion of flowering rush was quite flat.

Schleuning asked which plant species were paid attention to as part of the vegetation survey and research.

Mr. McComas stated that the EOR and BWS team focused primarily on EWM, SSW, flowering rush, and native plants.

B. Cook stated that the draft plans would be dispersed for comment soon. He encouraged the Board to keep in mind how the LMCD can be most effective with its resources as they read over the draft plans. B. Cook stated that he was expecting to propose that a more holistic AIS program be developed, with some of the following items included as part of the program:

- Harvesting capabilities
- Watercraft inspections
- Scientific data gathering and review

B. Cook acknowledged that such a program would require more funding. He stated that the LMCD ought to partner with the LMA and the University of Minnesota.

B. Cook asked the EOR and BWS team to help the LMCD Board review and evaluate the following items:

- As St. Albans Bay and Gideons Bay are treated with herbicide, is Excelsior Bay effectively receiving treatment as well due to the exchange of water between those three bays?
- What is the lake's equilibrium regarding to distribution of vegetation and AIS?
- How might harvesting or not harvesting impact that equilibrium?
- Given that it appears to be possible to remove or largely reduce the presence of flowering rush, is such an undertaking worthwhile given the plant's slow expansion?

B. Cook ended by encouraging the consultants to help the LMCD prioritize what actions to take with regarding to lake vegetation and AIS.

Walesch asked where the short-term social media goals referenced in the draft harvesting program review came from.

Mr. Naber stated that EOR and BWS recommended having a strong social media presence for a future harvesting program, as that was a common component of other successful harvesting programs they had reviewed, as social media enabled those programs to reach many people and clearly communicate the program's schedule.

Rich inquired as to whether there was notable research regarding the short- and long-term effects of herbicide treatments.

Mr. McComas responded that the EPA has conducted a quantifiable risk analysis for all approved aquatic herbicides. He acknowledged there may be some uncertainty, albeit unquantified, regarding long-term effects.

Rich noted that while other chemicals have been considered safe, class-action lawsuits have been raised alleging negative impacts caused by said chemicals. He expressed that he wants to be sure that a course of action the LMCD undertakes does not worsen the state of the lake in an attempt to protect it.

Klohs asked how confident the consultants were in their findings, given the tight timeline and budget.

Mr. Naber stated that while the task has been challenging, EOR and BWS were focused on receiving the next stage of input from other lake stakeholders.

Jabbour stated that the LMCD needs many more times the amount of information it had to develop a comprehensive plan noting carp, zebra mussels, and quagga mussels were not covered in the current plan documents.

B. Cook agreed with Mr. Jabbour that more information would be needed. He noted that the gathering of information would be an ongoing process. B. Cook stated that while the task can be overwhelming, the LMCD has to make a start somewhere.

Klohs underscored that the consultants ought to analyze an option of the LMCD to take no action and what effect that may have on the lake.

Mr. McComas concurred with Mr. B. Cook and Klohs. He stated that new information will always come forward, and the Master Plan can be adapted to the new information as it appears. Mr. McComas stated that the information needs to be compiled and put into a report at some point to begin action.

Mr. Naber added that the plan, as designed, is modular in structure. He explained that additional modules for animal species such as those listed by Mr. Jabbour can be developed and added to the plan.

2. Review of Reconfiguration Code Sections and Projects

Schleuning briefly reviewed the process and application types for reconfigurations of nonconforming structures, in addition do comparing the Code requirements for nonconforming structures with the requirements for Qualified Commercial Marinas.

Gilchrist stated that in creating and updating the language of the Reconfiguration of Nonconforming Structures, the Board recognized that requiring nonconforming docks to become conforming docks could create substantial hardships for owners of nonconforming docks. Gilchrist stated that the purpose of the Code section was to provide some flexibility for owners of nonconforming docks to make some changes to their docks without having to meet all of the standard code requirements so long as nonconformity is not increased.

Schleuning displayed some site plans from commercial marinas and provided varying site characteristics and approvals.

Walesch asked if the LMCD had recently approved any diagonally-oriented slips and not treated such slips as side-opening.

Schleuning indicated that the approval for 500NNL, LLC. met that description.

Walesch stated that the applicant had practical difficulties given the layout of the site. He noted that the Board should discuss what constitutes a side-opening slip.

The meeting was adjourned at 7:00 PM.

1. CALL TO ORDER

Chair Thomas called the meeting to order at 7:00 p.m.

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

Members present: Gregg Thomas, Tonka Bay; Ann Hoelscher, Victoria; Dan Baasen, Wayzata (arrived at 7:15 p.m.); Bill Cook, Greenwood; Ben Brandt, Mound; Gary Hughes, Spring Park; Dennis Klohs, Minnetonka Beach; Mark Kroll, Orono; Mike Molitor, Minnetrista; Chris Rich, Woodland; Nicole Stone, Minnetonka; Jake Walesch, Deephaven; and, Deborah Zorn, Shorewood. Also present: Troy Gilchrist, LMCD Legal Counsel; Vickie Schleuning, Executive Director; and, Matt Cook, Environmental Administrative Technician.

Members absent: Excelsior Vacant.

4. APPROVAL OF AGENDA

MOTION: Rich moved, Hughes seconded to approve the agenda as submitted.

VOTE: Motion carried unanimously.

5. CHAIR ANNOUNCEMENTS

There were no Chair announcements.

6. APPROVAL OF MINUTES- 9/25/19 LMCD Regular Board Meeting

MOTION: Zorn moved, Walesch seconded to approve the 9/25/19 LMCD Regular Board Meeting minutes as submitted.

VOTE: Ayes (11), Abstained (1), (Molitor). Motion carried.

VOTE: Motion carried unanimously.

7. APPROVAL OF CONSENT AGENDA

MOTION: Rich moved, Cook seconded to approve the consent agenda as presented. Items so approved included: **7A)** Audit of Vouchers (10/01/19 – 10/15/19); **7B)** September Financial Summary and Balance Sheet; and, **7C)** Resolution Accepting Save the Lake Contributions (08/22/19 – 09/24/19).

VOTE: Motion carried unanimously.

8. PUBLIC COMMENTS- Persons in attendance, subjects not on the agenda (limited to 5 minutes)

There were no public comments.

9. PUBLIC HEARING

A) Continued Public Hearing for Caribbean Marina and Restaurant (Tonka Bay Holdings, LLC), New Multiple Dock License Application to Reconfigure Nonconforming Multiple Dock Facility; Variances for Dock Use Area (Side Setbacks, Length, and Special Density); Located on Lower Lake South; 100, 110, and 135 Lakeview Avenue, Tonka Bay

Matt Cook presented the continued public hearing for consideration of applications for reconfiguration of a nonconforming structure and variances for the dock use area for the Caribbean Marina and Restaurant. He reviewed the existing and proposed dock comparison including BSUs, density, and linear BSU footage. He presented the site plans as revised on October 4, 2019 and October 9, 2019 noting changes to the east side and northwest corner. He identified the new location for the proposed gas dock. He highlighted key code considerations for the Board. He also reviewed the variance criteria that must be considered. He noted that no comments were received from the DNR or MCWD. He noted that the City of Tonka Bay would like the LMCD to take action before it carries out its own review process. He advised that the public comments received through October 4, 2019 were included in the Board packet.

Chair Thomas referenced the east side setback and asked if that would meet the code guidelines for side opening slips.

Matt Cook reviewed the setbacks proposed in the October 4th and October 9th site plans.

Schleunig stated that a nonconforming use would not necessarily need to meet or exceed the code, but the proposal meets the same as the original.

Chair Thomas asked and received confirmation that both the October 4th and October 9th proposals would be better than the original proposal.

Hoelscher referenced the setbacks for lake facing slips versus side facing slips and asked the required setbacks.

Matt Cook reviewed the required setback for each instance.

Hoelscher asked if the east side would meet the required setback if these were considered side opening slips.

Matt Cook stated that if this were a conforming facility that setback would not be met but given that this is a nonconforming facility, there could be flexibility.

Rich referenced the western most dock of the existing facility and asked how much further west the proposed dock would be.

Matt Cook commented that the further point proposed would match the current further point on the west.

Rich stated that his concern would be for the neighbor to the east as boats will need to back out to pull into their slips. He noted that currently the boats load into the slips from the interior while the new proposal would have those boats accessing from the outside.

Matt Cook stated that a representative for the neighbor is present tonight. He confirmed that the docks are essentially in the same location.

Walesch referenced the slips to the east and asked if those slips would require a variance if they were considered side facing slips.

Gilchrist stated that his impression is that a variance would not be needed as the slips would not extend further into the area. He explained this is nonconforming and therefore elements will remain nonconforming through reconfiguration. He stated that it would be the job of the Board to determine if this would have more impact on the neighboring properties.

Walesch stated that he would first like to have a discussion on what the Board considers side facing slips, specifically whether these are considered side facing slips.

Chair Thomas stated that it was his impression that whether or not these are considered side facing slips, a variance would not be required.

Matt Cook stated that given that there is a municipal site to the east that is the immediate neighbor, he would not see a reason to require a variance. He noted that there is a one to one mitigation provided.

Gilchrist stated that the question would be whether the Board feels there would be a negative impact from those side slips and confirmed that a variance would not be needed.

Zorn stated that during the worksession staff displayed other nonconforming uses with side slips, noting that those slips had acute angles while this applicant proposed obtuse angles. She commented that she would not see a valid reason to eliminate the requirement for a double side setback for those slips and therefore would not see a reason to allow those side slips at a diagonal angle.

Chair Thomas stated that because this is nonconforming there is not a requirement for a double side setback.

Zorn explained that it would be the decision of the Board whether or not to allow. She noted that the neighboring use is different and there should be a larger setback.

Rich commented that it is not whether it is a side load but will be an issue of whether this will increase boat traffic. He commented that there is a fire lane of 14 feet and his concern would be that the side slips to the east would cause additional traffic for the people on the other side of that fire lane. He applauded the new owners but noted that his personal concern is the side load slips on the eastern most side as that boat traffic will cause harm to the neighbor on that side.

Chair Thomas stated that in the last review there was concern with large pole that would remain and asked if those would now be removed.

Matt Cook confirmed that those poles would be removed under the new revision.

Baasen stated that it is his understanding that this cannot be treated as a qualified marina because of the boat club. He stated that if the boat club is going to be located on the eastern side that is not normal traffic as that generates much higher use and traffic. He asked the number of nonconforming marinas that extend beyond 200 feet.

Matt Cook stated that there are site plans and indicate that some portions extend beyond 200 feet but noted that some of those are quite old. He stated that gas docks routinely go beyond 200 feet for nonconforming structures.

Chair Thomas asked if any part of the current proposal exceeds 200 feet.

Matt Cook stated that the only portion that extends beyond 200 feet would be the gas dock and slips.

Schleunig clarified that gas docks are allowed to go 25 feet past. She explained that because this is nonconforming and the gas dock extended 20 feet, it can only extend 20 feet further and not 25 feet. She highlighted a triangular gas dock that will be removed.

Zorn referenced the two fingerlings to the east and asked the measurement between the two. She stated that her question would be whether that easterly dock could be shifted closer to provide additional setback from the neighboring property or whether that would impact navigation.

Molitor stated that although he was not able to attend the last meeting, he did review the written materials. He asked and received confirmation that there would be no transient slips proposed. He noted that therefore there would not be an ability for boat users to access the restaurant from the lake, which removes an amenity for lake users.

Klohs stated that there is obvious concern related to the east side from the Board. He noted that perhaps if

slips 120-124 are eliminated that would provide a double setback on the east side and there would be more probability that the Board could support the proposal.

Rich stated that perhaps if those were changed from side loading slips to four straight slips that could make the boat traffic less invasive as the boats would just tie up to the side of the dock. He noted that there would be a reduction in the number of slips but would still allow the dock space to be maximized without negatively impacting the neighbors.

Chair Thomas stated that there is a proposal and asked if the Board should be redesigning the proposal.

Gilchrist stated that the Board would not be in a position to design this for the applicant but noted that the comments made are expressing concern with elements of the proposal. He stated that there are a lot of issues involved in this review and some concerns remain.

Brandt referenced the October 9th revision, specifically the section parallel from the residential property and asked if that access would be solely provided through the water or whether there would be connection from the land.

Matt Cook confirmed that the access to the land has been removed from that location.

Kroll asked and received confirmation that under the currently proposed plan a boater could not tie up to the dock to access the restaurant.

Hughes stated that his concern would be along the side with the fire access and the high use a boat club would have for that area.

Chair Thomas stated that previously the applicant had stated that their intent was to place the boat club on the east as those users would have the least amount of trouble navigating that area. He asked if certain slips would be designated for boat clubs.

Schleuning stated that could be done but confirmed that the Board has not made that designation in the past.

Hughes referenced the angled slips on the other side, noting that would work fine when boaters come into dock but when exiting those boats would back out and then head out onto the lake, which would be intrusive to the neighboring property.

Hoelscher stated that there were public comments related to parking with the new plan and reminded the public that the Board does not have authority to regulate parking.

Chair Thomas noted that the revised plans both contain fewer slips than currently exist today.

Rich applauded the overall objective but noted that his concern remains the eastern most docking.

Thomas invited the applicant to address the Board.

Shawn Wischmeier, applicant, stated that they heard two key elements from the last discussion: to stay within the envelope and eliminate variances as well as make things right for the neighbors to the east. He stated that he also spoke with the neighbors to the west as well, which resulted in moving the gas dock. He stated that the only reason a variance was requested to the west in the past was to create a straight line. He explained that was eliminated and everything remains on the same existing line. He stated that leaving the large poles provided no benefit and they have eliminated that element. He stated that the poles can be removed with no trouble, explaining that it was just an offer if it was something the Board wanted. He stated that apart from moving the gas dock to the center, to keep it away from the neighbors on the west, they are only asking for the 20 feet allowed by code. He referenced the east side docks and stated that their attempt in angling the docks was to meet the conditions to ensure there would be good navigable water without causing problems to the neighbors to the east. He stated that he understands that the nonconforming changes the amount of setback required but they still ensured that enough setback would be provided to allow boats to back out of the eastern slips without extending over their property. He noted that the fire lane provides another 14 feet. He noted that the neighbor's dock is set back an additional ten feet, although the requirement should be 20 feet. He explained that there is sufficient space to ensure that the boats are not traveling into the fire lane. He stated that the boat club does not have to be located on the east side, he noted that the intent was that they are trained skilled drivers. He explained that if the belief is that the boat club would cause increased traffic, those slips could be moved. He referenced the issue of transient slips. He noted that there is not a goal of eliminating transient slips but explained that is not included in the plan right now because of the approaching winter season. He stated that their intent was only to request overnight storage right now in order to move boats around during construction.

Legal counsel for applicant, referenced the LMCD Code related to nonconforming structures which does not require double setbacks. She reminded the Board of the reasonable flexibility language that was created to address these nonconforming uses. She stated that this proposal meets the requirements of the code and asked that the Board look favorably on the proposal.

Molitor asked what the applicant would like to see for transient slips in the future.

Mr. Wischmeier stated that currently there are 20 transient slips identified but only 10 to 12 slips that can work effectively. He stated that his goal would be to have between eight and 12 transient slips. He noted that transient slips are not profitable, however they feel that the lake needs that amenity and has a commitment to add those back in.

Zorn asked the navigation space between the two easterly slips.

Mr. Wischmeier replied that there are three or four extra feet of navigation to allow boats to make the turn. He noted that it looks deceptively larger. He noted that it is marked 28 feet. He recognized that it is tight for navigation, but they want to make the walkways more user friendly. He commented that there is adequate space for navigation, but it is tight.

Robert Schatzle, applicant, confirmed that there will be attendants on the dock. He commented that the current configuration is very tight, and boats can see when another boat is coming and therefore the boat approaching would wait for the boat leaving to exit before attempting to gain access. He stated that very rarely do they have passing traffic, even with the restaurant customers. He stated that the corner will be eliminated to allow better navigation.

Zorn asked if there is an ideal location for the transient slips once they are added back in.

Wischmeier identified the desired location, closest to the restaurant.

Klohs asked for details on boat overhangs.

Wischmeier stated that they would follow whatever needs to be done. He noted that there are a number of marinas with large overhangs into the available space but advised that is not their intent.

Schleuning stated that if the overhangs are extended that would not be within the perimeter. She commented that the overhangs cannot extend past what exists.

Wischmeier stated that the configuration would ensure that boats backing out the slips should have sufficient space to backup without having to cross into the fire lane.

Thomas opened the public hearing at 8:04 p.m.

Mark Omstead, representing the property owners to the east, stated that the latest proposal is an improvement but there is still concern with the east side of the marina. He stated that his clients have taken their dock out and would move it ten additional feet if necessary. He commented that his clients have children and grandchildren that enjoy lake activities and that would be impacted by the boat traffic. He stated that in the current configuration there were no perimeter entering slips from the east side. He provided a copy of the order that was issued by the LMCD in the 1970's for this marina, which allowed encroachment on the west side with the variance. He stated that the license from 1978 stated that there was an additional stipulation that no parking signs be posted on the far easterly dock side. He stated that has been the history since 1978, with no boats parked on the east perimeter side but this proposal would have 12 boaters parking along that eastern perimeter. He stated that the purpose of his client's property is not for the marina to use it for navigation purposes as they like to enjoy the water with their family. He stated that opening the east side would be a change. He stated that he does not come up with the same 54 feet calculation on the distance between the eastern docks and his client's property line. He recognized that there is the fire lane but noted that the purpose of the fire lane is not for navigation of a marina. He stated that the fire lane and 20 feet of his client's property seem to be included in the 54-foot setback calculation, which is untrue and would make the actual setback only 20 feet. He stated that is a tight distance when you consider how big boats are and how much space they need to turn around. He referenced the property at 110 Sunrise, and the requirements and limitations on the number of slips allowed in front of that residential property.

Chair Thomas clarified that as long as the residential property is under common ownership of the marina, the

marina docks can extend in front of the residential property.

Gilchrist explained that although there may not be language that specifically states that, the property would be considered as part of the perimeter that can be used in this reconfiguration of a nonconforming structure.

Omstead referenced language in the LMCD ordinances related to a dock extension across different zoning areas. He noted that the dock extends from commercial property across to residential property, which would seem to be against the LMCD provisions. He stated that it is odd to have a residential lot with the current 11 slips that would be proposed to increase to 22 slips. He stated that at the previous meeting the real estate agent for the marina provided addresses that were in favor of the request. He noted that those properties are all vacant and do not have current residents living in them.

Matt Cook provided clarification on the language related to a dock extension from commercial to residential and the allowance with common ownership.

Richie Anderson, owner of North Shore Marina, stated that there should be double side setback on the west side as well. He stated that recent reconfiguration occurred at 5400 Howard's Point Road for that marina, noting that the side opening slips were required to be removed to allow for a double side setback. He referenced the reconfiguration that occurred at the marina at 1440 Shoreline Drive where the LMCD also required the side opening slips to be removed when reconfigured. He noted that those are just two recent configurations out of many that have been required to remove the side opening slips when reconfiguring. He presented a previous reconfiguration he presented in 2005 at 1440 Shoreline Drive which had side opening slips and the required 50-foot setback. He stated that when the side opening slips were changed, it reduced the number of slips from 12 to eight but was conforming. He provided a sketch of a marina in Maxwell Bay and highlighted the 200-foot line and how that was calculated. He also provided a sketch of the Maxwell Bay marina reconfiguration that became totally conforming under reconfiguration in 2007. He presented the current configuration of the Shorewood Marina and another sketch that will soon come before the Board and would propose to make that configuration totally conforming. He stated that the Caribbean could easily be made totally conforming. He stated that if a legal dock could not be built at the Caribbean there is a problem. He stated that he offered to help the applicant design the new plan as he has done it numerous times but never heard anything back from the applicant. He stated that the side opening slips should not be allowed as other marinas have been denied that option.

Don Westman, Echo Bay resident and marina owner, stated that he went through this process three years ago and is happy with the result. He stated that the idea of variances was never in the discussion with his marina reconfiguration. He stated that this layout seems so convoluted and there are so many opportunities to make the layout more navigable. He stated that this is a missed opportunity for layout. He stated that the applicant needs help to make the design flow better and more navigable. He stated that the east side is a problem area for the neighbors and will be a problem. He commented that it is not fair on the west side to use the fire lane for the traffic. He stated that perhaps it exists currently, but this is an opportunity to change it and make it fair. He commented that he is concerned with the boat traffic in Echo Bay as the boats keep getting larger and there is increased traffic. He lobbied for a slow buoy plan that would make it easier to control marina traffic. He commented that this is a missed opportunity to improve this layout.

Christine Peterson, resident to the west, thanked the applicant for moving the gas dock. She stated that she is very concerned with the boat traffic. She commented that the covered dock in the picture is her dock and the current renters in those western docks do not use their boats very often. She requested that the transient restaurant traffic not use the docks on the western side as those boaters often drink and she has five children that she would be concerned about in the water. She commented that the layout is interesting. She understands the difficulty in rebuilding and reinvesting in a site, but from a neighboring standpoint she requested that the traffic be kept to a minimum on the west. She stated that there is a lot of traffic coming and going between the properties in the winter with fishing traffic. She noted that it becomes a little dangerous with the deicing at the marina. She confirmed that the boats do back up and wait in the area near her home to wait for slips at times currently.

Mike Palm, 121 Grove Lane, real estate agent that sold the properties, stated that the Board should consider the fire lanes and how many of those are used by the cities for docks. He stated that Tonka Bay is allowing the LMCD to make a decision before they make a decision on the land use request. He stated that in Minnetonka Beach there are two properties with docks inside the fire lanes. He commented that the marina should be considered a friend to the neighbors as they will be great operators. He explained that in his last comments speaking in support of certain properties he was commenting in support of those properties, while some are vacant properties he has listed.

Gabriel Jabour, 985 Tonka Road, asked the LMCD why there was not an EAW completed on the last four reconfigurations. He stated that he will be submitting a reconfiguration application himself within the next month and would like to have the correct information presented.

Schleuning stated that there are certain criteria for when an EAW is needed and this request did not require an EAW. She explained that if a marina is extending out into new areas an EAW is required.

No additional comments were offered, and the public hearing was closed at 8:42 p.m.

Walesch asked if this consideration could be continued or whether there is a timeline for review. He asked if the applicant would prefer a yes or no decision or whether they would support a continuation if there are issues.

Schleuning confirmed that the application could be continued but a 60-day extension would be recommended.

Wischmeier stated that winter is approaching, and they feel that they need to start taking action soon. He stated that they have met what they have been asked to meet. He recognized that legal configurations were presented from another marina owner but believes that the reconfiguration presented tonight is legal under the LMCD code without variances. He was unsure what else could be done and noted that they still need approvals from Tonka Bay. He stated that they have met the requirements for legal nonconforming docks.

Walesch stated that he has a big concern on the east side and noted that comments were also received from the neighbor on the west side. He stated that he considers the east docks to be side facing slips. He noted

that the prior approval stipulated no parking on the east side of the docks.

Legal counsel for applicant stated that the current dock as it exists, the new dock would not extend past the current dock location.

Walesch stated that while he understands that comment, his opinion of the intent was to prevent boat traffic from the east side of the dock. He stated that he has concern for the neighboring property owners. He stated that when you compare the existing to the proposed, there would be a significant increase in boat traffic and would be an enhancement of what exists. He stated that he considers those side load slips that would be an enhancement and therefore double setbacks should be required.

Legal counsel for applicant stated that she would disagree with those comments.

Rich stated that currently there is no traffic on the east side and even though you move the dock eight to 12 feet, you would have 12 slips that load from the side and that traffic will extend outside the envelope whereas the current traffic does not extend outside the envelope. He recognized that this is challenging but noted that he has the same concern for the neighbors to the east and west with the side loading docks.

Chair Thomas commented that the double setback rule does not apply to a nonconforming marina, but that does not mean that this needs to be approved. He stated that the Board would simply need to explain the reasons it would not support the request, sighting traffic increases and safety concerns.

Walesch commented that the gas dock is provided for in the code. He stated that there are other marinas that have gas docks in excess of 200 feet and those slips are gas dock slips and not rentable slips over 200 feet. He commented that west side has side facing slips and therefore this does not seem to be an improvement. He commented that it seems the applicant is getting a lot of credit for the City owned land and fire lane. He stated that his concern is for the east side as that traffic did not exist before and this would be a large change to the existing conditions.

Hoelscher stated that the LMCD code provides the ability to reconfigure within the perimeter and commended the applicant for working hard to work within the perimeter. She commented that Lake Minnetonka is a small community that cares and encouraged the applicant to listen to the comments that were made tonight. She commented that under LMCD code, related to whether the new plan would have an adverse impact on nearby properties. She believed that the side opening slips would have a negative impact on the neighboring residential properties. She stated that there may be an argument that the nonconformity is increasing in the request as well, noting that those two elements of the code would allow the Board to deny the request. She stated that she was hoping the applicant would comment that he would be willing to continue and work with those that are offering help to the applicant.

Chair Thomas noted that the applicant requested the Board to approve or deny rather than continue.

Schleunig explains that if the application is denied, the entire process would need to be started over including public notice and public comment, rather than continuing the review.

Molitor stated that he understands that comment but noted that the action would not be to deny tonight but to direct staff to prepare that motion that the Board would consider at the next meeting.

Wischmeier stated that he would like everyone to be happy, but the interest of time is important to them. He stated that he would be willing to offer to eliminate the first 50 feet of slips (122, 123, and 124) on the eastern side, which would align with the length of the neighbor's dock. He stated that he could instead side tie a maintenance barge for the marina in that location which would not cause traffic.

Chair Thomas noted that this would be a change to the plan and asked staff how that would work.

Gilchrist stated that if the Board can still give direction. He noted that the Board could provide staff the direction to draft an order to approve, deny, or approve with the change in slips as indicated by the Board. He noted that additional changes could be made at the next meeting when reviewing the order if desired as well.

Zorn noted that the public hearing is closed, and the Board was having discussion and asked if that could continue before a motion is made.

Molitor stated that he appreciates the most recent offer to eliminate some slips. He stated that while he appreciates the desire to move forward from the applicant, this is a long-term reconfiguration, and this is an attempt to get this right. He noted that the intent of a marina is to get traffic directly out to the lake while this plan spills this traffic onto adjacent properties. He stated that while the traffic to the west already exists with side slips, this is a chance to correct that problem.

Walesch echoed the comments of Molitor.

Zorn agreed with the comments of Molitor. She stated that the spirit of the 1978 license was for no traffic on the east side and believed that should stand and be improved. She believed that the envelope needs to be improved and updated on the west as well to eliminate that side spilling traffic. She encouraged the applicant to work with the stakeholders on the lake that have offered help.

Brandt commented that there has been good communication from stakeholders on the lake tonight and believed that continuation and further revision could address the issues that remain.

Hughes commented that he is concerned with the side facing slips and the traffic that would spill onto adjacent land.

Rich commended the applicant for the work they have done. He stated that he remains concerns with the side facing slips and encouraged the applicant to work with Mr. Anderson because he has experience and could help to keep the traffic inward rather than outward.

Baasen thanked the applicant for purchasing the property and noted that the applicant has made great strides. He stated that although the site has been cleaned up tremendously, it does need work. He stated

that as submitted the plan appears to be very congested and if this is going to be done right, they need to make sure that they are not creating an issue. He explained that the lake has experienced bad boaters for its entire life and if the marina is congested that would cause a problem. He noted that there is a degree of infringement to the property owners on the east and west. He stated that if he lived next door, he would not want to see a work barge outside their home. He encouraged the extension to allow additional work to be done on the plan as he could not support the plan as it is today.

Cook agreed that he is concerned with the east side as this would increase the nonconformity of the situation.

Stone agreed with the comments of Baasen. She stated that when she moved onto the lake, she received a lot of advice, some that she wished she would have taken and encouraged the applicant to take the advice.

Hoelscher asked if the applicant would agree to continue this. She believed that a continuance would be a shorter path as there does not appear to be support for this plan.

Gilchrist stated that the option to continue is the decision of the Board. He noted that it will be the decision of the applicant as to whether they amend their plan. He stated that the Board is well within the allowed window.

MOTION: Hoelscher moved, Baasen seconded to continue this review to the next meeting.

VOTE: Motion carried unanimously.

10. OTHER BUSINESS

There was no other business.

11. OLD BUSINESS

A) Watercraft Wastewater Discharge Code Amendment

Schleuning reported that additional input was received on the proposed code amendment. She noted that while there was not a lot of input, there was a mix of positive and negative comments received. She explained the proposed penalties that would exist under misdemeanor. She stated that there would be a potential gross misdemeanor or felony under LMCD code, dependent on the occurrence and other circumstances. She stated that she looked into the language related to urination and noted that other municipalities include both urination and defecation. She stated that from an enforcement standpoint, someone should not be standing up and peeing into the lake or in the winter times. She provided additional information on urination in the water, noting that while it may not cause direct illness it should be something prohibited rather than promoted. She noted that this would just be another tool in the toolbox for enforcement.

Hughes commented that there are some parts that he can agree with, such as turning off the Y valve, but noted that he would not believe that the LMCD can ask someone to disassemble parts of a boat as part of an ordinance. He believed that the goal could be achieved without requiring mechanical and electrical disassembly. He asked how

this would be monitored as boats come from storage and go into the lake. He believed it would be easier to lock the Y valve.

Kroll asked that this discussion be continued because of the length of the meeting and the lack of urgency on this topic.

Walesch stated that if this is something that is approved, it would be beneficial to get the information out as soon as possible as boats are taken off the lake. He noted that if this is passed a portion of the work on the boats could be done this fall and the remainder in the spring.

MOTION: Hughes moved, Kroll seconded to continue this discussion to the next meeting.

VOTE: Ayes (9) Nays (4) (Brandt, Stone, Walesch, Zorn). Motion carried.

Gilchrist stated that prior to the next meeting the Board should provide specific feedback on the items they have issue with.

Hughes stated that he would like additional information on securing the Y valve.

Walesch noted that research was done on that element and it was determined that the Y valve could be easily unsecured for those that wanted to dump waste into the lake.

Hoelscher asked how comments should be provided to staff.

Gilchrist agreed that comments could be sent to staff to be considered. He stated that he can also provide detailed information in the next packet to help the Board focus a discussion and make a decision.

B) LMCD Fact Sheet Draft

Hoelscher noted that a draft fact sheet was provided in the packet and asked the Board to provide comments to staff. She noted that this information could be used for different audiences.

12. NEW BUSINESS

A) Draft City Letter of Appointment of 2020 LMCD Board Members

Schleuning reported that the letter will be sent to member cities related to reappointments. She asked the Board to review the term expiration dates and asked the Board to provide an update before the letter is sent.

Baasen stated that a number of cities have deadlines for appointment and suggested that the letter be sent as soon as possible.

Chair Thomas confirmed that comments should be received by Friday and the letter should then be sent.

13. TREASURER REPORT

Cook had no report.

14. EXECUTIVE DIRECTOR UPDATE

A) Lake Minnetonka Vegetation & AIS Master Plan Progress

Schleuning stated that the Board received an update from the consultants earlier and they are making a lot of progress. She stated that a lot of the data gathering has been done and highlighted the next steps.

MOTION: Cook moved, Thomas seconded to authorize staff to send draft copies of the report to the Citizen Advisory Group (CAG) and Technical Advisory Group (TAG).

VOTE: Motion carried unanimously.

B) Lake Activities

Schleuning stated that staff worked to post a special events calendar on the LMCD website. She noted that this will help people that want to participate in the events or avoid those special events.

15. STANDING LMCD COMMITTEE/WORKGROUP

Aquatic Invasive Species Taskforce: No report.

Budget Workgroup: No report.

Save the Lake Committee: No report.

Strategic Plan Subcommittee: No report.

16. ADJOURNMENT

There being no further business, the meeting was adjourned at 9:31 p.m.

Gregg Thomas, Chair

Ann Hoelscher, Secretary

Lake Minnetonka Conservation District
Check Detail
October 16 - 31, 2019

ITEM 7A

Date	Num	Name	Memo	Account	Class	Paid Amount
10/16/2019	EFT19-128	FRANCOTYP-POSTALIA, INC.		Alerus Checking		
			Postage for Meter	4080M10 · Postage - Admin.	Admin.	-500.00
TOTAL						-500.00
10/24/2019	EFT19-129	ADP Service Fee		Alerus Checking		
			Payroll 10/16/19 - 10/31/19	4180M10 · Professional Services - Admin.	Admin.	-76.70
TOTAL						-76.70
10/31/2019	EFT19-130	ADP		Alerus Checking		
			Salaries - Admin	4020M10 · Salaries-002 - Admin	Admin.	-8,602.91
			P. E.R.A.	2020 · Payroll Liabilities -	Admin.	1,201.82
			ER PERA	4022M10 · ER PERA - Admin	Admin.	-643.84
			ER/FICA Medicare - Admin	4021M10 · ER Share of Admin FICA/Medi...	Admin.	-656.74
			Long Term Disability	2020-LT · Payroll Liabilities - UNUM	Admin.	42.13
TOTAL						-8,659.54
10/24/2019	EFT19-131	Frontier Communications		Alerus Checking		
			Phone and Internet 10/4/19 - 11/...	4060M10 · Telephone - Admin.	Admin.	-198.76
TOTAL						-198.76
10/31/2019	EFT19-132	SelectAccount Group Service Fee		Alerus Checking		
			HSA Administrative fee for Octo...	4380M10 · Employee Benefits - Admin.	Admin.	-5.70
TOTAL						-5.70
10/30/2019	EFT19-133	Health Partners		Alerus Checking		
			Dental Insurance, November 2019	4380M10 · Employee Benefits - Admin.	Admin.	-167.64
TOTAL						-167.64
10/24/2019	EFT19-134	P.E.R.A		Alerus Checking		
			Payroll 10/16/19 - 10/31/19	2020 · Payroll Liabilities -	Admin.	-1,201.82
TOTAL						-1,201.82

Lake Minnetonka Conservation District
Check Detail
October 16 - 31, 2019

Date	Num	Name	Memo	Account	Class	Paid Amount
10/24/2019	EFT19-135	SW/WC Service Cooperatives		Alerus Checking		
			Health Insurance, November 2019	4380M10 · Employee Benefits - Admin.	Admin.	-2,091.00
TOTAL						-2,091.00
10/24/2019	EFT19-136	US Bank		Alerus Checking		
			Quickbooks help	4530M10 · Comp. Sftwr & Hdwr - Admin.	Admin.	-59.95
			A la Carte Creative Group - STL ...	4111M20 · Public Service/Education - S/L	STL	-555.30
			A-1 Rental - Tent for Apple Day	4111M20 · Public Service/Education - S/L	STL	-161.42
			U of M Parking for AIS Summit	4531M30 · Software & Hardware/Training	AIS	-7.00
			Credit for taking Sales Tax off In...	4111M20 · Public Service/Education - S/L	STL	11.30
TOTAL						-772.37
10/24/2019	21687	City of Mound		Alerus Checking		
10/24/2019	November, 2019		Rent, November 2019	4320M10 · Office Rent - Admin.	Admin.	-1,609.71
TOTAL						-1,609.71
10/24/2019	21688	Emmons & Oliver Resources, Inc.		Alerus Checking		
10/24/2019	Inv.#01449-00...		EOR Lake Minnetonka AIS Mast...	4181M30 · Prof. Services - AIS Prevention	AIS	-9,327.50
TOTAL						-9,327.50
10/24/2019	21689	FRANCOTYP-POSTALIA, INC.		Alerus Checking		
10/24/2019	10/3/19 - 1/20/10		Quarterly Rental Fee for Postage...	4080M10 · Postage - Admin.	Admin.	-89.85
TOTAL						-89.85
10/24/2019	21690	Goff Public		Alerus Checking		
10/24/2019	Inv.#16048		Public relations and legislative re...	4180M10 · Professional Services - Admin.	Admin.	-6,922.50
TOTAL						-6,922.50
10/24/2019	21691	LMCC		Alerus Checking		
10/24/2019			VOD Services for Meeting 10/9/19	4182M10 · Media (Cable/Internet) - Admin.	Admin.	-100.00
TOTAL						-100.00

Lake Minnetonka Conservation District
Check Detail
October 16 - 31, 2019


Date	Num	Name	Memo	Account	Class	Paid Amount
10/24/2019	21692	Mark Hodges Media Productions		Alerus Checking		
10/24/2019	Inv.#20191009		Meeting 10/9/19	4182M10 · Media (Cable/Internet) - Admin.	Admin.	-100.00
TOTAL						-100.00
10/24/2019	21693	Southwest News Media		Alerus Checking		
10/24/2019	Inv.#378052		Legal Notice Caribbean, Amendi...	4110M10 · Public Info./Legal - Admin.	Admin.	-168.30
TOTAL						-168.30
10/24/2019	21694	Tallen & Baertschi		Alerus Checking		
10/24/2019	September 2019		September prosecution costs	4640M10 · Prosecution Fees - Admin.	Admin.	-3,253.89
TOTAL						-3,253.89




LAKE MINNETONKA CONSERVATION DISTRICT

5341 MAYWOOD ROAD, SUITE 200 • MOUND, MINNESOTA 55364 • TELEPHONE 952/745-0789 • FAX 952/745-9085

DATE: October 23, 2019

TO: LMCD Board of Directors 

FROM: Matthew Cook, Environmental Administrative Technician

THROUGH: Vickie Schleuning, Executive Director 

RE: Caribbean Marina & Restaurant Multiple Dock Facility Reconfiguration

ACTION

Continuation of a public hearing and Board decision regarding Caribbean Marina & Restaurant (Tonka Bay Holdings) 2019 Reconfiguration of Nonconforming Structure and Variance applications. The site is located at 135 Lakeview Avenue and 100 and 110 Sunrise Avenue in the City of Tonka Bay. The site has shoreline on Lower Lake South. Two (2) nearby upland parcels (PIDs 27-117-23-24-0067 and 27-117-23-24-0068) are also associated with the site.

The following motions are offered depending on whether the Board wishes to approve, continue, or deny the request:

Approval:

I make a motion to direct LMCD legal counsel and staff to draft Findings of Fact and Order for consideration at the November 13, 2019 Board meeting approving Caribbean Marina & Restaurant 2019 Reconfiguration of Nonconforming Structure and Variance applications for the property located at 135 Lakeview Avenue and 100 and 110 Sunrise Avenue in the City of Tonka Bay as presented.

Approval with Amendment:

I make a motion to direct LMCD legal counsel and staff to draft Findings of Fact and Order for consideration at the November 13, 2019 Board meeting approving Caribbean Marina & Restaurant 2019 Reconfiguration of Nonconforming Structure and Variance applications for the property located at 135 Lakeview Avenue and 100 and 110 Sunrise Avenue in the City of Tonka Bay with the following conditions...

Denial:

I make a motion to direct LMCD legal counsel to draft Findings of Fact and Order for consideration at the November 13, 2019 Board meeting denying Caribbean Marina & Restaurant 2019 Reconfiguration of Nonconforming Structure and Variance applications for the property located at 135 Lakeview Avenue and 100 and 110 Sunrise Avenue in the City of Tonka Bay based on the following reasons...

APPLICATION BACKGROUND

Mr. Shawn Wischmeier, co-owner and representative of the Caribbean Marina & Restaurant (Tonka Bay Holdings; “Applicant”) submitted applications for the multiple dock facility located at 135 Lakeview Avenue and 100 and 110 Sunrise Avenue in the City of Tonka Bay. The Applicant proposes to reconfigure the existing nonconforming dock structure within the perimeter of the existing structures on site to improve internal navigation and address dock structure maintenance concerns.

The facility has been considered a legal nonconforming facility due to pre-existing nonconforming components of the facility (length of the fuel dock) and watercraft density. On March 15, 1978, the LMCD granted a variance for the western side setback in which the Village of Tonka Bay consented to on December 7, 1977. The site is currently licensed for 147 boat storage units (“BSUs”). The site has approximately 440 feet of 929.4-foot OHW shoreline, with a boat storage density of 1:3.

UPDATED APPLICATION INFORMATION

A public hearing was held by the LMCD Board on September 25, 2019 and was continued to the LMCD Board meeting on October 9, 2019. The public hearing was then continued to the October 23, 2019 in order for the Applicant to consider revising the plan based on feedback of the Board and time to discuss any concerns expressed by the neighboring owners. A notice to extend the application review period an additional 60-days was sent to the Applicant.

The applicant has made changes and submitted a new proposed site plan, which is attached to this report. A brief summary of the changes is provided below:

PERIMETER

- The dock system remains in the existing perimeter for the site.
- The fuel sales dock has been moved from the center dock structure to the second from the west. The fuel sales dock does not extend more than 220 feet from shore – 20 feet beyond the rest of the dock structure. This length reflects the length previously proposed and the length of the existing fuel sales dock beyond the existing dock structure.
- The proposed dock facility no longer has slips opening toward the east side site line, diagonally or otherwise. Watercraft will access the easternmost slips from the north.
- The westernmost dock layout remains the same as most recent proposed, extending no further beyond the west side site line than the existing structure does.

WATERCRAFT STORAGE

- The size of internal navigation spaces has generally been increased.
- The proposed total BSUs have been decreased from 123 to 117. The existing site has 147 BSUs.
- The proposed total linear footage of boat storage has been decreased from roughly 3,589.5 feet to 3,288 feet. The existing site has at least 3,709 linear feet of boat storage.
- All BSUs are proposed to be for overnight storage. The existing structure has 20 transient slips.

To prevent confusion with previous submittals for this application and due to the volume of information accumulated from the two previous LMCD Board meetings, not all items presented thus far are attached. Previous meeting packets are available on the LMCD website. A recapitulation of basic site and pertinent application information is below for your review.

PUBLIC HEARING AND COMMENTS

The public hearing held on September 25, 2019 was continued by the LMCD Board to the October 9, 2019 Board meeting. The October 9, 2019 public hearing was continued to the October 23, 2019 Board meeting. Public comments received through October 4 are attached.

Public comments received at the October 9, 2019 hearing that have not already been recorded are summarized as follows:

- A legal representative for Jim and Chris Erdahl, 120 Sunrise Avenue, spoke to the impact on their enjoyment of the lake due to increased boat traffic accessing the eastern-facing slips and previous information to prevent boat parking at this site in the late 1970s on the east side of the site.
- Richie Anderson, marina owner, advocated for an altered layout like the one he had designed he believed without point slips toward the east side site line and increased internal navigation. He also presented other dock layouts, noting differences between the sites.
- Don Westman, marina owner, stated that he believed the proposed layout was a missed opportunity to improve the navigability of the site.
- Christine Peterson, 85 Lakeview Avenue, spoke to her opposition of the gas dock's formerly proposed position on the westernmost side of the site. She also stated concerns about the proximity of traffic from the marina.
- Mike Palm, broker for the Applicant's purchase of the site, commended the improvements to the neighborhood and the efforts of the new marina owners.
- Gabriel Jabbour questioned whether or not an Environmental Assessment Worksheet (EAW) would be required for the proposed project.

ATTACHMENTS

1. 10-18-2019 Site Plan
2. Aerial Imagery
3. Existing Site Plan
4. Code Excerpts
5. Public Hearing Comments
6. Reconfiguration of Nonconforming Structure Application
7. Variance Application(s)
8. Public Hearing Notice Submitted to Lakeshore Weekly News
9. Public Hearing Notice Mailed to Property Owners and Residents
10. October 9, 2019 Public Hearing Memo (without attachments)
11. September 25, 2019 Public Hearing Memo (without attachments)

Kennedy

&

Graven

CHARTERED

Troy J. Gilchrist
470 US Bank Plaza
200 South Sixth Street
Minneapolis MN 55402
(612) 337-9214 telephone
(612) 337-9310 fax
tgilchrist@kennedy-graven.com
<http://www.kennedy-graven.com>

Also: St. Cloud Office
501 W. Germain Street, Suite 304
St. Cloud, MN 56301
(320) 240-8200 telephone

MEMORANDUM

To: LMCD Board of Directors

From: Troy Gilchrist, LMCD Attorney

Date: October 23, 2019

Re: EAW Requirements Related to the Reconfiguration Application from the Caribbean

I thought it would be helpful for me to provide the Board some additional information on the EAW process given the amount of assertions and questions that have been raised regarding the need for an EAW associated with the proposed reconfiguration of the nonconforming docks at the Caribbean. I will provide this information in as succinct a format as possible to make it easier to read prior to the meeting.

- **Does the proposed reconfiguration trigger a mandatory EAW? No.**

The Board has received outside comments that a mandatory EAW is required under Minn. R., part 4410.4300, subp. 25 related to the proposed reconfiguration of this commercial marina. The assertion is that because the reconfiguration of the docks falls within the broad definition of "construction" that an EAW is required. Under this interpretation, any construction activities affecting 20,000 square feet of the lake would trigger an EAW, even if it is the replacement of an existing dock in the same location, or the annual reinstallation of a removable dock system. If this were the case, nearly every application involving a commercial marina would require an EAW. The result would be significant costs and delays for commercial marinas simply attempting to reconfigure or repair their docks. That is not how the LMCD has applied the EAW process in the past and there is no basis on which to change going forward.

The statement of need and reasonableness provided for the current rule reflects an intent to address the construction of marinas and then expansions that exceed 20,000 square feet. This marina has existed for decades and the reconfiguration of the existing dock system does not

produce the types of potential significant environmental effects the construction of a new marina, or the expansion of an existing marina, might produce.

- **Who decides if an EAW is required? The LMCD Board.**

There was an assertion from others that the EQB said a mandatory EAW is required here. However, the EQB has made it clear it does not make those determinations in cases like this. Instead, that decision is left to the responsible governmental unit ("RGU"), which is the LMCD Board.

- **Can the Board require an EAW even if one is not mandated by rule? Yes, but only if the Board determines there is a potential for "significant environmental effects."**

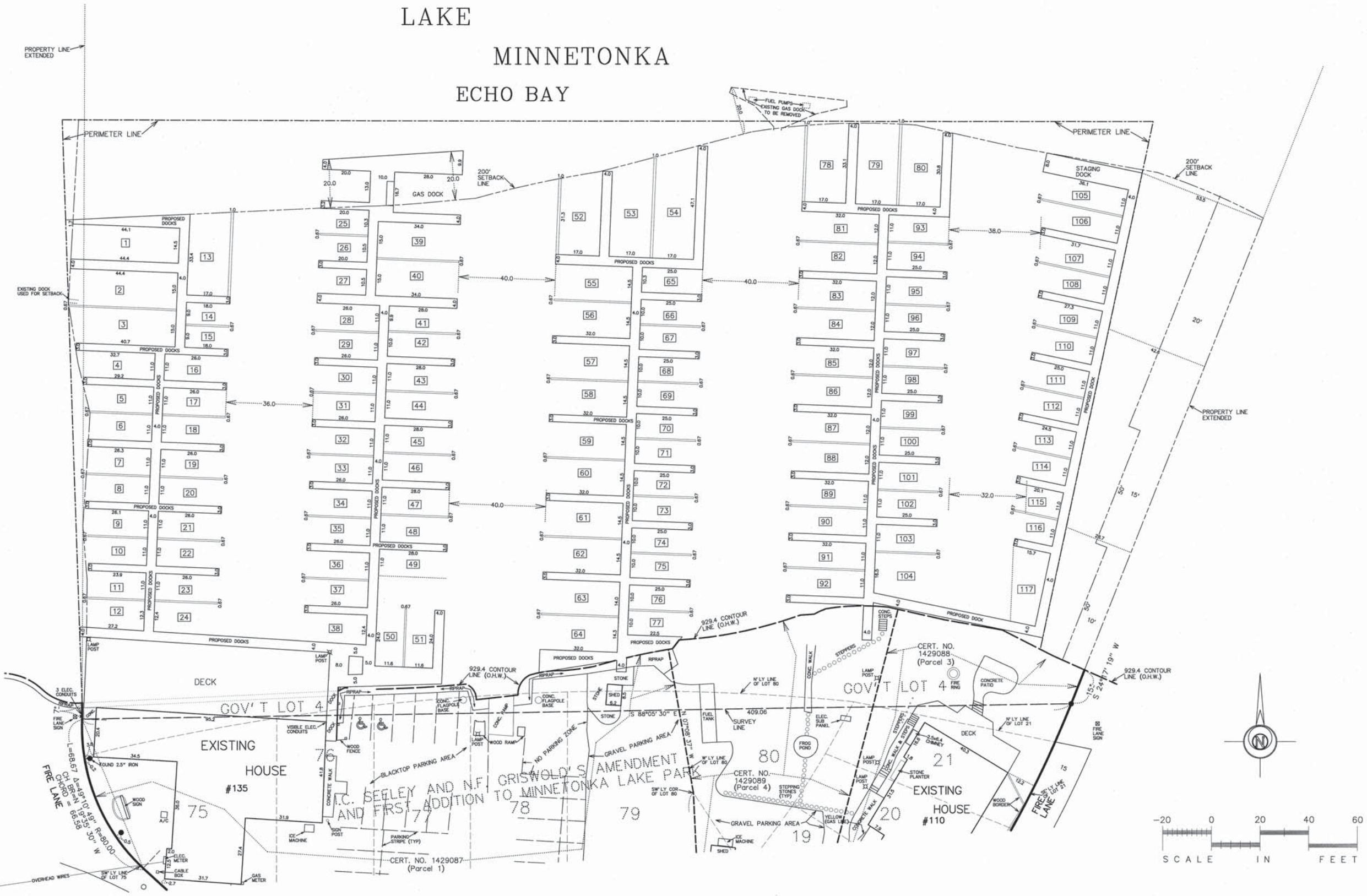
Under Minn. R., part 4410.4500, an RGU can order what is referred to as a discretionary EAW if it determines "that because of the nature or location of the proposed project the project may have the potential for significant environmental effects" The Board would need to make specific written findings to support such a decision. In short, the Board would have to explain how the proposed reconfiguration has the potential to produce significant environmental effects as compared to the existing dock system. To my knowledge, the Board has not ordered a discretionary EAW in the past and, because of the delays it would entail, the Board would need to be careful to have specific reasons for ordering one in this case when an EAW has not been required with dock reconfigurations in the past that did not involve an expansion.

- **Is it possible for the public to request an EAW by petition? Yes.**

Under Minn. R., part 4410.1100, at least 100 individuals may petition the EQB to request the preparation of an EAW. If a proper petition is received by the EQB, it will determine the RGU to make a determination on whether to approve the petition and order an EAW. The LMCD would almost certainly be designated the RGU and receive the petition from the EQB. The determination on whether to order an EAW is made based on the material evidence presented by the petitioners, the applicant, and others as to whether, "because of the nature or location of the proposed project, the project may have the potential for significant environmental effects." If such potential is not shown, the RGU must deny the petition. The RGU only has 15 days from its receipt of the petition to make that decision (with some ability to request an extension). If the LMCD does receive a petition from the EQB, under Minn. R., part 4410.3100, subp. 1 the LMCD is prohibited from making a final decision on the application until the petition is denied or, if an EAW is ordered, until the EAW is completed and a negative declaration is issued on the need for an EIS.

PROPOSED DOCK SURVEY FOR
TONKA BAY PROPERTY HOLDINGS, LLC
IN I.C. SEELEY AND N.F. GRISWOLD'S AMENDMENT AND FIRST ADDITION TO MINNETONKA LAKE PARK AND IN GOV'T LOT 4, SEC. 27-117-23
HENNEPIN COUNTY, MINNESOTA

LAKE
MINNETONKA
ECHO BAY



GRONBERG & ASSOCIATES, INC.
CIVIL ENGINEERS, LAND SURVEYORS, LAND PLANNERS
445 NORTH WILLOW DRIVE LONG LAKE, MN 55356
952-473-4141

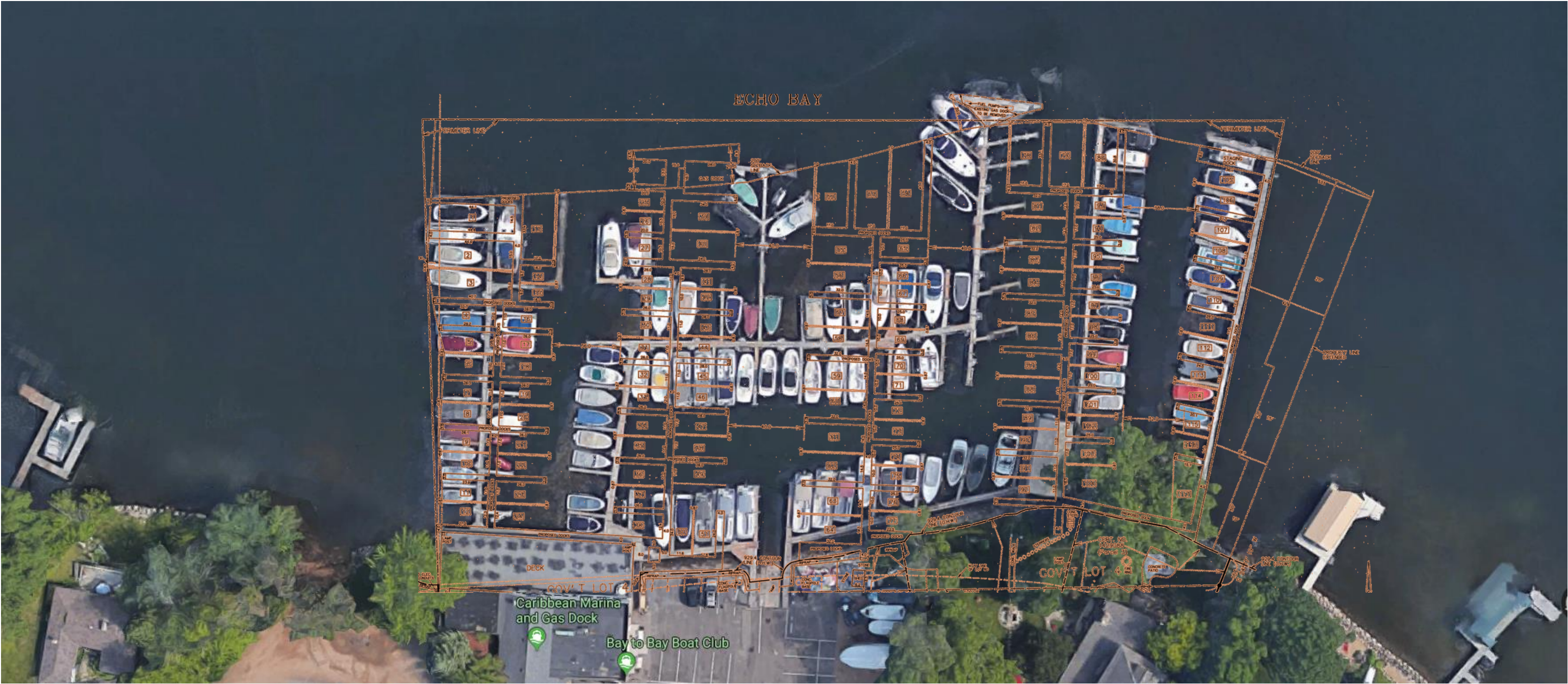
PROJECT

I hereby certify that this plan, specification, or report was prepared by me, or under my direct supervision, the laws of the State of Minnesota.

Mark S. Gronberg
Mark S. Gronberg Minnesota License Number 12755

DATE	REVISIONS
5-28-19	REVISED PROPOSED DOCKS
6-18-19	
10-23-19	
12-9-19	
12-17-19	

FOR ILLUSTRATIVE PURPOSES ONLY
OVERLAY OF SITE PLAN SUBMITTED 10-18-2019 AND RECENT AERIAL IMAGERY
CREATED 10-18-2019



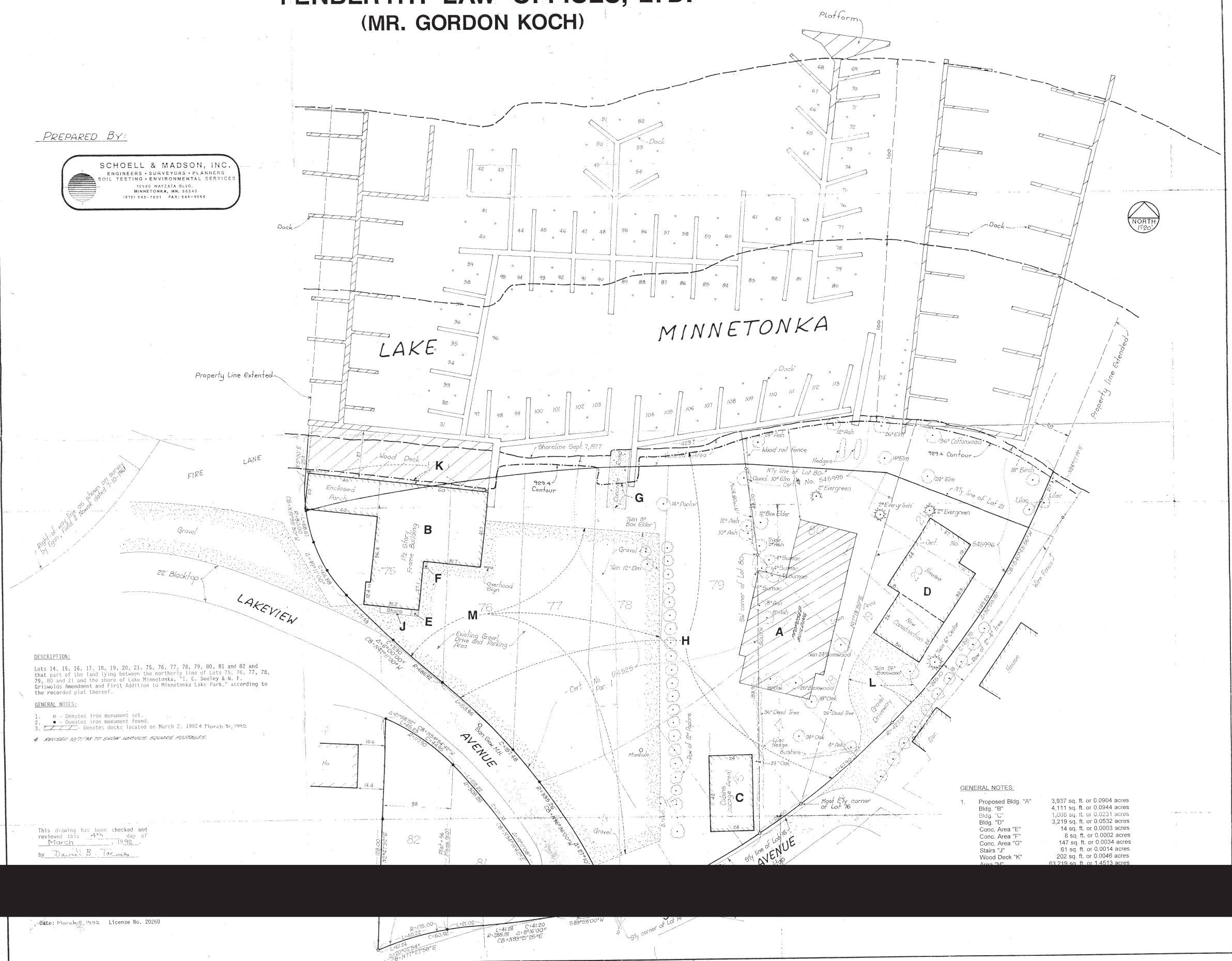
SURVEY FOR:

**PENBERTHY LAW OFFICES, LTD.
(MR. GORDON KOCH)**

ATTACHMENT 3

PREPARED BY:

SCHOELL & MADSON, INC.
ENGINEERS • SURVEYORS • PLANNERS
SOIL TESTING • ENVIRONMENTAL SERVICES
10580 WATZATA BLVD.
MINNETONKA, MN. 55345
(612) 545-7601 FAX: 545-9065



DESCRIPTION:
Lots 14, 15, 16, 17, 18, 19, 20, 21, 75, 76, 77, 78, 79, 80, 81 and 82 and that part of the land lying between the northerly line of Lots 75, 76, 77, 78, 79, 80 and 21 and the shore of Lake Minnetonka, 1. C. Seeley & M. F. Griswold Amendment and First Addition to Minnetonka Lake Park, according to the recorded plat thereof.

- GENERAL NOTES:**
1. o - Denotes iron monument set.
 2. • - Denotes iron monument found.
 3. --- Denotes docks located on March 2, 1992 & March 31, 1992.
 4. REVISED 10/1/98 TO SHOW HATCHED SQUARE FOOTAGES.

This drawing has been checked and reviewed this 4th day of March, 1992.
by Daniel B. Thomas

- GENERAL NOTES:**
1. Proposed Bldg. "A" 3,937 sq. ft. or 0.0904 acres
Bldg. "B" 4,111 sq. ft. or 0.0944 acres
Bldg. "C" 1,008 sq. ft. or 0.0231 acres
Bldg. "D" 3,219 sq. ft. or 0.0532 acres
Conc. Area "E" 14 sq. ft. or 0.0003 acres
Conc. Area "F" 8 sq. ft. or 0.0002 acres
Conc. Area "G" 147 sq. ft. or 0.0034 acres
Stairs "I" 61 sq. ft. or 0.0014 acres
Wood Deck "K" 202 sq. ft. or 0.0046 acres
Area "M" 63,219 sq. ft. or 1.4513 acres

**ATTACHMENT: LMCD Code Excerpts
Caribbean Marina & Restaurant
2019 New Multiple Dock License, Variance Applications**



Section 1.02. Definitions.

Subd. 40a. “Qualified Commercial Marina” means a privately owned, revenue-producing business that rents storage space at one facility for thirteen or more watercraft on the Lake. A facility does not qualify as a Qualified Commercial Marina unless all rented Boat Storage Units on the Lake are freely available to members of the public without requiring membership in any organization and without providing any priority or preference to members of any organization. Except as allowed in paragraphs a) and b) below, a facility does not qualify as a Qualified Commercial Marina if any part of the facility meets the definition of any of the following classifications of use as defined in Section 2.11, Sub. 2: Club Facilities, Municipal Facilities, Outlot Association Facilities, Multiple Dwelling Facilities, or Private Multiple Facilities. Additional Boat Storage Units may be used for purposes other than rental to the general public, subject to the following limitations:

- a) No more than twenty percent of all Boat Storage Units at the facility may be used for any combination of the following uses: watercraft held for sale by the marina owner, watercraft being repaired by the marina owner, rental watercraft, emergency storage of a disabled watercraft for up to three business days or Boat Storage Units made available under a priority or preference to owners of specified real property under real estate interests created prior to 1995;
- b) No more than the number of Boat Storage Units rented to the general public may be used for any combination of the following uses: transient use, storage of commercial or governmental lake maintenance watercraft, or storage of governmental watercraft for emergency response or law enforcement uses.

Section 1.07. Variance.

Subd. 1. General Statement. Where practical difficulties occur or where necessary to provide access to persons with disabilities, the Board may permit a variance from the requirements of this Code or may require a variance from what is otherwise permitted by this Code, provided that such variance with whatever conditions are deemed necessary by the Board, does not adversely affect the purposes of this Code, the public health, safety, and welfare, and reasonable access to or use of the Lake by the public or riparian owners. Except as otherwise provided in this Code, all variances granted by the district shall be governed by the provisions of this section.

Subd. 2. Unusual Configurations. Where the provisions of this Code would cause the authorized dock use area of two or more sites to overlap, or where there is any other unusual configuration of shoreline or extended lot lines, which causes a conflict between the owners of two or more adjacent or nearby sites as the use of the same area of the Lake for docks, mooring areas or other structures or for reasonable access thereto, the owner of any of the affected sites may apply to the Board for a variance. A variance may be to permit the applicant to locate a

dock, mooring area or other structure in a location different from that permitted by this ordinance or to permit or require the owner of any adjacent or nearby site to do so.

Section 2.01. Authorized Dock use area.

Subd. 2. Description of Authorized Dock use area. An authorized dock use area is described as follows:

- a) Length - The authorized dock use area for sites bordering on the Lake extends into the Lake a distance equal to the site Lake frontage to be measured at right angles to the side site lines and, except as provided herein, shall not extend into the Lake a distance of greater than 200 feet in the case of commercial docks in existence on August 30, 1978, and 100 feet in the case of other docks to be measured on a line parallel to the site side lines as extended into the Lake. In the case of commercial docks in existence on August 30, 1978, the lakeward extension of the dock use area more than 100 feet from the shoreline shall be limited to the distance from shore of the docks in existence on said date and that portion of said docks more than 100 feet from the shoreline may not be altered or expanded.

The authorized dock use area for Qualified Commercial Marinas, Qualified Sailing School and Qualified Yacht Clubs extends into the Lake 200 feet.

A site in existence on February 5, 1970, which has a Lake frontage of 40 feet or more, but less than 60 feet, may have a dock extending up to 60 feet into the lake. Any such site which has a Lake frontage of less than 40 feet may have a dock which extends beyond the authorized dock use area to the point necessary to reach a water depth of four feet, measured from 929.4 feet NGVD, and no further; provided that no such dock shall be located or extended more than 60 feet into the Lake. Side setbacks requirements shall be observed, however, unless a variance is granted by the Board under Section 1.07.

The authorized dock use area for dock facilities owned and operated by state agencies, Hennepin County, the LMCD or cities bordering on the Lake and used exclusively for law enforcement, public safety or LMCD purposes may extend up to 125' into the Lake.

- a) Width - The authorized dock use area for sites bordering on the Lake is limited in width by the setback limitations prescribed herein. The setback from side site lines as extended in the Lake shall be as follows:

For that portion of the length of the authorized dock use area which extends from the shore	<u>The setback shall be</u>
Zero to 50 feet	10 feet
50 to 100 feet	15 feet
100 to 200 feet	20 feet

- 1) Where boat slips open toward a side site line, the setback provided shall be at least equal to the slip depth but shall not be less than 20 feet.
- 2) Setbacks shall be doubled for all multiple docks or mooring areas and commercial docks on each side where such multiple docks are not located

adjacent to another multiple dock or mooring area or commercial docks; provided, however, that multiple docks or mooring areas and commercial docks in existence on May 3, 1978, shall be non-conforming structures and shall not be subject to this subparagraph 2.) as long as such structures are not expanded, and further provided that setbacks established by Section 2.12, Subd. 3 are not required to be doubled pursuant to this subparagraph 2).

- 3) The authorized dock use area, in the case of sites 50 feet in width or less in existence on February 2, 1970, may be expanded to a side setback limitation of five feet, provided that such setback in no way impairs access to neighboring docks.
- 4) A canopy, as defined in Section 1.02, must be setback from side site lines a minimum distance of 20 feet.

Section 2.015. Reconfiguration of Nonconforming Structure.

Subd. 1. Purpose. The protection and preservation of the Lake has required increasingly strict regulatory measures. While the Board has determined that these measures are generally appropriate on a lake-wide basis, it has recognized that requiring existing nonconforming structures to come into compliance with new requirements of the Code can impose substantial hardships. Therefore, as regulation of docks and boat storage on the Lake has changed, the Board, in some cases, has allowed docks lawfully in existence at the time of adoption of new ordinances to continue. In conferring such nonconforming status, the Board has imposed limitations on alterations or expansions of such facilities to protect the Lake and to otherwise further the purposes of this Code. However, the Board has determined that these limitations may be unduly restrictive without significantly advancing the public interest. The purpose of this section is to alleviate the hardship created by prohibiting changes or alterations to nonconforming structures by allowing reconfigurations and minor changes within certain limitations imposed to protect the spirit and intent of this Code. The Board also recognizes a need to allow some reasonable flexibility in the reconfiguration of nonconforming structures to enable owners to enhance the safety of their structures and respond to changing market demands and watercraft designs. The Board further recognizes that there may be alterations proposed to a nonconforming structure that comply with the requirements of the Code. The intent of the Board is to allow for such changes as part of an approved reconfiguration or minor change, provided the Board or the Executive Director finds the proposed changes do not increase the nonconforming nature of the structure and is otherwise consistent with the purpose of this section. It remains a priority of the Board to encourage owners to bring their nonconforming structures into compliance with Code to the extent reasonably possible, but the Board determines it is not necessary, and can result in unreasonably hardships, for an owner to be required to bring their nonconforming structure into conformance with the Code simply for seeking a reconfiguration of, or minor change to, the structure.

Subd. 2. Applicability. This section applies to all permanent docks, seasonal docks, and district mooring areas that are not in compliance with the requirements of the Code applicable to new facilities, but that are lawfully in existence by reason of Code provisions explicitly allowing such nonconformities to continue.

Subd. 3. Reconfigurations and Minor Changes Generally. This section sets out the procedure to seek approval for the reconfiguration of a nonconforming structure and also provides a process to obtain administrative approval for a minor change to a nonconforming structure. Without limiting the specific requirements of this section, the primary distinction

between a reconfiguration and a minor change with respect to a nonconforming dock is that a reconfiguration proposes to substantially alter the principal structure of a dock, while a minor change only alters a minimal portion of the principal structure or the secondary structure of a dock. For the purposes of this section, the “principal structure” of a dock is the main walkway, and the “secondary structure” of the dock includes the slip structures, dolphin poles, and other ancillary components affixed to or adjacent to the principal structure.

The reconfiguration of a nonconforming structure, to the extent allowed by this section, requires the submission of an application to the LMCD in accordance with subdivision 8 of this section requesting a new dock license or new district mooring area license for the proposed reconfigured nonconforming structure. If a proposed reconfiguration qualifies as a minor change, a minor change application may be submitted to the LMCD in accordance with subdivision 9 of this section and the Executive Director may approve the application without a public hearing, Board review, and without requiring a new license. The minor change process is only available if, in the determination of the Executive Director, the proposed reconfiguration complies with the limitations and criteria in subdivisions 6 and 9 of this section.

In considering a proposed reconfiguration or minor change to a nonconforming structure, the LMCD shall determine the number of boat storage units, total linear footage of the boat storage units, and the perimeter of the existing nonconforming structure. Each of these determinations, which must be made in accordance with subdivision 7 of this section, serve as limitations on the proposed and all future reconfigurations and minor changes to the structure. To the extent a proposed reconfiguration or minor change results in less than the full amount of the boat storage units, total linear footage, or perimeter area of the existing nonconforming structure being utilized, they are preserved as provided in subdivision 10 of this section for future use.

Subd. 5. Code Requirements. The reconfiguration of nonconforming structures must comply, in all respects, with the requirements of this Code except as otherwise provided in this section and as follows:

- (a) The provisions of section 2.01, subd. 2(a) which prohibit alteration of docks extending more than 100 feet from the shoreline;
- (b) The provisions of section 2.05, subd. 9, which prohibit changes involving an increase in slip size without first securing a special density license pursuant to section 2.05; and
- (c) The provisions of 2.10, subd. 3, which prohibit the expansion of non-conforming uses.

Subd. 6. Limitations. Except to the extent expressly allowed by this section, the reconfiguration of, or a minor change to, a nonconforming structure is not allowed, and the LMCD shall not issue a new dock license, a new district mooring area license, or grant administrative approval, if the proposed reconfiguration would result in any of the following:

- (a) An increase in boat storage units;
- (b) An increase in the linear footage of the boat storage units as determined in subdivision 7 of this section;

- (c) An increase in slip length of any slip structures opening toward a nonconforming side setback area;
- (d) An adverse effect on nearby properties, navigation, safety, wetlands with emergent vegetation, or the environment;
- (e) An increase in the nonconforming nature of the structure;
- (f) The creation of any new nonconformities; or
- (g) The structure extending further into any nonconforming side setback area than the existing structure, except that extension into a double setback area, if applicable, may be allowed upon the issuance of a variance.

Subd. 7. Determination of Existing Boat Storage Units, Linear Footage and Perimeter. The Board desires to allow the reconfiguration of, and minor changes to, nonconforming structures to accommodate the changing widths of watercraft and the needs of owners, but to do so in a way that ensures the reconfigured structure does not extend beyond the perimeter of the existing structure and that preserves for the owner, as a maximum, the original number and linear footage of the boat storage units of the existing structure. This subdivision sets out the process for confirming the number of existing boat storage units, the calculation of the total linear footage of the boat storage units, and for determining the perimeter of the existing nonconforming structure as part of a proposed reconfiguration. The determinations made under this subdivision are based on the existing licensed structure, not on any past or proposed future configuration of the structure. The LMCD may prepare and make available to the public diagrams to demonstrate how one or more of these determinations are made. Any such diagrams are for illustration only and are not controlling on the determinations made by the Executive Director or the Board under this subdivision regarding any particular application.

- (a) Boat Storage Units. The number of boat storage units for the nonconforming structure is established as part of the license issued by the LMCD for the dock or the district mooring area. If a proposed reconfiguration will result in a reduction of the number of boat storage units, the new dock license, district mooring area license, or minor change permit issued for the reconfigured structure shall identify the number of boat storage units before and after the reconfiguration.
- (b) Linear Footage. Part of the flexibility the Board desires to provide in the reconfiguration of nonconforming structures is to allow the transfer of linear footage of the boat storage units among slips and to otherwise reconfigure the boat storage units as the owner determines is appropriate, provided the total linear footage of the boat storage units of the existing structure is not exceeded. Where the license is based on multiple sites with non-continuous shoreline, the linear footage may be transferred among sites. The linear footage shall be determined as follows:
 - (1) General Linear Footage Calculation. The linear footage of a boat storage unit contained by a slip structure shall be determined by a straight line measurement from the center of dock-side end of the slip to a point even with the outside edge

of the slip structure, whether that is the end of the slip fingers, or other similar portion of the dock structure reasonably constituting the end of the slip.

- (2) Dolphin Poles or Similar. The linear footage of a boat storage unit with dolphin poles or that is not contained by a slip structure shall be determined based on the linear footage of the nearest slip finger or other similar portion of the dock structure reasonably constituting the end of the slip.
 - (3) Mooring Areas. The linear footage of a district mooring area shall be determined based upon the combined length of the watercraft, as identified in the most current license issued for the structure, allowed to be moored at the mooring area.
 - (4) Total Linear Footage. The total linear footage of the nonconforming structure shall be the combined linear footage of all the boat storage units.
- (c) Reduction in Linear Footage. If a proposed reconfiguration of, or minor change to, a nonconforming structure will result in reducing the amount of linear footage used for boat storage units, the new dock license, district mooring area license, or minor change permit issued for the reconfigured structure shall identify the total linear footage before and after the reconfiguration.
- (d) Linear Footage Appeal. The Executive Director is authorized to resolve any questions and to decide the total linear footage of a nonconforming structure. The Executive Director may bring a question regarding the determination of the linear footage to the Board for a final decision. If an applicant disagrees with the Executive Director's determination of the total linear footage, that person may appeal the determination to the Board for consideration at a regular meeting. The Board will consider the Executive Director's decision, give the applicant an opportunity to be heard, and make a final decision regarding the total linear footage.
- (e) Perimeter. Another part of the flexibility the Board desires to provide in the reconfiguration of nonconforming structures is to allow reconfigurations without being limited to a particular structural design or configuration, provided the reconfigured structure does not extend beyond the perimeter of the existing structure. Confining the reconfigured structure to the perimeter of the existing structure will help avoid the negative impacts that can result to the Lake and neighboring owners if the structure was allowed to expand or extend further into the Lake.
- (1) Perimeter Structure and Storage. All docks, moorings, watercraft storage, swimming floats, ski jump storage, diving towers, and similar items must be located within the perimeter as approved in accordance with this Code.
 - (2) Perimeter Determination. The perimeter of the existing nonconforming structure shall be a closed line that extends from shoreline to shoreline around the outside portions of the structure (boxing in the structure). The perimeter shall be drawn by extending straight lines from the shoreline on either side of the structure to the furthest point of the structure into the Lake, and then drawing

a straight line between the two side lines that parallels the shoreline. The Executive Director is authorized to resolve any questions and to decide the perimeter of a nonconforming structure. The Executive Director may bring a question regarding the determination of the perimeter to the Board for a final decision. The established perimeter shall be included in and made part of the new dock license, district mooring area license, or minor change permit issued for the reconfigured nonconforming structure. The established perimeter shall also be shown on any survey submitted with a proposed reconfiguration of the nonconforming structure.

- (3) Perimeter Appeal. If an applicant disagrees with the Executive Director's determination of the perimeter, that person may appeal the determination to the Board for consideration at a regular meeting. The Board will consider the Executive Director's decision, give the applicant an opportunity to be heard, and make a final decision regarding the perimeter.

Subd. 8. License for Reconfigured Nonconforming Structure. The reconfiguration of a nonconforming structure may only occur to the extent allowed by this section, and in accordance the procedures established in this subdivision. The reconfiguration of a nonconforming structure under this subdivision requires the issuance of a new dock license or a new district mooring area license.

- (a) Eligibility. The Board may only issue a new dock license or a new district mooring area license if the proposed reconfiguration of the nonconforming structure does not result in any of the conditions identified in subdivision 6 of this section and complies with the requirements of section 2.03, this section, and the other requirements of the Code, to the extent applicable or not otherwise exempted by the express provisions of this section.
- (b) Application and Process. A person proposing to reconfigure a nonconforming structure shall file a new dock license or new district mooring area license application with the LMCD, together with the applicable application fee and escrow deposit to be used by the LMCD to reimburse itself for legal, surveying, engineering, inspection, maintenance and other expenses it incurs to process and act on the application. Except as provided in this section, the application for the new license shall be processed in accordance with section 2.03. The application for the new license shall include, in addition to the information required by section 2.03, subdivision 2, the following information:
 - (1) A survey map of the nonconforming structure in its current configuration identifying the existing number of boat storage units, the linear footage of each boat storage unit, and the perimeter of the structure in accordance with subdivision 7 of this section; and
 - (2) A survey map of the proposed reconfigured nonconforming structure showing the boat storage units used, the total linear footage of the boat storage units used, and the perimeter area of the reconfigured structure in accordance with subdivision 7 of this section.

Upon the receipt of a complete application, the Executive Director shall decide whether the boat storage units, linear footage, and perimeter determinations shown on the map were made in accordance with subdivision 7 of this section and require adjustments as needed.

- (c) Variances. If a proposed reconfiguration of a nonconforming structure requires the issuance of a new variance, or an amendment to an existing variance, the applicant shall submit a variance application together with the application for a new dock or district mooring license application. Proceedings for consideration of such variance application and new dock or district mooring area license application shall be conducted concurrently.
- (d) Public Hearing. Once an application is deemed complete, a public hearing shall be scheduled before the Board to consider the application.
- (e) Board Determination. After conducting the public hearing, the Board shall make the final decision on whether to approve the requested new dock license or new district mooring area license for the reconfigured nonconforming structure. The Board, as part of an approval, may allow minor modifications to the perimeter in order to accommodate changes to the structure that otherwise comply with the Code. The Board may impose conditions on a license it issues as it determines is reasonably needed to address navigation, safety, and environmental concerns including, but not limited to, imposing restrictions on the length of watercraft. If the application is approved, the applicant may seek annual renewal of the license following the same annual licensing procedures required of conforming structures.

Subd. 10. Preservation of Unused Boat Storage Units, Linear Footage, and Perimeter Area. If the reconfigured or changed nonconforming structure does not utilize the full number of boat storage units, the total linear footage, or the full perimeter area of the existing nonconforming structure, as determined in accordance with subdivision 7 of this section, the unused boat storage units, unused linear footage, and unused perimeter area shall be preserved and may be used for a future reconfiguration of the nonconforming structure, provided that any such future reconfiguration is in compliance with this section. The utilization of any preserved boat storage units, linear footage, or perimeter area for a proposed future reconfiguration done in accordance with this section does not constitute an unlawful expansion of the nonconforming structure. No expansion beyond the preserved number of boat storage units, linear footage, or perimeter shall be allowed unless such expansion is otherwise allowed by this Code or a variance is applied for and obtained prior to, or as part of, the issuance of the new dock license, district mooring area license, or minor change permit for the newly reconfigured nonconforming structure.

Subd. 11. No Vested Rights. It is anticipated that in the future it may become necessary for the LMCD to attempt to make an allocation or apportionment of multiple dock, mooring area, commercial dock, and launching facility privileges on and within the Lake, on an equitable basis, in order to avoid overcrowding of the Lake, or portions thereof, and in order to balance the many conflicting demands upon the Lake. In order to give notice to licensees that the license does not create any vested rights and that future regulatory actions by the LMCD may necessitate modifying or discontinuing the facility for which the license is granted, each license shall state upon its face that the licensed facility is subject to existing and future density policies and regulations adopted by the Board.

Section 2.02. Shoreline Requirements.

Subd. 1. General Rule. No docks or mooring areas shall be constructed, established or maintained that provide space for or are used for mooring or docking a greater number of restricted watercraft than one for each 50 feet of continuous shoreline in existence on May 3, 1978, unless authorized to do so by special density license pursuant to Section 2.05. For sites with continuous shoreline greater than 100 feet, when measurements determining the number of restricted watercraft allowed result in the provision of a fractional restricted watercraft, any fraction up to and including one-half (1/2) shall be disregarded, and fractions over one-half (1/2) shall be counted as one additional restricted watercraft.

Section 2.03. Multiple Docks, Mooring Areas, Commercial Docks, and Launching Ramps.

Subd. 1. License Required. No person may locate, construct, install or maintain a multiple dock or mooring area or a commercial dock or a launching ramp on the shoreline of the Lake, or in the waters of the Lake unless licensed by the Board to do so.

Subd. 2. Application for License. Application for a license shall be made on forms provided by the Executive Director. The application for license shall contain (a) the name and address of the applicant, (b) the description of the property on which the facility is to be located, (c) the name and address of the owner of the premises, if different from the applicant, (d) if the applicant is not the owner, an explanation of the interest which the applicant has in the property, (e) a showing that all requisite permits, licenses and approvals from the local municipality have been obtained and that the requirements of any other governmental authority have been met, and (f) a plan showing the design and location of the facility including all Boat Storage Units. The application shall include such other information as the Executive Director may require to assist the Board in consideration of the application for the license. The application shall also be accompanied by a license fee which shall be established from time-to-time by resolution of the Board; provided that no fee shall be required for applications for launching ramps owned and operated by municipalities or other governmental agencies which are available for use by the general public without payment of fees or other charges. An additional deposit in an amount established from time to time by resolution of the Board shall accompany the application to cover legal, surveying, engineering, inspection, maintenance or other expenses incurred by the District. The Board shall approve all expenses charged against the deposit, and the unused portion thereof shall be returned to the applicant. The application shall state that the applicant agrees to reimburse the District for any legal, surveying, engineering, inspection, maintenance or other expenses incurred by the District in excess of the amount of the deposit. No such deposit shall be required in the case of renewal applications under Subdivision 13 of this Section or new license applications required by Subdivision 7 of this Section which do not require a public hearing, unless a hearing is requested by the applicant pursuant to Section 1.06, Subd. 12.

Subd. 3. Issuance of License. Licenses required by this section may be issued after a public hearing by the Board. Proceedings for the issuance of a license and the granting of a variance under Section 1.07 may be combined and conducted as one proceeding. The Board may impose conditions on the granting of a license, which conditions shall be in writing.

- a) Review Criteria. In exercising its discretion in granting or denying licenses, the Board may consider, among other things, the following:
- 1) Whether the proposed facility is compatible with the LMCD watercraft density classification criteria.
 - 2) Whether the proposed facility will be structurally safe for use by the intended users.
 - 3) the facility will comply with the regulations contained in this ordinance.
 - 4) Whether the proposed facility will create a volume of traffic on the Lake in the vicinity of the facility which will tend to be unsafe or which will cause an undue burden on traffic upon the Lake in the vicinity of the facility.
 - 5) Whether the proposed facility will be compatible with the adjacent development.
 - 6) Whether the proposed facility will be compatible with the maintenance of the natural beauty of the Lake.
 - 7) Whether the proposed facility will affect the quality of the water of the Lake and the ecology of the Lake.
 - 8) Whether the proposed facility, by reason of noise, fumes or other nuisance characteristics, will tend to be a source of nuisance or annoyance to persons in the vicinity of the facility.
 - 9) Whether adequate sanitary and parking facilities will be provided in connection with the proposed facility.
 - 10) Whether the proposed facility will serve the general public as opposed to a limited segment of the public or a limited geographical area.
 - 11) Whether the facility will obstruct or occupy too great an area of the public water in relationship to its utility to the general public.

Subd. 10. Fuel Sales Facilities. Notwithstanding the provisions of section 2.01, subd. 2a), a 25-foot addition may be allowed in the discretion of the Board, at the outer end of a commercial dock which does not extend more than 100 feet from the shoreline, for the purpose of fuel sales and related service. In the case of non-conforming dock which extends more than 100 feet from the shoreline, the Board may allow the construction of a 25 foot dock addition for fuel sales provided the additional docks extend no further lakeward than the original non-conforming docks. In no case shall docks authorized under this subdivision be used for the storage of watercraft or rental of dock space.

Section 2.05. Special Density License.

Subd. 3. Application for License. ... Applications may be received for densities greater than one watercraft per 50 feet but not greater than one watercraft per 10 feet of shoreline.

Section 2.10. Nonconforming Structures.

Subd. 1. Compliance with this Code. From and after May 3, 1978, docks, mooring areas and other structures in the Lake shall be in conformity with the provisions of this Code except as is otherwise provided.

Nonconforming structures in existence on February 5, 1970, were required to be terminated on February 5, 1971; provided, however, that the length limitations applicable to docks under

Section 2.01 were not applicable until February 5, 1975, to docks legally existing on February 5, 1970, which were not seasonally removed from the Lake.

Section 2.12. Miscellaneous Provisions.

Subd. 12. Dock Dimensions. A dock may exceed eight feet, excluding posts, in either its length or width, but not both. In connection with issuance of a license under section 2.03, the Board may authorize the construction and maintenance of docks used in conjunction with the sale of fuel to the public of up to ten feet in width to the extent deemed necessary by the Board for safe and efficient fuel sales activities. Docks that were in existence on June 30, 1982 and that are in compliance with all the provisions of the LMCD Code other than this section shall be allowed to continue in their present form without expansion or modification until such time as such docks are replaced or until 50% or more of any such dock is damaged or destroyed. A ski jump may exceed eight feet in width provided it is no wider than 12 feet and meets all other requirements of the Code.

ATTACHMENT 5

Caribbean Marina and Restaurant Reconfiguration of a Nonconforming Structure 09/25/2019 Public Hearing Comments

The following summarizes comments made during the public hearing process, with brief staff responses where applicable, to provide context or background information.

1. Many neighbors are in support of the improvements to the neighborhood.
2. The marina provides value to the neighboring properties with the marina and restaurant. A certain number of boat slips are required to make this investment economical.
3. The opening of a straight path through the to the Caribbean's launch ramp would allow for safer launching and winter storage, possibly of charter boats.
4. A variance was issued for an adjacent property and I didn't have concerns about that. (500 NNL)
5. A marina owner stated that charter boats should not be considered positive amenities as the marina owner has seen charter boats start fires and cause noise during trash removal.
6. The dock facility should not encroach further west than it already does (toward public access) or be brought into better compliance with the Code.
 - a. *The city previously consented to the encroachment that has existed at this site. Staff asked the city comment on the encroachment issue and any further proposed encroachment.*
7. De-icing operations should not cause increased impact to public access on west side during the winter.
 - a. *The existing site currently has a deicing license and is similar to the proposed plan.*
8. Concerns regarding parking areas and any increased needs for parking, potentially due to restaurant and watercraft rental company.
 - a. *It is staff's understanding that the City of Tonka Bay will be considering those issues.*
9. The Caribbean Marina & Restaurant should / does not / cannot meet the qualified commercial marina requirements.
 - a. *See item 10 below.*
10. What is the difference between nonconforming and qualified commercial marina?
 - a. *Guidelines and standards for applications to reconfigure structures with a nonconforming status are found in Section 2.015 of the LMCD Code. Qualified*

Commercial Marina standards and evaluation criteria are found in Section 2.03 of the LMCD Code. The license classification of Qualified Commercial Marina may only be applied to conforming structures (which may include variances). The Caribbean Marina & Restaurant is not a conforming structure, and the applicant is applying under the nonconforming structure standards. For more information regarding the intent of the flexibility provided to nonconforming structures, please see LMCD Code Section 2.015, Subdivision 1. "Purpose."

11. Other potential purchasers of the Marina passed on the property because they believed a viable rebuild was not possible.
 - a. *The broker and some potential buyers reached out to LMCD staff, who conveyed Code requirements and information regarding site constraints.*
12. They should have to meet the standards of the "envelope concept" developed years ago.
 - a. *The standard in effect in the code for nonconforming reconfigurations refers to Section 2.015 – the "perimeter" of the existing structure.*
13. What is the definition of envelope versus perimeter?
 - a. *Envelope – envelope or its definition is not included in the current Code. However, it has been used to refer to the perimeter area in which a nonconforming dock can be reconfigured.*
 - b. *Perimeter – as defined in LMCD Code Section 2.015, Subdivision 7, paragraph (e)(2): "The perimeter of the existing nonconforming structure shall be a closed line that extends from shoreline to shoreline around the outside portions of the structure (boxing in the structure). The perimeter shall be drawn by extending straight lines from the shoreline on either side of the structure to the furthest point of the structure into the Lake, and then drawing a straight line between the two side lines that parallels the shoreline."*
14. A marina owner stated that in 2005, a proposed reconfiguration of what is now Browns Bay Marina was required to have a 50-foot setback, double the length of the adjacent 25-foot side-opening slips.
 - a. *LMCD Code Section 2.01, Subdivision 2, paragraph (b)(2) states: "Setbacks shall be doubled for all multiple docks or mooring areas and commercial docks on each side where such multiple docks are not located adjacent to another multiple dock or mooring area or commercial docks..."*
 - b. *The site of the 2005 proposal was located next to land owned by the City of Orono. Given that the City did not have a multiple dock license for that site, a double setback was recommended by LMCD staff at that time.*
 - c. *The city properties fire lanes/launch, designated "N. Waseca" and "N. Sunrise" by the City, is part of the city's multiple dock license and a commercial dock (municipal) could be located on the sites. Therefore LMCD staff do not recommend requiring a double setback.*

15. A marina owner stated that a reconfiguration of North Shore Marina – Maxwell Bay in 2007- did not result in side-opening slips and conformed with LMCD Code.
- a. *Prior to 2007, the dock facility at the site had a setback of approximately 20 feet to the west and 19.5 feet to the east, according to the site plan received November 25, 1986. The dock facility proposed and approved in 2007 had 20-foot setbacks on each side. The staff memo dated December 7, 2007 provided the following rationale:*
“The proposed dock and boat storage are within the 200’ envelope of the previously approved dock... The applicant has proposed to maintain the grandfathered 20’ side setbacks to the extended lot lines on the east and west sides of the dock use area.”
 - b. *Maxwell Bay remains a non-conforming facility.*
16. Wayzata Marine replaced their docks and didn’t have to go to the full board because they are in compliance.
- a. *Wayzata Marine completed a replacement of the current layout with a minor reconfiguration to a portion of the dock facility. The facility remains a nonconforming facility.*
17. The slips are still side opening. How do you determine a side opening slip?
- a. *LMCD Code Section 2.01, Subdivision 2, paragraph (b)(1) states: “Where boat slips open toward a side site line, the setback provided shall be at least equal to the slip depth, but shall not be less than 20 feet.”*
 - b. *What constitutes a side-opening slip is based on the angle to the shoreline and adjacent properties. The Board has previously approved slips at an angle as not constituting side opening slips.*
18. To be consistent, every other marina has had to bring their property into compliance and did not have any variances.
- a. *In reviewing records, many marinas have nonconformities or variances associated with their sites.*
19. There are no docks that extend beyond 200 feet.
- a. *Multiple nonconforming facilities extend beyond 200 feet, without including gas dock extensions.*
20. What does it mean that there would be less environmental impact if former fuel dock pilings were left in? Charter boats break off pilings routinely. LMCD staff or the applicant should speak with DNR regarding environmental disturbance.
- a. *LMCD staff spoke with MNDNR staff. MNDNR staff confirmed that repurposing and leaving in pilings instead of removing them and installing others elsewhere helps to minimize impact, avoiding environmental disturbance where possible. MNDNR staff*

noted that breaking off or removing existing pilings does not require a permit. Please note that it is considered a common practice to break or remove pilings.

21. This site has the opposite of practical difficulties. The extended side site lines open up as they extend into the lake.
 - a. *To the extent a new variance is requested, the Board will have to determine whether the request is supported by a sufficient demonstration of a practical difficulty.*
22. Concerns expressed regarding expansion of the deicing activities and the orange signs that are unattractive.
 - a. *Fencing and signs are required for safety reasons. The current proposal would not constitute a change to the de-icing area on the east side of the site. The signs, fencing, and other safety materials would not need to be installed any closer to the eastern side site line.*
23. Concerns expressed regarding having to look at charter boat and line of sight from residential area in general.
 - a. *The charter boat slip, as located on previously-proposed site plans, is no longer proposed. Any charter boats stored at the site would need to be stored in a slip within 200 feet from shore.*
24. Will Tonka Bay comment on the land related activities prior to the next meeting?
 - a. *The City of Tonka Bay has indicated that they will wait for the LMCD to make a ruling on the application so there is a final plan to consider prior to formal consideration by the City.*
25. A neighbor next to a marina has noted constant and consistent violations of a zero setback / overhang with the marina and enforcement can be challenging.
 - a. *The west side of the site in questions has two additional DUAs, under common ownership with the marina, between the commercial zero-foot setback property and the nearest residential property. As the DUAs for the marina are effectively combined, the functional setback is far greater than zero feet – much closer to 110 feet.*
 - b. *The north side of the site has a 20-foot setback.*
 - c. *Several site visits have been conducted noting compliance with license conditions.*
 - d. *When violations are found, actions are taken to achieve compliance.*
 - e. *It can be challenging to observe and enforce intermittent types of issues.*



RECONFIGURATION OF NON-CONFORMING, MULTIPLE DOCK LICENSE APPLICATION

Lake Minnetonka Conservation District
5341 Maywood Road, Suite 200
Mound, MN 55364
Phone (952) 745-0789

LMCD Receipt # _____

Because this form is to be copied, please use black ink or type. The form may be filled out online and printed.

Pursuant to LMCD Code Section 2.015, an application to reconfigure a non-conforming multiple dock license is requested in accordance with all data and other information submitted herewith and made a part hereof.

The person completing this form is the ☐ authorized agent or ☒ property owner (select one).

Applicant: Tonka Bay Property Holdings, LLC

Address: 135 Lakeview Avenue

City, State, Zip: Tonka Bay, MN 55331

Phone: (919) 448-8884 Fax: _____ Email: shawn@caribbeanmn.com

Property owner (if different from applicant): _____

Address: _____

City, State, Zip: _____

Phone: _____ Fax: _____

PROPERTY LOCATION:

The property is located in the city of: Tonka Bay

The property is riparian to LMCD bay/area(s): Echo Bay

1. Classification of user per Section 2.11, Subd. 2 (please select one):

- | | | |
|--|--|---|
| <input checked="" type="checkbox"/> a) commercial marina | <input type="checkbox"/> d) transient | <input type="checkbox"/> g) private residence |
| <input type="checkbox"/> b) private club | <input type="checkbox"/> e) outlot association | <input type="checkbox"/> h) other (explain) |
| <input type="checkbox"/> c) municipal | <input type="checkbox"/> f) multiple dwelling | |

2. Type of dock construction, describe and attach to-scale drawing:

Piling/Pier, Wood Construction (schematic attached)

3. Please submit names and mailing addresses of owners within a 350-foot radius of the property.

Such owners must be verified by checking with the Hennepin County Auditors Office, (612) 348-5910, (or a private abstract company) which can provide actual mailing labels at a cost of \$1.25 per tax parcel (minimum of \$25.00). This service usually takes two days, and you must have your tax parcel identification number (PIN) ready when calling for this assistance.

Reconfiguration of Non-Conforming, Multiple Dock License Application

4. Documents listed below are required; check that they are attached:

- | | |
|--|--|
| <input checked="" type="checkbox"/> Locator map | <input checked="" type="checkbox"/> Slip size report (approved and proposed) |
| <input checked="" type="checkbox"/> County plat map | <input checked="" type="checkbox"/> Proposed facility site plan |
| <input checked="" type="checkbox"/> Certified land survey, legal description | <input checked="" type="checkbox"/> Existing facility site plan |
| <input checked="" type="checkbox"/> Scaled drawing of docks on abutting properties | |

Absence of significant data requested above could result in a processing delay.

5. All required permits, licenses, and approvals have been obtained from the MN DNR and from the city in which the multiple dock, ramp, and/or mooring is located, copies attached?

Yes ☐ No ☒ if no explain: Not Applicable

6. Check the parking requirements of the City if you provide the following services:

Boat Storage	<u>Provided, off-season only</u>
Launching ramps	<u>Provided, but not parking</u>
Sales	<u>Not Provided</u>
Service	<u>Provided, slip customer only</u>
Boat Rentals	<u>Provided</u>
Restaurant	<u>Provided</u>
Other (explain)	<u></u>
TOTAL	<u>Have 115 parking spaces for all uses</u>

8. Restroom facilities provided: Yes ☒ No ☐ Indoor ^x Outdoor portable (number)

9. Boat toilet pumping service provided? Yes ☒ No ☐

10. Total square footage of dock area including maneuvering space = 90000 sq. ft.
If 20,000-sq. ft. or over, an Environmental Assessment Worksheet (EAW) is required.

11. Boat Storage Units (BSU) computation: Lakeshore Frontage 440 feet divided by 50 = 9 BSU's allowable under the one-boat -per-fifty-foot rule. **If this number is less than the total BSU's applied for in No. 12 below, an application for a Special Density License is required per Code Section 2.05.**

12. Number of BSU's applied for:

LOCATION	
Slips	130
Slides	
Lifts	
Tie-ons	
Moorings	
Off Lake Rack Storage	
Other	
TOTAL BSU's	130

USE	
Rent, lease, etc.	117
Service work	
Company use	
Private use	
Transient use	10
Other	
Gas Dock Slips	3
TOTAL BSU's	130

ATTACHMENT 7



VARIANCE APPLICATION

Lake Minnetonka Conservation District
5341 Maywood Road, Suite 200
Mound, MN 55364
Phone: (952)745-0789
Fax: (952)745-9085

LMCD Receipt # _____

In accordance with LMCD Code Section 1.07, where practical difficulties occur or where necessary to provide access to the handicapped, the Board may permit a variance from the requirements of the Code, or may require a variance from what is otherwise permitted the Code provided that such variance with whatever conditions are deemed necessary by the Board, does not adversely affect the purposes of this ordinances, the public health, safety, and welfare, and reasonable access to or use of the Lake by public or riparian owners. The following application, when completed, shall be filed with the Executive Director of the District along with surveys, photos, and such other information as required.

Because this form is to be copied, please use black ink or type. The form may be filled out online and printed.

The person completing this form is the ☐ authorized agent or ☒ property owner (select one).

Applicant: Tonka Bay Property Holdings, LLC

Address: 135 Lakeview Avenue

City, State, Zip: Tonka Bay, MN 55331

Phone: (919) 448-8884 Fax: _____ Email: shawn@caribbeanmn.com

Property owner (if different from applicant): _____

Address: _____

City, State, Zip: _____

Phone: _____ Fax: _____

PROPERTY LOCATION:

Located in the city of: Tonka Bay

Address & Property Identification No (PID): 135 Lakeview Avenue : _____
Address PID#

TYPE OF VARIANCE: Practical difficulty variance request for a structure more than 200 feet from shore

State practical difficulties causing variance to be required:

We plan to move our gas dock to a new, safer location. This will result in five long, large wood pilings to be remaining in the water out past 200 feet. The only way to remove these is to cut off or break off with a crane. They are too large and deep to pull out of the water.

ABUTTING LAKESHORE PROPERTY OWNERS:

North or West: David and Christine Peterson, 85 Lakeview Avenue, Tonka Bay, MN 55331

(Name and mailing address)

South or East: James and Christine Erdahl, 120 Sunrise Avenue, Tonka Bay, MN 55331

(Name and mailing address)

Other affected parties (attach sheet if necessary):

Requested from Auditors Office

(Name and mailing address)

Please submit names and mailing addresses of owners within a 350-foot radius of the property. Such owners must be verified by checking with the Hennepin County Auditors Office, (612) 348-5910 (or a private abstract company) which can provide actual mailing labels at a cost of \$1.25 per tax parcel (minimum of \$25.00). This service usually takes two days, and you must have your tax parcel identification number (PIN) ready when calling for this assistance.

Documents listed below are required; check that they are attached:

- ☒ **Locator Map** (U.S.G.S area map with scale, North direction, Site clearly marked, Name or Title, LMCD Area Name, LMCD number)
- ☒ **County Plat Map** (Site clearly marked, Name, LMCD area name, LMCD number)
- ☒ **Certified Land Survey** (Legal description, Name, LMCD area name, LMCD number, 929.4 N.G.V.D. shoreline)
- ☒ **Proposed facility site plan** (to scale, 929.4' N.G.V.D. shoreline, LMCD area name, LMCD number, Scale, North direction, affected neighbors, locate setback area, locate dock use area, location of dock structure with dimensions and slip numbers, indicate type of slip if applicable)
- ☒ **Existing facility site plan**, if applicable (to scale, 929.4' N.G.V.D. shoreline, LMCD area name, LMCD number, Scale, North direction, affected neighbors, locate setback area, locate dock use area, location of dock structure with dimensions and slip numbers, indicate type of slip if applicable)
- ☒ **Scaled drawing of docks on abutting properties** and other affected dockage

Absence of significant data requested above could result in a processing delay.

FEE CALCULATION

APPLICATION FEE.....(non-refundable).....\$250.00


DEPOSIT.....(refundable, upon full compliance
with the Code and extent of
administrative, inspection and
legal service required).....+\$250.00

Variance Application

TOTAL FEE ENCLOSED..... (this fee is for processing of the application and does not entitle the applicant to a variance)..... **\$500.00**

I certify that the information provided herein and the attachments hereto are true and correct; I understand that any variance granted may be revoked by the District for violation of the LMCD code. I agree to reimburse the District for any legal, surveying, engineering, inspection, maintenance or other expenses incurred by the District in excess of the amount of the application fee. I consent to permitting officers and agents of the District to enter the premises at reasonable times to investigate and to determine whether or not the Code of the District is being complied with.

I agree to submit a certified, as-built survey upon completion of the docks.



Authorized Signature

August 26, 2019

Date

Managing Member

Title

Owner

Relationship to Owner

Return this application, attachments and fee to:

**Lake Minnetonka Conservation District
5341 Maywood Road, Suite 200
Mound, MN 55364
Fax: (952) 745-9085**



ATTACHMENT 8

LAKE MINNETONKA CONSERVATION DISTRICT

5341 MAYWOOD ROAD, SUITE 200 • MOUND, MINNESOTA 55364 • TELEPHONE 952/745-0789 • FAX 952/745-9085

DATE: September 5, 2019

TO: Lakeshore Weekly News
Attn: Legal Department
Fax: (952) 473-0895

FROM: Vickie Schleuning, Executive Director

SUBJECT: Public Hearing Notice (09/12/2019 Edition)

**LAKE MINNETONKA CONSERVATION DISTRICT
PUBLIC HEARING NOTICE**

7:00 PM, September 25, 2019
Wayzata City Hall
600 Rice Street, Wayzata, MN 55391

**Caribbean Marina & Restaurant
135 Lakeview Avenue, Tonka Bay
Lower Lake South, Lake Minnetonka**

The Lake Minnetonka Conservation District (LMCD) will hold a public hearing to consider applications for a reconfiguration of a multiple dock facility, special density license, and variances for adjustment of the dock use area (i.e. length and side setbacks). The site is located at 100, 110, and 135 Lakeview Avenue and associated PIDs 27-117-23-24-0067 and 27-117-23-24-0068 in Tonka Bay, MN 55331. The applicants propose 130 boat storage units to be located on the site. All interested persons will be given an opportunity to comment.

Details are available at the LMCD Office, 5341 Maywood Road, Suite 200, Mound, MN 55364 or by calling (952) 745-0789.



ATTACHMENT 9

LAKE MINNETONKA CONSERVATION DISTRICT

5341 MAYWOOD ROAD, SUITE 200 • MOUND, MINNESOTA 55364 • TELEPHONE 952/745-0789 • FAX 952/745-9085

DATE: September 11, 2019

TO: Property Owner

FROM: Vickie Schleuning, Executive Director

SUBJECT: Public Notice of Reconfiguration of Nonconforming Structure, Special Density License, and Variance Request(s)

You are receiving this notice since Hennepin County property records indicate you own property within 350 feet of a property being considered for the following approvals: reconfiguration of a multiple dock facility, special density license, and variances for adjustment of dock use area (length and side setbacks). The applicants are the owners of the Caribbean Marina & Restaurant. The site is located at 100, 110, and 135 Lakeview Avenue and associated PIDs 27-117-23-24-0067 and 27-117-23-24-0068 in Tonka Bay, MN 55331 on Lower Lake South.

Applications have been submitted to allow the reconfiguration of the existing dock facility and storage of 130 watercraft. The variance applications are proposed to adjust the length and side setbacks of the dock use area. All interested persons will be given an opportunity to comment.

Public Hearing Information:

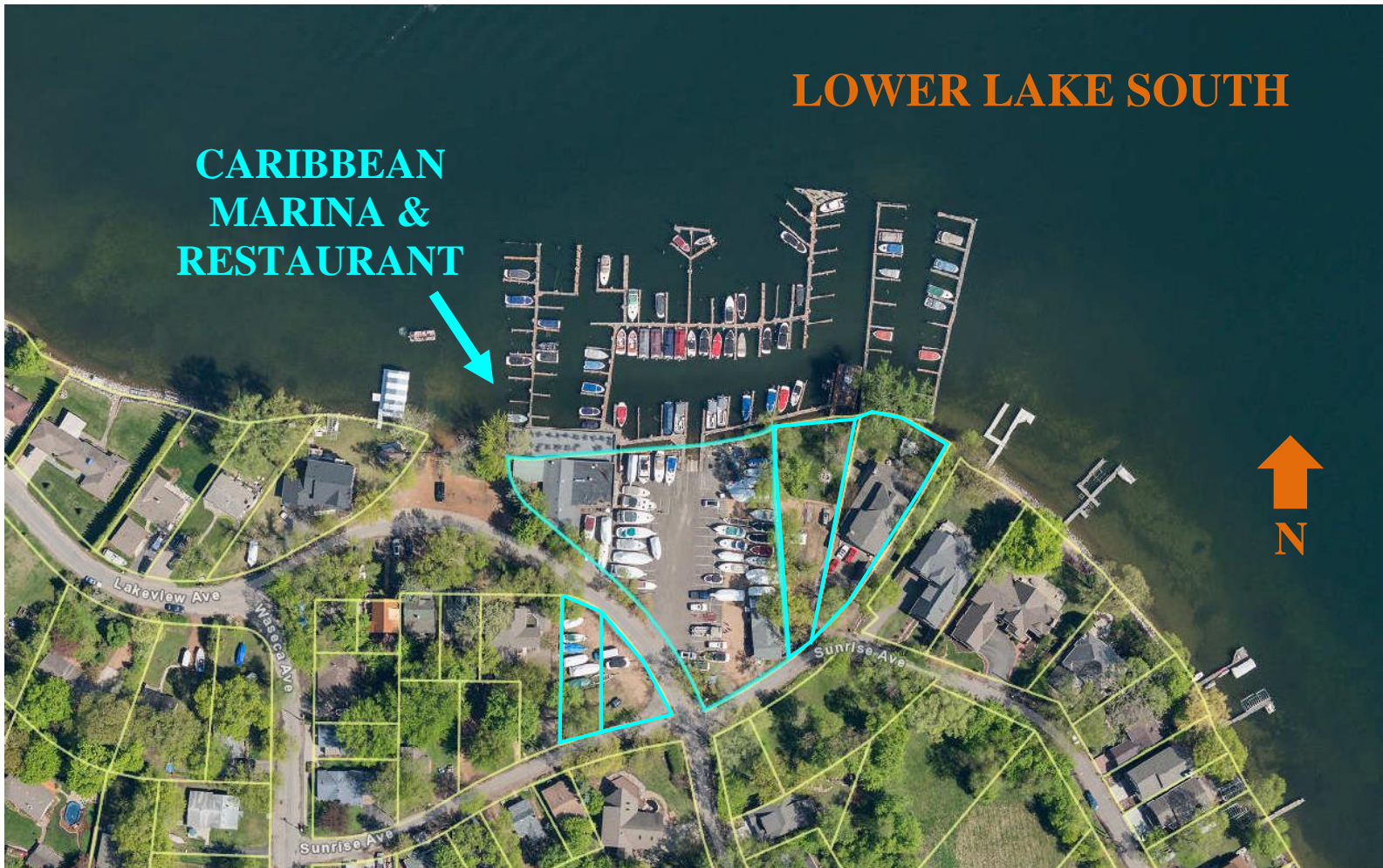
A public hearing will be held at 7:00 PM, September 25, 2019, at Wayzata City Hall, 600 Rice Street, Wayzata, MN 55391. The applicant is the Caribbean Marina & Restaurant, located at 100, 110, and 135 Lakeview Avenue in Tonka Bay, MN 55331. The facility is located on Lower Lake South, Lake Minnetonka.

A map for the site is enclosed. The location map was made using the Hennepin County Interactive Property Map. The site is indicated by a blue line and blue text.

Thank you for helping us to protect Lake Minnetonka and all those who enjoy it.

Details are available at the LMCD Office, 5341 Maywood Road, Suite 200, Mound, MN 55364 or by calling (952) 745-0789.

For illustrative purposes only. Created using Hennepin County Property Interactive Map 08/29/2019.
Caribbean Marina & Restaurant | Applications for Reconfiguration of Nonconforming Structure, Special Density License, and Variances







LAKE MINNETONKA CONSERVATION DISTRICT

5341 MAYWOOD ROAD, SUITE 200 • MOUND, MINNESOTA 55364 • TELEPHONE 952/745-0789 • FAX 952/745-9085

DATE: October 9, 2019

TO: LMCD Board of Directors 

FROM: Matthew Cook, Environmental Administrative Technician

THROUGH: Vickie Schleuning, Executive Director 

RE: Caribbean Marina & Restaurant Reconfiguration

ACTION

Continuation of a public hearing and Board decision regarding Caribbean Marina & Restaurant (Tonka Bay Holdings) 2019 Reconfiguration of Nonconforming Structure and Variance applications. The site is located at 100, 110, and 135 Lakeview Avenue in the City of Tonka Bay. The site has shoreline on Lower Lake South. Two nearby upland parcels (PIDs 27-117-23-24-0067 and 27-117-23-24-0068) are also associated with the site.

The following motions are offered depending on whether the Board wishes to approve, continue, or deny the request:

Approval:

I make a motion to approve the Findings of Fact and Order approving Caribbean Marina & Restaurant 2019 Reconfiguration of Nonconforming Structure and Variance applications for the property located at 100, 110, and 135 Lakeview Avenue in the City of Tonka Bay as presented and authorize the Chair and Secretary to sign the Findings of Fact and Order once legal counsel finalizes the language.

Approval with Amendment:

I make a motion to approve the Findings of Fact and Order approving Caribbean Marina & Restaurant 2019 Reconfiguration of Nonconforming Structure and Variance applications for the property located at 100, 110, and 135 Lakeview Avenue in the City of Tonka Bay as amended and direct legal counsel to finalize Findings of Fact and Order for consideration at the October 23, 2019 Board meeting with the following amendments...

Denial:

I make a motion to direct LMCD legal counsel to draft Findings of Fact and Order denying Caribbean Marina & Restaurant 2019 Reconfiguration of Nonconforming Structure and Variance applications for the property located at 100, 110, and 135 Lakeview Avenue in the City of Tonka Bay based on the following reasons... for consideration at the October 23, 2019 Board meeting.

APPLICATION BACKGROUND

A public hearing was conducted on September 25, 2019 for the application for a reconfiguration of a non-conforming structure for the Caribbean Marina and Restaurant. Several public comments were made, and the Board directed staff to bring back information for further consideration by the board. The following is a brief summary of the current proposal.

Mr. Shawn Wischmeier, co-owner and representative of the Caribbean Marina & Restaurant (Tonka Bay Holdings; “Applicant”) submitted applications for the dock facility located at 100, 110, and 135 Lakeview Avenue in the City of Tonka Bay. The Applicant proposes to reconfigure the existing dock structure within the perimeter of the existing structures on site to improve internal navigation and address dock structure maintenance concerns.

The facility has been considered a legal nonconforming facility due to pre-existing nonconforming components of the facility (length of the fuel dock) and watercraft density of 1:3. On March 15, 1978, the LMCD granted a variance for the western side setback in which the Village of Tonka Bay consented to on December 7, 1977. The site is currently licensed for 147 boat storage units (“BSUs”). The site has approximately 440 feet of 929.4-foot OHW shoreline, with a boat storage density of 1:3.

A revised site plan was received on October 4, 2019. A brief analysis of the site plan is below.

APPLICATION SUMMARY

The following items are primary code considerations related to the proposal:

- **Perimeter.** The Applicant proposes to remain within the perimeter of the existing structures. Additionally, the Applicant proposed that the dock facility does not extend beyond 200 feet from shore, except for the fuel sales dock described below.
- **Length – Fuel Dock.** The Applicant proposes to relocate and reconfigure the fuel dock. The current fuel dock is located in the center of the site extending 220 feet from shore, 20 feet beyond the rest of the dock structure. The Applicant proposes to extend the new fuel dock to the same length, locating the new fuel dock on the west side of the site.
- **East Setback.** The Applicant has relocated the dock structure within the existing perimeter and proposes to install diagonally angled BSUs to the eastern side site line. Setbacks from the proposed BSUs appear to match or exceed the length of each BSU.
- **West Setback.** The Applicant proposes to maintain the current position of the dock on the west side. The existing encroachment westward would not increase farther beyond the western side site line. The applicant proposes to install the fuel dock on the northern end of the westernmost dock, extending beyond the extended side site line no more than the existing dock does.
- **Variance(s).** To the extent to which portions of this proposal may not adhere to the Board’s interpretation of LMCD Code Section 2.015, Reconfiguration of Nonconforming Structures, the Applicant is requesting to continue the variance for the westernmost

extent of the facility with the location fuel dock.

- **Charter Boat.** The previously proposed BSU located where the existing fuel dock is removed from the most recent proposal dated 10/04/2019. The existing fuel dock pilings will be broken off or removed. If any charter boat is stored on the site, it would be stored in a BSU located within 200 feet from shore.
- **Classification.** The Applicant is requesting all BSUs for overnight storage, eliminating transient BSUs at this time.
- **Boat Density and Total BSUs.** The existing 147 BSUs with 440 feet of continuous 929.4 ft OHW shoreline provides a BSU density of 1:3. The Applicant proposes reducing the number of BSUs to 123, decreasing the density to approximately 1:3.6.
- **Linear Footage of Boat Storage.** The site plan for the existing dock facility shows approximately 3,709 linear feet of boat storage. The applicant has estimated that the entire dock facility constitutes approximately 3,537.6 linear feet of boat storage – a decrease of 171.4 feet. Staff comparison indicates that the total linear footage may be as low as 3,531 feet. The discrepancy, though inconsequential for this criterion as both counts indicate a decrease in linear footage, will be addressed and final numbers provided at the meeting.

PUBLIC HEARING AND COMMENTS

The public hearing held on September 25, 2019 was continued by the LMCD Board to the October 9, 2019 Board meeting. Public comments made at the hearing and otherwise received by the LMCD office are attached with staff responses as applicable.

RECOMMENDATION

If the Board seek to approve the Applicant's current proposal, as represented by the Updated Site Plan (Attachment 2), staff recommend revision of the Findings of Fact and Order (Attachment 1) for final approval and signature on October 23, 2019.

ATTACHMENTS

1. Findings of Fact and Order Rough Draft
2. Updated Site Plan, dated 10/04/2019
3. Public Hearing Comments
4. September 25, 2019 Public Hearing Memo and Attachments



ATTACHMENT 11

LAKE MINNETONKA CONSERVATION DISTRICT

5341 MAYWOOD ROAD, SUITE 200 • MOUND, MINNESOTA 55364 • TELEPHONE 952/745-0789 • FAX 952/745-9085

DATE: September 25, 2019

TO: LMCD Board of Directors

FROM: Matthew Cook, Environmental Administrative Technician

THROUGH: Vickie Schleuning, Executive Director

RE: Caribbean Marina & Restaurant Reconfiguration

ACTION

Board consideration of the Caribbean Marina & Restaurant (Tonka Bay Holdings) 2019 Reconfiguration of Nonconforming Structure, Special Density License, and Variance applications and receive public input as part of the public hearing for the applications. The site is located at 100, 110, and 135 Lakeview Avenue in the City of Tonka Bay. The site has shoreline on Lower Lake South. Two nearby upland parcels (PIDs 27-117-23-24-0067 and 27-117-23-24-0068) are also associated with the site.

The following motions are offered depending on whether the Board wishes to approve, continue, or deny the request:

Approval:

I make a motion to approve the Findings of Fact and Order approving Caribbean Marina & Restaurant 2019 Reconfiguration of Nonconforming Structure and Variance applications for the property located at 100, 110, and 135 Lakeview Avenue in the City of Tonka Bay as presented and authorize the Chair and Secretary to sign the Findings of Fact and Order once legal counsel finalizes the language.

Approval with Amendment:

I make a motion to approve the Findings of Fact and Order approving Caribbean Marina & Restaurant 2019 Reconfiguration of Nonconforming Structure and Variance applications for the property located at 100, 110, and 135 Lakeview Avenue in the City of Tonka Bay as amended and direct legal counsel to finalize Findings of Fact and Order for consideration at the October 9, 2019 Board meeting with the following amendments...

Continue Hearing:

I make a motion to continue the public hearing for the Caribbean Marina & Restaurant's 2019 Reconfiguration of Nonconforming Structure and Variance applications to the October 9, 2019 Board meeting for further consideration.

Denial:

I make a motion to direct LMCD legal counsel to draft Findings of Fact and Order denying Caribbean Marina & Restaurant 2019 Reconfiguration of Nonconforming Structure and Variance applications for the property located at 100, 110, and 135 Lakeview Avenue in the City of Tonka Bay based on the following reasons... for consideration at the October 9, 2019 Board meeting.

APPLICATION BACKGROUND

Mr. Shawn Wischmeier, co-owner and representative of the Caribbean Marina & Restaurant (Tonka Bay Holdings), ("Applicant") submitted applications for the dock facility located at 100, 110, and 135 Lakeview Avenue in the City of Tonka Bay. The Applicant proposes to reconfigure the existing dock structure to improve internal navigation and address dock structure maintenance concerns. The reconfiguration would occur generally within the existing perimeter or navigation area. The site is currently licensed for 147 boat storage units ("BSUs"), and the applicant is proposing to store 116 BSUs at the site. The site has approximately 440 feet of 929.4 OHW shoreline. Of the BSUs, 125 are overnight storage, 20 are transient, and 2 are for private use.

The facility has been considered a legal nonconforming facility due to pre-existing nonconforming components of the facility (length of the fuel dock) and watercraft density of 1:3. On March 15, 1978, the LMCD granted a variance for the western side setback in which the Village of Tonka Bay provided consent/approval on December 7, 1977.

The applicant proposes a code-compliant setback on the eastern side of 10, 15, and 20 feet extending to 50, 100, and 200 feet from shore, respectively. The applicant proposes that the variance be continued to extend past the western side site line to an extent similar to the existing approval, a graduated distance of approximately 14 feet at the lake end of the dock. The applicant also proposes to keep the posts for the existing fuel dock beyond 200 feet from shore for use in storing a charter boat due to offset the potential environmental impact of removing the posts. Further, the applicant proposes to install a fuel dock that would extend 220 feet from shore, similar to the distance of the current fuel dock. While the proposed dock structures would improve navigation safety and pedestrian safety, the fuel dock is also relocated to improve safety from wakes and wind.

RECONFIGURATION AND VARIANCES

As part of this license application, the following items are being considered for approval:

- Reconfiguration of Nonconforming Structure
- Variance(s) for adjustment of the dock use area
 - Western side setback / encroachment
 - Length

SPECIAL DENSITY

Based on the nonconforming reconfiguration application of the code, a special density license is not required at this time.

APPLICATION SUMMARY

The following items are primary code considerations related to the proposal:

- **Perimeter.** The applicant's measurements of the square footage and perimeter indicate generally similar use of the lake. While the eastern side setback meets code requirements, the overall width is expanded.
- **East Setback.** The applicant proposes code-compliant setbacks from the eastern side site line.
- **West Setback.** The applicant proposes to roughly maintain the distance to which the dock facility extends past the western side site line. The applicant proposes that the furthest extent of encroachment to the west would not increase, but some individual dock portions would encroach further to the west.
- **Boat Density.** The existing 147 BSUs with 440 feet of continuous 929.4 ft OHW shoreline provides a BSU density of 1:3. The applicant proposes reducing the number of BSUs to 116, slightly decreasing the density to approximately 1:3.8.
- **Linear Footage of Boat Storage.** The site plan for the existing dock facility shows approximately 3,709 linear feet of boat storage. The site plan for the proposed dock facility shows approximately 3,549 linear feet of boat storage – a decrease of 160 linear feet.
- **Classification.** The applicant is requesting all BSUs for overnight storage, eliminating transient slips at this time.
- **Variance(s).** To the extent to which portions of this proposal may not adhere to the Board's interpretation of LMCD Code Section 2.015, Reconfiguration of Nonconforming Structures, the applicant is requesting a variance for the length and westernmost extent of the facility.
- **Port of Call.** A BSU for a charter boat is proposed. A request has not been made for a Port of Call for this location at this time.

SITE HISTORY

The following is a brief summary of significant actions related to the current property conditions:

- On September 28, 1978, the LMCD Board approved a multiple dock license for 148 BSUs, for the Caribbean Marina & Restaurant, with a variance for western side setbacks and 30 additional BSUs.
- On April 22, 1992, the LMCD Board approved a renewal of the multiple dock license for 147 BSUs for the Caribbean Marina & Restaurant, which removed one BSU on the east side.

PUBLIC COMMENTS

In compliance with MN DNR General Permit 97-6098, the MN DNR, MCWD, and the City of Tonka Bay were provided copies of the proposed applications, with comments due in the LMCD office by September 24, 2019. Any comments will be provided at the Board meeting for review.

As of September 20, 2019, three general public comments received by LMCD staff are summarized below:

- The dock facility should not encroach further west than it already does (toward public access) or be brought into better compliance with the code.
- De-icing operations should not cause increased impact to public access on west side during the winter.
- The opening of a straight path through the to the Caribbean's launch ramp would allow for safer launching and winter storage, possibly of charter boats.
- Concerns regarding parking areas and any increased needs for parking, potentially due to restaurant and watercraft rental company. It is staff's understanding that the city will be considering those issues.

PUBLIC HEARING

The public hearing provides an opportunity for interested individuals to present their views to the Board for consideration. This is an important part of reviewing the impact of a project. Only items under the LMCD Code and Board authority may be considered as part of any approval or denial decision.

The public hearing notice was published in the September 12, 2019 edition of the Lakeshore Weekly News and posted on the LMCD Bulletin Board. Residents and owners of property within 350 feet of the site were notified via a mailing sent out September 12, 2019. In addition, the Board packet will be posted online.

SUMMARY OF CODE CONSIDERATIONS

In consult with legal counsel, key LMCD Code items are listed below, with a description of the code section as it relates to this application. Relevant code excerpts are attached at the end of this report.

Section 2.015. Reconfiguration of Non-Conforming Structures.

- **Section 2.015, Subd. 5. Code Requirements.** "The reconfiguration of nonconforming structure must comply, in all respects, with the requirements of this Code except as otherwise provided in this section and as follows:"
 - a) Prohibition of docks extending more than 100 feet from shoreline;
 - b) Prohibition of changes to slip size(s) without a special density license; and,
 - c) Prohibition of expansion of non-conforming uses.

- **Section 2.015, Subd. 6. Limitations.** This subdivision states that a license “shall not” be issued to a reconfiguration which results in the any of the outcomes listed below. Under each item, staff have indicated whether or not the applicant’s proposal meets said item.
 - a) “An increase in boat storage units;”
 - The applicant proposes to reduce BSUs from 147 to 116.
 - b) “An increase in the linear footage of the boat storage units as determined in subdivision 7 of this section;”
 - The applicant proposes to reduce the linear footage of boat storage from 3,709 feet to 3,549 feet.
 - c) “An increase in slip length of any slip structures opening toward a nonconforming side setback area;”
 - Regarding the western side site line, the lengthening of slips by moving the walkway to the east (toward the interior of the site) does not necessarily violate the intent of this code section, but the extension of dock fingers further west would violate the intent of this item. Any expanded nonconformity would require a variance from the LMCD Board.
 - d) “An adverse effect on nearby properties, navigation, safety, wetlands with emergent vegetation, or the environment;”
 - The City of Tonka Bay owns the properties immediately adjacent to the west and east of the site. The eastern side of the site does not appear to present a hazard to navigation due to the setback and non-side-opening slips. The western side of the site does encroach beyond the western side site line and is similar to the existing dock structures. The proposed facility has a longstanding history in its current location and has not been reported to create significant increases in burden with respect to navigation, vegetation, the environment, or safety.
 - e) “An increase in the nonconforming nature of the structure;”
 - Some proposals in the application reduce nonconformity, while other areas are maintained or increased. Areas where nonconformity increase, variances are sought.
 - f) “The creation of any new nonconformities; or”
 - See items c), e) and g)
 - g) “The structure extending further into any nonconforming side setback area than the existing structure, except that extension into a double setback area, if applicable, may be allowed upon issuance of a variance.”

- The Board may allow the encroachment beyond the western side site line via variance. The applicant is working with the City of Tonka Bay regarding their consent through a variance application.
- **Section 2.015, Subd. 8. License for Reconfigured Nonconforming Structure.** Paragraph (e) states: “The Board... may allow minor modifications to the perimeter in order to accommodate changes to the structure than otherwise comply with this Code.”

The extension of the perimeter of the proposed structure to the east results in a code-compliant setback and allows for safer internal navigation of the site.

Section 2.02. Shoreline Requirements.

- **Section 2.02, Subd. 4. Special Rule for Non-Conforming Docks and Moorings in Existence on May 23, 1978.** “Docks and mooring areas lawfully in existence on May 3, 1978 may continue provided the number of restricted watercraft moored or docked at such docks and mooring areas does not exceed the number moored or docked on May 3, 1978.”

VARIANCE REQUEST

A variance from the strict application of the provisions of the Code may be granted if the applicant is able to demonstrate to the satisfaction of the Board that practical difficulties exist that make the granting of the requested variance necessary. A variance may only be granted if doing so does not adversely affect: (1) the purposes of the Code; (2) the public health, safety, and welfare; or (3) reasonably access to or use of the Lake by the public or riparian owners.

A practical difficulty is the existence of one or more unique conditions of a property that prevent the property owner from using the Lake in a reasonable manner permitted by the Code. A practical difficulty only exists with respect to a particular property if the conditions preventing the proposed reasonable use of the property are: (1) unique to the property; (2) were not created by the property owner; and (3) are not based solely on economic considerations.

The unusual configuration of the site creates a practical difficulty that is unique to the property, was not created by the owner, and granting the proposed variance would not be based solely on economic considerations.

WEST SIDE SETBACK / ENCROACHMENT

The existing facility does not have a straight approach to the lake from the launch (and vice versa), making the launching and trailering of boats difficult at the site. The reconfigured dock facility would require relocation of boat storage to accommodate this straight navigation lane to/from the launch near the lateral center of the site, pushing docks and BSUs west and east.

Locations for charter boat dockage have become increasingly limited the past few years since some sites are no longer accommodating them due to their size, utility needs, etc. This has created practical difficulties for this use, which was not created by the Applicant and not solely based on economic considerations.

Charter boat operations also align with the LMCD's objective of promoting public access to Lake Minnetonka. The Applicant desires to maintain the 116 BSUs, while improving the navigability and safety of the dock facility. Clarifying the dock use area for this site through the issuance of a variance is needed to ensure reasonable use of the Lake by the owners. Granting the requested variance would be consistent with the purpose of the Code, would not adversely affect the public health, safety, or welfare, and would not interfere with reasonable access to the Lake by the public or other owners. In cases where the boat slip fingers extend further past the side site line, it is recommended they be reduced.

LENGTH

The applicant proposes to install a new fuel dock which extends 220 feet from shore. This 20-foot extension allows for a functional separation of traffic, minimizing navigational overlap for customers purchasing fuel and slip renters.

RECOMMENDATION

Staff offer some recommendations for Board consideration and possible approval at the October 9, 2019 board meeting. Unless new information is provided during the public hearing process that needs further consideration, staff recommend the following based on the current proposal:

- If the Board approves the variance for the western side setback, staff recommend reducing any dock portions that extend further than the existing dock structure (no increase to the existing encroachment);
- Further discussion regarding an option to the proposed fuel dock slips and whether they should be altered to not extend past the western side site line (two total slips, opening to the north, alongside the fuel platform), given there are advantages and disadvantages to both scenarios; and,
- That the staging dock platform be reduced to be no more than eight (8) feet in one direction. The code requires dock dimensions to be no greater than eight (8) feet in both length and width. Further, a space to accommodate the Caribbean and Bay to Bay Boat Club staff to park boats for loading and unloading customers could be provided such that the docked watercraft do not extend beyond the 200-foot length or the side setback requirements.
- Feedback from the City of Tonka Bay; reconfirmation of the setback encroachment consent is pending as of September 20, 2019.

ATTACHMENTS

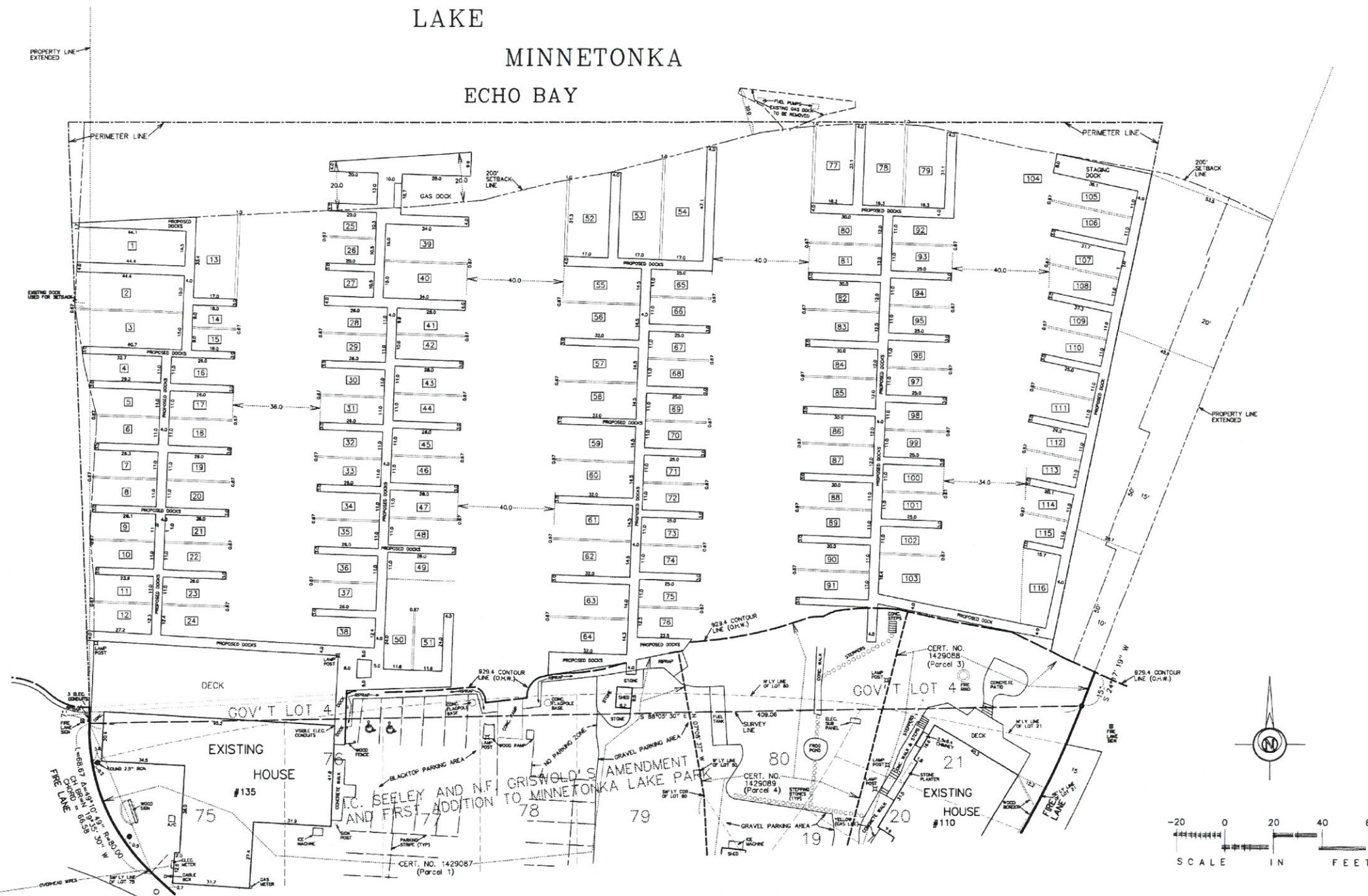
1. LMCD Code Excerpts
2. Draft Findings of Facts and Order
3. Reconfiguration of Nonconforming Structure Application
4. Special Density License Application
5. Variance Application(s)
6. Site Plan
7. Aerial Map(s) of Proposed Area
8. Public Hearing Notice
9. Public Hearing Notification to Property Owners

10-21-2019

PROPOSED DOCK SURVEY FOR
TONKA BAY PROPERTY HOLDINGS, LLC

IN I.C. SEELEY AND N.F. GRISWOLD'S AMENDMENT AND FIRST ADDITION TO MINNETONKA LAKE PARK AND IN GOV'T LOT 4, SEC. 27-117-23
HENNEPIN COUNTY, MINNESOTA

LAKE
MINNETONKA
ECHO BAY



GRONBERG & ASSOCIATES, INC.
 CIVIL ENGINEERS, LAND SURVEYORS, LAND PLANNERS
 445 NORTH WILLOW DRIVE LONG LAKE, MN 55356
 952-473-4141

PROJECT

I hereby certify that this plan, specification, or report was prepared by me, or under my direct supervision, and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Mark S. Gronberg
 Mark S. Gronberg Minnesota License No. 10755

REMARKS

1000

DATE
8-5-19
9-10-19
10-3-19
10-8-19
10-17-19



To preserve and enhance the "Lake Minnetonka experience"

CARIBBEAN MARINA & RESTAURANT RECONFIGURATION OF NONCONFORMING STRUCTURE & VARIANCE APPLICATIONS

(LOWER LAKE SOUTH)

Lake Minnetonka Conservation District

Board Meeting

October 23, 2019

Presented by: Matthew Cook, Environmental Administrative Technician
Vickie Schleuning, Executive Director

OVERVIEW

- Action
- Application Request Summary
- Revised Site Plans and Aerial Overlays
- EAW Requirements
- Key Considerations
- Public Hearing

ACTION

- Consideration of applications for reconfiguration of a nonconforming structure and variances for the dock use area (as needed) for Caribbean Marina & Restaurant.
- Options
 - Approval
 - Approve the license with or without conditions; or
 - Direct staff to prepare Findings of Fact & Order for approval at the November 13, 2019 Board Meeting
 - Denial
 - Direct legal counsel to draft Findings of Fact and Order for denial based on specific reasons with consideration at the November 13, 2019 Board meeting

APPLICATION REQUEST SUMMARY

- Reconfiguration of a Nonconforming Structure
 - 440 feet of shoreline
- Propose 116 overnight storage BSUs; density of 1:3.8
 - Currently licensed for 147 BSUs (20 transient); density of 1:3
- Decreasing linear footage of boat storage from at least 3,709 ft to 3,239.3 ft.
- Proposed dock facility no longer has slips opening toward the east side site line, diagonally or otherwise.
- Variances (do not appear to be necessary for current proposal)
 - Setbacks
 - Length
 - Nonconforming status

DOCK COMPARISON PROPOSED AND EXISTING

	Existing Dock License	Proposed Reconfiguration (Date Received)			
		Version 3 (10/04/2019)	Version 4 (10/09/2019)	Version 5 (10/18/2019) Item 9A Attach. 1	Version 6 (10/21/2019)
BSUs	147	123	124	117	116
Density	1:3	1:3.6	1:3.6	1:3.8	1:3.8
Linear BSU Footage	≥3,709	3,531	3,589.5	3,288	3,239.3

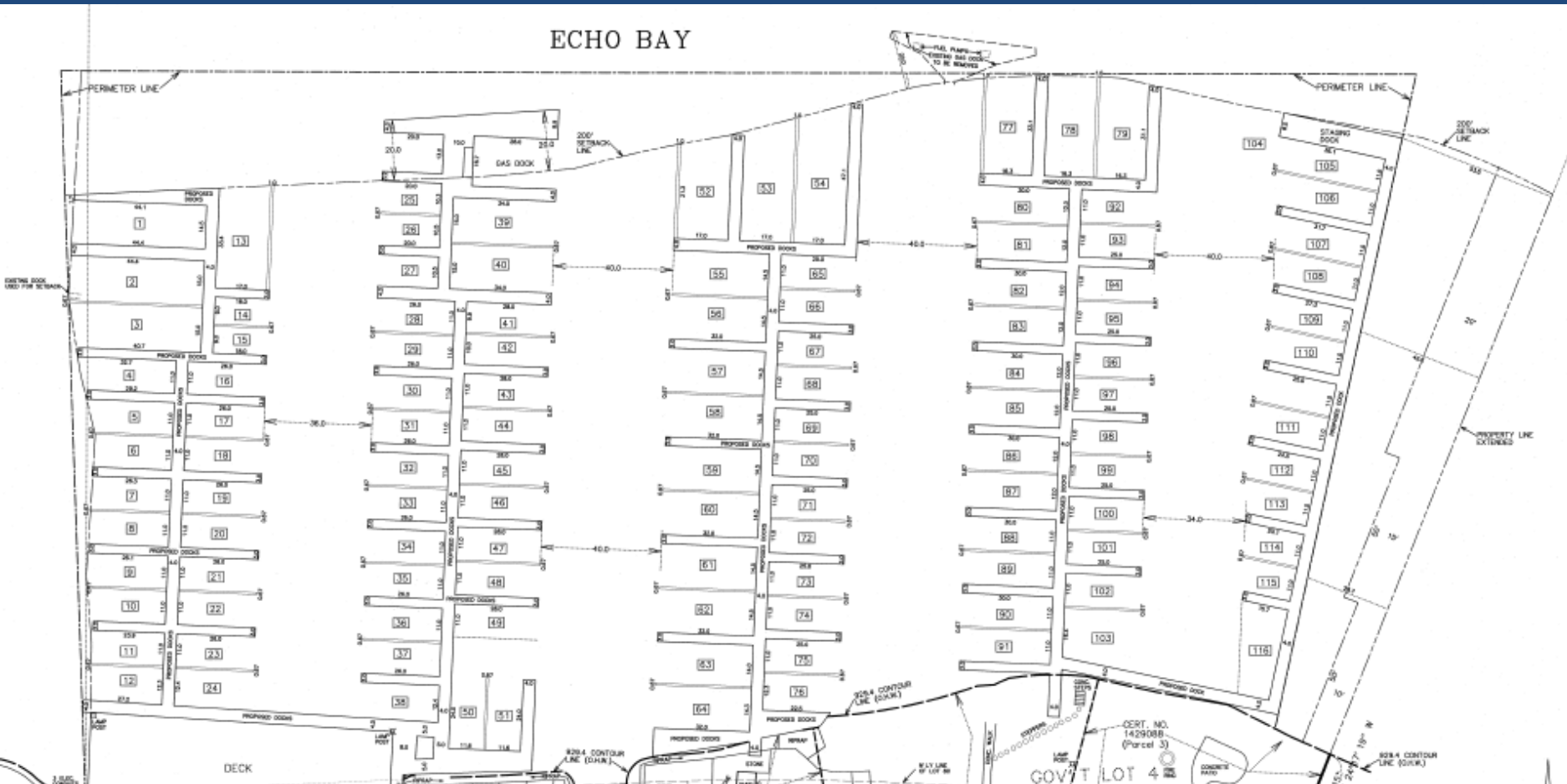
135 LAKEVIEW AVE, 100 SUNRISE, AND 110 SUNRISE, TONKA BAY



135 LAKEVIEW AVE, 100 SUNRISE, AND 110 SUNRISE, TONKA BAY



PROPOSED: REVISED 10-21-2019

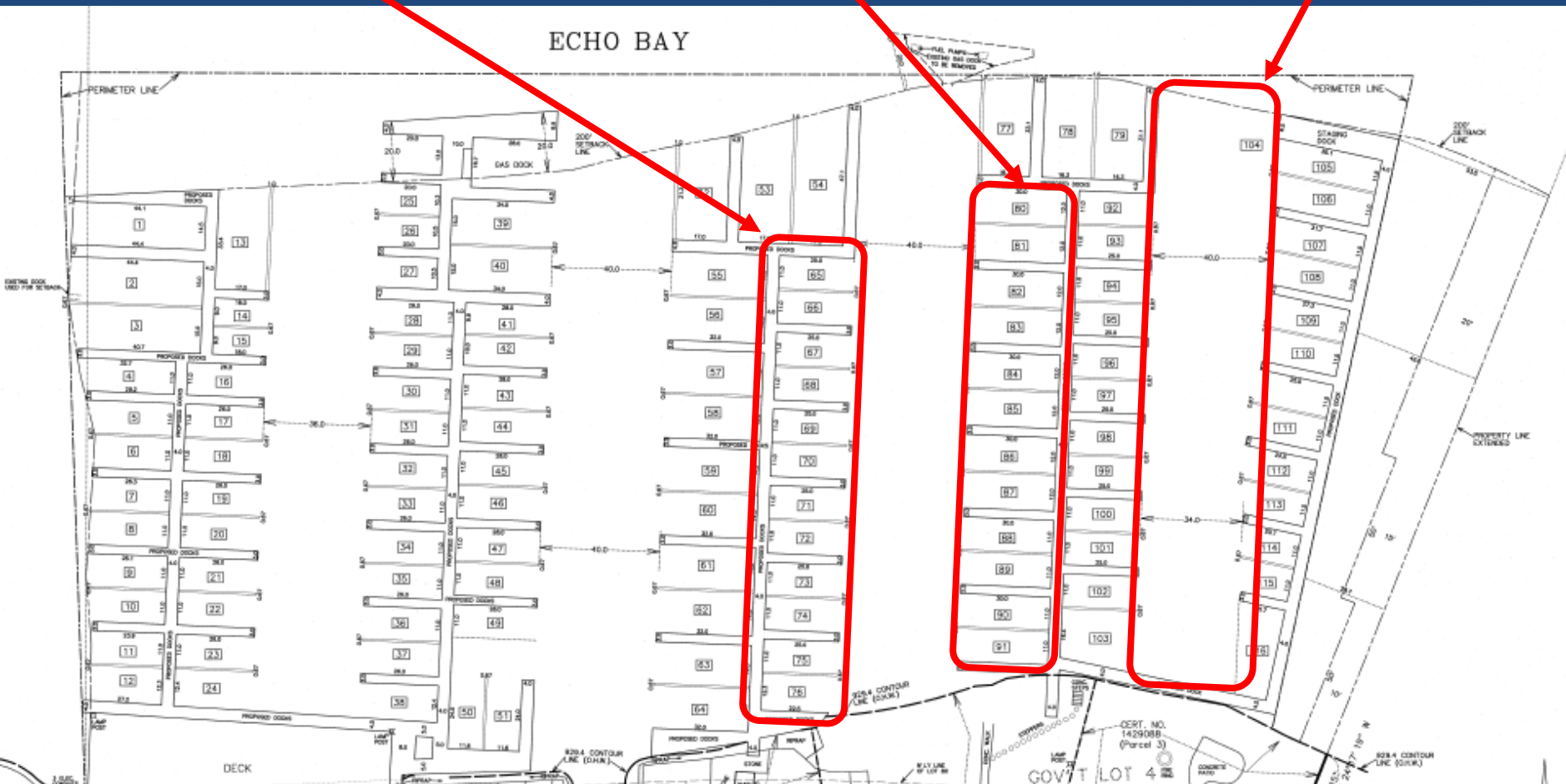


PROPOSED: REVISED 10-21-2019

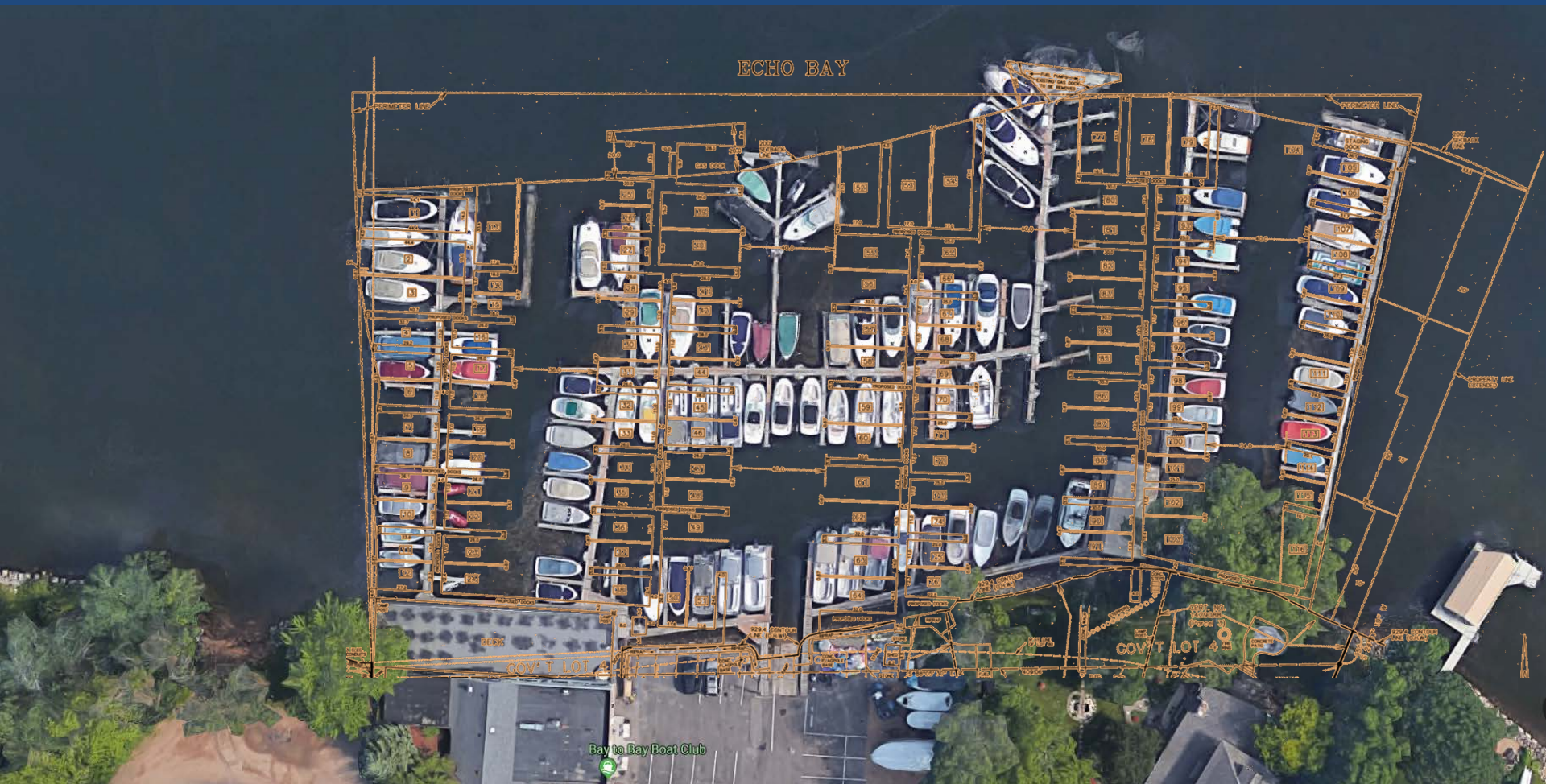
1 BSU removed;
BSUs widened 1' ea.

BSUs shortened 2' ea.

Passageway widened 2'



OVERLAY OF EXISTING AND 10-21-2019 LAYOUTS FOR ILLUSTRATIVE PURPOSES ONLY



EAW REQUIREMENTS

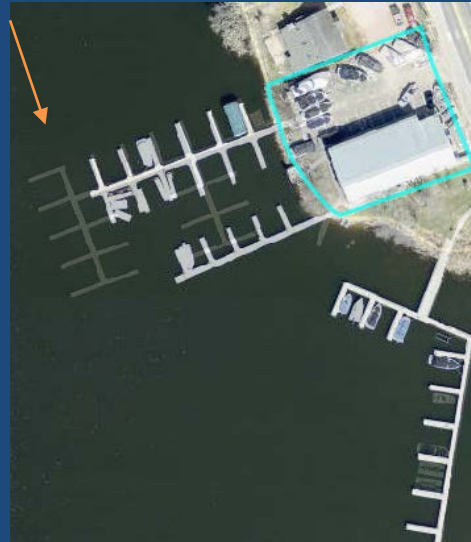
- Is a mandatory EAW required for Caribbean proposal? No
 - No changes to MN Rules in past 3 years that would mandate an EAW
 - Refer to October 23, 2019 letter from LMCD legal counsel, *EAW Requirements Related to the Reconfiguration Application from the Caribbean*
- Examples of when required for expansion of capacity
 - Next slide

EXAMPLES OF EAW PROJECTS- EXPANSIONS

Howard's Point Marina



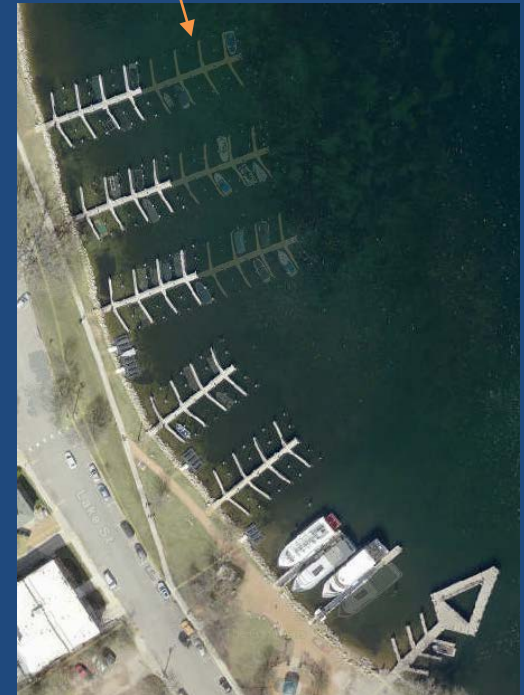
Brown's Bay Marina - Tanager



5th Street Venture



City of Excelsior



SUMMARY OF KEY CONSIDERATIONS

- The nonconforming nature of the structure is decreasing or is not changing in the following ways:
 - No change in structure perimeter
 - No boat traffic on the east side of the site
 - Decrease in BSUs
 - Decrease in linear footage of boat storage

KEY CODE CONSIDERATIONS

- **Section 2.015, Subd. 6. Limitations.** This subdivision states that a license “shall not” be issued to a reconfiguration which results in the any of the outcomes listed below. Under each item, staff have indicated whether or not the applicant’s proposal meets said item.
 - a) “An increase in boat storage units;”
 - The applicant proposes to reduce BSUs from 147 to 116.
 - b) “An increase in the linear footage of the boat storage units as determined in subdivision 7 of this section;”
 - The applicant proposes to reduce the linear footage of boat storage from 3,709 feet to approximately 3,239.3 feet.

KEY CODE CONSIDERATIONS

- c) “An increase in slip length of any slip structures opening toward a nonconforming side setback area;”
 - Regarding the west side site line, the lengthening of slips by moving the walkway to the east (toward the interior of the site) does not necessarily violate the intent of this code section, but the extension of dock fingers further west would violate the intent of this item. Any expanded nonconformity would require a variance from the LMCD Board.
 - The applicant states that the proposed dock fingers extending beyond the west side site line match the length of the existing dock fingers extending beyond the west side site line.

KEY CODE CONSIDERATIONS

- d) “An adverse effect on nearby properties, navigation, safety, wetlands with emergent vegetation, or the environment;”
 - The applicant proposes to continue the encroachment beyond the west side site line to the extent such encroachment exists today. The proposed facility has a longstanding history in its current location with regard to the west side site line, and has not been reported to create significant burden with respect to navigation, vegetation, the environment, or safety.

KEY CODE CONSIDERATIONS

- e) “An increase in the nonconforming nature of the structure;”
 - f) “The creation of any new nonconformities; or”
 - g) “The structure extending further into any nonconforming side setback area than the existing structure, except that extension into a double setback area, if applicable, may be allowed upon issuance of a variance.”
-
- The nonconforming nature of the structure is decreasing or is not changing in the following ways:
 - Decrease in BSUs
 - Decrease in linear footage of boat storage
 - No change in structure perimeter
 - No boat traffic on the east side of the site

VARIANCE CRITERIA

- A variance from the strict application of the provisions of the Code may be granted if the applicant is able to demonstrate to the satisfaction of the Board that practical difficulties exist that make the granting of the requested variance necessary.
- A variance may only be granted if doing so **does not adversely affect**: (1) the purposes of the Code; (2) the public health, safety, and welfare; or (3) reasonable access to or use of the Lake by the public or riparian owners.
- A practical difficulty is the existence of one or more unique conditions of a property that prevent the property owner from using the Lake in a reasonable manner permitted by the Code.
- A practical difficulty only exists with respect to a particular property if the conditions preventing the proposed reasonable use of the property are: (1) unique to the property; (2) were not created by the property owner; and (3) are not based solely on economic considerations.

AGENCY AND PUBLIC COMMENTS

- Public Agencies - Review and Comments
 - MN General Permit #97-6098
 - No comment received from MN DNR or MCWD
 - City of Tonka Bay
 - Waiting for LMCD to approve / deny before carrying out own variance review process
- Public comments received through October 4, 2019 and at the October 9, 2019 public hearing are included in the meeting packet.

PUBLIC HEARING

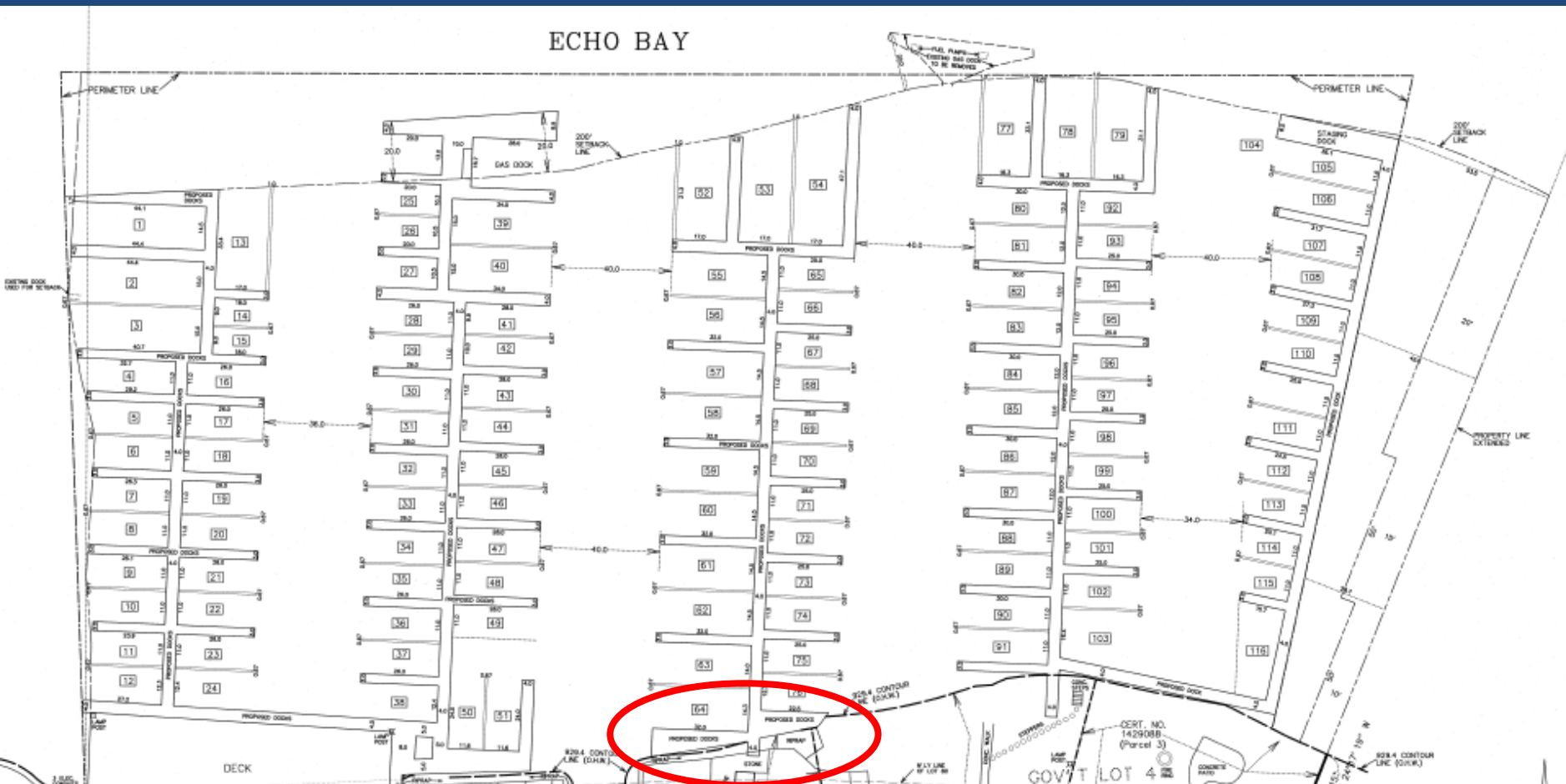
Public Hearing

- Public hearing was noticed for and held on September 25, 2019.
- The Board voted to continue the hearing on October 9, 2019.
- The Board voted to continue the hearing on October 23, 2019.
- New comments or comments about the newly-revised site plan(s) are welcome at this time.

STAFF COMMENTS

- Staff recommend that if the proposal is approved, portions of dock (excluding the fuel sales dock) that exceed 8 feet in both length and width be reconfigured to meet the maximum dimensions allowed by LMCD Code.

STAFF COMMENTS





To preserve and enhance the "Lake Minnetonka experience"

QUESTIONS & BOARD DIRECTION

THANK YOU

LMCD MEETING

OCTOBER 23, 2019

The Caribbean Reconfiguration



TOPICS

- Initial Comments
- Competing Marina Considerations
- Current Reconfiguration Plan
 - East Perimeter
 - West Perimeter
 - 200 Foot Perimeter / Gas Dock
- Conclusions
- Legal Considerations

INITIAL COMMENTS

- Our vision is to provide an experience, grounded in family values, that is the best on Lake Minnetonka in amenities, efficiency, experience and safety.
- The Caribbean has been in existence for over 65 years and is one of the oldest marinas on the Lake, dating back to the public-use concept embodied by the Tonka Bay Hotel.
- Our restaurant and gas dock employs numerous high school and college-aged employees (often from the local community); a first job for many.
- We know people by name and try to find a way to “yes”! We pride ourselves on this point. Neighbors have become regulars; regulars have become friends.
- RSI Marine, owned by Rob and Laura Schatzle, supports all aspects of The Caribbean. They are previous marina owners and have an outstanding reputation on the lake.

INITIAL COMMENTS

- This is our third meeting with LMCD.
- We have listened to requests from staff, neighbors and LMCD members.
- We have reduced our slips from 147 to 116 slips, and significantly reduced usage of the lake through less linear feet of rentable slips.
- Our design results in replacing docks in the exact same location as our current dock perimeter; not requesting anything new at all.
- Professional engineering firm, with extensive Lake Minnetonka marina experience, hired to develop a safe & efficacious dock design
- We ask the LMCD to focus on our strict compliance with codes and discount any sensationalist comments that simply do not apply to our situation.

With your affirmation of this dock plan, The Caribbean will regain its historical position as a proud marina on the lake and will assist the LMCD in it's "mission of protecting and enhancing the Lake Minnetonka experience"!

COMPETING MARINA CONSIDERATIONS

- A couple of our competitors have taken an unnatural interest in the design of our docks; they could have bought the marina but did not.
- During the process, we reached out to some of the marina owners on the lake for ideas; some helped, some declined or never responded.
- We are working with the licensed engineering firm which has completed work for other prominent marinas on Lake Minnetonka.
- Numerous *historically approved* marina layouts have been shown on poster boards or through handouts by others and described as legal.
- A few *alternate* design suggestions for the layout of docks at The Caribbean have also been suggested by others and described as legal.

Great showmanship, but the **facts** are that each of the designs that we presented from the beginning were reviewed by Staff and were legal

This detailed plan view shows the deck layout with numerous dimensions. Key features include:

- Deck Area:** A large rectangular area at the bottom left, labeled "DECK", with a width of 200'.
- Gas Dock:** A structure at the top center, labeled "GAS DOCK", with a width of 47' and a height of 25'.
- Structural Elements:** Various vertical and horizontal lines represent bulkheads and corridors. Dimensions for these include 4', 3', 25', 35', 33', 20', 45', 38', 20', 34' 1/16", 42.5', 25', 100', 200', 50', 32', and 60'.
- Diagonal Structure:** A diagonal bulkhead or structure on the right side, with dimensions 100', 200', 50', 32', and 60'.

6

CARIBBEAN – REVISED PROPOSAL



This design meets all code requirements completely with no requested variances, enhanced encroachments, or illegalities of any kind.

EAST PERIMETER

- The proposed dock design perimeter is EXACTLY on the same line and of the same orientation as the current docks
- Even though not required in the non-conforming code, we more than meet a double setback against the eastside fire lane in this proposal
- The neighbors on the East, through their lawyer, requested at the September 25th meeting that we do (4) things:
 - No Charter Boat at Old Gas Dock: **ELIMINATED CHARTER BOAT SLIP**
 - No Increased Boat Traffic: **NO NEW TRAFFIC, LESS SLIPS**
 - Orange De-Icing Signs: **NO CHANGES IN DE-ICING REQUIREMENTS**
 - Location of Access to East Slips: **NO CHANGE FROM CURRENT DOCKS**

Absolutely no changes to the East Perimeter; meet 100% of code.

WEST PERIMETER

- The proposed dock design perimeter is EXACTLY on the same line and of the same orientation as the current docks
- There is no further encroachment into the fire lane.
- At least a couple Board Members requested we consider decreasing the encroachment on the West back to our extended property line.
- This encroachment is small, does not create any navigation issues, has been existing in same way for decades, and helps us accommodate current renters.
- A neighbor on the West, expressed concern over intoxicated boaters being near her house, but nothing is changing from current use.

Absolutely no changes to the West Perimeter; meet 100% of code.

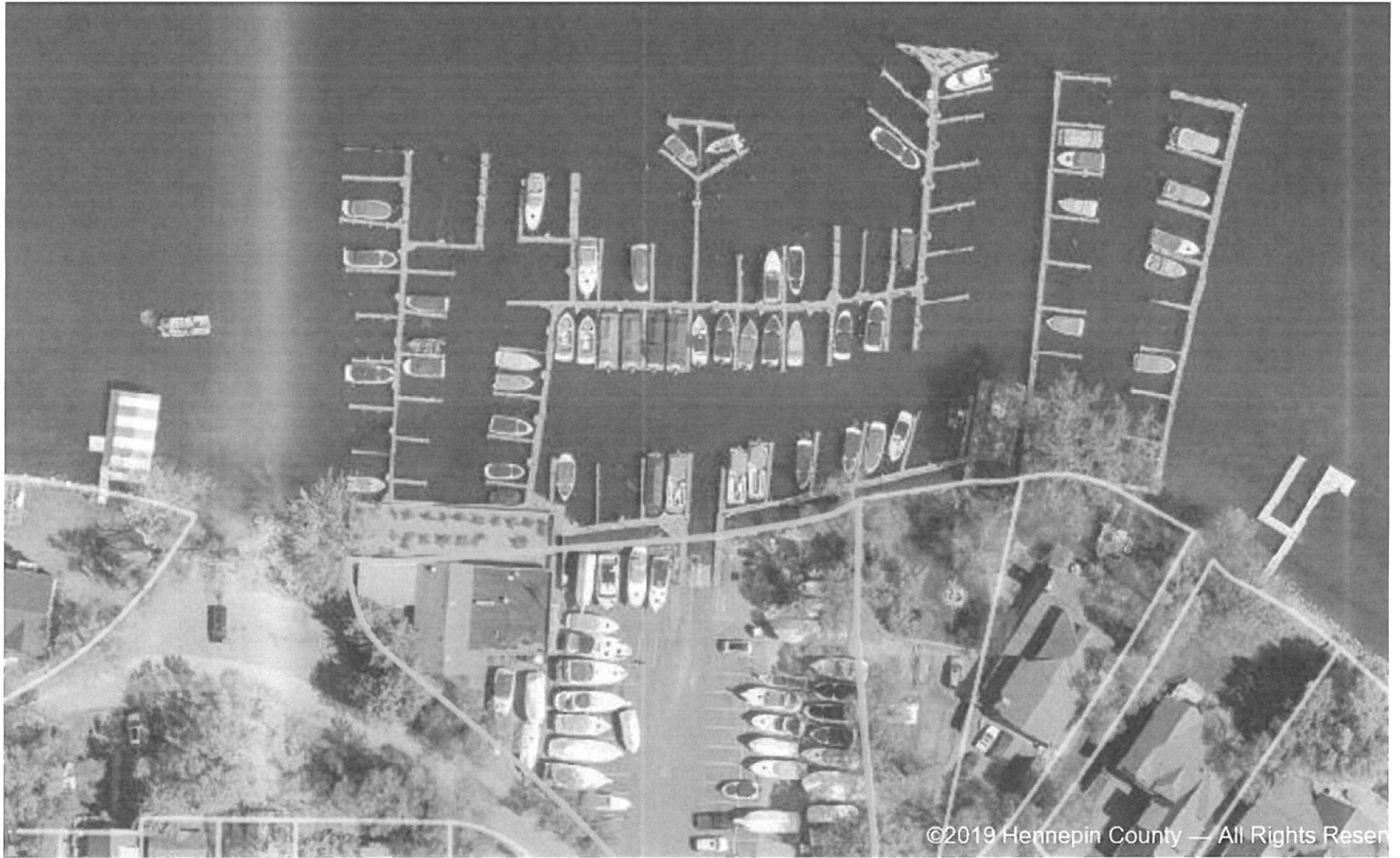
200-FOOT FROM SHORE / GAS DOCK

- We have endeavored to honor the request of the neighbors on the West by relocating the gas dock further east and not on the western dock section.
- We originally moved move the gas dock to the middle dock section but have determined that moving it that far east is not practical.
- The revised design is significantly more functional, allows for a more compact use of the lake, and keeps the gas dock ~200 feet away from any residence.
- The location of our gas dock would be more than double the distance away from residential property than most marina gas docks on the lake.
- The gas dock is 20 feet beyond the 200-foot setback, which is specifically allowed in the code.

Completely meet all requirements for 200-foot setback and gas dock.

CLOSING COMMENTS

- We have worked tirelessly with neighbors to get feedback and to ensure we created collaborative and open dialogue.
- Multiple Tonka Bay neighbors have expressed gratitude in saving the marina and restaurant by creating a wonderful, family-friendly, environment.
- All aspects of this proposal meet or exceed all code requirements.
- Reduced total BSU's and linear feet of slips, thus lowering impact to the lake.
- Need your support to get going on these important renovations.



©2019 Hennepin County — All Rights Reserved







CARIBBEAN MARINA PROJECT

OCTOBER 23, 2019

ELIZABETH H. SCHMIESING
Shareholder
P/ 612.604.6528
E/ eschmiesing@winthrop.com

Reconfiguration of Nonconforming Structure

The existing docks are nonconforming structures.

This section applies to all permanent docks . . . That are not in compliance with the requirements of the Code applicable to new facilities, but that are lawfully in existence by reason of Code provisions explicitly allowing such nonconformities to continue.

LMCD Code of Ordinances, section 2.015, subd. 2.

Reconfiguration of Nonconforming Structure

Changes to nonconforming structures are legal.

The intent of the Board is to allow for such changes as part of an approved reconfiguration or minor change, provided the Board or the Executive Director finds the proposed changes do not increase the nonconforming nature of the structure and is otherwise consistent with the purpose of this section.

LMCD Code of Ordinances, section 2.015, subd. 1.

Reconfiguration of Nonconforming Structure

- > No increase in nonconforming nature.**
- > No variances.**

LMCD Code of Ordinances, section 2.015, subd. 4.

Reconfiguration of Nonconforming Structure

The project is consistent with the goals of the provision.

In considering a proposed reconfiguration or minor change to a nonconforming structure, the LMCD shall determine the number of boat storage units, total linear footage of the boat storage units, and the perimeter of the existing nonconforming structure.

LMCD Code of Ordinances, section 2.015, subd. 4.

Reconfiguration of Nonconforming Structure

- > **BSUs: Reduced.**
- > **Total linear footage of the BSUs: Reduced.**
- > **Perimeter: Identical.**

LMCD Code of Ordinances, section 2.015, subd. 3.

Reconfiguration of Nonconforming Structure

The Project meets the spirit and intent of the Code.

The purpose of this section is to alleviate the hardship created by prohibiting changes or alterations to nonconforming structures by allowing reconfigurations and minor changes within certain limitations imposed to protect the spirit and intent of this Code.

LMCD Code of Ordinances, section 2.015, subd. 1.

Reconfiguration of Nonconforming Structure

The Project will enhance the safety and functionality of the dock system.

The Board also recognizes a need to allow some reasonable flexibility in the reconfiguration of nonconforming structures to enable owners to enhance the safety of their structures and respond to changing market demands and watercraft designs.

LMCD Code of Ordinances, section 2.015, subd. 1.

Reconfiguration of Nonconforming Structure

- > This is an improvement to an existing nonconforming use.**

No Mandatory Environmental Review

- **This is not new construction-this marina has been in place for decades.**
- With respect to an existing project, the mandatory category is triggered in two instances:
 - The marina crosses the 20,000 ft² water area threshold for the first time

OR

 - An existing project adds > 20,000 ft² through an expansion

No Mandatory Environmental Review

Marinas.

For construction ***or expansion*** of a marina or harbor that results in a 20,000 or more square foot total ***or a 20,000 or more square foot increase*** of water surface area used temporarily or permanently for docks, docking, or maneuvering of watercraft, the local government unit shall be the RGU.

Minn. R. 4410.4300, subp. 25

No Mandatory Environmental Review

Redline version of rule (1996):

Subp. 25. Marinas. For construction or ~~cumulative~~ expansion of a marina or harbor project ~~which~~ that results in a ~~total of~~ 20,000 or more square feet foot total or a 20,000 or more square foot increase of ~~temporary or permanent~~ water surface area used temporarily or permanently for docks, docking, or maneuvering of watercraft, the local government unit shall be the RGU.

21 State Register 310, 321 (September 3, 1996).

No Mandatory Environmental Review

From the *Statement of Need and Reasonableness* (SONAR):

Part 4410.4300, subp. 25. Marinas. The new language is for *clarification*, attempting to specify that an EAW is required when marina size reaches or surpasses 20,000 square feet, ***and in 20,000 square foot increments thereafter.*** The original language ***would require an EAW for every expansion after the initial 20,000 square foot size had been reached.***

No Contrary Determination By The EQB

“EQB staff received several phone calls about the project you are referencing below and generally discussed the mandatory category found in Minn. R. 4410.4300 subpart 25 for marinas that meet certain criteria as specified in the rule. ***In all conversations, EQB staff affirmed that it is the responsible governmental unit (RGU) that makes the determination for whether the rules apply to a specific project.***”

Email from Denise Wilson, Director, Environmental Review Program, Environmental Quality Board, to Betsy Schmiesing on October 22, 2019.

No Need For Discretionary EAW

A governmental unit with jurisdiction may order the preparation of an EAW for any project that does not exceed the mandatory thresholds . . . ***if the governmental unit determines that because of the nature or location of the proposed project the project may have the potential for significant environmental effects . . .***

Minn. R. 4410.4500

THANK YOU.

QUESTIONS?

TITLE

Elizabeth H. Schmiesing

P/ 612.604.6528

E/ eschmiesing@winthrop.com



LAKE MINNETONKA CONSERVATION DISTRICT

5341 MAYWOOD ROAD, SUITE 200 • MOUND, MINNESOTA 55364 • TELEPHONE 952/745-0789 • FAX 952/745-9085

DATE: October 23, 2019

TO: LMCD Board of Directors

FROM: Matthew Cook, Environmental Administrative Technician

THROUGH: Vickie Schleuning, Executive Director

SUBJECT: Variance for Dock Use Area, 870 Windjammer Lane, Orono

ACTION

Board consideration of a variance for an adjusted dock use area (side setbacks and dock length) for 870 Windjammer Lane on North Arm Bay in the City of Orono (PID 07-117-23-11-0012) and receive public input during the public hearing.

The following motions are offered depending on whether the Board wishes to approve or deny the request:

Approval

I make a motion to direct LMCD legal counsel to prepare Findings of Fact and Order approving the variance application from Ben Mitlyng for the property located at 870 Windjammer Lane in Orono for a final vote at the November 13, 2019 LMCD Board meeting <subject to the following changes>...

Denial

I make a motion to direct LMCD legal counsel to prepare Findings of Fact and Order denying the variance application from Ben Mitlyng for the property located at 870 Windjammer Lane in Orono for a final vote at the November 13, 2019 LMCD Board meeting based on...

BACKGROUND

The applicant, Ben Mitlyng, has submitted a variance application for 870 Windjammer Lane in Orono (PID 07-117-23-11-0012; "Site") for an adjusted dock use area, altering side setbacks and dock length. The applicant's property has approximately 134 feet of 929.4 feet OHW shoreline. The side site lines converge as they extend out into the lake.

The applicant's request to adjust the dock use area is proposed in order to make the existing dock on Site a compliant dock. The existing dock has an overall approximate footprint of 30.35 feet wide by 135.4 feet long. The dock includes an enclosed BSU measuring approximately 17 feet wide and 47 feet long, covered by a canopy.

The applicant is seeking a variance to allow their dock to extend 135.4 feet as measured from the OHW in order to achieve adequate water depth. The applicant reports that the depth of water (measured from the OHW) at the lakeward end of the dock is just over three (3) feet.

The applicant proposes reductions to side setback distances on both the north and south sides of the Site. The standard setbacks at the furthest extent of the dock would be 20 feet. The applicant proposes an 11.9-foot setback from the north side site line, and an 18.5-foot setback from the south side site line.

CONSIDERATIONS OF VARIANCE

The following items should be considered when considering granting a variance:

1. Has the applicant sufficiently demonstrated practical difficulties exist such that each of following are true?
 - a. Strict application of code prohibits property owner from using Lake in reasonable manner that is otherwise permitted by the code.
 - b. Granting variance is within spirit and intent of the code.
 - c. Plight of property owner is due to circumstances:
 - (1) Unique to property;
 - (2) Not created by property owner; and
 - (3) Not based solely on economic considerations.
 - d. Granting a variance does not alter essential character of the area.
2. Is the applicant proposing a use not allowed under the code?
3. Would variance, if granted and with conditions imposed, adversely affect:
 - a. Purpose of code?
 - b. Public health, safety, and welfare?
 - c. Reasonable access to or use of the Lake by public or riparian owners?

KEY CONSIDERATIONS (See Attachment 1 for code excerpts)

For this Site and this application, LMCD staff see the following items as key considerations:

- Location of navigable depth at the Site;
 - Depths suitable for navigation appear to be further than 100 feet from the OHW.
- Navigable space of the surrounding area
 - The dock use areas of the applicant's property and most of the other properties to the south have converging lot lines.

Staff comments regarding each of these items, and more, are found on the following pages.

1. **Side Setbacks.** Section 2.01 Subd. 2b of the LMCD Code requires setback distances of 20 feet for docks greater than 100 feet in length and canopies. The applicant is proposing setbacks (11.9 feet to the north; 18.5 feet to the south) that do not appear to cause significant impact to navigation or reasonable use of the lake.

Staff Comments

The dock use areas of the adjacent and nearby properties to the south have converging lot lines or are otherwise constricted. Preserving the 20-foot setback from the south side site line would help to prevent constriction of navigation space for the area.

The applicant could also meet the setback requirements on the south side by removing the platform (approximately 7 feet by 8 feet without walkway) or relocating the structure approximately 2 feet to the north, but would need a setback variance to meet the north setbacks.

Staff recommend moving the dock slightly north (from 11.9 feet off the side site line) and reducing the north side setback requirement from 20 feet to 9.5 feet. This would allow the owner to maintain the current dock configuration with the platform and preserve navigation space for the somewhat congested area to the south. Given that the dock is currently located 11.9 feet from the north side site line, a move of roughly 2 feet north would not likely pose an impact nearby patches of lily pads to the north and south. Further, movement 2 feet to the north would not cause navigational issues as the adjacent property to the north has a large dock use area due to diverging side site lines and adequate shoreline (see Attachment 4).

2. **Provisions for Length Variance.** Section 1.07, Subd. 3 of the LMCD Code of Ordinances (“LMCD Code”) expressly provides for dock length variances “to allow the construction and maintenance of a dock in the Lake to a water depth of five feet, measured from 929.4 feet NGVD, at the outer end of such dock to provide adequate water depth for navigation and to protect the environmental quality or natural habitat of the water adjacent to the dock.”

Staff Comments

The applicant reports that the depth of water (measured from the OHW) at the lakeward end of the BSU is just over three (3) feet.

3. **Conditions and Reasonable Use.**

Staff Comments

The strict application of the 100-foot limitation on the length of the authorized dock use area as prescribed by Section 2.01 Subd. 2a in these circumstances would prohibit the Applicant from using the Lake in a reasonable manner as the shallow water, converging extended side site lines, and emergent vegetation conditions were not created by the Applicant, and the requested dock length is not based solely on economic considerations.

4. **LMCD Board Authority.**

Staff Comments

It seems that practical difficulties exist in this case that could justify the Board in exercising its authority under Section 1.07 of the LMCD Code to adjust the authorized dock use area by granting a variance for dock length and adjusted side setbacks.

PUBLIC HEARING

The public hearing provides an opportunity for interested individuals to present their views to the Board for consideration. This is an important part of reviewing the impact of a project. Only items under the LMCD Code and Board authority may be considered as part of any approval or denial decision.

A hearing notice was published in the October 11, 2019 edition of the Lakeshore Weekly News. On October 7, 2019, a public hearing notice was mailed to persons who reside upon or are owners of property within 350 feet of the Site. In addition, the Board packet is posted online and the agenda is posted on the LMCD bulletin board.

In compliance with MN DNR General Permit 97-6098 and general communications, the MN DNR, MCWD, and the City of Orono were provided a copy of the variance application for review.

No comments have been received from the DNR, MCWD, or the City of Orono.

One comment in support of the application was received from Charlie Smoot of 980 North Arm Drive. Two other nearby residents inquired regarding the application and did not make comments in opposition.

RECOMMENDATION

Length

Staff recommend approval of a variance for length as proposed.

Side Setbacks

Staff recommend the Board approve the following side setback adjustments:

- Setback from north side site line reduced to 9.5 feet; and,
- Setback from the south side site line remain 20 feet.

The Board may also elect to approve the side setback adjustments as proposed by the applicant.

ATTACHMENTS

1. LMCD Code Excerpts
2. Variance Application
3. Site Plan
4. Aerial Imagery of Site
5. Public Hearing Notice (Lakeshore Weekly News)
6. Public Hearing Notice (Residents Within 350ft of Site)

LMCD Code Excerpts



Section 1.07. Variance.

Subd. 1. General Statement. Where practical difficulties occur or where necessary to provide access to persons with disabilities, the Board may permit a variance from the requirements of this Code or may require a variance from what is otherwise permitted by this Code, provided that such variance with whatever conditions are deemed necessary by the Board, does not adversely affect the purposes of this Code, the public health, safety, and welfare, and reasonable access to or use of the Lake by the public or riparian owners. Except as otherwise provided in this Code, all variances granted by the district shall be governed by the provisions of this section.

Subd. 2. Unusual Configurations. Where the provisions of this Code would cause the authorized dock use area of two or more sites to overlap, or where there is any other unusual configuration of shoreline or extended lot lines, which causes a conflict between the owners of two or more adjacent or nearby sites as the use of the same area of the Lake for docks, mooring areas or other structures or for reasonable access thereto, the owner of any of the affected sites may apply to the Board for a variance. A variance may be to permit the applicant to locate a dock, mooring area or other structure in a location different from that permitted by this ordinance or to permit or require the owner of any adjacent or nearby site to do so.

Subd. 3. Length Variances. The length limitations prescribed by this ordinance may be adjusted to allow the construction and maintenance of a dock in the Lake to a water depth of five feet, measured from 929.4 feet NGVD, at the outer end of such dock to provide adequate water depth for navigation and to protect the environmental quality or natural habitat of the water adjacent to the dock.

Subd. 6. Hearings. Upon receipt of a completed variance application, the Executive Director shall schedule a hearing by the Board on the application in accordance with Section 1.05. The Board may grant a variance from the literal provisions of this Code in instances where the property owner can show practical difficulties exist by virtue of circumstances which are unique to the individual property or properties under consideration or to provide access to persons with disabilities. The Board may only grant a variance if the property owner is able to demonstrate that granting the variance will be in keeping with the spirit and intent of this Code, the plight of the property owner is due to circumstances unique to the property that were not created by the property owner, the proposed use is reasonable under the circumstances, and the variance, if granted, would not alter the essential character of the area. No variance may be granted to allow a use that is not permitted under this Code. The Board may impose conditions in the granting of variances to ensure compliance and to protect other riparian owners and users of the Lake. No variance for access for persons with disabilities shall be granted which allows or provides for the storage of a greater number of watercraft than otherwise would be permitted under this Code.

Subd. 7. Orders to Other Owners. The Board shall not require the owner of any site who is not the applicant to take any action at variance with what is otherwise permitted by this chapter without first giving the owner a reasonable opportunity to be heard thereon as provided

by Subdivision 6. If the Board orders such owner to take the action proposed, or any part thereof, a reasonable length of time within which to take such action shall be afforded. Any such order shall be in writing, shall be served upon the owner in the manner that civil process is served, and shall specify the length of time within which the owner shall take the required action, which time shall be no less than 30 days.

Subd. 8. Violations. Locating, constructing, installing or maintaining a dock, mooring or other structure in a manner different from the terms and conditions of a variance which is ordered or permitted is a violation of this Code and grounds for rescission of the variance.

Subd. 9. Temporary Low Water Variances. During periods when the Lake level falls below elevation 928.0 feet NGVD, the Board may issue temporary low water variances for multiple docks and moorings in locations or configurations not otherwise allowed by this Code. Such variances shall be subject to the provisions of this section; provided, however, that the Board may waive application requirements of Subd. 4 and may waive the public hearing requirement of Subd. 6. No such variance shall be granted which provides storage for more watercraft or larger watercraft than would be allowed without a variance. Temporary low water variances may be issued for a specified term or for such time as low water conditions continue as determined by the Board. Removal or relocation for the winter season may be required.

Section 2.01. Authorized Dock Use Area.

Subd. 2. Description of Authorized Dock Use Area. An authorized dock use area is described as follows:

b) Width - The authorized dock use area for sites bordering on the Lake is limited in width by the setback limitations prescribed herein. The setback from side site lines as extended in the Lake shall be as follows:

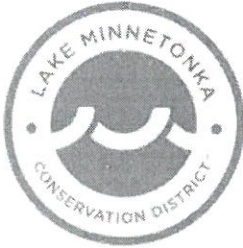
For that portion of the length of the authorized dock use area which extends from the shore_____	The setback shall be
Zero to 50 feet	10 feet
50 to 100 feet	15 feet
100 to 200 feet	20 feet

Section 2.02. Shoreline Requirements

Subd. 1. General Rule. No docks or mooring areas shall be constructed, established or maintained that provide space for or are used for mooring or docking a greater number of restricted watercraft than one for each 50 feet of continuous shoreline in existence on May 3, 1978, unless authorized to do so by special density license pursuant to Section 2.05. For sites with continuous shoreline greater than 100 feet, when measurements determining the number of restricted watercraft allowed result in the provision of a fractional restricted watercraft, any fraction up to and including one-half (1/2) shall be disregarded, and fractions over one-half (1/2) shall be counted as one additional restricted watercraft.

S
EF
L

ATTACHMENT 2



VARIANCE APPLICATION

Lake Minnetonka Conservation District
5341 Maywood Road, Suite 200
Mound, MN 55364
Phone: (952)745-0789
Fax: (952)745-9085



60 days 11/15/19

LMCD Receipt #

OK # 3445 \$500.00

In accordance with LMCD Code Section 1.07, where practical difficulties occur or where necessary to provide access to the handicapped, the Board may permit a variance from the requirements of the Code, or may require a variance from what is otherwise permitted the Code provided that such variance with whatever conditions are deemed necessary by the Board, does not adversely affect the purposes of this ordinances, the public health, safety, and welfare, and reasonable access to or use of the Lake by public or riparian owners. The following application, when completed, shall be filed with the Executive Director of the District along with surveys, photos, and such other information as required.

Because this form is to be copied, please use black ink or type. The form may be filled out online and printed.

The person completing this form is the ☐ authorized agent or ☒ property owner (select one).

Applicant: Ben Mitlyng

Address: 870 Windjammer Lane

City, State, Zip: Orono, MN

Phone: (952) 479-1188 Fax: Email: bmitlyng@gmail.com

Property owner (if different from applicant):

Address:

City, State, Zip:

Phone: Fax:

PROPERTY LOCATION:

Located in the city of: Orono

Address & Property Identification No (PID): 870 Windjammer Lane, Orono : 07-117-23-11-0012
Address PID#

TYPE OF VARIANCE: Dock over 100 feet

State practical difficulties causing variance to be required:

Due to cattails and shallow water, unable to reach depth of 4 feet depth to have a boat.

ABUTTING LAKESHORE PROPERTY OWNERS:

North or West: Daniel Kelly, 860 Windjammer Lane, Orono, MN 55364
(Name and mailing address)

South or East: Matt Gettman, 880 Windjammer Lane, Orono, MN 55364
(Name and mailing address)

Other affected parties (attach sheet if necessary):

(Name and mailing address)

Please submit names and mailing addresses of owners within a 350-foot radius of the property. Such owners must be verified by checking with the Hennepin County Auditors Office, (612) 348-5910 (or a private abstract company) which can provide actual mailing labels at a cost of \$1.25 per tax parcel (minimum of \$25.00). This service usually takes two days, and you must have your tax parcel identification number (PIN) ready when calling for this assistance.

Documents listed below are required; check that they are attached:

- ☒ **Locator Map** (U.S.G.S area map with scale, North direction, Site clearly marked, Name or Title, LMCD Area Name, LMCD number)
- ☒ **County Plat Map** (Site clearly marked, Name, LMCD area name, LMCD number)
- ☒ **Certified Land Survey** (Legal description, Name, LMCD area name, LMCD number, 929.4 N.G.V.D. shoreline)
- ☒ **Proposed facility site plan** (to scale, 929.4' N.G.V.D. shoreline, LMCD area name, LMCD number, Scale, North direction, affected neighbors, locate setback area, locate dock use area, location of dock structure with dimensions and slip numbers, indicate type of slip if applicable)
- ☒ **Existing facility site plan**, if applicable (to scale, 929.4' N.G.V.D. shoreline, LMCD area name, LMCD number, Scale, North direction, affected neighbors, locate setback area, locate dock use area, location of dock structure with dimensions and slip numbers, indicate type of slip if applicable)
- ☐ **Scaled drawing of docks on abutting properties** and other affected dockage

Absence of significant data requested above could result in a processing delay.

FEE CALCULATION

APPLICATION FEE.....(non-refundable).....\$250.00

DEPOSIT.....(refundable, upon full compliance
with the Code and extent of
administrative, inspection and
legal service required).....+\$250.00

Variance Application

TOTAL FEE ENCLOSED..... (this fee is for processing of the application and does not entitle the applicant to a variance)..... **\$500.00**

I certify that the information provided herein and the attachments hereto are true and correct; I understand that any variance granted may be revoked by the District for violation of the LMCD code. I agree to reimburse the District for any legal, surveying, engineering, inspection, maintenance or other expenses incurred by the District in excess of the amount of the application fee. I consent to permitting officers and agents of the District to enter the premises at reasonable times to investigate and to determine whether or not the Code of the District is being complied with.

I agree to submit a certified, as-built survey upon completion of the docks.

Ben Milum 7/30/2019
Authorized Signature Date

owner
Title

Relationship to Owner

Return this application, attachments and fee to:

**Lake Minnetonka Conservation District
5341 Maywood Road, Suite 200
Mound, MN 55364
Fax: (952) 745-9085**

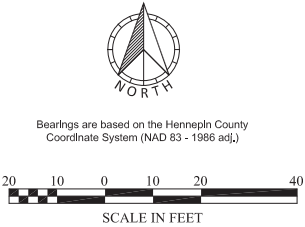
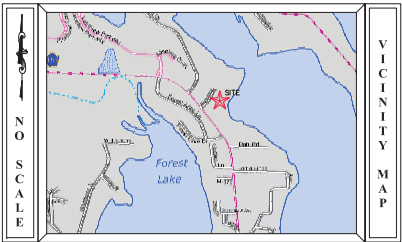
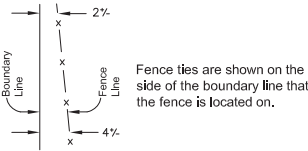
ATTACHMENT 3

DESCRIPTION OF PROPERTY SURVEYED

Lot 8, Block 1, PIRATES COVE, according to the recorded plat thereof, Hennepin County, Minnesota

STANDARD NOTES

- 1) **Site Address:** 870 Windjammer Lane, Orono, Minnesota
- 2) A title opinion was not furnished to the surveyor as part of this survey. Only easements per the recorded plat are shown unless otherwise denoted hereon.
- 3) **Parcel Area Information:** Area: 43,872± s.f. ~ 1.007± acres (as measured to ordinary high water line)
- 4) **Benchmark:** Elevations are based on Hennepin County Control Point Station Name: FOREST which has an elevation of: 945.31 feet (NGVD29).
- 5) **Utilities:** We have shown the location of utilities on the surveyed property by observed evidence only. There may be underground utilities encumbering the subject property we are unaware. Please note that we have not placed a Gopher State One Call for this survey. There may or may not be underground utilities in the mapped area, therefore extreme caution must be exercised before any excavation takes place on or near this site. Also, please note that seasonal conditions may inhibit our ability to visibly observe all the utilities located on the subject property. Before digging, you are required by law to notify Gopher State One Call at least 48 hours in advance at 651/454-0002.
- 6) This survey does not purport to show all improvement, on or across the property lines.
- 7) No title work was provided for this survey.



SURVEY LEGEND

CAST IRON MONUMENT	PIEZOMETER	WOE WALKOUT ELEVATION
IRON PIPE MONUMENT SET	POWER POLE	FFE FIRST FLOOR ELEVATION
IRON PIPE MONUMENT FOUND	GUY WIRE	GFE GARAGE FLOOR ELEVATION
DRILL HOLE FOUND	ROOF DRAIN	TOF TOP OF FOUNDATION ELEV.
CHISELED "X" MONUMENT SET	LIFT STATION	LOE LOWEST OPENING ELEV.
CHISELED "X" MONUMENT FOUND	SANITARY MANHOLE	CONCRETE
REBAR MONUMENT FOUND	SANITARY CLEANOUT	BITUMINOUS
PK NAIL MONUMENT SET	STORM MANHOLE	BUILDING SETBACK LINE
PK NAIL MONUMENT FOUND	STORM DRAIN	CABLE TV
PK NAIL W/ ALUMINUM DISC	CATCH BASIN	CONCRETE CURB
SURVEY CONTROL POINT	FLARED END SECTION	CONTOUR EXISTING
A/C UNIT	TREE CONIFEROUS	CONTOUR PROPOSED
CABLE TV PEDESTAL	TREE DECIDUOUS	GUARD RAIL
ELECTRIC TRANSFORMER	TREE CONIFEROUS REMOVED	DRAIN TILE
ELECTRIC MANHOLE	TREE DECIDUOUS REMOVED	ELECTRIC UNDERGROUND
ELECTRIC METER	TELEPHONE MANHOLE	FENCE
ELECTRIC OUTLET	TELEPHONE PEDESTAL	FIBER OPTIC UNDERGROUND
YARD LIGHT	UTILITY MANHOLE	GAS UNDERGROUND
FIBER OPTIC MANHOLE	UTILITY PEDESTAL	OVERHEAD UTILITY
FIRE DEPT. HOOK UP	UTILITY VAULT	TREE LINE
FLAG POLE	WATERMAIN MANHOLE	SANITARY SEWER
FUEL PUMP	WATER METER	STORM SEWER
FUEL TANK	WATER SPIGOT	TELEPHONE UNDERGROUND
PROPANE TANK	WELL	RETAINING WALL
GAS METER	MONITORING WELL	UTILITY UNDERGROUND
GAS VALVE	CURB STOP	WATERMAIN
GAS MANHOLE	GATE VALVE	TRAFFIC SIGNAL
GENERATOR	HYDRANT	RAILROAD TRACKS
GUARD POST	IRRIGATION VALVE	RAILROAD SIGNAL
HAND HOLE	POST INDICATOR VALVE	RAILROAD SWITCH
MAIL BOX	SIGN	SATELLITE DISH
	SOIL BORING	WETLAND BUFFER SIGN

FIELD CREW	NO.	BY	DATE	REVISION
CL				
DRAWN				
DBP				
CHECKED				
DBP				
DATE				
09/07/2019				

USE (INCLUDING COPYING, DISTRIBUTION, AND/OR CONVEYANCE OF INFORMATION) OF THIS PRODUCT IS STRICTLY PROHIBITED WITHOUT SATHRE-BERGQUIST, INC.'S EXPRESS WRITTEN AUTHORIZATION. USE WITHOUT SAID AUTHORIZATION CONSTITUTES AN ILLEGITIMATE USE AND SHALL THEREBY INDEMNIFY SATHRE-BERGQUIST, INC. OF ALL RESPONSIBILITY. SATHRE-BERGQUIST, INC. RESERVES THE RIGHT TO HOLD ANY ILLEGITIMATE USER OR PARTY LEGALLY RESPONSIBLE FOR DAMAGES OR LOSSES RESULTING FROM ILLEGITIMATE USE.

I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Dated this 7th day of September, 2019.

David B. Pemberton, PLS
pemberton@sathre.com

Minnesota License No. 40344



SATHRE-BERGQUIST, INC.

150 SOUTH BROADWAY WAYZATA, MN, 55391 (952) 476-6000

WWW.SATHRE.COM

TWP:117-RGE.23-SEC.07
Hennepin County
ORONO, MINNESOTA

BOUNDARY/DOCK SURVEY

PREPARED FOR:
BENJAMIN MITLYNG

FILE NO.
59200-001

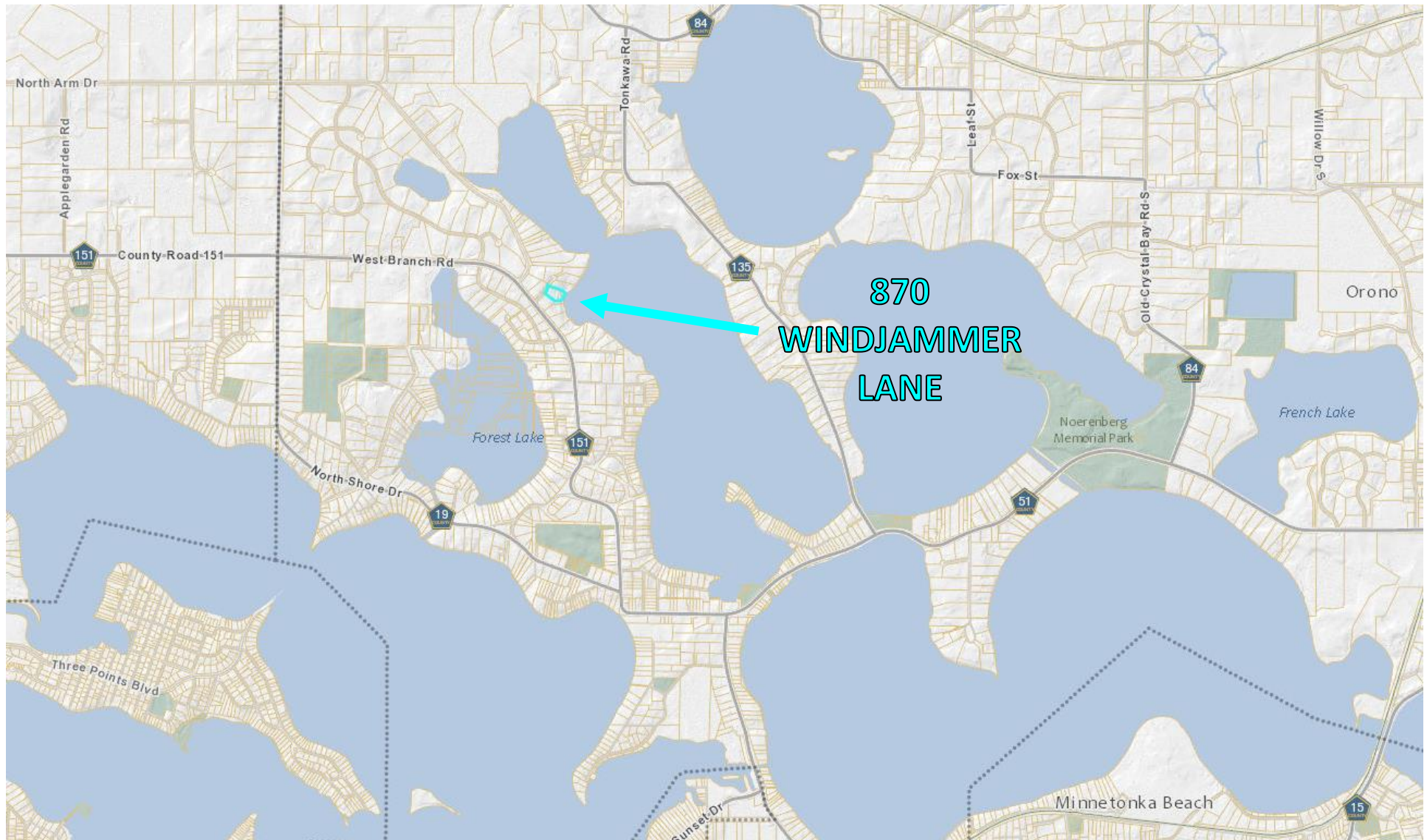
1
1

Ben Mitlyng, 870 Windjammer Lane, Orono | Variance Application

For illustrative purposes only. Aerial imagery (2018) may not depict current conditions.

Source: Hennepin County Interactive Property Map, 09/30/2019

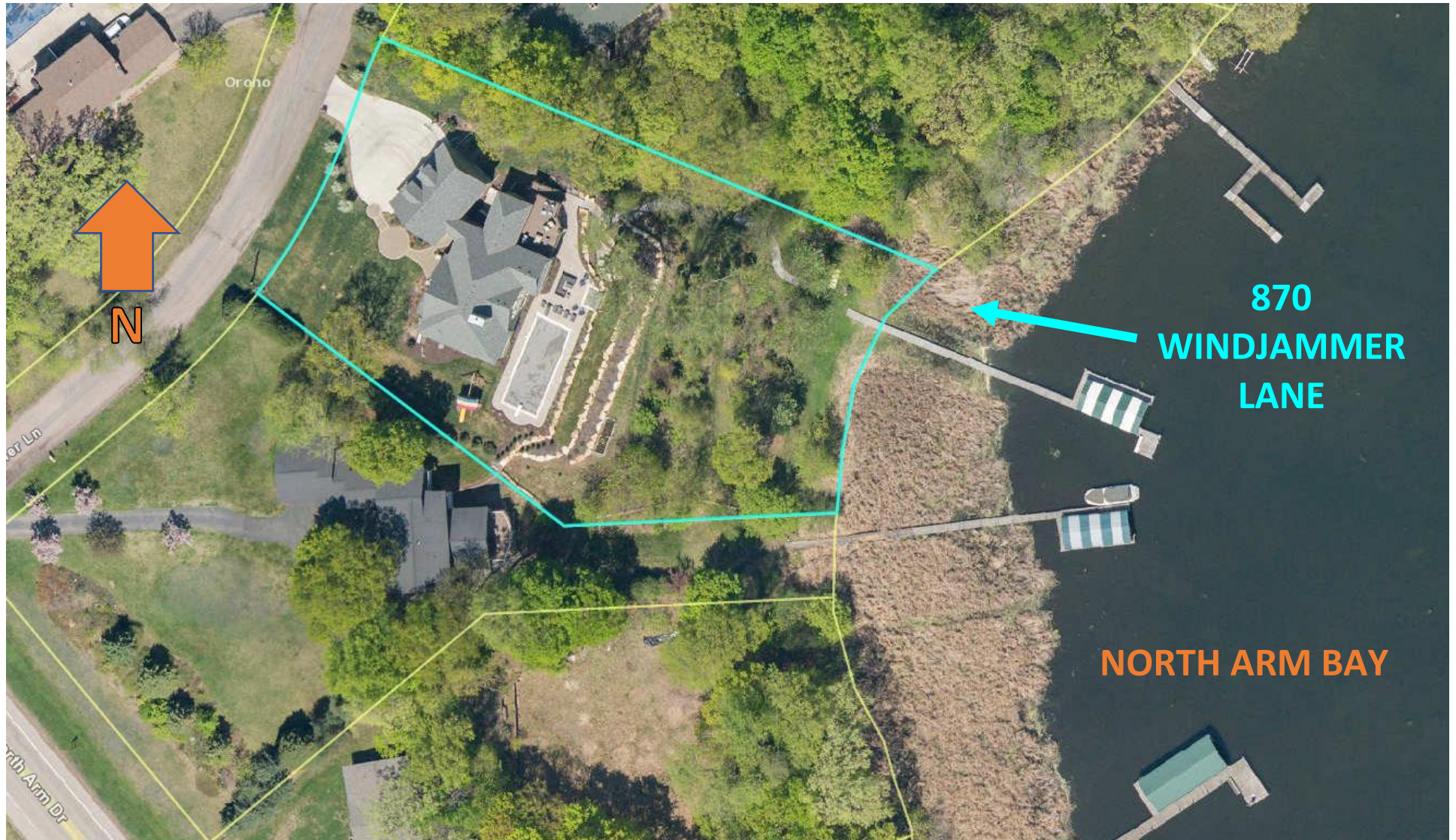
ATTACHMENT 4



Ben Mitlyng, 870 Windjammer Lane, Orono | Variance Application

For illustrative purposes only. Aerial imagery (2018) may not depict current conditions.

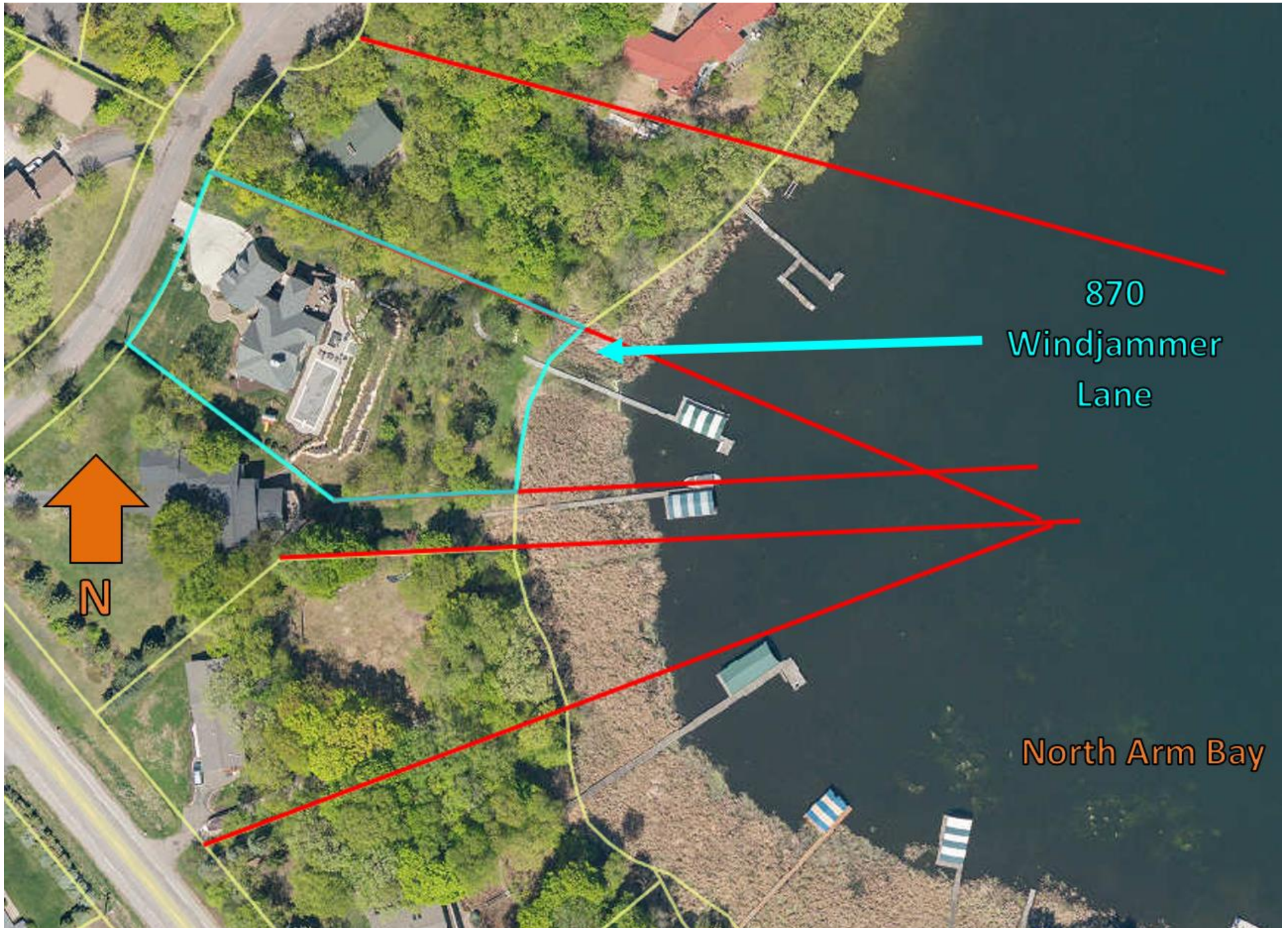
Source: Hennepin County Interactive Property Map, 09/30/2019



Ben Mitlyng, 870 Windjammer Lane, Orono | Variance Application

For illustrative purposes only. Aerial imagery (2018) may not depict current conditions.

Source: Hennepin County Interactive Property Map, 09/30/2019





ATTACHMENT 5

LAKE MINNETONKA CONSERVATION DISTRICT

5341 MAYWOOD ROAD, SUITE 200 • MOUND, MINNESOTA 55364 • TELEPHONE 952/745-0789 • FAX 952/745-9085

DATE: October 3, 2019

TO: Lakeshore Weekly News
Attn: Legal Department
Fax: (952) 473-0895

FROM: Vickie Schleuning, Executive Director

SUBJECT: Public Hearing Notice (10/11/19 Edition)

**LAKE MINNETONKA CONSERVATION DISTRICT
PUBLIC HEARING NOTICE**

7:00 PM, October 23, 2019

Wayzata City Hall

600 Rice Street, Wayzata, MN 55391

Ben Mitlyng

870 Windjammer Lane, Orono, MN 55391

North Arm Bay, Lake Minnetonka

The Lake Minnetonka Conservation District (LMCD) will hold a public hearing to consider a variance application for Ben Mitlyng of 870 Windjammer Lane in Orono. An application has been submitted to adjust the site's dock use area through changes to dock length and side setbacks. All interested persons will be given an opportunity to comment.

Details are available at the LMCD Office, 5341 Maywood Road, Suite 200, Mound, MN 55364 or by calling (952) 745-0789.



ATTACHMENT 6

LAKE MINNETONKA CONSERVATION DISTRICT

5341 MAYWOOD ROAD, SUITE 200 • MOUND, MINNESOTA 55364 • TELEPHONE 952/745-0789 • FAX 952/745-9085

DATE: October 7, 2019
TO: Property Owner or Resident
FROM: Vickie Schleuning, Executive Director
SUBJECT: Public Hearing Notice

You are receiving this notice since Hennepin County property records indicate you own or reside upon property within 350 feet of a site being considered for an adjusted dock use area (side setbacks and dock length). The site is located at 870 Windjammer Lane in Orono.

The Lake Minnetonka Conservation District (LMCD) will hold a public hearing to consider the variance application. The applicant proposes to reduce side setbacks for the site and increase dock length to reach sufficient depth for boat storage. All interested persons will be given an opportunity to comment.

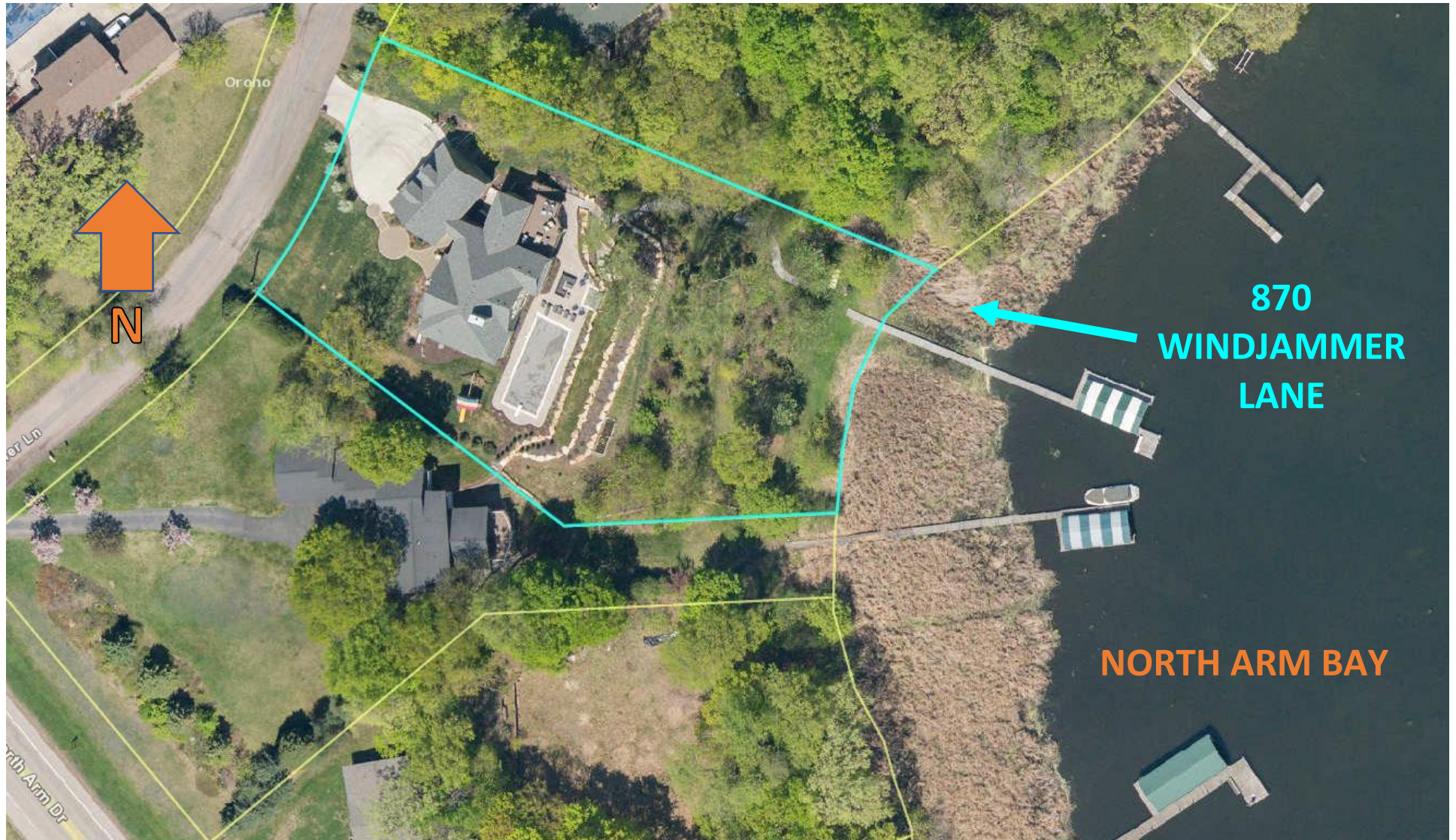
Public Hearing Information: A public hearing will be held at 7:00 PM, October 23, 2019, at Wayzata City Hall, 600 Rice Street, Wayzata, MN 55391. The applicant is Ben Mitlyng of 870 Windjammer Lane, Orono, MN 55364. The site is located on North Arm Bay on Lake Minnetonka.

Details are available at the LMCD Office, 5341 Maywood Road, Suite 200, Mound, MN 55364 or by calling (952) 745-0789.

Ben Mitlyng, 870 Windjammer Lane, Orono | Variance Application

For illustrative purposes only. Aerial imagery (2018) may not depict current conditions.

Source: Hennepin County Interactive Property Map, 09/30/2019





To preserve and enhance the "Lake Minnetonka experience"

870 WINDJAMMER LANE NORTH ARM BAY, ORONO VARIANCE APPLICATION PUBLIC HEARING

Lake Minnetonka Conservation District

Board Meeting

October 23, 2019

Presented by: Matthew Cook, Environmental Administrative Technician

OVERVIEW

- Board Action
- Background
- Variance Request
- Variance Standards
- Considerations & Code Analysis
- Public / Review Agency Comments
- Public Hearing
- Staff Comments
- Q & A

BOARD ACTION

- **Approval of Length Variance Request**
- **Approval of Side Setback Variance Request**
- **Continue Public Hearing**
- **Denial of Variance Request(s)**

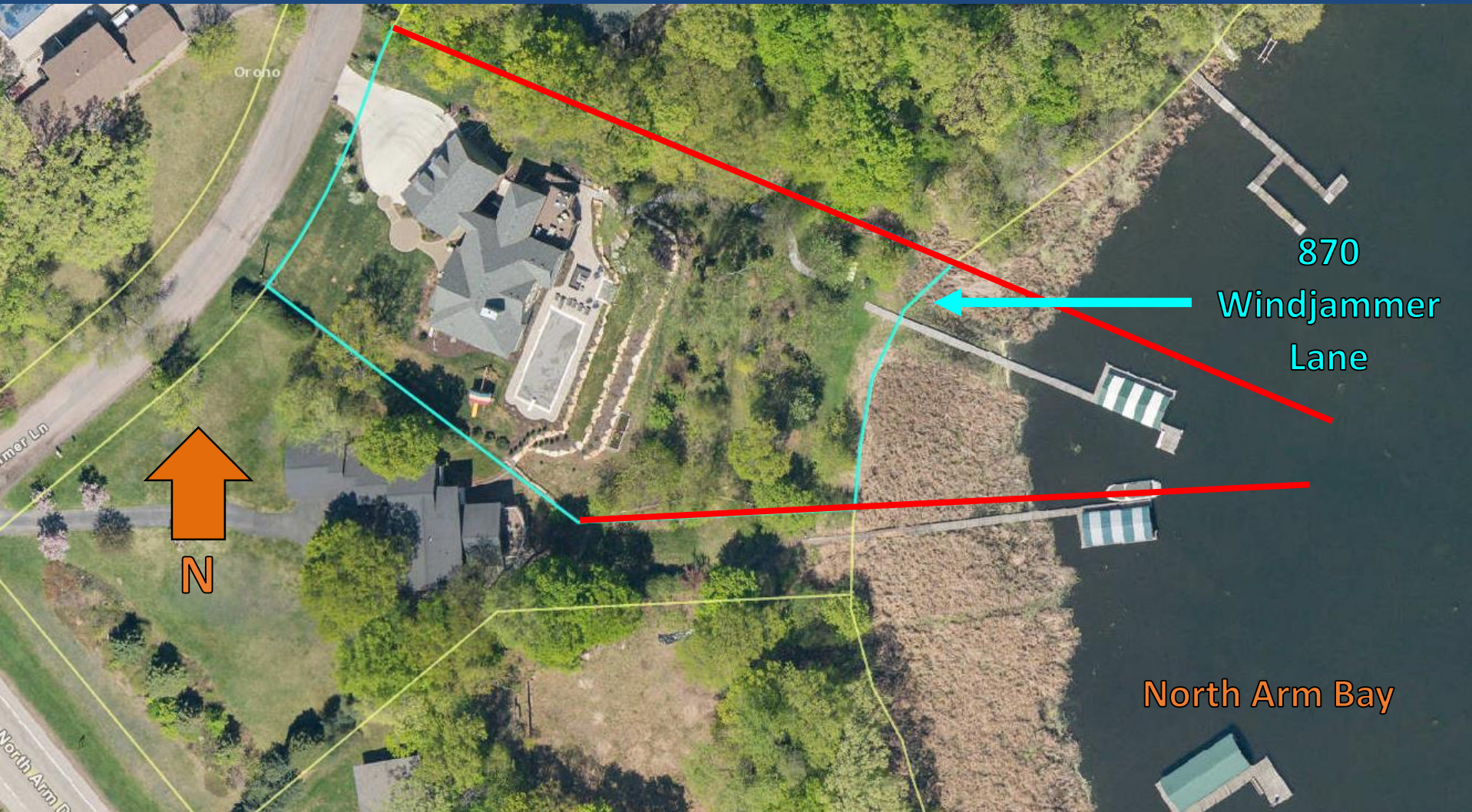
BACKGROUND

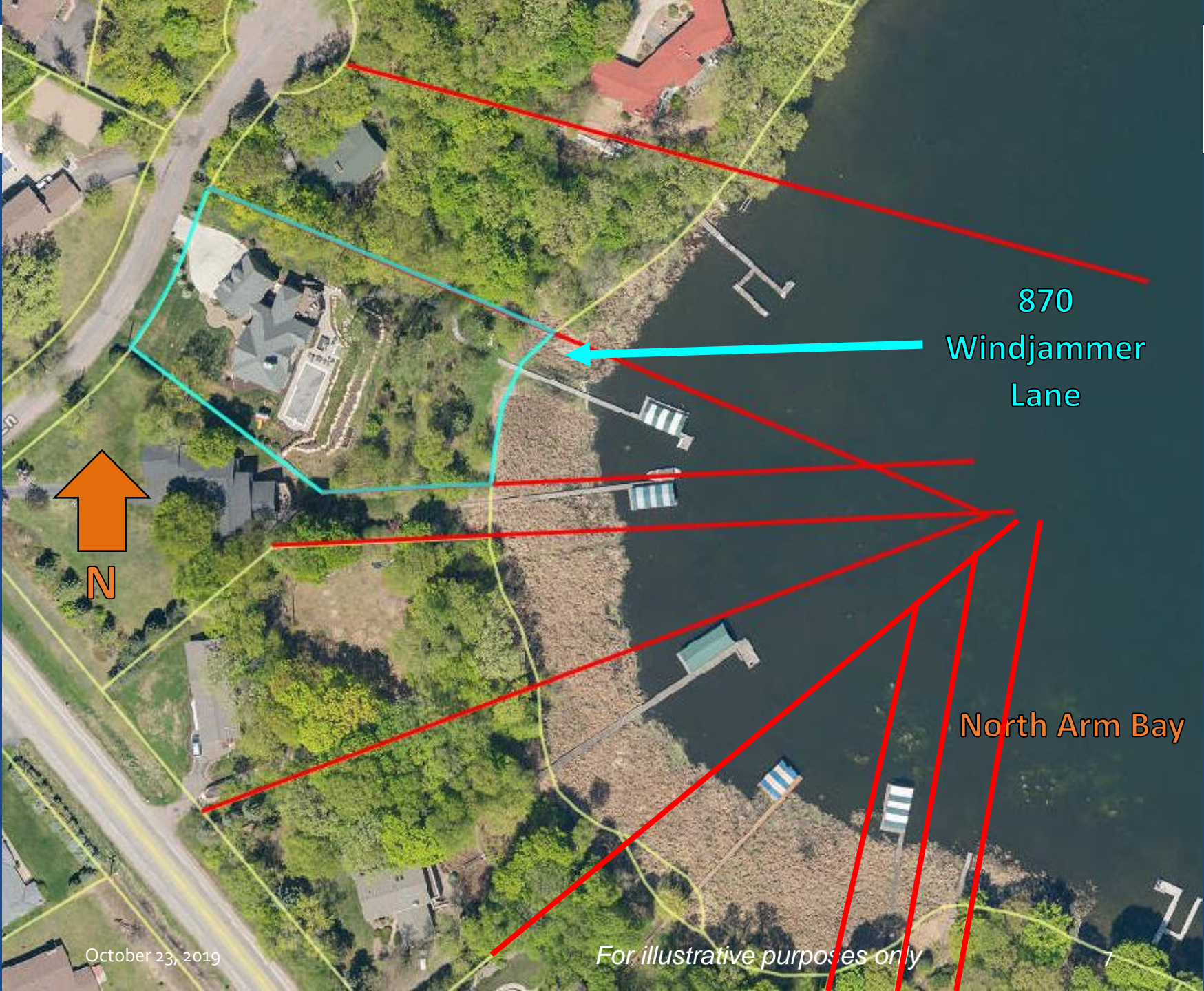
- Applicant's property has approximately 134 feet of 929.4 feet OHW shoreline.
- One parcel (PID 07-117-23-11-0012)
- Previously existing dock, seeking variance to ensure compliance
- Property owner submitted variance application September 16, 2019

VARIANCE REQUEST

- **Dock Use Area Adjustment**
 - Side setback reduction
 - Applicant proposes the following setbacks from the extended side site lines:
 - NORTH – 11.9 feet
 - SOUTH – 18.5 feet
 - Length extension
 - Applicant proposes a dock structure which extends to approximately 134 feet from the OHW

870 WINDJAMMER LANE, ORONO





870

Windjammer
Lane

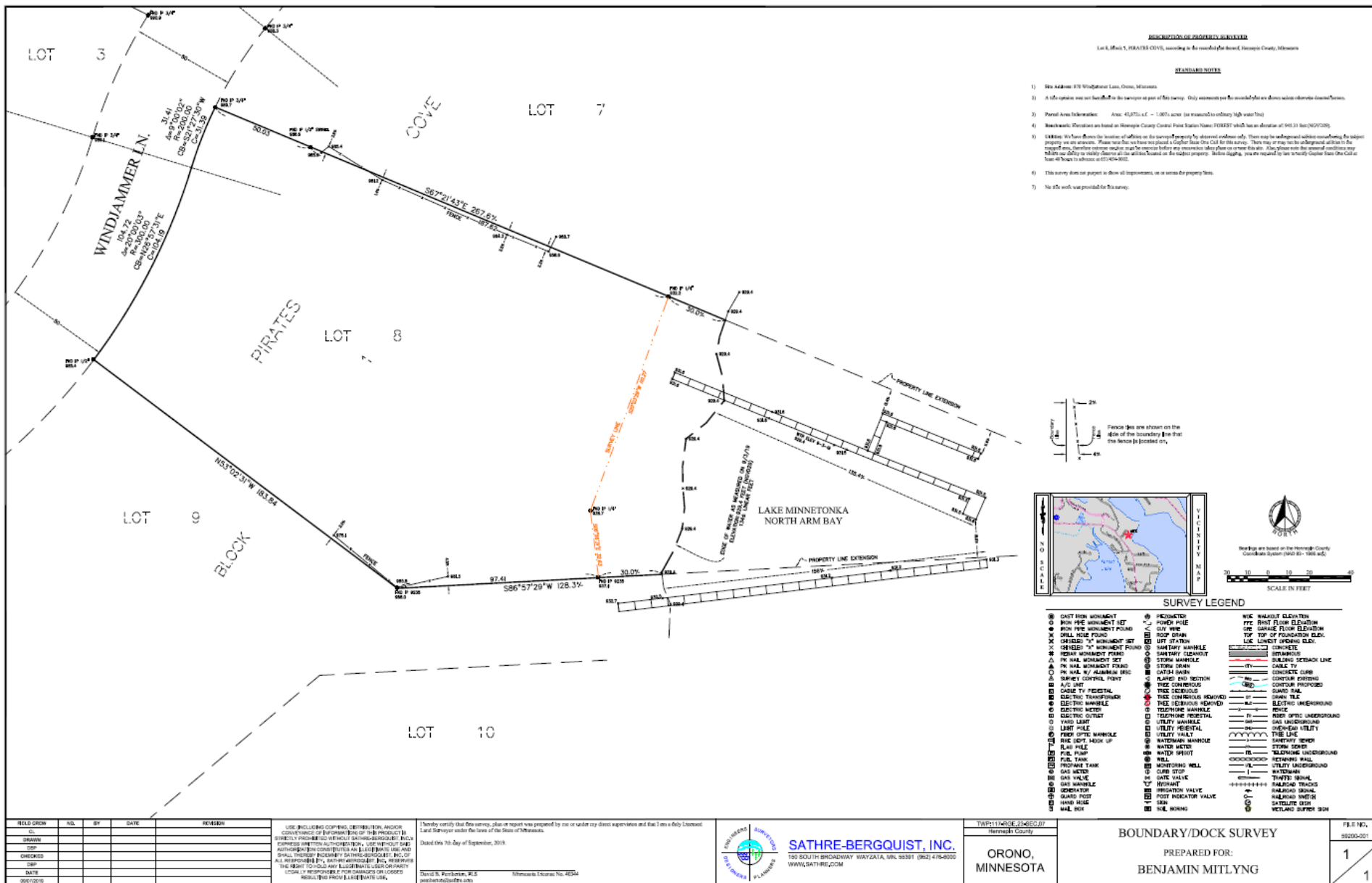


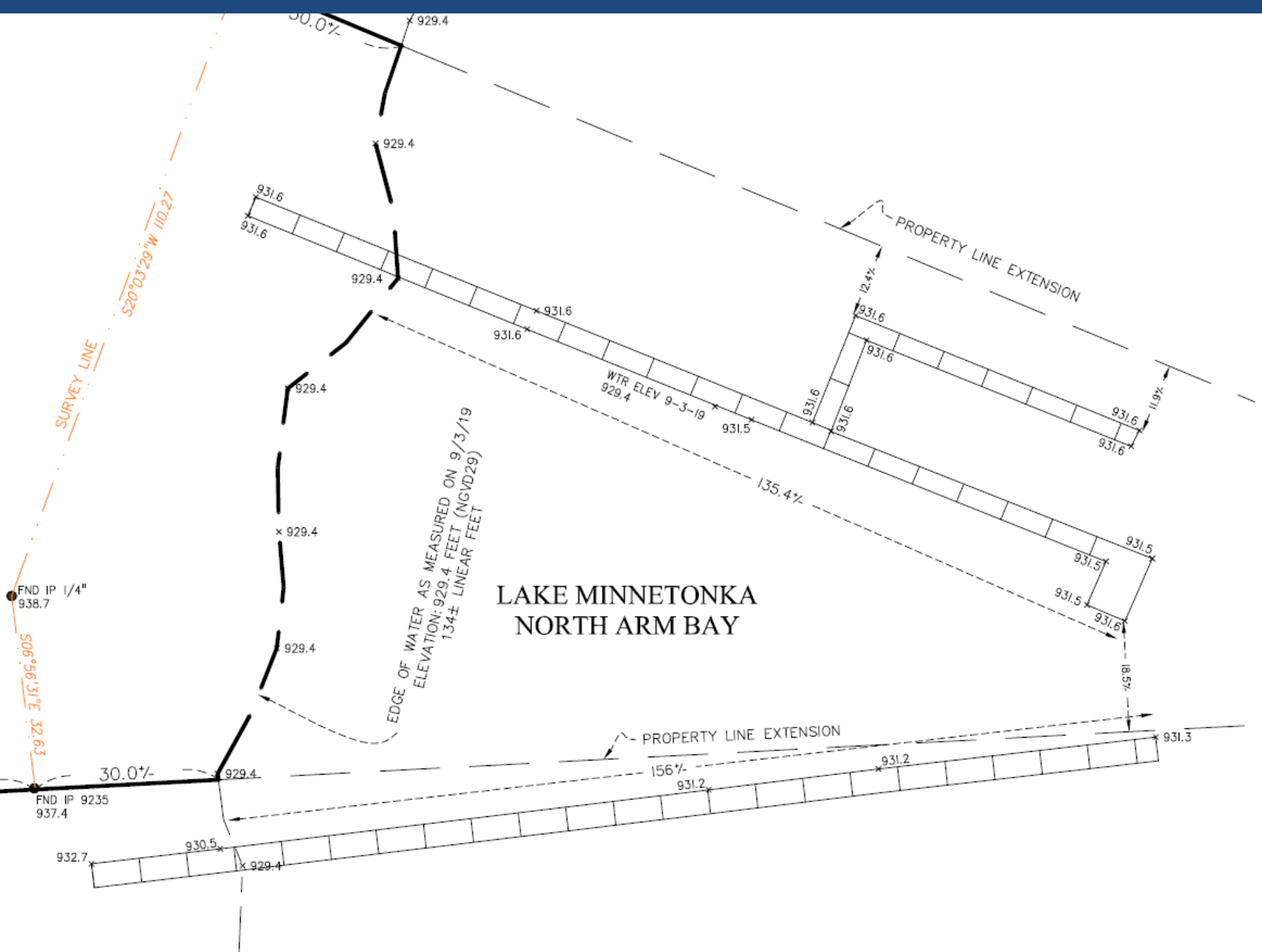
North Arm Bay

October 23, 2019

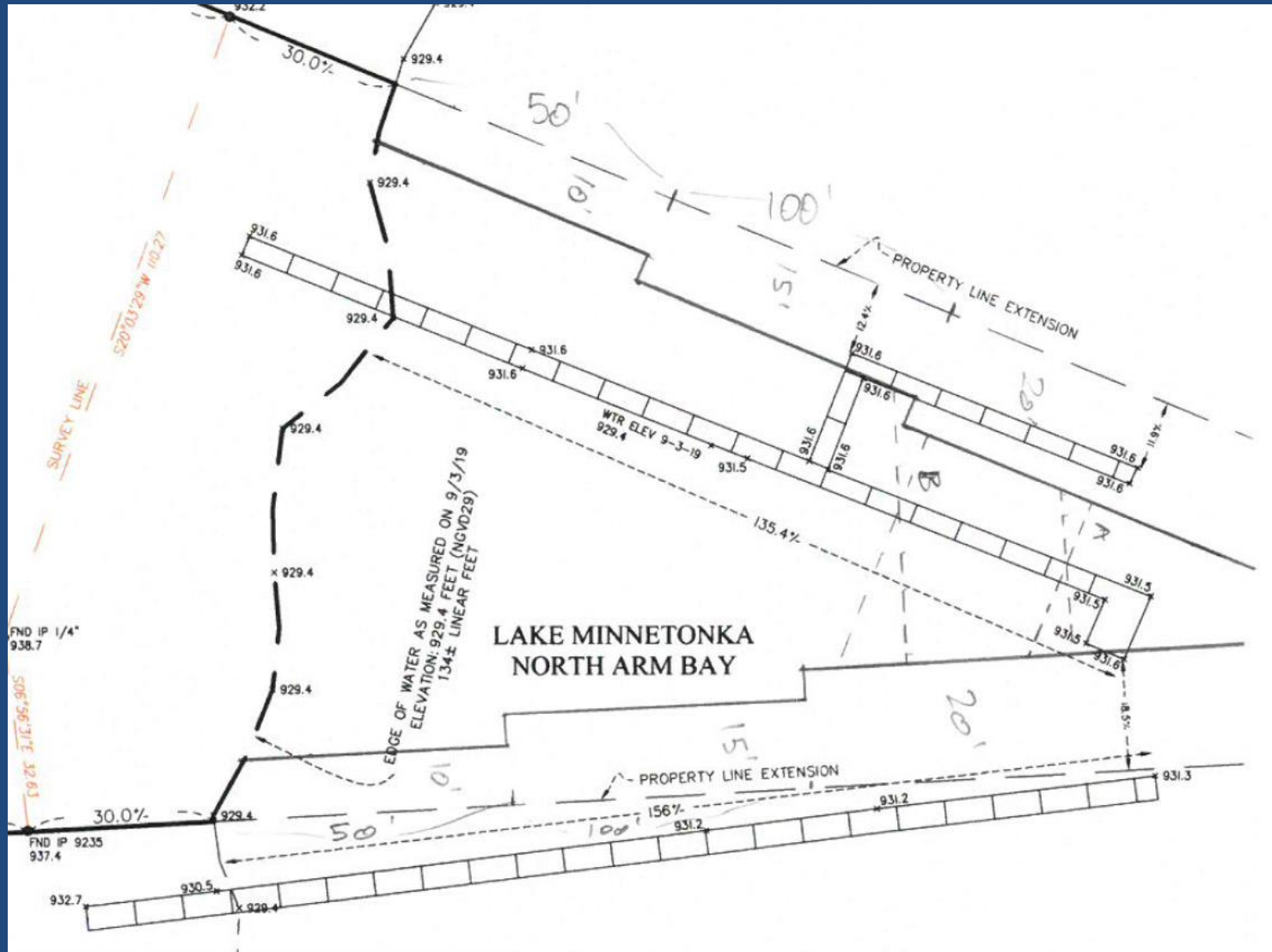
For illustrative purposes only

PROPOSED SITE PLAN





ANNOTATED SITE PLAN EXCERPT: STANDARD SETBACKS



VARIANCE STANDARDS

- 1. Has applicant sufficiently demonstrated practical difficulties exist that each of following are true?**
 1. Strict application of code prohibits property owner from using Lake in reasonable manner that is otherwise permitted by the code.
 2. Granting variance is within spirit and intent of code.
 3. Plight of property owner is due to circumstances:
 1. Unique to property;
 2. Not created by property owner; and
 3. Not based solely on economic considerations.
 4. Granting variance does not alter essential character of the area.
- 2. Is applicant proposing a use not allowed under the code?**
- 3. Would variance, if granted and with conditions imposed, adversely affect:**
 1. Purpose of Code?
 2. Public health, safety, and welfare?
 3. Reasonable access to or use of the Lake by public or riparian owners?

CONSIDERATIONS & CODE ANALYSIS

- **Adjusted Dock Use Area.**

- Board may adjust authorized dock use area for a property in order to provide reasonable access to the lake.

- **Side Setbacks.**

- Section 2.01 subd. 2b of the LMCD Code delineates setback distances of 10 feet for docks less than 50 feet in length, 15 from 50-100, and 20 longer than 100 feet in dock length. Setback distances from canopies are 20 feet from the edge of dock canopies.

- **Length.**

- Generally equal to shoreline, but not further than 100 feet in length.

PUBLIC / REVIEW AGENCY COMMENTS

- **Agency Review of Application / Comments (General Permit)**
 - No comments were received from the DNR, MCWD, or City of Orono.
- **Public Comments**
 - Charlie Smoot of nearby property to the south (980 North Arm Drive) contacted LMCD staff and voiced his support for the variance as proposed.
 - Other nearby residents called to inquire

PUBLIC HEARING

- **Public Hearing Requirements**
 - Posted in official newspaper October 11, 2019
 - Owners of properties within 350 feet notified, 10-day notice sent October 7, 2019
 - Posted online
- **Opportunity for interested individuals to present their views to Board for consideration**
 - Part of reviewing impact of a project
- **Only items under the LMCD Code and Board authority may be considered as part of any Approve or Deny decision**

STAFF RECOMMENDATIONS

- Staff recommends approval of length variance to provide adequate water depth
- Staff recommend approval of a variance for a 9.5-foot setback to the north
 - Standard 20-foot setback on south side maintained
 - Dock could move roughly 2.5 feet north from its current position

STAFF COMMENTS

- Dock structure and watercraft storage installed in strict conformance with approved dock use area.
- Watercraft storage must remain in compliance with LMCD Code Section 2.02, watercraft density.

STAFF COMMENTS

Previously Suggested Standard Provisions to Include in Variances:

- **Watercraft not extend beyond length of boat slip. For purposes of Order, length overall means horizontal length from foremost to aftermost point of watercraft, including all attached equipment in its normal operating position.**
- Any structures placed as part of this variance shall be maintained in good condition and shall promptly be removed, together with any watercraft stored on them, if this variance is ever revoked by action of the Board or if it rendered null and void.
- This variance shall be rendered null and void in event the Subject Property is subdivided. If the Subject Property is combined with another property, the applicant shall request a review of the variance by the LMCD Executive Director to determine if a new or amended variance is required. If the Executive Director determines that a new or amended variance is required, the applicant shall submit an application for the variance to the LMCD within forty five (45) days of the determination or bring the Subject Property into conformance with the LMCD Code without reliance on this variance within the same period.
- This variance grants no vested rights to the use of the Lake. Use of the Lake shall at all times remain subject to regulation by the LMCD to assure the public of reasonable and equitable access to the Lake.
- Utilization of the Lake pursuant to this variance constitutes, and shall be deemed, acceptance of, and agreement to, the terms and conditions of this variance without exception, qualification, or reservation.



To preserve and enhance the "Lake Minnetonka experience"

QUESTIONS?



ITEM 11A

LAKE MINNETONKA CONSERVATION DISTRICT

5341 MAYWOOD ROAD, SUITE 200 • MOUND, MINNESOTA 55364 • TELEPHONE 952/745-0789 • FAX 952/745-9085

DATE: October 23, 2019

TO: LMCD Board of Directors

FROM: Vickie Schleuning, *Vickie Schleuning* Executive Director

SUBJECT: Watercraft Wastewater Discharge Suggested Code Amendment

ACTION

Board review and consideration of public input regarding a code amendment to reinforce state and federal laws regarding wastewater discharge from watercraft and to remove certain wastewater devices from watercraft operating on Lake Minnetonka.

The following motions are offered depending on whether the Board wishes to approve or deny the draft language:

Approval:

I make a motion to approve the code amendment regarding sewage discharges in Lake Minnetonka <with the following amendment...>.

I make a motion to adopt the resolution approving summary language of the ordinance for publication.

Denial:

I make a motion to deny the code amendment regarding sewage discharges in Lake Minnetonka for the following reasons....

BACKGROUND

On September 25, 2019, the LMCD Board discussed a potential code amendment that would clarify current LMCD regulations and reinforce the state and federal laws that make it illegal to discharge wastewater from watercraft into many waterbodies in Minnesota and throughout the country. The proposed code amendment would also emphasize the importance of keeping pollution out of the water to protect the public, aquatic plants, and animals.

After reviewing the public input and response, board direction is sought to determine what, if any, changes to the draft amendment is desired.

The proposed code amendment has been posted for public comment. At the next Board meeting on October 9, 2019, staff presented comments that had been received. The comments received largely reflected comments made during Board discussion. Additionally, staff presented information regarding the implications of the introduction of urine to a lake environment. At the October 9, 2019

board meeting, a motion was made and carried to continue the discussion into the next board meeting due to time.

Considerable research and discussion has been done. Based on that research and discussion, it appears the following items are key considerations for this potential amendment to the LMCD Code:

- Pump removal vs. Y-valve
- Public urination
- Who gets penalized for infractions?

ATTACHMENTS

- Proposed Ordinance Language
- September 25, 2019 Item 11A Board Memo and Informational Attachment
- October 9, 2019 Item 11A Board Memo

ATTACHMENT 1

LAKE MINNETONKA CONSERVATION DISTRICT STATE OF MINNESOTA

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE LAKE MINNETONKA CONSERVATION DISTRICT CODE OF ORDINANCES REGARDING SEWAGE DISCHARGES

THE BOARD OF DIRECTORS OF THE LAKE MINNETONKA CONSERVATION
DISTRICT ORDAINS:

Article I. Definitions. Chapter I, Section 1.02, Subd. 47 of the Lake Minnetonka Conservation District Code of Ordinances is hereby amended as follows:

Subd. 47. “Sewage” means the water-carried waste products from residences, public buildings, institutions or other buildings, or any mobile source, including the excrementitious or other discharge from the bodies of human beings or animals, together with such ground water infiltration and surface water as may be present. For the purposes of this definition, “mobile source” includes, but is not limited to, watercraft, ice houses, aircraft, campers, or other vehicles or structures driven onto or placed on the Lake.

Article II. State Laws Incorporated. Chapter III, Section 3.17 of the Lake Minnetonka Conservation District Code of Ordinances is hereby amended as follows:

Section 3.17. Adoption of State Statutes and Regulations by Reference. The provisions of the following laws and regulations of the State of Minnesota are adopted by reference and made a part hereof as though fully set forth herein:

...

Subd. 16. Discharge from Marine Toilets. Minnesota Statutes, section 86B.325 (as amended).

Article III. Pollution; Sewage Discharges. Chapter IV, Section 4.01 of the Lake Minnetonka Conservation District Code of Ordinances is hereby amended as follows:

Section 4.01. Pollution of Waters of the Lake.

Subd. 1. Prohibition. No person shall pollute the surface waters of the district by placing or depositing or by permitting to be placed or deposited in, or upon said waters or upon any public or private property from which may run into said water any sewage, industrial waste, garbage, rubbish or other waste. This prohibition includes, but is not limited to, the following:

- a) The discharge of sewage from marine toilets or retention devices in violation of Minnesota Statutes, section 86B.325, which is adopted by reference into this LMCD Code by Section 3.17, Subd. 16; and

b) A person who urinates or defecates directly into the Lake.

Subd. 2. Retention Device Required. Minnesota Statutes, section 86B.535, prohibiting a watercraft from being equipped with a marine toilet unless it also equipped with an acceptable retention device, is hereby adopted by reference and made part hereof, including any amendments made thereto.

Subd. 3. Pump Removal. The owner of a watercraft equipped with a pump capable of pumping sewage or other wastes directly into the Lake, such pumps being commonly referred to as macerator pumps or grinder pumps, are required to have such pumps removed from the watercraft before placing the watercraft on the Lake. Additionally, the owner of such a watercraft shall cause the "Y" valve on such pumping system to be locked into the position so that sewage can only be removed by an on-land disposal system and cannot be manually or mechanically directed into the Lake. The handle shall be secured in such a way so as to prohibit sewage from being pumped or otherwise released directly into the Lake.

Subd. 4. Launching Prohibited. It shall be a petty misdemeanor for any person to launch a watercraft equipped with a marine toilet into the Lake without first inspecting the watercraft to confirm the pump is removed and the "Y" valve is locked as required in subdivision 3 of this section.

Subd. 5. Reporting Violations. Those service providers who provide watercraft launching, sewage pumping, or recovery services are required to report to the LMCD if they become aware of a watercraft being operated on the Lake, or that is being returned to the Lake, that is not in compliance with subdivision 3 of this Section. Failure to report such noncompliance is not punishable as a violation of this LMCD Code.

Subd. 26. Private Sewage Systems. Private sewage disposal systems designed for soil absorption of subsurface disposal shall be operated as such and any surface discharge from either is prohibited.

Subd. 37. Littering. No person shall throw or otherwise discard or deposit any bottle, can, carton, or other food or beverage wrapper or container, leaves, branches, grass clippings or any other rubbish or wastes in the waters of the district or on the shoreline of such waters.

Subd. 48. Pieces of Ice. No person shall leave on the surface of the ice or snow pieces of ice cut from the Lake. All such pieces of ice cut from the Lake shall be removed from the Lake, replaced in the hole from which they were cut, or deposited under the surface of the ice.

Subd. 59. Variances. Where, upon the written application of the responsible person or persons, other than metropolitan sewer board sewage facility operators, the Board finds that by reason of exceptional circumstances strict conformity with any of the provisions contained herein would cause undue hardship, would be unreasonable, impractical, or not feasible under the circumstances, the Board may permit a variance from these provisions upon such condition and within such time limitations as it may

prescribe, for prevention, control, or abatement of pollution in harmony with the intent of state, federal and Lake Minnetonka Conservation District Laws.

Article IV. Declaration. This enactment is adopted by a majority vote of all the members of the Board, has the effect of an ordinance, and is in effect on the first day of publication after adoption.

Adopted this ____ day of _____ 2019.

BY THE BOARD OF DIRECTORS

Gregg Thomas, Chair

ATTEST:

Ann Hoelscher, Secretary

Date of Publication: _____, 2019

Effective Date: _____, 2019

New material is double-underlined and removed material is ~~stricken~~.

NOTES FOR SEWAGE DISCHARGE ORDINANCE

1. Does the Board want to retain the language prohibiting a person from urinating or defecating directly into the Lake?

- a. If no, the Section 4.01, subd. 1 would read as follows:

Subd. 1. Prohibition. No person shall pollute the surface waters of the district by placing or depositing or by permitting to be placed or deposited in, or upon said waters or upon any public or private property from which may run into said water any sewage, industrial waste, garbage, rubbish or other waste. This prohibition includes, but is not limited to, the discharge of sewage from marine toilets or retention devices in violation of Minnesota Statutes, section 86B.325, which is adopted by reference into this LMCD Code by Section 3.17, Subd. 16; and

2. Does the Board want to require the removal of the macerator pump?

- a. If no, then Section 4.01, subd. 3 would read as follows:

Subd. 3. "Y" Valve Lock. The owner of a watercraft equipped with a pump capable of pumping sewage or other wastes directly into the Lake, such pumps being commonly referred to as macerator pumps or grinder pumps, shall cause the "Y" valve on such pumping system to be locked into the position so that sewage can only be removed by an on-land disposal system and cannot be manually or mechanically directed into the Lake. The handle shall be secured in such a way so as to prohibit sewage from being pumped or otherwise released directly into the Lake.

3. Does the Board want anyone who launches a boat to be responsible for inspecting to confirm the required work is done before launching the boat into the Lake?

- a. If no, then Section 4.01, subd. 4 would read as follows:

Subd. 4. Launching Prohibited. It shall be a petty misdemeanor for the owner of a watercraft to launch, or allow to be launched, a watercraft equipped with a marine toilet into the Lake without having first removed the pump and locking the "Y" valve as required in subdivision 3 of this section.

- b. If no, and the pump removal requirement is eliminated, then it would read as follows:

Subd. 4. Launching Prohibited. It shall be a petty misdemeanor for the owner of a watercraft to launch, or allow to be launched, a watercraft equipped with a marine toilet into the Lake without having first locked the "Y" valve as required in subdivision 3 of this section.

**LAKE MINNETONKA CONSERVATION DISTRICT
STATE OF MINNESOTA**

RESOLUTION NO. ____

**A RESOLUTION APPROVING SUMMARY LANGUAGE
FOR PUBLICATION OF ORDINANCE NO. ____**

WHEREAS, on October 23, 2019 the Board of Directors ("Board") of the Lake Minnetonka Conservation District ("LMCD") adopted Ordinance No. ____, "An Ordinance Amending the Lake Minnetonka Conservation District Code of Ordinances Regarding Sewage Discharges" ("Ordinance");

WHEREAS, Chapter I, Section 1.04, Subd. 5 of the LMCD Code allows the publication of an ordinance by title and summary instead of publishing the full text; and

WHEREAS, the Board determines that publishing the full text of the Ordinance is impractical and that publishing a summary of the Ordinance, together with placing it on the LMCD's website and making it available in the LMCD office for review, is sufficient to inform the public of the Ordinance.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors hereby approves the following summary language for publication:

**AN ORDINANCE AMENDING THE LAKE MINNETONKA CONSERVATION
DISTRICT CODE OF ORDINANCES REGARDING SEWAGE DISCHARGES
ORDINANCE NO. _____**

The Board of Directors of the Lake Minnetonka Conservation District adopted the above referenced ordinance to adopt by reference prohibitions related to the discharge of sewage into the Lake, to require watercraft equipped with marine toilets to have a retention device, to require the removal of macerator and grinder pumps, to require the "Y" valve be locked so sewage is not directed into the Lake, prohibit the launching of watercraft with a marine toilet without confirming the pump is removed and the "Y" valve is locked, and to require service providers that service or launch watercraft to report noncompliance with these requirements. The ordinance is effective immediately. A copy of the full ordinance is available on the LMCD website and may be obtained by contacting the LMCD office.

Vickie Schleuning, Executive Director

Adopted on this 23rd day of October 2019.

BY THE BOARD OF DIRECTORS

Gregg Thomas, Chair

Attest: _____
Ann Hoelscher, Secretary



ATTACHMENT 2

LAKE MINNETONKA CONSERVATION DISTRICT

5341 MAYWOOD ROAD, SUITE 200 • MOUND, MINNESOTA 55364 • TELEPHONE 952/745-0789 • FAX 952/745-9085

DATE: October 9, 2019

TO: LMCD Board of Directors

FROM: Vickie Schleuning, *Vickie Schleuning* Executive Director

SUBJECT: Watercraft Wastewater Discharge Suggested Code Amendment

ACTION

Board review and consideration of public input regarding a code amendment to reinforce state and federal laws regarding wastewater discharge from watercraft and to remove certain wastewater devices from watercraft operating on Lake Minnetonka.

The following motions are offered depending on whether the Board wishes to approve or deny the draft language:

Approval:

I make a motion to approve the code amendment regarding sewage discharges in Lake Minnetonka <with the following amendment...>.

I make a motion to adopt the resolution approving summary language of the ordinance for publication.

Denial:

I make a motion to deny the code amendment regarding sewage discharges in Lake Minnetonka for the following reasons....

BACKGROUND

On September 25, 2019, the LMCD Board discussed a potential code amendment that would clarify current LMCD regulations and reinforce the state and federal laws that make it illegal to discharge wastewater from watercraft into many waterbodies in Minnesota and throughout the country. The proposed code amendment would also emphasize the importance of keeping pollution out of the water to protect the public, aquatic plants, and animals.

After reviewing the public input and response, board direction is sought to determine what, if any, changes to the draft amendment is desired.

The proposed code amendment has been posted for public comment. At the next Board meeting, staff will present comments that have been received. Additionally, staff will present information regarding the implications of the introduction of urine to a lake environment.

In regard to the board question regarding penalties for urinating in public, the following information was provided by Prosecuting Attorney Steve Tallen:

- **Applicable Misdemeanor Ordinances.** The ordinance used to cover this kind of behavior is presently numbered LMCD Code Section 3.01 subd. 23(a) 4, Public Nuisances Defined, which covers lewd or lascivious conduct, offensive to public decency, or indecent exposure. LMCD Code Section 3.01 subd. 23(a) 7 which is disorderly conduct which is conduct that disturbs the peace and quiet or repose of others. These are misdemeanor with a maximum sentence of 90 days in the workhouse and/or a \$1,000 fine.
- **Potential Gross Misdemeanor or Felony.** In regard to possible felony charges for this type of behavior, the County Attorney would address these charges. Minnesota Statute 617.23 is the statute that covers Indecent Exposure. That statute does provide for felony charges, but only when the person has previously been convicted of indecent exposure in the presence of a minor under age 16, Criminal Sexual Conduct in the 5th degree under Minnesota Statute 609.3451, or committing the crime in front of a person who has been confined or whose movements have been restricted. It can also be a Gross Misdemeanor if the indecent conduct is committed in the presence of a minor under age 16 or the person has a previous conviction for a similar offense.

ATTACHMENTS

- Proposed Ordinance Language
- September 25, 2019 Item 11A Board Memo and Informational Attachment

**LAKE MINNETONKA CONSERVATION DISTRICT
STATE OF MINNESOTA**

ORDINANCE NO. _____

**AN ORDINANCE AMENDING THE LAKE MINNETONKA CONSERVATION
DISTRICT CODE OF ORDINANCES REGARDING SEWAGE DISCHARGES**

THE BOARD OF DIRECTORS OF THE LAKE MINNETONKA CONSERVATION
DISTRICT ORDAINS:

Article I. Definitions. Chapter I, Section 1.02, Subd. 47 of the Lake Minnetonka Conservation District Code of Ordinances is hereby amended as follows:

Subd. 47. “Sewage” means the water-carried waste products from residences, public buildings, institutions or other buildings, or any mobile source, including the excrementitious or other discharge from the bodies of human beings or animals, together with such ground water infiltration and surface water as may be present. For the purposes of this definition, “mobile source” includes, but is not limited to, watercraft, ice houses, aircraft, campers, or other vehicles or structures driven onto or placed on the Lake.

Article II. State Laws Incorporated. Chapter III, Section 3.17 of the Lake Minnetonka Conservation District Code of Ordinances is hereby amended as follows:

Section 3.17. Adoption of State Statutes and Regulations by Reference. The provisions of the following laws and regulations of the State of Minnesota are adopted by reference and made a part hereof as though fully set forth herein:

...

Subd. 16. Discharge from Marine Toilets. Minnesota Statutes, section 86B.325 (as amended).

Article III. Pollution; Sewage Discharges. Chapter IV, Section 4.01 of the Lake Minnetonka Conservation District Code of Ordinances is hereby amended as follows:

Section 4.01. Pollution of Waters of the Lake.

Subd. 1. Prohibition. No person shall pollute the surface waters of the district by placing or depositing or by permitting to be placed or deposited in, or upon said waters or upon any public or private property from which may run into said water any sewage, industrial waste, garbage, rubbish or other waste. This prohibition includes, but is not limited to, the following:

- a) The discharge of sewage from marine toilets or retention devices in violation of Minnesota Statutes, section 86B.325, which is adopted by reference into this LMCD Code by Section 3.17, Subd. 16; and
- b) A person who urinates or defecates directly into the Lake.

Subd. 2. Retention Device Required. Minnesota Statutes, section 86B.535, prohibiting a watercraft from being equipped with a marine toilet unless it also equipped with an acceptable retention device, is hereby adopted by reference and made part hereof, including any amendments made thereto.

Subd. 3. Pump Removal. The owner of a watercraft equipped with a pump capable of pumping sewage or other wastes directly into the Lake, such pumps being commonly referred to as macerator pumps or grinder pumps, are required to have such pumps removed from the watercraft before placing the watercraft on the Lake. Additionally, the owner of such a watercraft shall cause the "Y" valve on such pumping system to be locked into the position so that sewage can only be removed by an on-land disposal system and cannot be manually or mechanically directed into the Lake. The handle shall be secured in such a way so as to prohibit sewage from being pumped or otherwise released directly into the Lake.

Subd. 4. Launching Prohibited. It shall be a petty misdemeanor for any person to launch a watercraft equipped with a marine toilet into the Lake without first inspecting the watercraft to confirm the pump is removed and the "Y" valve is locked as required in subdivision 3 of this section.

Subd. 5. Reporting Violations. Those service providers who provide watercraft launching, sewage pumping, or recovery services are required to report to the LMCD if they become aware of a watercraft being operated on the Lake, or that is being returned to the Lake, that is not in compliance with subdivision 3 of this Section. Failure to report such noncompliance is not punishable as a violation of this LMCD Code.

Subd. 26. Private Sewage Systems. Private sewage disposal systems designed for soil absorption of subsurface disposal shall be operated as such and any surface discharge from either is prohibited.

Subd. 37. Littering. No person shall throw or otherwise discard or deposit any bottle, can, carton, or other food or beverage wrapper or container, leaves, branches, grass clippings or any other rubbish or wastes in the waters of the district or on the shoreline of such waters.

Subd. 48. Pieces of Ice. No person shall leave on the surface of the ice or snow pieces of ice cut from the Lake. All such pieces of ice cut from the Lake shall be removed from the Lake, replaced in the hole from which they were cut, or deposited under the surface of the ice.

Subd. 59. Variances. Where, upon the written application of the responsible person or persons, other than metropolitan sewer board sewage facility operators, the Board finds that by reason of exceptional circumstances strict conformity with any of the

provisions contained herein would cause undue hardship, would be unreasonable, impractical, or not feasible under the circumstances, the Board may permit a variance from these provisions upon such condition and within such time limitations as it may prescribe, for prevention, control, or abatement of pollution in harmony with the intent of state, federal and Lake Minnetonka Conservation District Laws.

Article IV. Declaration. This enactment is adopted by a majority vote of all the members of the Board, has the effect of an ordinance, and is in effect on the first day of publication after adoption.

Adopted this ____ day of _____ 2019.

BY THE BOARD OF DIRECTORS

Gregg Thomas, Chair

ATTEST:

Ann Hoelscher, Secretary

Date of Publication: _____, 2019

Effective Date: _____, 2019

New material is double-underlined and removed material is ~~stricken~~.



ATTACHMENT 3

LAKE MINNETONKA CONSERVATION DISTRICT

5341 MAYWOOD ROAD, SUITE 200 • MOUND, MINNESOTA 55364 • TELEPHONE 952/745-0789 • FAX 952/745-9085

DATE: September 25, 2019

TO: LMCD Board of Directors

FROM: Vickie Schleuning, *Vickie Schleuning* Executive Director

SUBJECT: Watercraft Wastewater Discharge Suggested Code Amendment

ACTION

Board discussion and public input regarding a code amendment to reinforce state and federal laws regarding wastewater discharge from watercraft and a suggestion to remove certain wastewater devices from watercraft operating on Lake Minnetonka.

BACKGROUND

The discharge or depositing of sewage or wastewater in Lake Minnetonka is illegal. This code amendment clarifies current LMCD regulations and reinforces the state and federal laws that currently make it illegal to discharge wastewater from watercraft into many waterbodies in Minnesota and throughout the country. It also emphasizes the importance of keeping pollution out of the water to protect the public, aquatic plants, and animals.

Further, a marina owner has suggested that certain wastewater equipment, such as a macerator or grinder pump, be removed from watercraft that operate on Lake Minnetonka. After several conversations with various marina owners, code amendment language has been developed and attached for your review and public input. Removal of these pumps would prevent the intentional or accidental discharge of sewage from certain watercraft that have these devices.

Staff is working with Hennepin County and other stakeholders over the next few months to review options for reducing the risk of illness outbreaks at mass gatherings. While there are many possible ways that a pathogen could have been introduced resulting in the illness outbreak at Big Island on July 4th, this agenda item reflects one action that may help reduce the risk and educate boat owners regarding the importance of proper waste disposal. Also, any person that has knowledge of situations where waste was improperly or accidentally discharged should contact the LMCD right away.

ATTACHMENT

- Suggested Code Amendment Language Regarding Watercraft Wastewater Discharge
- General Information Regarding Sewage and Waste Disposal

Summary Regarding Watercraft Wastewater Disposal & Regulations

Excerpts From Various Sources

Overview of Pollutant Disposal Laws

Signs like these are posted at marine sanitation pump-out stations in Minnesota. It is illegal to discharge waste, oil, or trash into any state or federally controlled waters. This is for very good reasons:



- Sewage carries disease and other pollutants that are harmful to people, aquatic plants and animals.
- Trash thrown into the water can injure swimmers and wildlife alike. It can also plug engine cooling water intakes.
- Pollution is unsightly and takes away from your enjoyment of the water.

Boat operators need to be aware of the following regulations for waste, oil, and trash disposal that apply to both federally controlled and state waters. The Refuse Act prohibits throwing, discharging, or depositing any refuse matter of any kind (including trash, garbage, oil, and other liquid pollutants) into the waters of the United States.

Discharge of Sewage and Waste

Under state law, toilets on board boats must be no-discharge devices (see exceptions below). Waste must be retained on board for proper disposal after returning to shore.

If you have a recreational boat with permanently installed toilet facilities, it must have an operable marine sanitation device (MSD) on board. All permanently installed devices must be U.S. Coast Guard–certified.

There are three types of MSDs.

- Types I and II MSDs are usually found on large boats. Waste is treated with special chemicals to kill bacteria before the waste is discharged. Types I and II MSDs with “Y” valves that direct the waste overboard must be secured so that the valve cannot be opened. This can be done by placing a lock or non-reusable seal on the “Y” valve or by taking the handle off the “Y” valve.
- A Type III MSD, the simplest and most common, consists of holding tanks or portable toilets. It requires only a small storage space and is simple to operate. Type III MSDs have the least effect on the environment since the waste is to be discharged on shore into a local sewage treatment facility.

Type I and II USCG–certified treatment / discharge marine sanitation devices are currently legal only on the Mississippi River below Lock and Dam #2 (at Hastings) and on Lake Superior. This is a result of the federal preemption of state law. MSDs on boats less than 65 feet in length must be USCG–certified Type I or II devices.

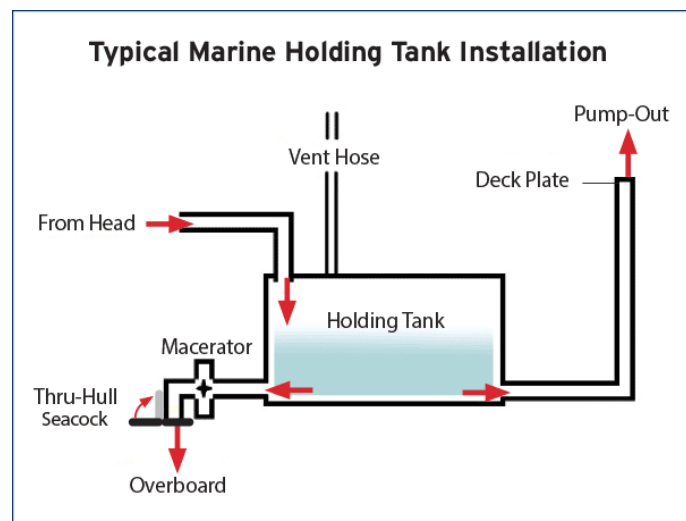
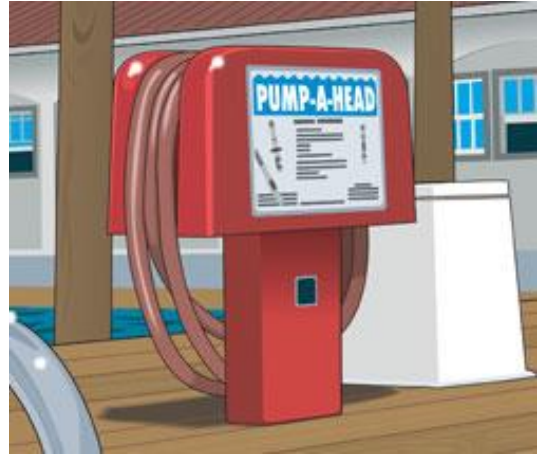
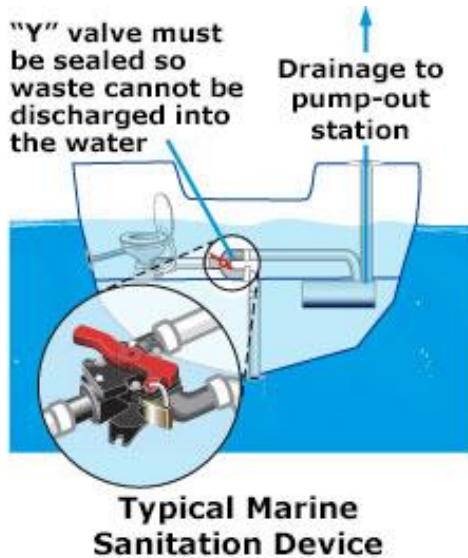


Diagram Source: Boat US

Discharge of Trash

The Act to Prevent Pollution from Ships places limitations on the discharge of garbage from boats. It is illegal to dump refuse, garbage, or plastics into any state or federally controlled waters. Many forms of litter can kill birds, fish, and marine mammals.

- You must store trash in a container while on board and place it in a proper receptacle after returning to shore.
- If boating on federally controlled waters and your boat is 26 feet or longer, you must display a Garbage Disposal Placard in a prominent location. The Garbage Disposal Placard is a durable sign that is at least 4 x 9 inches and notifies passengers and crew about discharge restrictions.

It is illegal for any vessel to dump plastic trash anywhere in the ocean or navigable waters of the United States. Annex V of the MARPOL TREATY is a new International Law for a cleaner, safer marine environment. Each violation of these requirements may result in civil penalty up to \$25,000, a fine up to \$50,000, and imprisonment up to 5 years.

U.S. lakes, rivers, bays, sounds, and 3 miles from shore
ILLEGAL TO DUMP:
 Plastic Garbage
 Paper Metal
 Rags Crockery
 Glass Dunnage
 Food

3 to 12 miles
ILLEGAL TO DUMP:
 Plastic
 Dunnage (lining & packing materials that float)
 Also, if not ground to less than one inch:
 Garbage Metal
 Paper Crockery
 Rags Food
 Glass

12 to 25 miles
ILLEGAL TO DUMP:
 Plastic
 Dunnage (lining & packing materials that float)

Outside 25 miles
ILLEGAL TO DUMP:
 Plastic

State and local regulations may further restrict the disposal of garbage

Working together we can all make a difference!

Source: Boaters Ed Course

2018 Minnesota Statutes

86B.325 DISCHARGE FROM MARINE TOILETS PROHIBITED.

(a) A person owning or operating a watercraft or other marine conveyance on the waters of this state may not use, operate, or allow the use or operation of a marine toilet or similar device for the disposition of sewage or other wastes unless the toilet wastes are retained for disposition on land by means of facilities constructed and operated in accordance with rules adopted by the state commissioner of health and approved by the Pollution Control Agency.

(b) A person may not:

(1) discharge sewage or other wastes into the waters of this state directly or indirectly from a watercraft or other marine conveyance; or

(2) place, leave, discharge, or cause to be placed, left, or discharged a container of sewage or other wastes into waters of this state by a person whether or not the owner, operator, guest, or occupant of a watercraft or other marine conveyance.

(c) Toilets must be sealed or otherwise rendered inoperative so that human or other waste cannot be discharged from the toilet into waters of this state.

History:

1990 c 391 art 9 s 17

Copyright © 2018 by the Revisor of Statutes, State of Minnesota. All rights reserved.

Environmental Protection Agency Information

Vessel Sewage Discharges: Statutes, Regulations, and Related Laws and Treaties

You may need a PDF reader to view some of the files on this page. See [EPA's About PDF page](#) to learn more. *Section 312 of the Clean Water Act (CWA) sets out the principal framework for regulating sewage discharges from vessels into the U.S. navigable waters and is implemented jointly by the U.S. Environmental Protection Agency (EPA) and the U.S. Coast Guard. However, sewage discharges from certain vessels may also be subject to regulation under other federal statutes or international treaties.*

Statutes

Clean Water Act Section 312 (33 U.S.C. 1322)

CWA sections 312(a) – (m) provide the statutory framework under which the EPA and the U.S. Coast Guard regulate sewage discharges from vessels. See Clean Water Act Section 312 ([33 U.S.C. 1322 \(PDF\)](#))(10 pp, 170 K)).

Note on the relationship between CWA sections 312 and 402:

Section 301(a) of the CWA provides that "the discharge of any pollutant by any person shall be unlawful" unless the discharge is in compliance with certain other sections of the Act. 33 U.S.C. 1311(a). The CWA defines "discharge of a pollutant" as "(A) any addition of any pollutant to navigable waters from any point source, (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft." 33 U.S.C. 1362(12). A "point source" is a "discernible, confined and discrete conveyance" and includes a "vessel or other floating craft." 33 U.S.C. 1362(14). A person may discharge a pollutant without violating the section 301 prohibition by obtaining a [National Pollutant Discharge Elimination System \(NPDES\)](#) permit under section 402 of the CWA. ([33 U.S.C. 1342 \(PDF\)](#))(8 pp, 164 K)).

Vessel sewage discharges defined in CWA section 312 are excluded from Vessel General Permit (VGP) coverage although certain vessels are required to obtain coverage under EPA's NPDES VGP for discharges incidental to the normal operation of those vessels (see below for information on the VGP). While sewage is defined as a "pollutant" under the CWA, **sewage from vessels** within the meaning of section 312, is exempt from this statutory definition [33 U.S.C. 1362(6); see also 33 U.S.C. 1322(a)(6) (definition of "sewage")]. Sewage from vessels also includes graywater for commercial vessels operating on the Great Lakes and is also exempt [33 U.S.C. 1322(a)(10) (definition of "commercial vessels" for purposes of section 312)]. Therefore, vessel owners/operators are not required to obtain NPDES permits before discharging sewage. However, vessels discharging graywater and sewage in one effluent stream, and are not otherwise "commercial vessels" under CWA section 312, are required to follow the requirements outlined in CWA section 312 and the VGP.

Implementing Regulations

The EPA regulations implementing CWA section 312 (standards for marine sanitation devices (MSDs)): [40 C.F.R. 140 et seq \(PDF\)](#)(5 pp, 229 K).

U.S. Coast Guard regulations implementing CWA section 312 (regulations governing the design, construction, certification, installation and operation of MSDs): [33 C.F.R. 159, Subparts A-D \(PDF\)](#)(18 pp, 273 K).

Related Laws and Treaties

Sewage discharges from certain vessels may also be subject to regulation under other Federal statutes and/or international requirements. Examples of these regulations include Title XIV, which applies to certain cruise ships operating in Alaska, and MARPOL Annex IV, which applies if the vessel's flag State is a party to Annex IV. Discharges of graywater and sewage that have been mixed into one effluent stream are also regulated under the NPDES VGP, issued by the EPA pursuant to section 402 of the CWA.

"Title XIV" (33 U.S.C. 1901 Note)

On December 21, 2000, Congress enacted an omnibus appropriation bill that included new statutory requirements for certain cruise ships discharging graywater and sewage in Alaska [Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2001, Pub. L. No. 106-554, 114 Stat. 2763, enacting into law Title XIV of Division B of H.R. 5666, 114 Stat. 2763A-315, and codified at [33 U.S.C. 1901 \(PDF\)](#)(7 pp, 154 K) Note ("Title XIV")].

Title XIV did not supersede regulation of sewage discharges from cruise ships under CWA section 312. Rather, Title XIV establishes separate requirements for the discharge of treated sewage and graywater from those cruise ships with capacity for 500 or more passengers and operating in certain waters in Alaska. Like the CWA section 312 program, Title XIV is jointly implemented by the EPA and the U.S. Coast Guard.

Vessel Discharge Permit Program (Vessel General Permit)

Pursuant to section 402 of the CWA, [33 U.S.C. 1342 \(PDF\)](#)(8 pp, 164 K), the VGP, finalized by the EPA in 2008, regulates discharges incidental to the normal operation of vessels operating in a capacity as a means of transportation. Recreational vessels as defined in section 502(25) of the CWA are not subject to the VGP. In addition, with the exception of ballast water discharges, non-recreational vessels less than 79 feet (24.08 meters) in length, and all commercial fishing vessels regardless of length, are not subject to the VGP.

The VGP includes:

- general effluent limits applicable to all covered discharges;
- general effluent limits applicable to 26 specific discharge streams;
- narrative water-quality based effluent limits;
- inspection, monitoring, recordkeeping, and reporting requirements; and
- additional requirements applicable to certain vessel types.

Vessel sewage discharges within the meaning of CWA section 312 are excluded from coverage under the VGP. However, as noted above, graywater and sewage discharges mixed into one effluent stream are subject to the permit (except those discharges from "commercial vessels" (as defined at 33 U.S.C. 1322(a)(10)) operating on the Great Lakes). This one effluent

stream must meet the discharge limitation requirements in Parts 2 and 5 (if applicable) of the VGP, and any applicable CWA section 312 requirements for sewage discharges.

See Vessel Discharge Permit Program (Vessel General Permit).

MARPOL Annex IV

The principal international instrument regulating sewage discharges from vessels is Annex IV to the "International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto" ("MARPOL Annex IV"). The United States is not a party to MARPOL Annex IV, and thus is not bound by the Annex's provisions. However, ocean-going vessels operating in U.S. navigable waters which are registered in foreign countries may be subject to the MARPOL Annex IV requirements.

More information regarding MARPOL Annex IV can be accessed on the IMO website.



LAKE MINNETONKA CONSERVATION DISTRICT

5341 MAYWOOD ROAD, SUITE 200 • MOUND, MINNESOTA 55364 • TELEPHONE 952/745-0789 • FAX 952/745-9085

DATE: October 23, 2019

TO: LMCD Board of Directors

FROM: Matthew Cook, Environmental Administrative Technician

THROUGH: Vickie Schleuning, Executive Director

SUBJECT: Renewal of De-icing License with Enlargement for City of Excelsior

ACTION

Board consideration of a 2019-2020 renewal application to enlarge a licensed de-icing facility for the City of Excelsior.

The following motions are offered depending on whether the Board wishes to approve or deny the request.

Approval:

I make a motion to approve the City of Excelsior's De-icing License Application as presented <or as amended> and to authorize the Executive Director to grant the License once all conditions are met.

Denial:

I make a motion to direct LMCD legal counsel to draft Findings of Fact and Order denying the applicant's De-icing License Application based on the following reasons... for consideration at the November 13, 2019 Board Meeting.

BACKGROUND

City of Excelsior (Applicant) has submitted an application to enlarge a licensed de-icing facility for the 2019-2020 winter season for an existing permanent dock structure. The facility is located on Excelsior Bay in the City of Excelsior. The site is located at 399 Lake Street, PID 34-117-23-11-0002.

The Applicant requests to enlarge the de-icing area in order to accommodate winter storage of an additional charter boat. A copy of the site plan and code requirements are included in the attachments for your review.

The following is a highlight of the de-icing expansion request and key considerations:

- Enlarge the de-icing area 24 feet to the northwest – this is in the opposite direction of the public launch area to the southeast.
- Provide additional floating silt curtain to fully encompass area of open water.
- Locate fencing to provide better installation and access to watercraft.
- Staff recommend that access to the walkway for the dock on the northwestern side of the site be limited and that the applicant meets all other de-icing license requirements.

PUBLIC COMMENTS

The Minnesota Department of Natural Resources, Minnehaha Creek Watershed District, and the City of Excelsior were notified of the requested change to the de-icing facility via a courtesy notice on October 17, 2019. Agency comments received through October 23, 2019 will be presented at the Board meeting.

BOARD AUTHORITY

The Board may approve or deny the proposal upon review of the application to enlarge a licensed de-icing facility. Only items under the LMCD Code and Board authority may be considered as part of any decision to approve or deny the application.

SUMMARY OF RELEVANT CODE SECTIONS

The following is a highlight of certain code sections related to this application and for consideration by the Board in consideration of the de-icing license application.

1. **Code Section 2.09, Subd. 1** requires a de-icing license for de-icing facilities and requires certain conditions to be met for safety factors.
2. **Code Section 2.09, Subd. 11** states the types of facilities that are eligible for a de-icing license. Given the definition of “Commercial dock” includes those owned by municipalities (Section 1.02, Subd. 8), the City of Excelsior meets criteria a) of Section 2.09, Subd. 11: “Commercial docks”.
3. **Code Section 2.09, Subd. 7** states facilities that are eligible for a license under Subd. 11b), any renewal licenses requiring an enlargement of a proposed Authorized De-icing Area or enlarged for reconfigured docks may be granted only by the Board of Directors.

The existing and proposed de-icing plans are attached. The proposed plan is generally in compliance with the code requirements. Staff will work with the applicant to ensure the regulations are met and safety measures are in place prior to issuing a renewal license and throughout the season.

RECOMMENDATION

Based on the findings regarding the proposed facility, staff recommends the Board approve the De-icing License for the applicant on the following conditions:

1. That access to the walkway for the dock on the northwestern side of the site be limited.
2. That all other requirements for the license are met.

Other reasonable conditions may be deemed necessary depending on the Board review and public input.

ATTACHMENTS

1. LMCD Code Excerpts
2. Aerial Map of Proposed Area
3. Existing De-icing Plan
4. Proposed De-icing Plan
5. Application

ATTACHMENT 1



LMCD Code Excerpts

City of Excelsior

Renewal of De-icing License with Enlargement

October 23, 2019

Section 1.02. Definitions.

Subd. 8. “Commercial Dock” means a dock or dock structure used in conjunction with a commercial or other revenue producing business enterprise including a private club, or a dock or dock structure on land owned by a municipality or political subdivision and operated, controlled or licensed by the municipality or political subdivision, but not including apartments or any such businesses involving the leasing of real property for residential use.

Section 2.01. Authorized Dock Use Area.

Subd. 2. Description of Authorized Dock Use Area. An authorized dock use area is described as follows:

- a) Length - The authorized dock use area for sites bordering on the Lake extends into the Lake a distance equal to the site Lake frontage to be measured at right angles to the side site lines and, except as provided herein, shall not extend into the Lake a distance of greater than 200 feet in the case of commercial docks in existence on August 30, 1978, and 100 feet in the case of other docks to be measured on a line parallel to the site side lines as extended into the Lake. In the case of commercial docks in existence on August 30, 1978, the lakeward extension of the dock use area more than 100 feet from the shoreline shall be limited to the distance from shore of the docks in existence on said date and that portion of said docks more than 100 feet from the shoreline may not be altered or expanded.

Section 2.09. De-icing Equipment.

Subd. 1. License Required. It is unlawful for any person to install, operate, maintain or use de-icing equipment on Lake Minnetonka without a special license issued in accordance with this section, or to install, operate, maintain or use de-icing equipment on Lake Minnetonka, with or without a license therefor, which constitutes a hazard to the safety of persons on the Lake. For purposes of this section, de-icing equipment shall be deemed to constitute such hazard whenever any of the following circumstances exist without being specifically authorized in a current or valid license for the facility:

- a) Except as provided in paragraph d) of this Subdivision, the entire area of open water or weakened ice is not enclosed by a semi opaque fence which is at least four feet in height;
- b) The entire fence, the area enclosed by the fence and the area deiced is not lighted from one-half hour before sunset to one-half hour after sunrise;

c) The entire fenced area is not marked by reflectorized warning signs at least every fifty feet around the perimeter of the fence.

d) During the periods prior to the generally accepted total Lake freezeover in the fall and following the beginning of the final thaw in the spring, the shoreline along the area deiced is not fenced with a semi opaque fence which is at least four feet in height and marked by reflectorized warning signs visible from 50 feet and installed every 50 feet along the shoreline.

Subd. 2. Application for License. A person desiring to install de-icing equipment may apply for a special license therefor to the Executive Director of the District on forms provided by the Executive Director. The application shall set forth the name and address of the owner, a general description of the equipment, its location, its general purpose and such other information as will enable the Executive Director and the Board of Directors to determine if the proposed installation will conform to the purposes of this section. The application shall be accompanied with such documentation as is necessary to show that the proposed installation will be made in accordance with applicable state and local building, electrical and other construction codes.

Subd. 3. Fee. A seasonal fee for a special de-icing license in an amount to be fixed from time to time by resolution of the Board shall accompany the application. A special license may not be issued unless the fee established pursuant to this subdivision is paid. An additional deposit in an amount established from time-to-time by resolution of the Board shall accompany the application to cover legal, surveying, engineering, inspection, maintenance, or other expenses incurred by the District. The Board shall approve all expenses charged against the deposit, and the unused portion thereof shall be returned to the applicant. The application shall state that the applicant agrees to reimburse the District for any legal, surveying, engineering, inspection, maintenance or other expenses incurred by the District in excess of the amount of the deposit.

Subd. 4. Issuance of License. A license may be granted by the Board, denied, or granted upon such conditions as are deemed necessary or prudent by the Board to protect the public health, safety and welfare. In deciding whether to grant or deny a license, determining appropriate conditions of issuance or establishing an Authorized De-icing Area, the Board shall consider such factors as the proximity of public access points, the size and configuration of adjacent and nearby properties, the use of the surface of the lake in the vicinity of the facility by the general public and other riparian owners, the proximity of channels, the effect on the public and adjacent riparian owners of any failure to confine de-icing to the Authorized De-icing Area, and the past history of de-icing operations by the applicant. All licenses issued under this Section shall be subject to the following conditions:

a) Fencing to enclose the area to be de-iced must be within the extended side site lines of the site and less than one hundred (100) feet beyond the end of the dock structure at the site. The area within these boundaries shall be referred to in this Subdivision as the "Authorized De-icing Area". The Board may establish a smaller Authorized De-icing Area if it deems such adjustment reasonable or prudent in the interest of public safety or protection of reasonable access to, and use of, the Lake by the public and other riparian owners. The Board may establish a larger Authorized De-icing Area by variance in accordance with Section 1.07.

b) The area to be de-iced shall be no greater than is necessary to prevent damage to the installation and shall not extend nor affect areas beyond the Authorized De-icing Area.

c) The area to be de-iced shall be enclosed by a snow fence or approved alternative four feet in height and a minimum of six reflectorized “Thin Ice” signs and at least one sign for every 50 feet; in a form approved by the Executive Director. De-icing will occur only in the fenced area. If open water or weakened ice occurs outside of the Authorized De-icing Area, or if water is pumped by de-icing equipment onto the surface of the ice outside of the Authorized De-icing Area, all de-icing equipment shall be turned off until sound ice is reestablished outside of the Authorized De-icing Area and all open water or weakened ice is enclosed by the fence required by this paragraph. The licensee will maintain fencing and signs around all open water or weakened ice at all times. Fencing installed temporarily outside of the Authorized De-icing Area shall be removed when sound ice is reestablished.

d) The installation including the fenced area will be adequately lighted to protect the public.

e) The applicant shall maintain liability insurance covering claims for death, injury or damage to property arising out of the operation of the de-icing equipment. Such insurance shall be in the amount of at least \$1,500,000 for persons and \$50,000 for property. In the case of insurance for commercial facilities, the insurance shall name the District as additional insured and shall provide that the insurance will not be amended or canceled without first giving 30 days’ written notice to the District.

f) The applicant will, by the installation of adequate screening, signing, or other means, effectively prevent the feeding and congregation of waterfowl and other animals and the creation of conditions constituting health hazards or public nuisances within the licensed area.

g) The installation will be supervised at all times and the applicant will provide the District with a primary telephone number and a 24 hour emergency telephone number.

h) The installation shall include an easily identifiable on-off switch located near the de-icing unit on the dock.

i) The applicant shall consent to permitting officers and agents of the District to shut off or remove the equipment if de-icing extends beyond the Authorized De-icing Area or if water is pumped by de-icing equipment onto the surface of the ice outside of the Authorized De-icing Area.

Subd. 5. Compliance With Conditions. The Executive Director or the Board of Directors may attach such guarantees and conditions to the license as are necessary to ensure compliance with this section. Violation of any such guarantees and conditions is grounds for revocation, suspension or modification of the conditions of the license pursuant to Section 1.06, Subd. 9. In the event the licensee does not consent in writing to any conditions imposed by the Executive Director, the application shall be referred to the Board. The license shall be of such duration as is specified in it, but in no event shall it extend beyond April 20 in any year.

Subd. 6. Maintenance of Equipment. Persons granted a license under this section shall maintain the safety facilities and equipment in a safe, neat, and orderly condition during the season, and upon termination of the license, the equipment shall be removed completely and the surrounding area cleared of all related materials and equipment.

Subd. 7. Issuance of License, New and Renewal. An application for a renewal de-icing license must be received prior to October 1st of the year of the beginning of the winter season during which the applicant wishes to operate de-icing equipment. The Executive Director shall not accept a renewal application received after October 1st unless it is accompanied by a late fee in an amount determined by resolution by the Board. For facilities that are eligible for a license under Subd. 11b), any renewal licenses requiring an enlargement of a proposed Authorized De-icing Area or license for de-icing enlarged or reconfigured docks may be granted only by the Board of Directors. In other cases, the Executive Director may issue renewal licenses without action by the Board of Directors provided there were no violations or alleged violations during the term of the prior seasonal license and a full deposit refund was given for the prior seasonal license. The Executive Director may issue new licenses without action by the Board of Directors upon determining that the applicant agrees through the application process to comply fully with the requirements of this Section. In the case of all other applications and in cases in which the Executive Director declines or fails to issue a license for any reason, the application shall be referred to the Board of Directors.

Subd. 8. Dams. Permanent dams which are licensed by the Department of Natural Resources and operated by a municipality or political subdivision of the state shall not be required to secure a special license under this section providing the following conditions are met:

- a) a snow fence four feet in height shall be provided which encloses all open water or dangerously thin ice in the vicinity of the dam;
- b) a minimum of six reflectorized warning signs shall be provided at intervals not exceeding 75 feet;
- c) appropriate steps shall be taken, either by obtaining insurance or otherwise to hold the District and its officers and employees harmless from any damage or injury arising out of the operation of the dam;

Subd. 9. Permits of Other Jurisdictions. Where a person has been issued a license to install and operate de-icing equipment by a municipality, and satisfactory proof thereof is presented to the Executive Director, the application shall so state. The Executive Director shall thereupon issue a license and attach whatever additional conditions the Executive Director deems necessary to ensure compliance with this section.

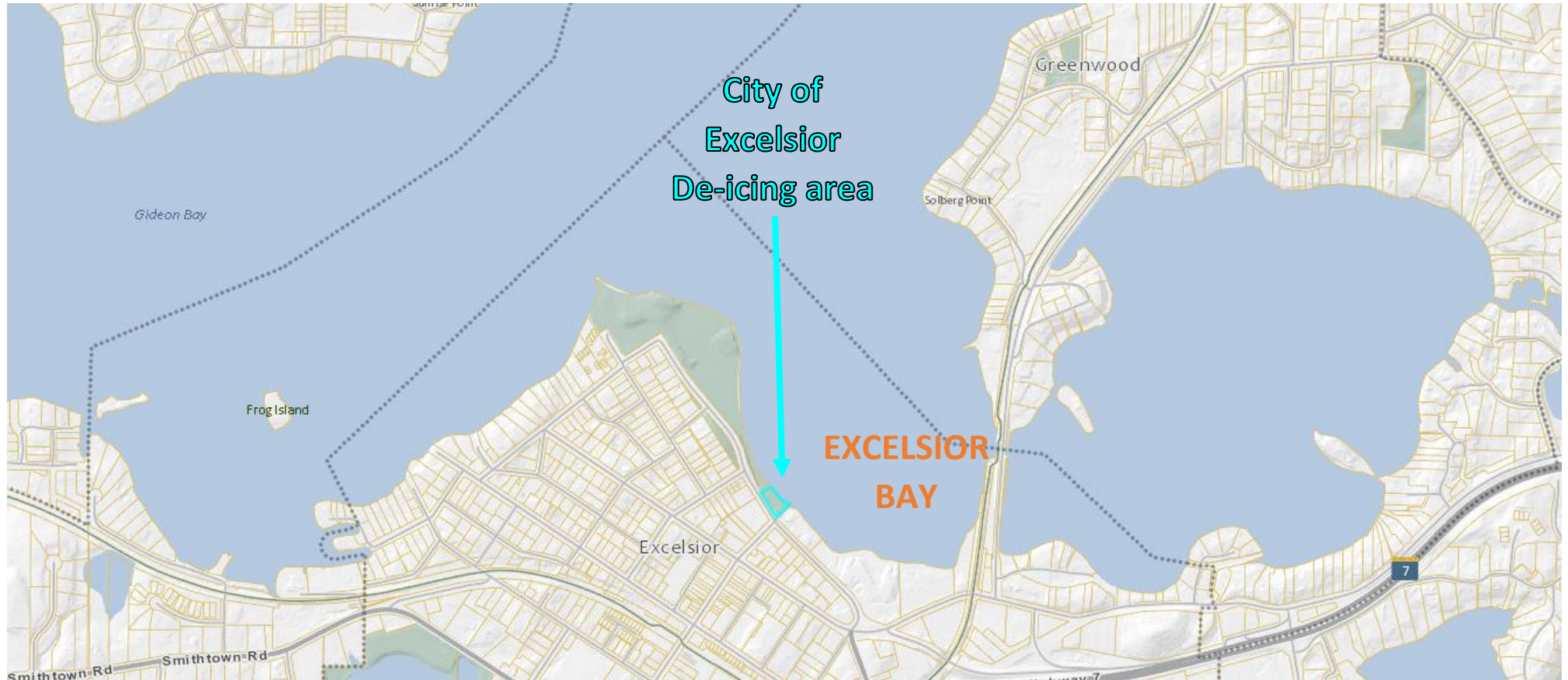
Subd. 10. Exception. No license shall be required for installation and operation of de-icing equipment during that part of the winter season occurring after March 1st, provided warning signs with the message "Thin Ice", of a size and type approved by the Executive Director, are installed and maintained at least each 50 feet along the affected shoreline. Anyone initiating the operation of de-icing equipment between March 1st and March 15th under this exception shall, prior to such operations, entirely enclose the area to be deiced with snow fence that is at least four feet in height and place at least six reflectorized "Thin Ice" signs on the fence with a minimum of one sign for every 50 feet.

Subd. 11. Eligible Facilities. Permits may be issued only for:

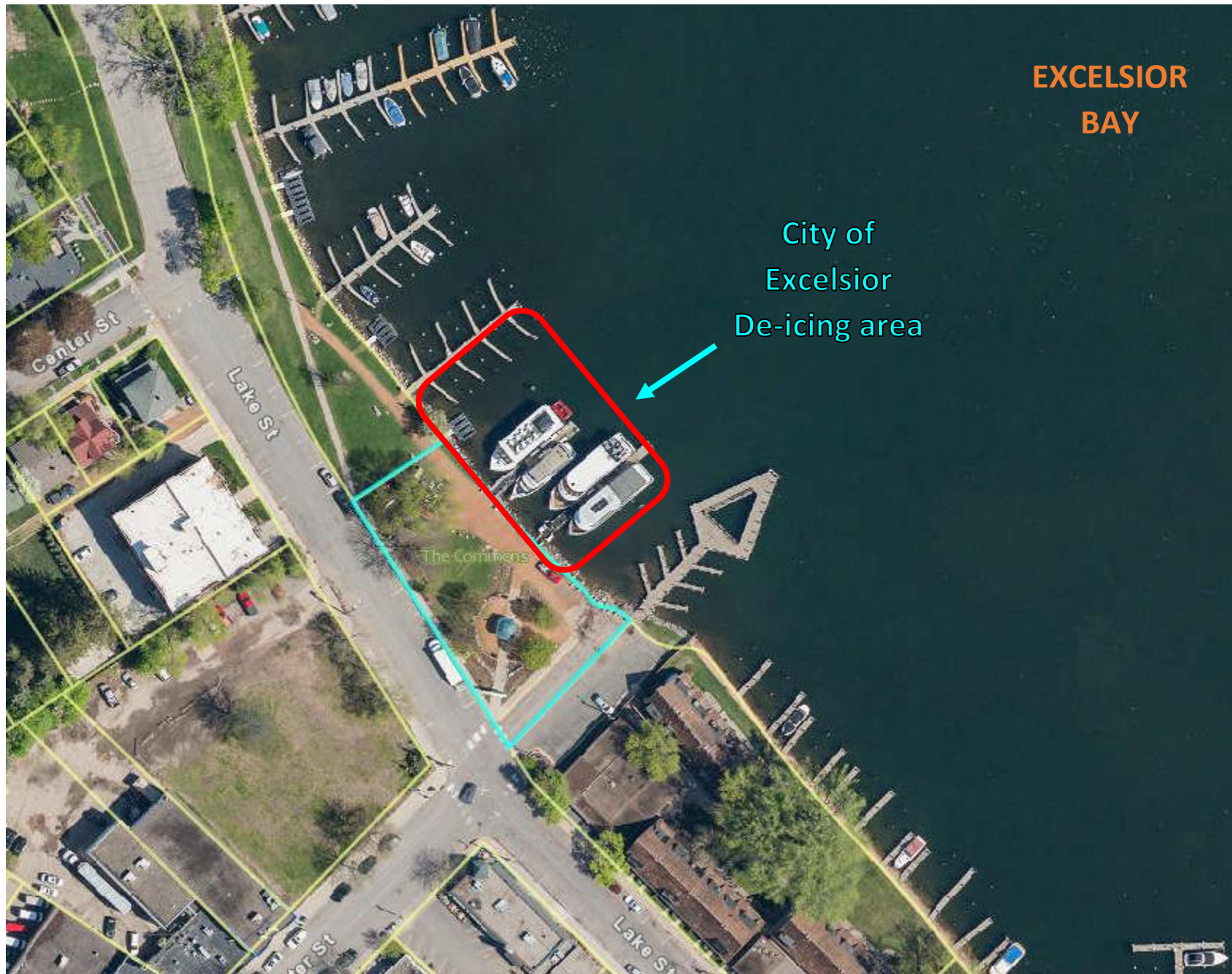
- a) Commercial docks;
- b) Dock facilities that were issued de-icing licenses for the winters of 2002/2003, 2003/2004 or 2004/2005; and
- c) Permanent docks initially issued permanent dock permits between August 17, 2003 and August 10, 2005.

City of Excelsior
Renewal of De-icing License with Expansion
Created using Hennepin County Interactive Property Map on October 17, 2019
For illustrative purposes only

ATTACHMENT 2



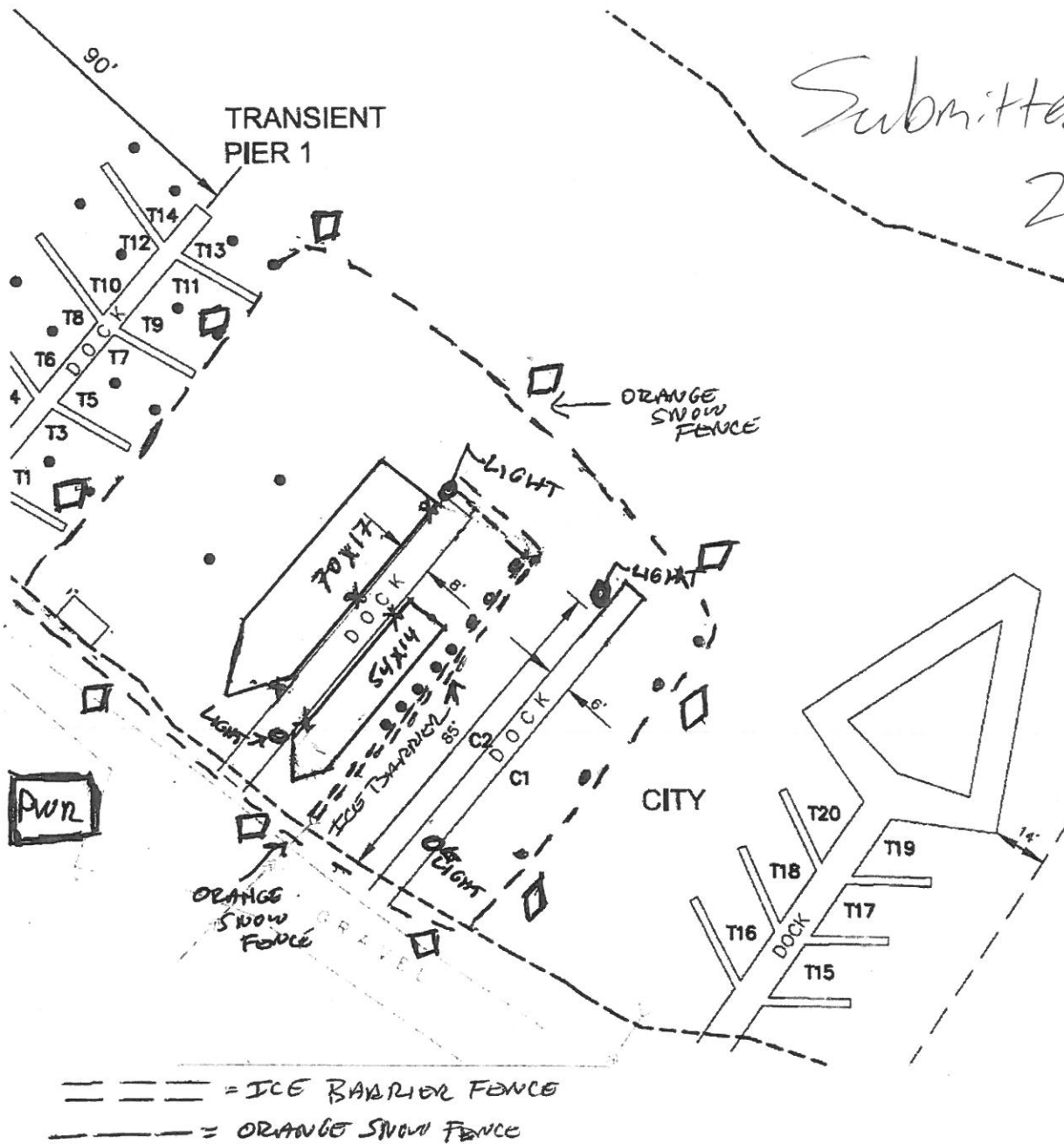
City of Excelsior
Renewal of De-icing License with Expansion
Created using Hennepin County Interactive Property Map on October 17, 2019
For illustrative purposes only



ATTACHMENT 3

Site Plan A

Submitted
2018



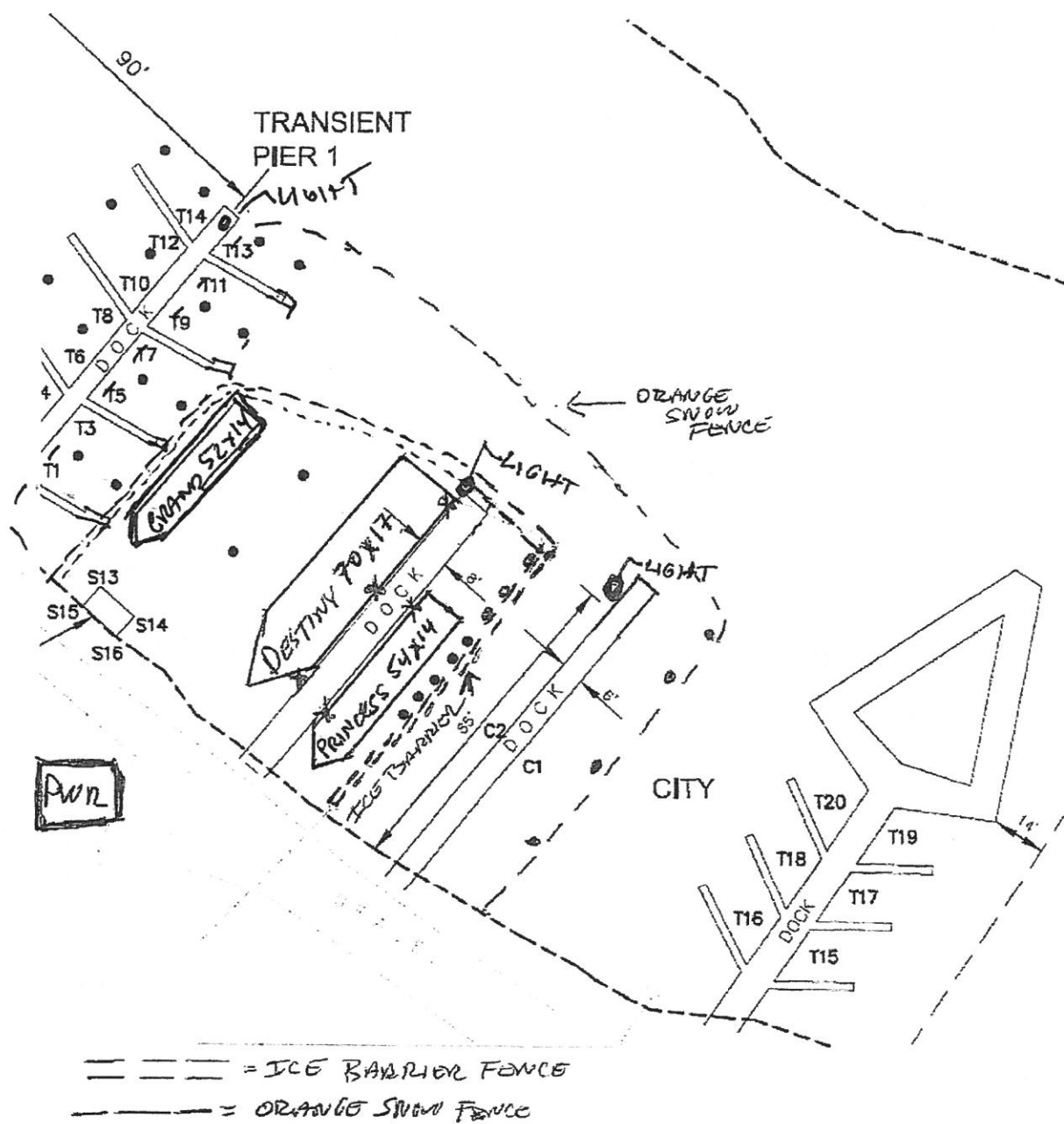
X = DEICING UNIT

● = LIGHT

PWR = POWER ON/OFF SWITCHES

◇ = THIN ICE SIGNS

ATTACHMENT 4



$X =$ DEFICIT UNIT

② = LIGHT

PWP = Power ON/OFF switches



ATTACHMENT 5

DE-ICING LICENSE 2019/2020 RENEWAL APPLICATION

LAKE MINNETONKA CONSERVATION DISTRICT

For LMCD Use:

Fee Amount: _____ Check # _____ Date Received: _____

In accordance with Sec. 2.09 of the Lake Minnetonka Conservation District Code, the following license application must be complete and accurate to be considered for a license and submitted to the LMCD Office by **October 1, 2019**. It is unlawful for any person to install, operate, maintain, or use de-icing equipment or drain outlet on Lake Minnetonka without a license.

Please use blue or black ink.

CONTACT INFORMATION

Applicant: Kristi Luger Applicant Title: Manager (Owner, Manager, etc.)

Date of Birth: N/A Phone: 952-474-5233 Email: kluger@ci.excelsior.mn.us

Applicant Address: 339 3rd Street, Excelsior, MN 55331

Company Name (if different from Applicant): City of Excelsior

24-Hour Emergency Contact Information (list below)

Name	Title	Phone	Email
1. <u>DAVID LAWRENCE</u>	<u>PARADISE CRUISE CAPTAIN</u>	<u>952 292 5856</u>	<u>DAVE@TWINCITIESCRUISES.COM</u>
2. _____	_____	_____	_____

DE-ICING SITE INFORMATION

Site Address: 399 Lake Street, Excelsior, MN, 55331

Bay Location: Excelsior Bay LMCD Area #: 36

NOTE: You must submit a new site plan if any changes are made to location of docks, de-icing units, off/on switch, lighting, fence, etc.

Description of de-icing equipment/units:

a) Number: 4 b) Size(s): _____ c) gpm _____ d) hp 3/4

e) Area capability of unit(s): _____ sq ft

Dates de-icing unit(s) in use: from 11/1 to 3/1

Is a Municipal permit required? (check one) Yes _____ No X

REGULATION SUMMARY

Please indicate you have read the following de-icing regulations by placing your personal initials in front of these items:



- a) Fencing to enclose the area to be de-iced must be within the extended side site lines of the site and less than one hundred (100) feet beyond the end of the dock structure at the site. The area within these boundaries shall be referred to in this Subdivision as the "Authorized De-icing Area".



- b) The area to be de-iced shall be no greater than is necessary to prevent damage to the installation and shall not extend nor affect areas beyond the Authorized De-icing Area.



- c) The area to be de-iced shall be enclosed by a snow fence or approved alternative four feet in height and a minimum of six reflectorized "Thin Ice" signs and at least one sign for every 50 feet; in a form approved by the Executive Director. De-icing will occur only in the fenced area. If open water or weakened ice occurs outside of the Authorized De-icing Area, or if water is pumped by de-icing equipment onto the surface of the ice outside of the Authorized De-icing Area, all de-icing equipment shall be turned off until sound ice is reestablished outside of the Authorized De-icing Area and all open water or weakened ice is enclosed by the fence required by this paragraph. The licensee will maintain fencing and signs around all open water or weakened ice at all times. Fencing installed temporarily outside of the Authorized De-icing Area shall be removed when sound ice is reestablished.



- d) The entire fence, the area enclosed by the fence, and the area de-iced will be adequately lighted from one-half hour before sunset to one-half hour after sunrise to protect the public.



- e) During the periods prior to the generally accepted total Lake freeze over in the fall and following the beginning of the final thaw in the spring, the shoreline along the area de-iced will be fenced with a semi opaque fence which is at least four feet in height and marked by a reflectorized warning signs visible from 50 feet and installed every 50 feet along the shoreline.



- f) The applicant shall maintain liability insurance covering claims for death, injury or damage to property arising out the operation of the de-icing equipment. Such insurance shall be in the amount of at least \$1,500,000 for persons and \$50,000 for property. In the case of insurance for commercial facilities, the insurance shall name the District as additional insured and shall provide that the insurance will not be amended or canceled without first giving 30 days written notice to the District. **The applicant must submit a certificate of liability insurance with this application. A worksheet is attached outlining your insurance needs.**



- g) The applicant will, by the installation of adequate screening, signing, or other means, effectively prevent the feeding and congregating of waterfowl and other animals, and the creation of conditions constituting health hazards or public nuisances with the licensed area.



- h) The installation will be supervised at all times and the applicant will provide the District with a primary telephone number and a 24 hour emergency telephone number.



- i) The installation shall include an easily identifiable on-off switch located near the de-icing unit on the dock.



- j) The applicant shall consent to permitting officers and agents of the District to shut off or remove the equipment if de-icing extends beyond the Authorized De-icing Area or if water is pumped by de-icing equipment onto the surface of the ice outside of the Authorized De-icing Area.



- k) Persons granted a license under this section shall maintain the safety facilities and equipment in a safe, neat, and orderly condition during the season, and upon termination of the license (April 20), the equipment shall be removed completely and the surrounding area cleared of all related materials and equipment.

FEES

For purposes of computing the service charges required by LMCD Resolution No. 76, the term "Watercraft Storage Unit" (WSU) means a space or facility available for mooring, docking or storing a boat or watercraft, including a mooring, boat or watercraft slip, space within a boat or watercraft slip, or any other space provided for storage of boats or watercraft to be used on the Lake:

A slip up to 20' long and / or up to 10' wide = 1 WSU
A slip 20' to 24' long and / or up to 11' wide = 1.5 WSU
A slip 24' to 32' long and / or up to 12' wide = 2 WSU
A slip 32' to 40' long and / or up to 14' wide = 2.5 WSU
A slip 40' to 48' long and / or up to 16' wide = 3 WSU
A slip over 48' long and / or over 16' wide = 4 WSU

- a) Number of Watercraft Storage Units (WSU's) at this facility: 8
- b) Application fee @ \$1 per WSU, with a minimum of \$25.00: \$25.00
- c) Plus Base fee: + \$ 100.00
- d) Add Late fee:
If LMCD receives application after Oct. 1st thru Dec. 1st \$ 50.00
If LMCD receives application after December 1st \$ 100.00
- e) TOTAL FEE ENCLOSED \$ 125.⁰⁰

Note: The application fee is for processing the application and does not entitle the applicant to a license. Upon approval of a license, the application fee accommodates two inspections. Additional fees may incur if additional inspections are conducted due to observed deficiencies. These fees will be billed back to the license holder in accordance with the LMCD fee resolution.

I certify that the information provided herein and the attachments hereto are true and correct statements to the best of my knowledge. I agree to reimburse the District for any legal, surveying, engineering, inspection, maintenance or other expenses incurred by the District in excess of the original fee. I agree to the provisions of the license, if granted; and I consent to permitting officers and agents of the District to investigate at all reasonable times and to determine compliance with all applicable regulations. I agree to immediately shut off and/or remove the equipment if de-icing extends beyond the authorized de-icing area.

Signature of Applicant: _____

Name / Title

Date: 10/3/19



To preserve and enhance the "Lake Minnetonka experience"

CITY OF EXCELSIOR DE-ICING LICENSE APPLICATION (EXCELSIOR BAY)

**Lake Minnetonka Conservation District
Board Meeting
October 23, 2019**

Presented by: Matthew Cook, Environmental Administrative Technician

OVERVIEW

- Action
- Background
- Application Review
- Public Comments & Input
- Considerations
- Recommendation

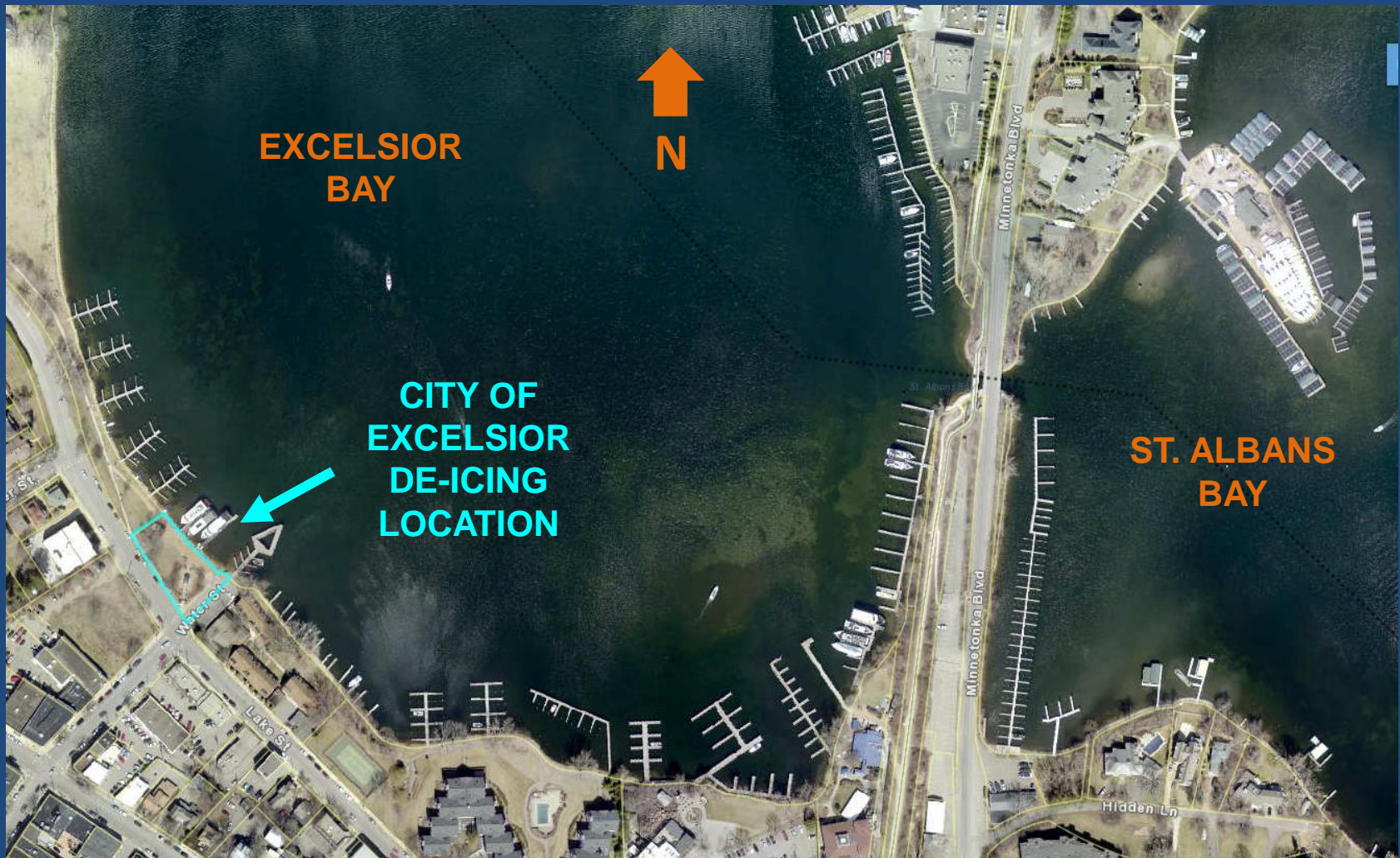
ACTION

- Consideration of renewal application for de-icing license with enlargement from the City of Excelsior
- Options
 - Approval
 - Approve the license with or without conditions
 - Continue
 - Direct staff to research items and bring back to November 13, 2019 Board Meeting
 - Denial
 - Direct legal counsel to draft Findings of Fact and Order for denial based on specific reasons with consideration at the November 13, 2019 Board meeting

APPLICATION REQUEST SUMMARY

- Renewal of De-icing License with Enlargement of De-icing Area
- De-icing area proposed to expand ~24 feet to the northwest (opposite direction from the public launch to the southeast)

LOCATION – 399 LAKE STREET, EXCELSIOR



For Illustrative Purposes Only

EXCELSIOR
BAY

Area of
Expansion

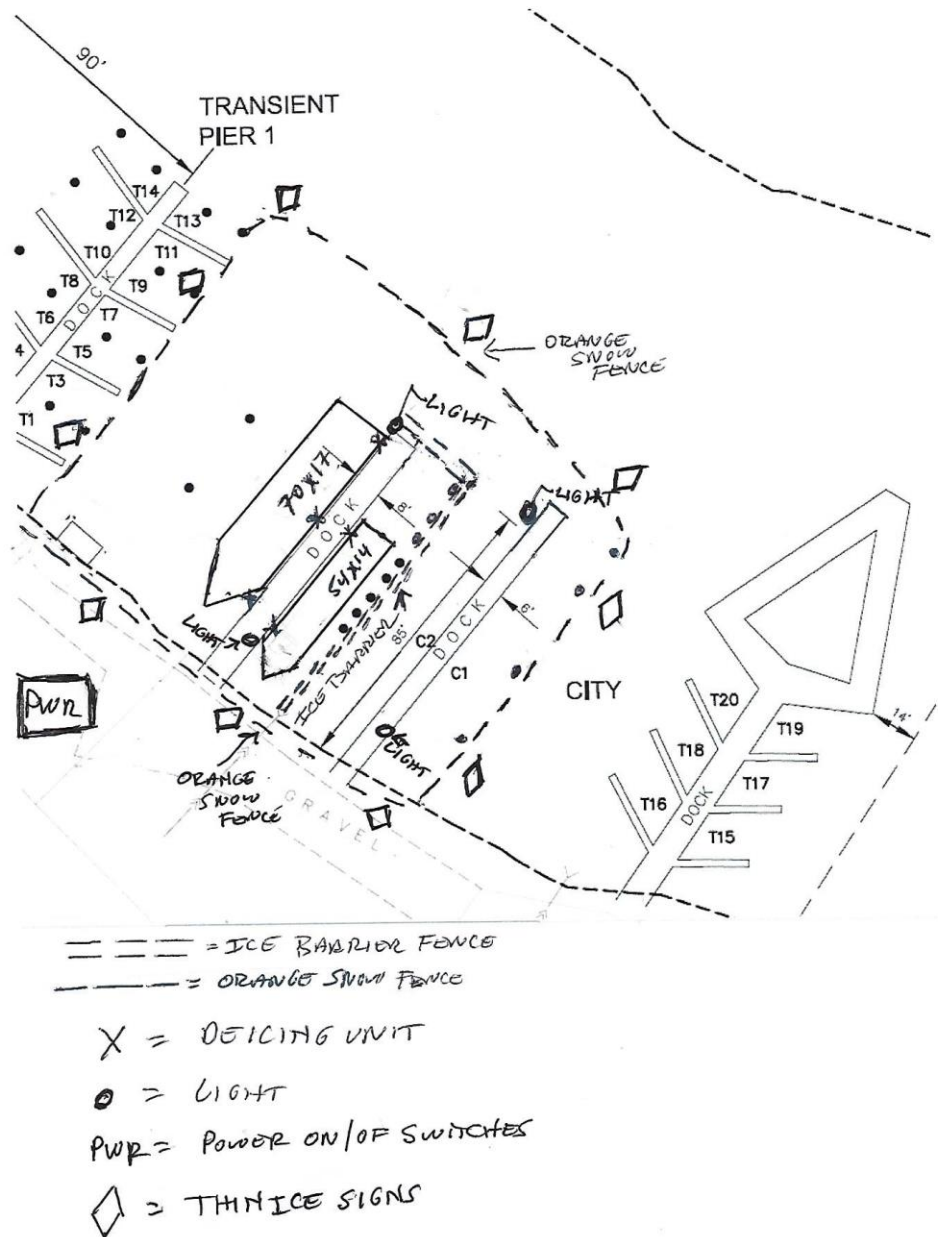
City of
Excelsior
De-icing area



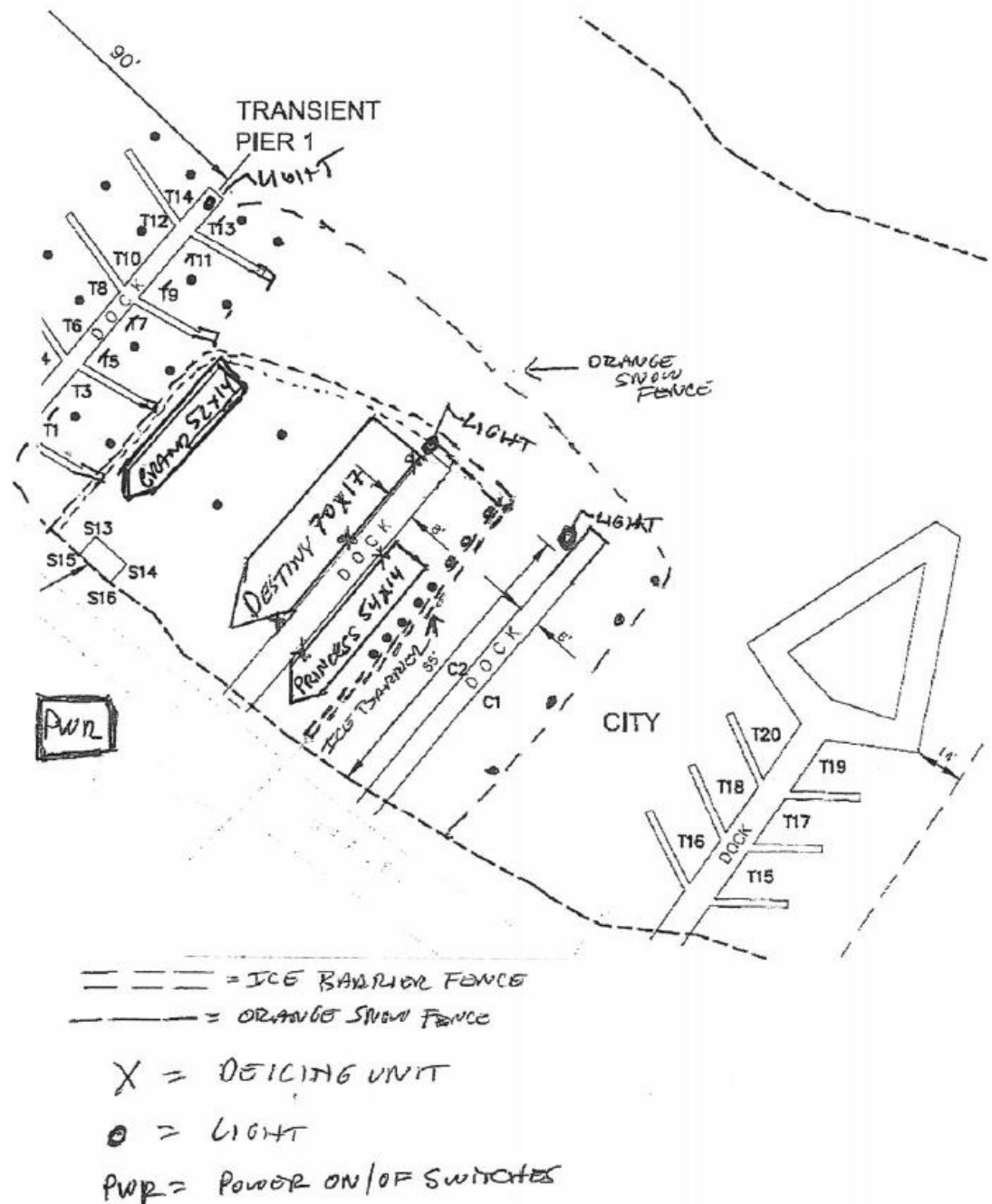
For Illustrative Purposes Only



October 23, 2019



PROPOSED SITE PLAN



PROPOSED SITE CONDITIONS

- 3 lights (applicant may add more)
- Ice barrier (silt curtain) to surround area of open water
- 11 thin-ice signs (required every 50 feet)
- De-icing area approximately 113 ft by 162 ft
 - Formerly 113 ft x 138 ft
- Up to 5 de-icing units – same as current
- On / off switch on land – same as current

PROPOSED SITE CONDITIONS

- Enlargement of de-icing area allows for winter storage of an additional charter boat and provides safe access to boat via adjacent dock
- Also aids installation of fencing

DE-ICING LICENSE REQUIREMENTS

- **Code Section 2.09, Subd. 4. Issuance of Licenses.**
 - Authorized de-icing area shall be no larger than necessary
 - Fencing, signage, and lighting
 - On / off switch accessible to LMCD staff
 - Liability insurance
 - Prevent feeding and congregation of animals
 - 24-hour emergency contact

AGENCY NOTICE

- Courtesy notice sent to MN DNR Hydrologist and Fisheries; MCWD; Municipality
- No comment received

HIGHLIGHT RELEVANT CODE SECTIONS

- **Code Section 2.09, Subd. 7. Issuance of License, New and Renewal.**
 - Renewal licenses for enlargement of de-icing area may be granted only by the Board of Directors.
- **Code Section 2.09, Subd. 11. Eligible Facilities.**
 - De-icing licenses may be issued to Commercial Docks.

RECOMMENDATIONS

Pending any information received as part of public discussion, staff recommends Board approval of a de-icing license with the following conditions:

New condition:

- Limit access to dock on NW side of de-icing operation

Continued conditions:

- Ice thickness monitoring
 - Closure / limitation / relocation of public access as needed
- Enclosure of area of open water with silt curtain
- All other license requirements met



To preserve and enhance the "Lake Minnetonka experience"

QUESTIONS & DIRECTION

THANK YOU



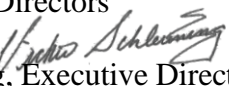
ITEM 12B

LAKE MINNETONKA CONSERVATION DISTRICT

5341 MAYWOOD ROAD, SUITE 200 • MOUND, MINNESOTA 55364 • TELEPHONE 952/745-0789 • FAX 952/745-9085

DATE: October 23, 2019

TO: LMCD Board of Directors

FROM: Vickie Schleuning, Executive Director 

SUBJECT: Appointment of Nominating Committee for 2020 Officers

ACTION

Board consideration to appoint board members to the Nominating Committee through a motion and formal approval.

The following motions are offered depending on whether the Board wishes to approve or deny the request.

Approval:

I make a motion to appoint <Director names> to the Nominating Committee for selection of candidates for Officers in 2020.

Denial:

I make a motion to deny the appointment of the Nominating Committee for 2020 Officers.

BACKGROUND

The LMCD is required by state statute to annually elect officers from among Board members. Further, the LMCD Bylaws indicate the Board is to annually elect a Chair, Vice Chair, Secretary, and Treasurer in February. The Nominating Committee is charged with assisting in the election process by recommending a slate of officers to the Board at the February 12, 2020 Board Meeting.

On September 14, 2016, the Lake Minnetonka Conservation District (LMCD) Board of Directors approved attached Resolution 150, Approving and Ratifying a Nominating Process for Board Officers. This process, followed at the recommendation of the LMCD attorney Troy Gilchrist, was utilized in 2015, in which the Board desired to formally approve and ratify such for the annual selection of its officers. This Committee is a temporary committee that will extend until the officers are elected.

ATTACHMENTS

- Recommended Nomination Process
- Nominating Committee Resolution

ATTACHMENT- **RECOMMENDED NOMINATION PROCESS**

Nominating Committee

1. The Committee develops a recommended slate of officers for presentation to the full Board.
2. The Committee develops a recommended procedure the Board may use to address any nominations at the meeting.

Nomination Procedures

1. The Board Chair asks the Chair of the Nominations Committee to present the recommended slate of officers.
2. The Chair asks the Board if there are any other nominations for any of the positions.
 - a. The member making the nomination must state the name of the person being nominated and the position to which the person is being nominated.
 - b. Nominations do not require a second.
 - c. No member shall be nominated for more than one position.
 - d. A Board member may not nominate himself or herself.
 - e. A nominated member may reject the nomination by the person announcing he or she does not accept immediately after the nomination is made. A member who does not accept a nomination for a position remains eligible to be nominated for another position.
3. If there are no additional nominations, the Board Chair calls for a motion and a vote on the recommended slate of officers.
4. If there are any additional nominations made “from the floor”, the positions for which there were additional nominations are pulled from the recommended slate and the Board Chair calls for a motion and a vote on the remainder of the recommended slate of officers (if any positions remain unchallenged).
5. The challenged officer positions must be voted on individually, which is conducted by the Board Chair identifying the officer position and announcing the name of the member recommended for the position by the Nominating Committee and the names of those nominated for the position from the floor. Each of the nominated members may be allowed up to three minutes to provide background on themselves and why they are interested in the position.
6. The Board Chair announces that voting will be conducted by a show of hands with each member voting only once for each officer position. The nominated members are eligible to vote. The nominee with the most votes at the end of the voting wins the position. If the vote ends in a tie between the two highest vote getters, another vote shall be conducted between just those two members (any other nominees for the position are dropped from the voting) until a winner is selected.
7. The Board Chair then calls for a vote for the position by calling each of the names and then asking members to raise their hand if voting for that person for the position (“All those in favor of Bill Smith for Secretary raise your hands. [count votes] All those in favor of Cindy Jones for Secretary raise your hand. [count votes]” Etc.)
8. The person with the highest number of votes for the position is then announced as being selected for the position.
9. The Board Chair then moves onto to the next challenged position, announces the nominees, and proceeds with voting in the same manner until all of the positions are filled.

ATI



**STATE OF MINNESOTA
LAKE MINNETONKA CONSERVATION DISTRICT**

RESOLUTION NO. 150

**A RESOLUTION APPROVING AND RATIFYING A
NOMINATING PROCESS FOR BOARD OFFICERS**

WHEREAS, the Board of Directors ("Board") of the Lake Minnetonka Conservation District ("LMCD") is required by Minnesota Statutes, section 103B.615 to annually elect officers from among the Board members;

WHEREAS, Article II, Section 2.4 of the Bylaws of the Lake Minnetonka Conservation District ("Bylaws") indicates that the Board is to annually elect a Chair, Vice Chair, Secretary, and Treasurer in February;

WHEREAS, the Board has utilized a nominating committee ("Committee") to assist in the election process by recommending a slate of officers to the Board as is permitted by Section 2.4 of the Bylaws; and

WHEREAS, the Committee, with input from the LMCD civil attorney, created and utilized a nominating process for the 2016 election that the Board desires to formally approve and ratify as the standing nominating process for its elections.


NOW, THEREFORE, BE IT RESOLVED, that the Board hereby approves and ratifies the attached nominating process as the official process to be followed by the Committee and the Board in the annual selection of its officers.

BE IT FINALLY RESOLVED, that the Committee and Board members may make recommendations for amendments to the nominating process, but the process may only be amended by resolution adopted by a majority vote of all Board members at least 30 days before the date of the election at which the amended process is to be used.

Adopted this 14th day of September, 2016 upon a majority vote of all members.

BY THE BOARD OF DIRECTORS

Attest


Gregory J. Thomas, Secretary


James Jay Green, Chairperson



LAKE MINNETONKA CONSERVATION DISTRICT

5341 MAYWOOD ROAD, SUITE 200 • MOUND, MINNESOTA 55364 • TELEPHONE 952/745-0789 • FAX 952/745-9085

DATE: October 23, 2019

TO: Board of Directors

FROM: Vickie Schleuning, *Vickie Schleuning* Executive Director

SUBJECT: 2020 LMCD Employee Benefits Package

ACTION

Board consideration of the 2020 Employee Benefits Package.

The following motions are offered depending on whether the Board wishes to approve or deny the employee benefit package.

Approval:

I make a motion to approve the employee benefit package as recommended with the employer paying \$839 per single coverage for health insurance; and continuing the current benefit package <or with the following changes>.

Denial:

I make a motion to deny the proposed health insurance coverage and employee benefit package and direct staff to

BACKGROUND

The Lake Minnetonka Conservation District is required to confirm the contract for benefits for 2020. As such, the following information is being brought forward for consideration of approval by the Board. The benefit package is based on the current Personnel Policy.

The quote for 2020 for health insurance indicates increases, but to a lesser degree than experienced in 2019 and 2018. The remaining costs of benefits have slight increases. During the budget preparation period in May, estimates are sought from the providers. However, it is challenging to obtain precise quotes since the providers typically do not have that information yet available.

The health insurance rate quoted for 2020 for the current health plan increases \$28.67 per month (3.54%) for single coverage including increased cost of deductible. The total annual cost of the increase for three employees would be \$1,032.12.

In 2018, the LMCD transitioned to a new high deductible health plan since the rate of the long-standing low-cost plan was projected to increase 43%. The high deductible health plan is a consumer-directed health plan that theoretically facilitates consumer consideration of health care options prior to use and provides the opportunity for payment of pretax healthcare expenses through a health savings account (HSA). The Board wanted to ensure the LMCD would continue to be competitive with other government agencies for benefit package. In comparing benefits and rates with some other cities and small organizations, this benefit package seems competitive. This plan had the least amount of increase when the deductible amount is covered by the organization for single coverage. A summary of options is provided below:

Options

For health insurance, the base premium rate increases \$24.50, from \$697.00 to \$721.50, per month for a single coverage and increases \$60, from \$1,709 to \$1,769, per month for family coverage. The deductibles increased \$50, from \$1,350 to \$1,400, for single plan and \$100, from \$2,700 to \$2,800, for family plan.

Option 1- Current Plan

- If the employer continues to cover the deductible, the rate would be \$838.17 per month for a single plan, resulting in an increase of \$28.67 per month per coverage. The added amount for a family plan would be paid for by the employee.

Option 2

- Another option would be for the employees to incur out-of-pocket expenses for all or a portion of the of \$1,400 deductible for single coverage and \$2,800 for family coverage, which would result in an increase of \$24.50 per month per single coverage for the employer. The added amount for a family plan would be paid for by the employee.

HISTORY

The LMCD is part of the Southwest West Central Service Cooperative (SWWC), which provides a larger pool of employees to provide a more consistent, competitive benefit package. The SWWC facilitates a member committee to research benefit packages and pricing earlier in the year. Since 2011, the LMCD has obtained benefit packages that have been fairly consistent, with minor increases or decreases in the single digits. In 2018, the quote was 43 % increase for the previous type of health insurance plan, prompting the move to a high deductible plan. The quote in 2019 for the current high deductible plan was 14.3% higher than 2018. For 2020, an increase of 3.54% was quoted. A comparison of the annual benefit rates since 2011 is provided in Attachment I.

RECOMMENDATION

Option 1. Employees of the LMCD (regularly work 30 hours or greater on a weekly basis) are provided the following employee benefits:

- Health Insurance- Single coverage is provided at no cost (family coverage is offered;

however, no funds are budgeted for dependents).

- Dental Insurance- Single coverage is provided at no cost (family coverage is offered; however, no funds are budgeted for dependents).
- Life Insurance- Provided at no cost.

Permanent employees (including one permanent part-time employee that regularly works less than 30 hours per week) are provided a public pension through the Public Employee Retirement Association (PERA). Additionally, LMCD provides Long-Term Disability Insurance to permanent employees (salaries and hourly rates are grossed up).

2020 BUDGET CONSIDERATIONS

The employee benefit package, and any increase, was considered in the adopted 2020 budget and fits within the budget for personnel.

ATTACHMENT

- 2011 - 2020 LMCD Benefit Package Summary

2011 - 2020 LMCD BENEFIT PACKAGE SUMMARY

Based on Monthly Rates

PERA (Coordinated Plan)					
Year	Employee Rate	Employer Rate	Employer Additional	Employer Total	Staff Participation
2011, 2012, 2013, 2014	6.25%	6.25%	1%	7.25%	2011-Sept. 2012- 3 Oct. 2012 - 4
2015, 2016	6.50%	6.50%	1%	7.50%	4
2017	6.50%	6.50%	1%	7.50%	3 (1 vacant)
2018	6.50%	6.50%	1%	7.50%	4 (1 vacant)
2019	6.50%	6.50%	1%	7.50%	3 (1 vacant)
2020	6.50%	6.50%	1%	7.50%	4 (0 vacant)

HEALTH PARTNERS (DENTAL)			
Year	Rate	Percent Increase	Staff Participation
2011	\$45.64	4%	3
2012	\$47.48	4%	3
2013	\$49.16	3.5%	3
2014	\$51.09	3.9%	3
2015	\$52.11	2%	3
2016	\$53.46	2.6%	3
2017	\$53.46	0%	2 (1 vacant)
2018	\$53.99	0.99%	2 (reorganized)
2019	\$55.88	3.5%	2
2020	\$56.95	1.9%	3

BLUE CROSS/BLUE SHIELD (SWWC Service Coop)			
Year	Rate	Percent Increase	Staff Participation
2011	\$365	3%	3
2012	\$394	8%	3
2013	\$417.50	6%	3
2014	\$417.50	0%	3
2015	\$407	-2.50%	3
2016	\$478	17.50%	3
2017	\$533	11.5%	2 (1 vacant)
2018	\$722	35.46%	2 (reorganized)
2019	\$809.50 (Prem 697.00, HSA 112.50)	\$14.3%	2
2020	\$838.17 (Prem 721.50 HSA 116.67)	3.54%	3

NCPERS Group Life Insurance			
Year	Rate	Percent Increase	Staff Participation
Life Ins Policy	\$16/Participant	N/A	3