



LAKE MINNETONKA CONSERVATION DISTRICT

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AGENDA **LAKE MINNETONKA CONSERVATION DISTRICT** **Wednesday, August 10, 2022** **Wayzata City Hall** **600 Rice Street, Wayzata, MN 55391**

PUBLIC PARTICIPATION

Those attending the meeting, please complete the attendance sheet. Those desiring to participate in the meeting should complete the *Public Comment Form* at the meeting if the online [Public Comment Form](#) was not submitted. The Chair may choose to reorder the agenda for a specific agenda item if it would benefit the needs of those in attendance. Please see *Public Comments* Section for more information.

WORK SESSION AGENDA

6:30 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. The work session may be continued after the formal meeting, time permitting.

- Managing Risk: State Open Meeting Laws, Conflict of Interest, LMCD Business Policies-
Continued from April 13, 2022 Meeting

FORMAL MEETING AGENDA

7:00 p.m.

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** (07/27/2022 LMCD Regular Board Meeting)

7) APPROVAL OF CONSENT AGENDA

- A) Audit of Vouchers (08/01/2022 – 08/15/2022)
- B) Resolution Accepting Save the Lake Contributions (07/20/2022 – 07/31/2022)
- C) Approval of Variance Application for 4425 North Shore Drive, Orono MN 55364, West Arm, Adjusted Dock Use Area Including Setbacks
- D) Denial of Watercraft for Hire Application, Stephen Crumley, MA778893 MN Boat Master

8) RECOGNITIONS

- 9) PUBLIC COMMENTS** – *Provides an opportunity for the public to address the board on items that are not on the agenda. Public comments are limited to 5 minutes and should not be used to make personal attacks or to air personality grievances. Please direct all comments to the Board Chair. The Board generally will not engage in public discussion, respond to or correct statements from the public, 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.*

10) PUBLIC HEARING

11) OTHER BUSINESS

12) OLD BUSINESS

- A) Boat Generated Wakes- Review Draft Code Amendment Options

13) NEW BUSINESS

14) TREASURER REPORT

15) EXECUTIVE DIRECTOR UPDATE

16) STANDING LMCD COMMITTEE UPDATE

- Aquatic Invasive Species
- Communications
- Finance
- Operations
- Save the Lake

17) ADJOURNMENT

Future Items for Review – Tentative

- Lake Use Vision and Policy Discussion Continuing Series
 - Deicing Eligibility Expansion Review
- Public Hearings
 - August 24, 2022: Daniel Gustafson, New Multiple Dock License, Shoreline Drive, PID: 11-117-23-22-0013
 - August 24, 2022: North Shore Marina, New Multiple Dock License Classification Change, 1449 Shoreline Drive

LMCD BOARD OF DIRECTORS ANNUAL TRAINING

TROY GILCHRIST, LMCD ATTORNEY

APRIL 13, 2022

2 LMCD STATUTORY AUTHORITY

- One of two expressly established lake conservation districts
- Established and authorized by M.S. 103B.601-103B.645
- The LMCD is “a corporate and political body and a political subdivision of this state”
- “The district is a public corporation within the definition of section 466.01 and is included in the provisions of chapter 466.”
- “The district is governed by a board composed of members appointed by the governing bodies of the municipalities included in the district.”

3 BOARD

- Can establish bylaws and rules of procedure
- Elect officers, including a treasurer
- Funded by member cities – “must provide the funds necessary to meet its proportion of the total cost determined by the board, provided the total funding from all municipalities in the district for the costs shall not exceed an amount equal to .00242 percent of the total estimated market value within the district, unless three-fourths of the municipalities in the district pass a resolution concurring to the additional costs.”
- May adopt regulations that have the effect of ordinances and provide for the prosecution of violations

4 BOARD POWERS (SELECT)

- to regulate the types of boats permitted to use the lake and set service fees;
- to limit by rule the use of the lake at various times and the use of various parts of the lake;
- to regulate the speed of boats on the lake and the conduct of other activities on the lake to secure the safety of the public and the most general public use;
- to regulate the construction, installation, and maintenance of permanent and temporary docks and moorings consistent with federal and state law;
- to regulate the construction and use of mechanical and chemical means of deicing the lake and to
- regulate mechanical and chemical means of removal of weeds and algae from the lake;

5 BOARD POWERS (SELECT)

- to regulate the construction, configuration, size, location, and maintenance of commercial marinas and their related facilities that affect activity below the ordinary high-water mark. The authority under this clause does not apply to land-based marina activities, including storage facilities, and must be consistent with the applicable state statutes, municipal building codes, and zoning ordinances where the marinas are located;
- to undertake research to determine the condition and development of the lake and the water entering it and to transmit their studies to the Pollution Control Agency and other interested authorities, and to develop a comprehensive program to eliminate pollution;
- to receive financial assistance from and join in projects or enter into contracts with federal and state agencies for the study and treatment of pollution problems and demonstration programs related to them;

6 EXECUTIVE DIRECTOR

- Appointed by the Board

- Duties and Powers

(1) is the executive and operating officer of the district;

(2) is responsible for the operation, management, and promotion of all activities with which the district is charged and other duties prescribed by the board; and

(3) has the powers necessarily incident to the performance of the duties of the executive director and other powers granted by the board, but without authority to incur liability or make expenditures on behalf of the district without general or specific directions by the board, as shown by the bylaws or minutes of its meetings.

7 ATTORNEYS

- LMCD Civil Attorney
 - Assists the LMCD and the Board in its operations
 - Client is the organization, not individual members
- LMCD Prosecuting Attorney
 - Prosecutes violations occurring on the Lake
- Defense Counsel
 - Appointed by insurer to defend LMCD if sued

8 APPLICABILITY OF STATUTORY REQUIREMENTS

- Statutory obligations
 - Certain statutory obligations clearly apply to the LMCD as a political subdivision
 - Others are not entirely clear, but need to work to comply with requirements reasonably applicable to cities
- Only have those powers provided by statute and those reasonably inferred from the statutes
- Powers of the Board must be exercised by the Board, not individual Board members
- The Board can only act at a properly called and held public meeting

9 FIDUCIARY DUTY

- Fiduciary duty / Public Trust
 - Directors owe a fiduciary duty to the LMCD, not their appointing city
 - Uphold the oath
 - Do not exceed authority
 - Protect the organization (not revealing confidential information)
 - Act in the best interests of the LMCD
 - Support the Board's majority decision even if you didn't agree
 - Do not engage in malfeasance or misfeasance

10 ADVOCACY – INCOMPATIBLE POSITIONS

- Do not engage in advocacy for or against quasi-judicial matters coming before the Board
 - License and permit matters
 - As the decision maker, need to remain neutral on the matter (like a judge)
 - Could violate due process rights and invalidate the Board's decision
- Incompatible Positions
 - Violates the public trust to hold two incompatible positions at the same time
 - Taking the second office is deemed to be an automatic vacation of the first

II GIFT LAW

- Arguably not applicable, but should follow to avoid complaints
- Prohibited from accepting a gift from an interested person.
- “Gift” is money, real or personal property, a service, loan, the forbearance or forgiveness of debt, or a promise of future employment given without the exchange of something of equal or greater value.
- “Interested person” is a person or representative of a person that has a direct financial interest in a decision the Board is authorized to make.
- There are limited exceptions dealing with services of insignificant value, a recognition plaque, a trinket or memento costing \$5 or less; informational materials of unexceptional value, food or beverage at a reception, meal or meeting at which you are giving a speech or answering questions.

12 OPEN MEETING LAW

- What is the Open Meeting Law (“OML”)?
 - Minnesota Statutes, chapter 13D
 - Court interpretations
 - AG Interpretations
 - Information Policy Analysis Division opinions (guidance and compliance)
- There is no question the OML law applies to the LMCD as a public body

13 PURPOSE OF THE OML

- Not adopted for the convenience of public officials
- General Idea: Public business should be conducted in the public – “Sunshine Law”
- Goals: avoid secret meetings; assure public right to be informed; provide public an opportunity to present its views; and ensure no improper influences on officials
- Achieved by requiring meetings to be public and preceded by public notice
- Interpreted broadly to uphold the goals (i.e., don’t look for loopholes)
 - “Open meeting statutes are enacted for the public benefit and are to be construed most favorably to the public.”

I4 WHO IS SUBJECT TO THE OML AND WHEN DOES IT APPLY?

- Board, committees, subcommittees, etc.
- The OML is triggered when:
 1. Gathering;
 2. of a quorum or more of members;
 3. of a body subject to the OML;
 4. at which the members discuss, decide, or receive information as a group; and
 5. related to the official business of the body
- These criteria must be considered with respect to each body you serve on (board, committees, etc.)

15 APPLICATION OF THE CRITERIA

- If all of criteria are met, the gathering is a violation of the OML if it is not occurring at a properly noticed public meeting
- A “gathering” can occur by electronic means – email, texts, message boards, etc.
 - An email exchange among a quorum or more of members is a problem
 - Anything that involves the potential gathering of a consensus among members
- Serial meetings and hub & spoke meetings are prohibited (gathering consensus)
- One way communication from the office to members is ok
- Work through the office to get information out

16 TYPES OF MEETINGS AND NOTICE

- Regular – occurring at a scheduled time and place
 - Posted schedule
- Special – occurring not at a regular scheduled time and place
 - At least 3 days posted notice of date, time, place, and purpose (limited to state purposes)
- Closed – occurring only when expressly authorized by law
 - Must identify the statutory authority and state it in the motion to close
- Emergency – occurring when necessary to address an immediate threat to public health, safety, or welfare
 - Notify press if filed written request for notice of emergency meetings

17 ELECTRONIC MEETINGS

- Declared emergency or health pandemic (M.S. 13D.021)
- Remote Participation (M.S. 13D.02)
 - Everyone can see and hear everyone else
 - At least one member is present in meeting room
 - Must use roll call votes
 - All member locations must be “open and accessible to the public”
 - Must provide at least 3 days notice of “the regular meeting location and notice of any location where a member of the public body will be participating in the meeting by interactive technology”
 - Minutes must identify the members participating remotely and “state the reason or reasons for the appearance by interactive technology.”

18 PENALTIES FOR VIOLATING THE OML

- Personal liability – civil fine of up to \$300 for a single occurrence
 - Cannot be paid by the body or its insurer
- Intentional violation in three or more actions brought under the OML, the official forfeits office and cannot serve in any capacity with the body for a period equal to the term of the office
- Court may award up to \$13,000 in costs, disbursements, and attorney fees
 - Defendant eligible only if action was frivolous and without merit
- No penalties or attorney fees award against the official unless the court finds there was “an intent to violate” the OML

19 DATA PRACTICES ACT

- M.S. Chap. 13 that classifies government data, addresses the management of data, and the response to requests for data
 - Default presumption is that government data is public
- Application of the law can involve a number of complexities and responding to requests can be extremely time consuming
- Data received or generated by members is subject to the act if the data was created or used in the person's capacity as a member and it related to LMCD business
 - Assume anything you write down or receive regarding LMCD business is subject to the Act

20 PENALTIES FOR VIOLATING THE DPA

- This law is very broad and requires you provide access to government data regardless of where it is (personal email, texts, notes at home, etc.)
- If a request is made, any government data falling within the scope of the request must be provided to the office
- Civil liability for any damages resulting from a violation and attorney fees. If intentional, also pay exemplary damages from \$1,000 - \$15,000.
- “Any person who willfully violates the provisions of this chapter or any rules adopted under this chapter or whose conduct constitutes the knowing unauthorized acquisition of not public data ... is guilty of a misdemeanor.”

21 RECOMMENDATIONS REGARDING DPA

- Use the LMCD email address for LMCD business
- Think twice before creating data (e.g., sending the email)
- Assume everything you write down regarding LMCD business will be made public
 - Subject to a DPA request or discoverable as part of a lawsuit
- If there is a suit, a litigation hold applies to data related to the suit so do not delete any LMCD data

22 CONFLICTS OF INTEREST

- Two types: (1) contracting with the LMCD; and (2) having a direct interest in a matter before the LMCD
- Why conflicts matter – voting when there is a conflict can:
 - Void the contract
 - Result in a taxpayer action to claw back funds expended
 - Result in a due process challenge that could invalidate a vote, even if it was unanimous
 - Could require the matter to be reheard and acted on again
 - Result in criminal prosecution for a gross misdemeanor
 - Undermine public confidence in the LMCD and its ability to act in the public's best interests
 - May reflect poorly on the city the member represents

23 CONFLICT POLICY

- LMCD Board Bylaws, Section 2.6 adopts a policy on conflicts that prohibits a member from participating in a vote if the member has:
 - A direct or indirect financial interest in a contract with the LMCD
 - A direct interest, pecuniary or otherwise, in the matter based on consideration of the following factors:
 1. The nature of the decision being made;
 2. The nature of the pecuniary interest;
 3. The number of officials making the decision who are interested;
 4. The need, if any, to have interested persons make the decision; and
 5. The other means available, if any, such as the opportunity for review, that serve to ensure that the members will not act arbitrarily to further their selfish interests.

24 CONFLICT POLICY

- “A Board member shall be considered to have a conflict of interest if the outcome of a matter could substantially affect a member’s financial interests or those of an associated business.”
- Encourages members to contact LMCD Attorney about potential conflicts prior to the meeting
- Requires announcement of conflict and that the member will not participate in the discussion and will abstain from voting. Must sit in the audience during the deliberation.

25 CONFLICT POLICY

- A member can raise a conflict regarding another member
- Must obtain opinion of LMCD Attorney before making a motion
- Member makes a motion to prohibit the other member from voting due to a conflict
 - Must state the reasons for the claims conflict
- “If the motion is seconded and adopted by a majority of the members present and voting at the meeting, the member shall be prohibited from participating in the Board’s discussion and vote on the matter.”
- The member claimed to have the conflict may vote on the motion

26 60 DAY RULE

- Arguably does not apply to LMCD, but comply with it to avoid a claim
- Must act on complete application within 60 days of submission or it is deemed approved
- The LMCD can extend the period for up to an additional 60 days
- The applicant can request / agree to a further extension
- The clock stops when other approvals or processes are required, such as conducting a required EAW

27 LIABILITY

- The state provides local governments some exemptions and limitations on liability
- The LMCD is insured through LMCIT, which provides a defense for covered claims
- The policy also addresses LMCD's statutory obligation to defend and indemnify members sued while performing their duties for the board
 - Does not apply to criminal actions or when there is malfeasance or misfeasance

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS
7:00 P.M., July 27, 2022
Wayzata City Hall**

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; Rich Anderson, Orono; Ann Hoelscher, Victoria; Bill Cook, Greenwood; Ben Brandt, Mound; Michael Kirkwood, Minnetrista; Dennis Klohs, Minnetonka Beach; Mark Kroll, Excelsior; Denny Newell, 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: Dan Baasen, Wayzata; and Mark Chase, Spring Park.

Persons in Audience: Bill Olson, Jim Dustrude, Luke Anquist, Hailey Boz, Sandy Kennedy, Scott Albrecht, Greg Blasko, Tony Ferrara, Matt Mueller, Michelle Mueller, Travis Hansberger, Erik Forsbera, Travis Anderson, Jill Sims, Mike Sommer, Chris Lee, Frank Precopio, KC Bank, Katie Stewart, Gabriel Jabbour, Eric Evenson, and John Bendt. Other attendees may not have signed attendance sheet.

4. APPROVAL OF AGENDA

MOTION: Kroll moved, Hoelscher seconded to approve the agenda as submitted.

VOTE: Motion carried unanimously.

5. CHAIR ANNOUNCEMENTS

A) Gary Hughes Acknowledgement

Chair Thomas acknowledged former member Gary Hughes, who served on the LMCD Board for 10 years, recognizing his service and thanking him for his contributions during that time. He thanked Hughes and presented him with a certificate of recognition.

6. APPROVAL OF MINUTES- 07/13/2022 LMCD Regular Board Meeting

MOTION: Thomas moved; Brandt seconded to approve the 07/13/2022 LMCD Regular Board Meeting minutes as submitted.

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

7. APPROVAL OF CONSENT AGENDA

MOTION: Cook moved; Walesch seconded to approve the consent agenda as presented. Items so approved included: **7A)** Audit of Vouchers (07/16/2022 – 07/31/2022); and **7B)** Resolution Accepting Save the Lake Contributions (07/01/2022 – 07/19/2022).

VOTE: Motion carried unanimously.

8. RECOGNITIONS

Thomas recognized those that have made recent donations to Save the Lake.

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

There were no public comments.

10. PUBLIC HEARING

A) Variance Application for 4425 North Shore Drive, Orono, MN 55364, West Arm, Adjusted Dock Use Area Including Setbacks

Schleuning presented a variance request for the property at 4425 North Shore Drive in Orono. She displayed an aerial photograph showing the property, adjacent property, and channel. She also reviewed the recent history of the property. She provided details on the shoreline of the applicant, noting the unique configuration, and slightly converging extended side site lines with a peninsula on the southwest side and a public navigation channel under the authority of Hennepin County on the eastern side. She reviewed the details of the applicant's proposal and displayed the existing site plan, comparing that to the proposed site plan. She explained that the Applicant had desired a larger dock with two boat slips facing south, but staff would not recommend that to the Board. Subsequently, the Applicant reduced the dock configuration, as well as clarified property boundaries. She stated a significant amount of time has been spent to bring useful information to the board to consider as part of the application. She reviewed the variance standards and noted that no comments were received from the notified public entities or public at this point. She also highlighted some additional considerations. She reviewed the minimum recommendations the Board should consider if it were to approve the variance.

Cook stated that he was intrigued by the 60-foot minimum and asked if there are depth issues.

Schleuning replied that there really are not depth issues in this location.

Cook stated that a 60-foot minimum would push the dock out.

Schleuning clarified that it was a 60-foot maximum.

Newell asked if there are navigational buoys in the channel and whether they are lighted.

Schleuning confirmed that there are two navigational buoys but noted that they continue to move west.

Anderson referenced a previous request from another property where he believed the dock could only extend 20 feet as that is where the four-foot water depth was reached.

Schleuning stated that for a lot 40 to 60 feet in width, the dock can extend up to 60 feet. She noted that for lots under 40 feet in width, the dock length is allowed to the first reach of four feet of water but no greater than 60 feet.

Kroll asked if there has been any discussion with the neighbor.

Schleuning stated that materials were provided from the neighboring property owner tonight and provided to the Board in their folders.

Zorn referenced the historical information included in the packet and asked staff for a summary.

Schleuning stated that there was some question as to where the property lines were and therefore a more detailed survey was requested, and legal counsel was consulted. She commented on the unique and confusing situation with past records regarding the peninsula and property boundaries, and avoiding conflict with the neighboring dock use area.

Walesch asked the dispute on the new survey information.

Schleuning replied that the original shows 35 feet and the current shows 50 feet on the Hennepin County Property Integrative Map, but those are not official determinations. She noted the original plat, which showed all the distances for all the properties leading towards that area needed to be verified by a surveyor. She confirmed that there was a difference.

Walesch asked Gilchrist for his opinion on the assertion that boundary lines cannot be changed without going to court.

Gilchrist stated that this Board has every right to use current information to make its decision and is not bound by information from 1981. He stated that in this case he collaborated extensively with staff on this and did some research on accretion. He supported the opinion of staff to rely on the latest information.

Schleuning stated that it is not so much that the site information has changed, but that some of the documentation appeared wrong, as well as the land on the peninsula needs to be factored in for accretion.

Scott Albrecht, 4425 North Shore Drive, applicant, stated that the survey has been a point of contention and provided details on how the survey was completed. He noted that the survey company was recommended by the neighboring property owner. He explained that the original plat was used to track each lot along the lake down to the end to determine the shoreline for each lot. He noted that multiple property attorneys were

consulted. He recognized the concern with the dock that was previously installed in a perpendicular angle, noting that was a mix up with the installer and it was remedied as soon as possible. He stated that they have been working to fit the dock into a reasonable space without impeding into the channel or use of neighboring properties. He stated that they originally requested a larger dock but realized that would not fit into the property or neighborhood and therefore scaled down their request. He noted that they have consulted professionals whenever they could to provide the most accurate information. He stated that within the past ten years there has not been any credible information that shows differently than what they have provided. He noted that they have completed their due diligence to ensure everyone is treated fairly.

Kirkwood referenced the platform and asked the intent.

Albrecht replied that the intent would be for swimming, fishing and to have a few chairs.

Anderson provided a photograph and asked which year the photo was taken.

Albrecht replied that would have been in 2018 or 2019.

Anderson compared that to the Hennepin County property information, showing the property lines, noting that the dock in question is over the property line at that point. He then compared that to the 2020 images and noted the platform that is over the property line, and everything then moves into the dock use area of the neighbor.

Albrecht clarified that the dock location in the 2020 picture is not where the requested dock location is.

Anderson commented that he understands why the applicant would want the dock in this location but also recognized that impacts the neighbors.

Zorn asked if the applicant would consider shortening the dock to make the variance not necessary.

Albrecht replied that the dock is currently 52.5 feet in length and with the platform would be 60.5 feet. He commented that he could bring the dock in four or five feet to provide a six-foot setback.

Thomas opened the public hearing at 7:46 p.m.

Todd Lundman, 4435 North Shore Drive, asked why this would angle to the west into his property, when all other extended side site lines go straight from the property lines.

Schleuning reviewed the definition of site lines within the Code and explained how those are shown as extended from the property.

Lundman asked his width.

Schleuning replied that his would remain the same and provided the extended side site line. She also

explained accretion and how that is factored in.

Lundman asked if the judicial landmark survey was considered with this survey.

Schleuning replied that the original surveys were reviewed by the surveyor. She stated that Lundman could also get a survey if he feels this is inaccurate.

Lundman stated that he just saw this over the weekend and the surveyors are three months out. He stated that he did not expect things to change as they have been this way for years.

Schleuning stated that when they were onsite, they did talk about this, and she did send information to Lundman.

Thomas commented that the survey is what it is, although historically it may have been different.

Lundman stated that his questions remain because this is a judicial landmark survey. He commented that a previous owner got their permission to extend riprap into their property to protect the shoreline and that worked against them in this case.

Thomas commented that the history was reviewed by the surveyors and the office.

Anderson stated that the boulders in one of the photographs are not shown and commented on the side site lines.

Lundman commented that shoreline has taken a beating, but the new angle is based on the riprap and not the actual land.

Walesch commented that the applicant owns the point and asked what is the biggest issue for Lundman.

Lundman replied that all the lines extend straight off the property lines throughout the neighborhood where this extends at an angle which seems based off the riprap.

Walesch asked if the dock proposed is permanent.

Lundman replied that it would not be a permanent dock.

Schleuning replied that there would have always been an angle on extended site line because of the property lines. She stated that the confusion was the Hennepin County property marker as that was not accurate. She stated that the Hennepin County property maps are not always accurate and that is why surveys are completed.

Lundman stated that he started with 75 feet of shoreline, and this would result in 60 feet.

Albrecht clarified that property was showing over 80 feet previously and has been adjusted to what it should be, which would still be over 70 feet.

No additional comments were offered, and the public hearing was closed at 7:57 p.m.

Anderson stated that, this dock could be built without a variance. He stated that on the other side of the bridge, in the channel, there are docks on both sides. He noted the measurement between the docks in the most constrictive space, which is about 20 feet when factoring in boats. He noted that if the dock were placed along the shoreline in the channel, the dock could be placed in that location without a variance.

Schleuning replied that this channel is different than other channels. She stated that typically they attempt to keep boat storage out of a channel, but this channel is a Hennepin County authority, and more research would be needed to see if that would even be allowed.

Anderson referenced the property at 4801 Shoreline Drive. He provided details on the most constrictive point in Seton Channel. He noted that this is wider, and the big boats cannot get under the bridge.

Thomas commented that this is a property owner that owns shoreline in a big bay, versus property owners that do not have property on a bay and therefore must locate their dock in the channel.

MOTION: Walesch moved, Zorn seconded to direct LMCD legal counsel to prepare Findings of Fact and Order approving the variance application from Scott Albrecht for the property located at 4425 North Shore Drive in Orono for final approval at the August 10, 2022, LMCD Board meeting, with the conditions 1-6 as recommended by staff.

VOTE: Ayes (10), Nays (2), (Anderson, Cook). Motion carried.

11. OTHER BUSINESS

There was no other business.

12. OLD BUSINESS

A) Boat Generated Wakes – Review of Draft Code Amendment and Public Comment

Thomas stated that at the last workshop, the Board had discussion and asked staff to draft an ordinance that would apply to all watercraft and would require a distance of 300 feet from shore, dock, etc. He stated that the Board also stated that a vote on the draft ordinance would not occur at this meeting, as the intent would be to simply review the draft ordinance. He recognized the vast number of verbal and written comments that have been received on this topic and noted that he has asked staff to provide a summary/response to comments. He stated that some public comment will be accepted tonight, but that will be limited to one hour in length. He stated that if anyone is unable to speak during that time but still wants to provide input, which can be done in writing. He first asked for the input of the Board. He noted that some written comments supported the distance of 300 feet, others suggested a distance of

200 feet, and others believed there would be difficulty in 300 feet being calculated from docks, boats, etc. He noted that the Board spoke about wakes in general and did not attempt to target one type of boat.

Cook stated that he likes the distance of 300 feet from shore. He believed that 150 feet from other structures such as docks, fishing boats, etc. would be a reasonable compromise. He stated that in reviewing maps of the lake, it does not appear that requiring a distance of 300 feet from shore will cause any issues for boaters to comply.

Hoelscher stated that she noticed a lot of comments related to enforcement and recognized that education and enforcement are two large issues. She stated that one positive aspect of these discussions is that more people are becoming educated on the topic and the regulations. She stated that the wakeboard group recommends 200 feet and asked if that would be from shore or from all other structures as well. She asked for input from Water Patrol in terms of enforcement.

Schleuning stated that she would prefer not to speak for Water Patrol. She noted that the Water Patrol has stated that they would enforce any regulation. She stated that 150 feet would be challenging, whereas 300 feet would be easier for enforcement as it would be less contested. She commented that there is consensus that having a minimum that is applied to all watercraft equally is supported in general by law enforcement.

Thomas stated that there were comments received suggesting that the LMCD do more to support Water Patrol. He noted that in 2022, the LMCD, through Save the Lake, is supporting the funding for two dedicated Water Patrol Officers on the lake.

Jill Sims, National Marine Manufacturers Association (NMMA), stated that their recommendation was based on the research of their trade and would be for a distance of 200 feet from shore and other structures, such as docks, etc. She noted that she did submit written comments and therefore will not be providing additional input tonight but is present to answer any additional questions.

Walesch stated that he agrees with Cook on the distance of 300 feet from shore. He stated that requiring 300 feet from other structures would be impractical. He believed that the current regulation of 150 feet from shore or other structures is inadequate. He stated that part of the issue is with enforcement. He noted that many of the other boaters are not following the current regulations and therefore there is an enforcement component. He stated that whatever is done needs to be clear, enforceable, and needs to be communicated to the public. He commented that Chris Banks has done an enormous amount of work on this front and there is improvement being made. He suggested that the Communications Committee focus on this topic over the winter season and noted that it could also be helpful to partner with the boating industry and Chris Banks. He noted that the difference would only be 50 to 100 feet from the current regulations in most instances. He commented that he believes that the big cruisers throw a bigger wake than the wake boats and therefore the regulation needs to apply equally.

Kirkwood echoed the comments of Walesch in that 300 feet is a suitable number to work with at this time. He stated that in Cooks Bay there is a demonstration of what 300 feet looks like with a buoy, along with a 150 foot buoy for comparison. He stated that from the shore side it does not look like a huge distance. He stated that the buoys are a useful tool to show people the distances.

Schleuning stated that the buoys in Cooks Bay are 300 feet and 150 feet from the public launch dock structure.

Thomas invited public comments.

Gabriel Jabbour stated that he agrees with the comments of Walesch. He stated that he has been collaborating with members of the boating industry and many other stakeholders on the boating operator permit. He wanted to provide input on why the legislation failed. He noted that all the bills are included on the omnibus bill and therefore if one item is contentious, it causes all the others to fail. He did not want the Board to give up on the concept of a boating operator permit. He stated that the distance from shore does not matter if the fine remains at \$100 and there are no other penalties. He appreciated the desire for the LMCD to update its ordinance and agrees with Cook and Walesch. He stated that the distance of 300 feet has been in place for years applying to jet skis and therefore the uproar from the boating industry is ridiculous. He stated that the distance of 300 feet from shore is overdue. He noted that he is a marina owner. He stated that boat size could be limited. He stated that the boating operator permit would help to ensure there are consequences for those that need them. He commented that he does not agree with WSIA as they are drawing the line at 200 feet from shore. He noted that this regulation would apply to all boats, not wake boats. He provided a scenario where it would be difficult to measure the distance from shore and/or structures.

Dave Spadafore, Maple Grove resident and lake user, encouraged the continued focus on education. He stated that the current recommendation of 200 feet is a minimum and many lake users stay a distance beyond that from shore and other boats. He stated that it would be good to hear rationale on the distance of 300 feet from shore based on data. He believed that 200 feet would be sufficient. He believed that the distance from docks makes the issue more complex. He believed that applying that distance from anchored boats is a stretch, noting that if he anchors, he does not expect other boats to stay a football field away from him.

Rick Atherton, Lake Minnetonka homeowner, commented that he supports the distance of 300 feet from shore as well as docks. He stated that he has spoken with the Sheriff on this issue noting that it is difficult to enforce. He noted that residents are supposed to call 911 to make a report, when it is not typically an emergency, and the response is 30 to 40 minutes at which time the boater has usually left. He commented that the wake is doing damage to his shoreline. He stated that the issue of noise has not been addressed but believed that the issue has gotten better as there are less boats on the water with the price of gas increasing. He recognized that the sound towers are behind the driver and therefore the driver turns the music up to hear it over the engine noise, but that sound also travels across the water. He stated that a time limit could be implemented for music. He stated that there is data available to show that even two passes in water 18 to 20 feet in depth disrupts the phosphorus by 20 percent. He commented on the increase in dredging that has occurred because of the disruption from the boats. He noted that the problems caused by the wakes are at the expense of the homeowners and not those causing the problem.

Sandy Kennedy, Cooks Bay resident, commented that she believes a setback from the shoreline is reasonable. She noted that would provide everyone with a general idea of where they should be. She stated that in Cooks Bay if there are strategically placed anchored boats, this would render the bay no wake. She did not believe a 30-day implementation period is reasonable and believed that education should be the focus and the change should be implemented for the next boating season. She did not believe the requirement should apply to anchored boats.

Luke Anquist, West Lafayette Road, commented that he does not think there are a lot of people in the wake surf community that believe 300 feet is preposterous. He stated that the concern is that the distance will continue to increase. He noted that ice causes more damage to the shoreline than wake in some instances.

Frank Precopio, Greenwood and St. Albans Bay resident, commented that he agrees with Walesch. He noted that if someone were to anchor in the middle of the bay it would make the bay no wake.

Jim Dustrude, Harrison Bay and Mound resident, commented that he has spoken with many lakeshore owners that applaud the focus on 300 feet from shore. He commented that this is a positive direction and would be easier for people to estimate the distance. He stated that the LMCD has good mapping capabilities, and it could do more mapping to show 300 feet from shore to be used in education. He stated that the best parts of the lake for wake surfing could be identified and shared with boaters.

John Bendt, 1120 Tonkawood Road, stated that the distance of 300 feet from shore makes sense. He agreed it would make sense to have a different standard from docks and anchored boats. He stated that formulation is complicated by the tremendous power and energy in large wakes, which raises safety issues for anchored boats. He did not see a distance of 150 feet from docks and other boats would settle the issue. He stated that boats that provide large wakes may need a different standard and could be considered in the next phase of the process.

Greg Blasko, 3295 Crystal Bay Road, stated that he supports a distance of 200 feet from shore in order to provide more consistency for boaters. He stated that if there is going to be inconsistency between lakes, which should be very publicly noticed with everyone receiving notification in the mail. He stated that if there is a change to the distance from shore, which should be implemented next year for the new boating season. He stated that he would prefer to see effective communication on the change, if there is a change made.

Eric Evenson, Lake Minnetonka Association, recognized that this step is an information gathering step. He asked the question of how this would apply to marina docks that extend out 200 feet from shore already. He stated that those marinas could get quiet water buoys to remedy that issue. He stated that there are some areas in the lake which have long docks that extend through marshes and asked how those would be handled. He stated that he likes the idea of 300 feet as it is easy to visualize. He stated that he is uncomfortable with a distance of 300 feet from structures as that would create a challenge as already mentioned by other speakers. He stated that he is pleased to see the Board considering this distance and would encourage the Board to focus on the distance from shore rather than at wakes specifically. He noted that quiet recreation such as canoe and paddleboards often operate within those 300 feet from shore. He stated that while boat size and motor sizes have increased, boater behavior has also changed in recent years. He noted that these were simply some informal comments and LMA will provide formal comments later.

Walesch commented that the current ordinance is 150 feet from shore but also from any structures. He stated that he would propose that distance from structures would remain unchanged at 150 feet, while only the distance from shore would increase to 300 feet.

Travis Anderson, Maxwell Bay resident, commented that Chris Banks and his group have done a fantastic job on

education. He stated that they work with marinas and Water Patrol to help in any situation they can. He stated that he received a call on Monday related to music complaints and their collective group made some postings on social media and reached the gentleman causing the issue with music. He stated that the person recognized that they were in the wrong and stated that he understood the issue and would act differently moving forward. He stated that it is amazing how a social media network can reach others. He stated that education is the key component, although it requires a lot of time and energy. He stated that this will take time to continue to reach more people and spread the message of education. He stated that the entire process needs more time. He recognized that people continuously reaching out with complaints can be annoying and therefore may cause the LMCD to believe immediate action is necessary, but it takes time to spread education and make that desired difference in boater behavior. He asked for clarification on the statement of Kirkwood that 300 feet would be a good starting point.

Kirkwood commented that there is still research being completed and if there is data that suggests that the water quality is being destroyed by wake penetration, the offshore settings may need to be adjusted further to protect the lake bottom.

Mr. Anderson asked if the decision of 300 feet is being made before there is enough information. He agreed that the operator permit would be a huge step and asked the LMCD to support that legislation. He stated that if the issue is with anchored boats, there are designated areas for anchored boats.

Thomas thanked everyone for sharing their comments and invited additional comments in writing.

Walesch noted that any comments Kirkwood made are his individual comments and do not represent a consensus of the Board.

MOTION: Cook moved; Kroll seconded to table this discussion to the next meeting.

Further discussion: Anderson stated that he suggested a distance from shore of 300 feet last year after his experience sailing in another area. He stated that area used 300-foot buoys on the high points of shore which made enforcement easy. He stated that he is glad to see this moving forward with support. He believed that people would be willing to make donations to cover the cost of buoys.

Zorn asked that formal comments be received from Water Patrol for consideration at the next meeting.

Newell stated that he approves of moving this forward and not deciding tonight. He stated that some of the items that came forward tonight were related to structures and anchored boats. He suggested that staff provide some alternative language to those elements.

Schleuning stated that the stakeholders were notified that there would not be action taken tonight and that the intent tonight would be to simply have discussion.

VOTE: Motion carried unanimously.

Walesch stated that he believes that if this proceeds, there is a way this could be done correctly and agreed with the

residents that setting this up to roll out in the spring would make the most sense in terms of proper education. He also asked if an ordinance could be drafted that better matches the discussion tonight.

Thomas noted that this item has been tabled and discussion should cease.

Gilchrist commented that he could revise the draft to reflect the discussion tonight. He echoed the comments of the Chair that when an item is tabled that would end discussion.

13. NEW BUSINESS

A) Watercraft for Hire Application, Stephen Crumley, MA778893 MN Boat Master

Schleuning reported that an application has been received from the applicant for a Watercraft for Hire Certificate of Registration with a berthing location at a residential dock. She stated that staff anticipates denial as the request does not meet the LMCD Code. She provided a summary of the request. She noted that the Board has reviewed similar requests with residential dock berthing locations that have been denied. She reviewed other key considerations for the Board to consider as well.

Gilchrist noted that typically this type of request is managed administratively, but when a denial is recommended, that application goes before the Board.

Thomas commented that the Board has reviewed similar applications where an applicant has met all the requirements except for a commercial berthing location and those have been denied.

Stone stated that this seems like the request the Board denied last year and therefore would want to be consistent.

Cook stated that personally he does not have interest in revisiting this issue and would stand behind the current regulations.

Thomas invited the applicant to speak.

Steve Crumley, applicant, stated that if he looks at the ordinance specifically, berthing is not noted in that section. He was confused as to why this is coming up. He stated that the part quoted comes from the Code related to building a dock. He stated that there are a lot of operators doing casual charters illegally without the proper safety equipment and licensing. He stated that he is attempting to do this in a legal and safe way. He believed that this topic came before the Board in the last two years because he approached staff in 2020 to determine how he could do this in a legal manner. He stated that prohibition does not work, and people need to be provided a legal way to conduct this activity safely. He stated that he would not be having any commercial activity at his personal dock. He stated that he would pick up patrons at the commercial dock at which he would pay a fee to do so. He stated that he does not offer catering or serve alcohol, therefore those would also not occur at his dock. He stated that he is not attempting to compete with big charter operations but to provide a service to others on the lake in a safe manner.

Thomas stated that the Board is aware of the illegal charter operations on the lake, which is why this has been a

focus for the Board and Water Patrol over the past two years. He stated that this year the Board implemented stickers for legal charters which will make enforcement easier.

Anderson commended the applicant for trying to do the right thing. He recognized the considerable number of illegal charters that often do not have the proper safety equipment. He stated that the stickers are helping with enforcement. He stated that he does have compassion for the applicant.

Kirkwood asked why this would create a hassle in this instance.

Schleuning stated that traditionally if you run a revenue operating establishment, it must be at a commercial site. She noted that the Watercraft for Hire would be a commercial use. She stated that if this were allowed at residential docks, they would need more regulation as to what could or could not be done at those locations. She stated that this discussion of the Board began prior to the applicant bringing this forward in 2020.

Brandt referenced the language in the staff report which states that the applicant has attempted to minimize the commercial activity at his dock and asked for more details.

Schleuning stated that her concern would be with enforcement if those elements spelled out in the applicant's narrative are not followed.

Brandt asked if there is an opportunity to commercialize the dock.

Schleuning stated that has not been part of the discussion. She noted that if the property qualified for double setbacks and other city regulations, which could be a consideration.

Gilchrist commented that this is a policy issue for the Board and whether it wants to change the Code to allow this activity. He stated that until the Code is changed, it has been consistently applied and would encourage the Board to continue to do so. He noted that if the Board wanted to allow this activity, it would need to change the Code to allow the activity.

Anderson asked if there is sufficient space for the applicant to have a commercial dock.

Crumley replied that he does not want to pursue that. He stated that this is a residential dock, and he does not wish to disrupt his residential neighborhood. He noted that fishing charters are treated differently and asked why. He asked the definition of a fishing charter that would fall outside of the regulation.

Thomas commented that is how the Board has traditionally interpreted the ordinance.

Crumley asked if all parties on his boat had a fishing license, would that then make his charter a fishing charter, or whether everyone is required to have a fishing pole.

Gilchrist commented that this is not a debate, but a time for the Board to decide.

Crumley stated that he is not attempting to debate but obtain clarity.

MOTION: Walesch moved, Cook seconded to direct LMCD legal counsel to draft Findings of Fact and Order to deny Andiamo's application based on the proposed berthing location not being a commercial site and bring back to the Board on August 10, 2022.

VOTE: Ayes (10), Abstained (2), (Kroll, Anderson). Motion carried.

14. TREASURER REPORT

Anderson commented that he made a mistake in how the funding should occur for the St. Anthony Falls Laboratory research study. He noted that if the funding is short, he would be willing to donate to cover the difference.

15. EXECUTIVE DIRECTOR UPDATE

Schleuning provided the following information:

- Starry Trek is scheduled for August 20th and encouraged residents and members of the Board to participate.

16. STANDING LMCD COMMITTEE/WORKGROUP

Aquatic Invasive Species: No report.

Communications: Hoelscher reported that the next meeting is scheduled for Tuesday, August 9th at 8:30 a.m.

Finance: No report.

Operations: No report.

Save the Lake: No report.

17. ADJOURNMENT

Being there no further business, the meeting was adjourned at 9:34 p.m.

Gregg Thomas, Chair

Dan Baasen, Secretary

10:50 AM
08/04/22

Lake Minnetonka Conservation District
Check Detail
August 1 - 15, 2022

ITEM 7A

Date	Num	Name	Memo	Account	Class	Paid Amount
08/15/2022	EFT-22-83	ADP		Alerus Checking		
			Salaries - Admin	4020M10 · Salaries-002 - Admin	Admin.	-10,204.57
			P.E.R.A.	2020 · Payroll Liabilities -	Admin.	1,422.70
			ER PERA	4022M10 · ER PERA - Admin	Admin.	-762.16
			ER/FICA Medicare - Admin	4021M10 · ER Share of Admin FIC...	Admin.	-777.44
			Long Term Disability	2020-LT · Payroll Liabilities - UNUM	Admin.	84.96
TOTAL						-10,236.51
08/11/2022	EFT-22-84	ADP Service Fee		Alerus Checking		
			Payroll 8/1/2022 - 8/15/2022	4180M10 · Professional Services -...	Admin.	-89.62
TOTAL						-89.62
08/11/2022	EFT-22-85	Unum Life Insurance	0510159	Alerus Checking		
			Long Term Disability - August 2022	2020-LT · Payroll Liabilities - UNUM	Admin.	-169.92
TOTAL						-169.92
08/11/2022	EFT-22-86	P.E.R.A.		Alerus Checking		
			Payroll 8/1/2022 - 8/15/2022	2020 · Payroll Liabilities -	Admin.	-1,422.70
TOTAL						-1,422.70
08/11/2022	EFT-22-87	SelectAccount Group S...		Alerus Checking		
			HSA Employer Contribution for August 2022 - Tammy Duncan	4380M10 · Employee Benefits - Ad...	Admin.	-116.67
			HSA Employer Contribution for August 2022 - Vickie Schleuning	4380M10 · Employee Benefits - Ad...	Admin.	-116.67
			HSA Employer Contribution for August 2022 - Thomas Tully	4380M10 · Employee Benefits - Ad...	Admin.	-116.67
TOTAL						-350.01
08/11/2022	22188	AIS Advanced Imaging ...		Alerus Checking		
07/26/2022	Inv. #478606...		Copier Contract 7/20/2022 - 8/20/2022	4140M10 · Office Equipment R&M ...	Admin.	-279.52
TOTAL						-279.52

10:50 AM

08/04/22

Lake Minnetonka Conservation District
Check Detail
 August 1 - 15, 2022

Date	Num	Name	Memo	Account	Class	Paid Amount
08/11/2022	22189	Chuck Struck		Alerus Checking		
07/27/2022	INV. #0017		Board Meeting 7/27/22	4182M10 · Media (Cable/Internet) ...	Admin.	-105.00
TOTAL						-105.00
08/11/2022	22190	Kennedy & Graven	LK110-00004	Alerus Checking		
07/26/2022	June 2022		Legal Fees June 2022	4620M10 · Civil Legal Fees - Admin.	Admin.	-2,063.40
TOTAL						-2,063.40
08/11/2022	22191	LMCC		Alerus Checking		
07/27/2022	Inv. #1498		VOD Services for Meeting 7/27/22	4182M10 · Media (Cable/Internet) ...	Admin.	-100.00
TOTAL						-100.00
08/11/2022	22192	NCPERS Group Life Ins...		Alerus Checking		
07/05/2022	August 2022		Life Insurance, August 2022 (Schleuning, Duncan, Tully)	4380M10 · Employee Benefits - Ad...	Admin.	-48.00
TOTAL						-48.00
08/11/2022	22193	TimeSaver Off Site Sec...		Alerus Checking		
07/13/2022	Inv. #M27498		Board Minutes Work Session 7/13/22	4230M10 · Meeting Exp. - Admin.	Admin.	-80.13
			Board Minutes 7/13/22	4230M10 · Meeting Exp. - Admin.	Admin.	-185.25
TOTAL						-265.38
08/11/2022	22194	Freshwater Scientific S...		Alerus Checking		
06/21/2022	Inv. #2022-26		Spring CLP Delineation Survey - Harrison Bay	4181M30 · Prof. Services	AIS	-483.00
TOTAL						-483.00

10:50 AM

08/04/22

Lake Minnetonka Conservation District
Check Detail
August 1 - 15, 2022

Date	Num	Name	Memo	Account	Class	Paid Amount
08/11/2022	22195	Freshwater Scientific S...		Alerus Checking		
06/30/2022	Inv. #2022-34		Spring CLP Delineation Survey - Black Lake	4181M30 · Prof. Services	AIS	-437.50
			Spring CLP Delineation Survey - Browns Bay	4181M30 · Prof. Services	AIS	-472.50
			Spring CLP Delineation Survey - Crystal Bay	4181M30 · Prof. Services	AIS	-717.50
TOTAL						-1,627.50

ITEM 7B



RESOLUTION 243

A RESOLUTION ACCEPTING CONTRIBUTION(S) TO THE LAKE MINNETONKA CONSERVATION DISTRICT (LMCD)

WHEREAS, the LMCD is a regional government agency established by Minnesota Statutes Section 103B.605, Subd. 1; and

WHEREAS, contributions to the LMCD "Save the Lake" fund are generally tax deductible to individuals under the IRS Code 26 USC Section 170 (b)(1)(a) because contributions to any political subdivision of any state for exclusively public purposes are deductible; and

WHEREAS, municipalities are generally authorized to accept donations of real and personal property pursuant to Minnesota Statutes Section 465.03 for the benefit of its stakeholders, and is specifically authorized to accept gifts; and

WHEREAS, LMCD wishes to follow similar requirements as established for municipalities for accepting donations; and

WHEREAS, the attached listed person(s) and entity(ies) have offered to contribute the cash amount(s) set forth with any terms or conditions as outlined in Attachment I to the LMCD; and

WHEREAS, such contribution(s) have been contributed to the LMCD for the benefit of the public, as allowed by law; and

WHEREAS, the LMCD Board of Directors finds that it is appropriate to accept the contribution(s) offered.

NOW THEREFORE, BE IT RESOLVED BY THE LMCD BOARD, STATE OF MINNESOTA AS FOLLOWS:

1. The contribution(s) described with Attachment I is/are accepted and shall be used to establish and/or operate services either alone or in cooperation with others, as allowed by law.

2. The executive director is hereby directed to issue receipt(s) acknowledging the LMCD's receipt of the contributor's contribution(s).

Adopted by the Board this 10th day of August 2022.

ATTEST:

Gregg Thomas, Chair

Dan Baasen, Secretary

Lake Minnetonka Conservation District
Transaction Detail By Account
July 20 - 31, 2022

Resolution #243 Attachment 1 - Save the Lake Contributions

<u>Date</u>	<u>Num</u>	<u>Name</u>	<u>Memo</u>	<u>Amount</u>
Contributions				
3001M20 · Donations (General) - S/L				
07/27/2022	6396	Dan Johnston	STL Donation (General)	50.00
07/27/2022	002583	Alton Foundation	STL Donation (General)	1,000.00
07/27/2022	3748	(OPT OUT)	STL Donation (General)	100.00
07/27/2022	19206	Neal and Debra Netsch	STL Donation (General)	25.00
Total 3001M20 · Donations (General) - S/L				1,175.00

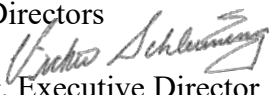


LAKE MINNETONKA CONSERVATION DISTRICT

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

DATE: August 10, 2022 (Prepared August 4, 2022)

TO: LMCD Board of Directors

FROM: Vickie Schleuning, Executive Director 

CC: Thomas Tully, Environmental Administrative Technician

SUBJECT: Variance for Adjusted Dock Use Area for Setback, 4425 North Shore Dr, Orono

ACTION

Board approval of Findings of Fact and Order for a variance for an adjusted dock use area (side setbacks) for 4425 North Shore Drive on West Arm Bay in the City of Orono (PID 07-117-23-34-0003)

BACKGROUND

The LMCD held a public hearing on July 27, 2022 to consider the application of Scott Albrecht ("Applicant") for a variance at 4425 North Shore Drive on West Arm Bay in the City of Orono (PID 07-117-23-34-0003) for an adjusted dock use area and side setbacks.

On July 27, 2022, the LMCD Board voted to have legal counsel and staff draft Findings of Fact and Order for approval of the variance request with conditions. The draft Findings of Fact and Order is attached, as well as the memos and presentations from the hearing.

BUDGET

N/A

STRATEGIC PRIORITIES

<input type="checkbox"/> Operational Effectiveness	<input type="checkbox"/> Clear & Timely Communications	<input type="checkbox"/> Effective Governance	<input checked="" type="checkbox"/> Lake Protection	<input type="checkbox"/> Other
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ATTACHMENTS

1. Findings of Fact and Order
2. Board Memo of July 27, 2022 without attachments
3. Proposed Site Plan
4. Variance Application & Submitted Documents

Type: Variances for Adjusted Dock
Use Area, Length and Side
Setbacks
Date: August 10, 2022
Applicant: Scott Albrecht
PID: 07-117-23-34-0003
Mailing Address: 4425 North Shore Dr.
Mound, MN 55364
Site Location: Orono

**LAKE MINNETONKA CONSERVATION DISTRICT
HENNEPIN COUNTY, MINNESOTA**

IN RE:

Application of Scott Albrecht for a variance for
dock use area, length and side setbacks, for the
property located at 4425 North Shore Drive in
the City of Orono

**FINDINGS OF FACT
AND ORDER**

The Lake Minnetonka Conservation District (“**LMCD**”) received an application from Scott Albrecht (“**Applicant**”) for a variance from the 60-foot length limit and setbacks from the side site lines of the dock use area to allow the installation of a 60.5 foot dock with four (4) and zero (0) foot setbacks at the property located at 4425 North Shore Drive, in Orono, Minnesota and legally described in the attached Exhibit A (“**Subject Property**”). The LMCD Board of Directors (“**Board**”) held a public hearing, after due notice having been provided, on the requested variances on July 27, 2022. Based on the proceedings and the record of this matter, the Board hereby makes the following Findings of Fact and Order:

FINDINGS OF FACT

1. The Subject Property is located in the City of Orono (despite having a Mound address) and is on West Arm Bay, which is part of Lake Minnetonka (“**Lake**”). The Subject Property has an unusual configuration and has had a dock for several years and the Applicant is seeking to determine the dock use area and bring the dock into compliance by obtaining a variance as it encroaches on the side setbacks of the Subject Property.
2. The Applicant desires to install a dock with a four (4) foot setback from the west side site line with a proposed platform; a zero (0) foot setback from the east side site line; a dock length of 60.5 feet, with the proposed platform, or 52.5 feet without the platform; one (1) enclosed boat storage unit (“**BSU**”), 11.5 feet by 31 feet, with a canopy; two BSUs, 10 feet by 12 feet, for personal watercraft (tucked behind the larger BSU); and, a seven (7) foot by eight (8) foot platform off the western end of the dock as shown in the site plan attached

hereto as Exhibit B (“Site **Plan**”).

3. The Subject Property has an unusual configuration and slightly converging extended side site lines with a peninsula on the southwest side a public navigation channel under the authority of Hennepin County on the eastern site.
4. The Subject Property has approximately 459 feet of 929.4 feet OHW shoreline. Ninety (90) feet of shoreline on the peninsula and 50 feet of shoreline between the extended side site lines.
5. The Subject Property has enough shoreline to support a density of four (4) BSUs for watercraft owned and registered to persons living at the Subject Property.
6. The dock, as proposed, is compliant with all requirements of the LMCD Code of Ordinances (“**Code**”), except length and side setbacks.
7. Additional information regarding this matter is provided in the LMCD staff report related to this application prepared July 22, 2022 and the presentation made thereon at the meeting (collectively, the “**Staff Reports**”). The Staff Reports are incorporated herein by reference, except that the approvals and conditions contained in this document shall be controlling to the extent there are any inconsistencies.
8. The Applicant proposes a variance from the 60-foot length limit on the dock use area established in Section 2-3.03, Subd. 2(d)(1) of the Code to allow a dock with a length of 60.5 feet in order to include the proposed platform in the dock.
9. The Applicant proposes a variance from the 10-foot and 20-foot setback for a canopy from the side site lines, and not less than 20 when the BSUs open toward a side site line, established in Section 2-3.03, Subd. 3(a) of the Code to allow a side setback of four feet from the west side site line and zero feet from the east side site line.
10. Section 6-5.01, Subd. 6 of the Code allows the granting of a variance if the Board determines practical difficulties exist and that granting the variance with whatever conditions it deems are necessary does not adversely affect the purposes of the Code; the public health, safety, and welfare; and reasonable access to or use of the Lake by the public or riparian owners.
11. The term “practical difficulties” is defined in Code, Section 1-3.01, Subd. 73 as meaning “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 and that serve as a basis for the property owner to request a variance from the strict application of the provisions of the Code. Practical difficulties only exist with respect to a particular property if the conditions preventing the proposed reasonable use of the property are unique to the property, were not created by the property owner, and are not based solely on economic considerations.”
12. Converging side site lines is a challenge for a number of properties on the Lake. Often in such cases, as is true here, the conditions do not reasonably allow a dock to be installed that

strictly complies with the requirements of the Code or given the overall site characteristics. These conditions are unique and were not created by the Applicant. The variance request is not based solely on economic considerations. The proposed platform is not integral to the installation or use of the dock.

13. Issues have been raised by a neighboring owner over the accuracy of the current survey information over the original plat and past positions of the LMCD regarding the DUA for the Subject Property. However, the Board has no reasonable basis on which to question the accuracy of the current survey information.
14. The LMCD Executive Director, in consultation with the LMCD attorney, consider the current boundary lines of the Subject Property, including accretion along the point, and reached a conclusion on side site lines that provide the Applicant reasonable access to and use of the Lake.
15. Granting a side setback variance will not adversely affect the purposes of the Code as the installation and use of a dock furthers the purposes of the Code by promoting reasonable access to the Lake. The requested variance is also not contrary to the public health, safety, or welfare in that the dock does not pose a safety or navigation problem on the Lake. The dock is located entirely within the extended sidelines and does not interfere with views of the lake or the navigation of watercraft to or from the neighboring docks or adjacent public navigation channel.
16. Granting the requested length variance would adversely affect the purposes of the Code in promoting and regulating the orderly utilization of the Lake. The applicant has reasonable use of the Lake without exceeding the dock length established by the Code.
17. No comments were received from the Minnesota Department of Natural Resources, the Minnehaha Creek Watershed District, or the municipality. Comments received by LMCD from the general public are summarized as one party raising numerous concerns related to blocking views of the lake and obstructing use of another dock use area.
18. The Board has issued dock side setback variances to other properties around the Lake due to similar conditions.
19. The Applicant's proposed installation of a dock to access the Lake is a reasonable use of the Subject Property. The location of the dock is entirely within the extended sidelines of the Subject Property and eliminates watercraft storage and structures in the adjacent public navigation channel.
20. Practical difficulties exist in this case that support the Board exercising its authority under Section 6-5.01 of the Code to grant a sideline setback variance for the Subject Property.

ORDER

ON THE BASIS OF THE FOREGOING AND THE RECORD OF THIS MATTER, IT IS ORDERED by the Board as follows:

1. Dock Length Variance. The Applicant's request for a variance allowing a 60.5 dock length is denied. The maximum dock length is sixty (60) feet.
2. Side Setback Variance. A side setback and authorized dock use area variance is hereby approved to allow the installation of a dock that has a five (5) foot setback to a structure and eight (8) foot setback from the canopy from the western side site line of the Subject Property and a zero (0) foot setback from the eastern side site line of the Subject Property. This may require the removal or reconfiguration of the platform shown on the Site Plan.
3. Boat Storage Units. The requested enclosed BSU with canopy and two (2) BSUs indicated as PWC Lift as shown on the Site Plan attached hereto as Exhibit B are approved.
4. Conditions. The variances granted in this Order are subject to compliance with all of the following conditions:
 - a. The Applicant shall provide an updated site plan with final configuration, including measurements of the dock structure, length, setback distances, illustrating the removal or reconfiguration of the platform which ensures the five (5) foot westerly setback and overall dock length limit of 60 feet. The dock shall be installed and maintained in compliance with the updated site plan. No alteration of the dock shall occur except in conformance with the requirements of the Code.
 - b. Watercraft and other structures may not extend beyond the length of the boat slip or the 60 feet maximum length from the 929.4 ft OHW mark. Prohibited extensions include any portion of the watercraft, including all attached equipment in its normal operating position, that extend beyond the ends of the boat slips.
 - c. Applicant will obtain all required approvals if the installation of the dock will impact any delineated wetlands.
 - d. 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 is rendered null and void.
 - e. 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 Code without reliance on this variance within the same period.

- f. 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.
 - g. 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.
5. Authorization. The LMCD staff is authorized and directed to provide a copy of this Order to the Applicant.

BY ORDER OF THE BOARD OF DIRECTORS of the Lake Minnetonka Conservation District this 10th day of August 2022.

Gregg Thomas, Chair

ATTEST:

Dan Baasen, Secretary

EXHIBIT A
Legal Description of Subject Property

Par 1: Lot 1, "Bergquist's Addition to Saga Hill, Hennepin County, Minnesota"

Par 2: That part of Government Lot 3, Section 7, Township 117, Range 23 described as follows: Beginning at the most Southerly corner of Lot 1, Bergquist's Addition to Saga Hill, Hennepin County, Minnesota; thence Northeasterly along the Southeasterly line of said lot to its intersection with the Southwesterly line of the alley as platted in the rear of said Lot 1, thence Northwesterly along the said line to most northerly corner of said lot; thence Northeasterly along an extension of the Westerly line of said lot to its intersection with the center line of the county road mentioned in Torrens Case No. 2123 and in Certificate of Title No. 76040, thence Easterly along said center line to its intersection with the Westerly line of the channel connecting West Arm, Lake Minnetonka with Forest Lake, thence Southwesterly along the Westerly line of said channel to the shore of West Arm; thence Westerly along said shore to the point of beginning.

EXHIBIT B
Site Plan

[attached hereto]




LAKE MINNETONKA CONSERVATION DISTRICT

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

DATE: July 27, 2022 (Prepared July 22, 2022)

TO: LMCD Board of Directors

FROM: Vickie Schleuning,  Executive Director

CC: Thomas Tully, Environmental Administrative Technician

SUBJECT: Variance for Adjusted Dock Use Area for Setback, 4425 North Shore Dr, Orono

ACTION

Board consideration of a variance for an adjusted dock use area (side setbacks) for 4425 North Shore Dr on West Arm Bay in the City of Orono (PID 07-117-23-34-0003) 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 Scott Albrecht for the property located at 4425 North Shore Dr in Orono for final approval at the August 10, 2022 LMCD Board meeting <subject to the following conditions>...

Denial

I make a motion to direct LMCD legal counsel to prepare Findings of Fact and Order denying the variance application from Scott Albrecht for the property located at 4425 North Shore Dr in Orono for a final vote at the August 10, 2022 LMCD Board meeting based on...

APPLICATION SUMMARY

The applicant has submitted an application for a variance to adjust the dock use area of 4425 North Shore Dr in Orono. The applicant is proposing a layout that would maintain the existing structure at the site, in addition to a platform and personal watercraft lift. The existing structure does not meet setback requirements per LMCD Code. The site has an unusual configuration and slightly converging extended side site lines with a peninsula on the southwest side and a public navigation channel under authority of Hennepin County on the eastern side. Old parcel maps and the Hennepin County Interactive map may not have reflected the current property boundaries accurately with the peninsula, possibly due to previous survey techniques or accretion. After review and in consultation with LMCD legal counsel, this portion of land is being considered part of the Applicant's property.

Site Background

The applicant's parcel has approximately 459 feet of shoreline that mostly follows along the channel running South from Forest Lake to West Arm Bay before protruding out into a small peninsula. There is approximately 90 feet of shoreline on the peninsula, which includes approximately 50 feet of shoreline between the proposed extended side site lines. Only a portion of the riprap is being considered for purposes of determining the westerly extended side site line for the peninsula. The current proposal avoids any obstruction to the navigation channel.

At the time the survey was being prepared, a dock was not installed at the adjacent property to the west, 4435 North Shore Dr. Based on observations at the site, the current proposal does not appear to impair navigation or use of this adjacent property. It was also observed that water lily exists northwest of the peninsula, but not in the location of the Applicant's request. The channel is approximately 60 feet in width. The navigation through the channel does not appear to be obstructed physically or visually.

Proposed Setbacks

The proposed dock would be set back on the West side shore to lakeward 9 feet to 8 feet, respectively; and 9 feet to 4 feet with the proposed platform. The proposed dock would be set back on the East side shore to lakeward from 3 feet to 0 feet, respectively.

Per the LMCD Code Section 2-3.03, a 5-foot setback is allowed under certain conditions for properties with shoreline of 50-feet or less at the 929.4 OHW, while canopies are prescribed a 20-foot setback.

Proposed Dock Length

The Applicant proposed dock length is approximately 60.5 feet from the 929.4 OHW with the proposed platform and 52.5 feet without the platform. The proposed dock width is approximately 22 feet wide with the proposed platform and 18.5 feet wide without the platform. The proposed platform is 7 feet wide by 8 feet long.

The LMCD Code Section 2-3.03 allows a dock length up to 60 feet from the 929.4 OHW mark for properties with a lake frontage of 40 to 60 feet.

Proposed BSUs

The applicant proposes one boat storage unit (BSU) with a canopy, of which is enclosed on three sides by dock structure and two BSUs for personal watercraft (PWC). The enclosed BSU measures 11.5 feet wide by 31 feet long. The PWC lift measures 10 feet wide by 12 feet long and is tucked behind the enclosed BSU. The location would be along the East side of the proposed dock facing the channel.

CONSIDERATIONS OF VARIANCE

The following items should be considered when reviewing a variance request:

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 a 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?

PUBLIC COMMENTS

In compliance with MN DNR General Permit 97-6098, the MN DNR, MCWD, and the City of Orono were provided information regarding the application on July 8, 2022. City and agency comments were due by July 18, 2022. Comments received as of July 18, 2022 are summarized below. Any comments received after July 18, 2022 will be provided at the Board meeting for review.

- There have been no agency comments regarding the application

As of July 18, 2022, comments received by LMCD staff from the general public are summarized below:

- The LMCD Office has received numerous concerns from one party regarding this site related to blocking views of the lake and obstructing use of another dock use area.

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 July 7, 2022 edition of the Sun Sailor (official newspaper) and the July 9, 2022 edition of the Laker Pioneer. On July 8, 2022, 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 was posted online and the agenda was posted on the LMCD bulletin board.

RECOMMENDATION

The Applicant's parcel has approximately 459 feet of shoreline and 90 feet of shoreline on the peninsula. Approximately 50 feet of shoreline exists between the extended side site lines per the Code description, given its unusual configuration. Based on onsite reviews, the dock configuration does not appear to impede navigation, impair reasonable use of other dock use areas, and seems compatible with adjacent uses.

If the board chooses to approve the variance, based on review of the Considerations of Variance factors, the minimum recommendations are provided for consideration. The Board may wish to consider other items.

1. Maintain a minimum 5-foot setback on the western side and a 0-foot setback on the eastern side from the extended side site lines as indicated on the site plan.
2. Maintain a maximum 60-foot dock length.
3. Allow the requested enclosed BSU with canopy and two BSUs indicated as PWC Lift.
4. Remove or reconfigure the platform to enable a 5-foot setback on the westerly side.
5. Apply standard variance conditions reflecting environmental, nuisances, maintenance, etc.

BUDGET _____

N/A

STRATEGIC PRIORITIES _____

☐

Operational
Effectiveness

☐

Clear & Timely
Communications

☐

Effective
Governance

☒

Lake
Protection

☐

Other

ATTACHMENTS _____

1. LMCD Code Excerpts
2. Aerial Imagery of Site
3. Proposed Site Plan
4. Variance Application & Submitted Documents
5. Public Hearing Notice (Sun Sailor and Laker Pioneer)
6. Public Hearing Notice Mailing

ITEM 10A ATTACHMENT 5

This survey map depicts a large land parcel with various boundary lines and measurements. Key features include:

- NORTH SHORE DR**: A road running along the top right edge.
- CHANNEL**: A waterway located at the bottom right.
- LAKE MINNETONKA WEST ARM**: Labeled on the left side.
- Property Boundaries**: Shown with solid black lines and dashed red lines.
- Easements**: Indicated by dashed lines and labels such as "EASEMENT FOR CONVEYANCE OF WATER".
- Measurements**: Numerous numerical values are provided for distances and bearings, including:
 - $R=850.08$, $\Delta\theta=93.58^\circ$, $D=66.66$
 - $R=862.08$, $\Delta\theta=70.07^\circ$, $D=46.14$
 - $N37^\circ 46' 59'' E$, $358.71'$
- Topographic Features**: Contour lines and spot elevations are shown throughout the area.
- Annotations**: Includes "SAS 111111 REVISSED" and "WEST QUARTERLY CORNER LOT 1 POINT OF BEGINNING".
- Inset Map**: Located in the bottom left corner, showing the project location relative to the "EXTENDED SITE LINE".

Page 2 That part of Gazetteer List I, Section 7, Towns nos. 117, Range 23, is described as follows, beginning at the most Southerly corner of Lot 1, the Bergquist's Addition to Sagehen Lake, Humboldt Co. Minn.: thence Northerly along the Southwesterly line of said lot to its intersection with the Southwestwesterly line of the alley as platted in the rear of said Lot 1. thence Northerly along the said line to most Northerly corner of said lot; thence Northerly along an extension of the Westerly line of said lot to its intersection with the center line of the publicly-owned right-of-way in Torrence Co. Minn. 2125 and in Certificate of Title No. 76049; thence Southerly along said center line to its intersection with the Westerly line of the channel connecting West Arm, Lake Minnetonka, with Forest Lake; thence Southerly along the Westerly line of said channel to the shore of West Arm; thence Westerly along said shore to the point of

Site Address: 8425 North Salem Drive Grano, MN 55904

(5) **Zoning Information:** The current Zoning for the subject property is LR-1R (One Family Lakeshore Residential) per the City of Orono's zoning map dated 12/31/2021. The subject, hereto, and River estate are not subject to any and zoning designation are as follows:

Slope: 35 feet (North Slope 1A)
 Side: 10 feet
 Rear: 30 feet
 Lake: 75 feet (From Ordinary High Water Line)
 Height: 35 feet
 Hardcover: 25 percent of lot area (No terraces, lawns, or lawns)

Rate: 75 Feet (Juke Side- From Ordinary High

We have not received the current zoning classification and building setback requirements from the owner.

Utilities: We have shown the location of utilities on the surveyed property by observed evidence only. There may be underground utilities interfering with the subject property we are unaware. Please note that we have not placed a Copper State One Call for this survey. There may or may not be underground utilities in the mapped area, therefore exercise caution when to assume before any excavation takes place on or near this site. Also, please note that seasonal conditions may inhibit our ability to visually observe all the utilities located on the subject property. Before digging, you are required by law to notify Copper State One Call at least 48 hours in advance at (515) 544-4662.

Existing Hardcover	
Let Area	= 43,151.5 F
Home Area	= 2,721 S.F.
Intimate Area	= 2,186 S.F.
Concrete Area	= 675 S.F.
Rock Ret Wall	= 90 S.F.
Boat House Area	= 255 S.F.
Privy Area	= 29 S.F.
Total Area	= 5,913 S.F.
Concrete	= 18,754



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I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that it is a study I have Last Survey or under the laws of the State of Minnesota.

Dated this 10th day of June, 2022.

Daniel L. Schmidt

Daniel L. Schmidt, P.E.
dschmidt@shoreline.com

Minnesota License No. 26117



SATHRE-BERGQUIST, INC.
14000 25TH AVENUE NORTH, SUITE 120
PLYMOUTH MN 55447 (952) 476-8000
WWW.SATHRE.COM

TWP 117-RGE 07-SEC 23
Hennepin County

ORONO,
MINNESOTA

PREPARED FOR:
SCOTT ALBRECHT

FILE NO.	100001-001
1	1



VARIANCE APPLICATION

LAKE MINNETONKA CONSERVATION DISTRICT

For LMCD use:
Fee Amount: _____ Check # _____ Date Received: _____

1. CONTACT INFORMATION

Applicant: Scott Albrecht Title (Owner, Authorized Agent, etc.): Owner

Address: 4425 North Shore Drive

City, State, Zip: Mound, MN 55364

Phone: 612 325 8251 Email: scotta1981@hotmail.com

Property Owner (if different from applicant): _____

Relationship to Property Owner: _____

Address: _____

City, State, Zip: _____

Phone: _____ Email: _____

2. PROPERTY INFORMATION

Site Address: 4425 North Shore Drive, Mound MN 55364

Abutting Lakeshore Property Owners (Name and Mailing Address)

North or West: Todd Lundman

4435 North Shore Drive, Mound MN 55364

South or East: _____

Other affected parties: _____

3. PROPOSED VARIANCE

Type of Variance: Variance to dock guidelines

State practical difficulties causing the variance to be required: _____

Shape of property does not allow for a dock of useable size, adjustments to setbacks and/or angles of extended site lines is needed to allow for useable dock.

4. ATTACHMENTS

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

- | | |
|--|---|
| <input checked="" type="checkbox"/> Locator map, county plat map | <input checked="" type="checkbox"/> Proposed facility site plan with scaled drawing of docks on abutting and other affected dockage |
| <input checked="" type="checkbox"/> Certified Land Survey, Legal Description | |
| <input checked="" type="checkbox"/> Existing facility site plan | <input checked="" type="checkbox"/> Names & mailing addresses of owners within a 350-foot radius of the property. (See note below.) |

***Names & Mailing Addresses: The LMCD provides notice of a public hearing, which is published and mailed to owners within 350 feet of the subject property. The applicant is required to obtain mailing labels from Hennepin County for property owners within a 350-foot radius of the site. Labels are now available online by visiting <https://gis.hennepin.us/locatenotify/default.asp>. Set the buffer distance to 350 feet and print the "mail list," which includes both taxpayer and resident information. If the property is located in Carver County, contact the LMCD office for assistance.

Several of the required attachments can be combined into a single document. Absence of requested data may result in a processing delay or the application may be deemed incomplete.

5. FEES

Application Fee (Non-refundable)	\$250.00
Deposit (Refundable, upon full compliance with the Code and extent of administrative, inspection and legal service required.)	<u>\$250.00</u>
TOTAL FEE ENCLOSED (This fee is for processing of the application and does not entitle the applicant to a variance.)	<u>\$500.00</u>

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.

Applicant's Signature:

<u>SCOTT ALBRECHT</u>	<u>[Signature]</u>	<u>OWNER</u>	<u>6/16/22</u>
Name	Title		Date

[Signature]

Return to:

Lake Minnetonka Conservation District
5341 Maywood Road, Suite 200
Mound, MN 55364

38 07-117-23 31 0001
JOHN O'NEILL/LAUREN O'NEILL
4445 NORTH SHORE DR
MOUND MN 55364

38 07-117-23 34 0002
COUNTY OF HENNEPIN
ATTN: REAL ESTATE MANAGER
701 4TH AVE S SUITE 400
MINNEAPOLIS MN 55415

38 07-117-23 31 0002
GREGG DANIEL KLOHN
4455 NORTH SHORE DR
MOUND MN 55364

38 07-117-23 34 0003
KATHARINE STOLTENBERG
SCOTT M ALBRECHT
4425 NORTH SHORE DR
MOUND MN 55364

38 07-117-23 31 0003
CHARLES WILLARD SANVIK
4465 NORTH SHORE DR
MOUND MN 55364

38 07-117-23 34 0004
TODD O LUNDMAN
4435 NORTH SHORE DR
MOUND MN 55364

38 07-117-23 31 0004
JOHN D & DEBRA M KNODEL
4485 NORTH SHORE DR
MOUND MN 55364

38 07-117-23 42 0009
CITY OF ORONO
P O BOX 66
CRYSTAL BAY MN 55323

38 07-117-23 31 0010
JOHN ILZE & PETERIS GROTANS
3200 29TH AVE NE
ST ANTHONY MN 55418

38 07-117-23 42 0010
CITY OF ORONO
P O BOX 66
CRYSTAL BAY MN 55323

38 07-117-23 31 0013
LEBRISIA IVERSEN
ANDREW IVERSEN
4448 NORTH SHORE DR
MOUND MN 55364

38 07-117-23 42 0037
THOMAS EDMUND LINDER
1360 VINE PL
MOUND MN 55364

38 07-117-23 31 0035
ERIC MEISEL
AMY YANIK MEISEL
1355 VINE PL
MOUND MN 55364

38 07-117-23 42 0040
WILLIAM T SCHOENING
4380 NORTH SHORE DR
MOUND MN 55364

38 07-117-23 31 0039
JOSEPH W LOMA
4460 NORTH SHORE DR
MOUND MN 55364

38 07-117-23 42 0041
DANIEL P HOLLERMAN
1375 VINE PL
MOUND MN 55364

38 07-117-23 31 0041
COUNTY OF HENNEPIN
ATTN: REAL ESTATE MANAGER
701 4TH AVE S SUITE 400
MINNEAPOLIS MN 55415

38 07-117-23 43 0017
CHRISTOPHER A TWOMEY
DARLA R TWOMEY
16743 W LOMA VERDE TRAIL
SURPRISE AZ 85387

38 07-117-23 34 0001
KENNETH PAUL SCHMELING
JUDITH A SCHMELING
5115 MINNEAPOLIS AVE
MINNETRISTA MN 55364

38 07-117-23 43 0018
ANDREW H SCHMIDT
JAMIE L LOHR
4395 NORTH SHORE DR
MOUND MN 55364



Google

Map data ©2022 Map data

Certificate of Title

Certificate Number: 1458398

Created by Document Number: 5508994

Transfer from: 1454128

Originally registered July 16, 1921 Volume: 69, Certificate No: 22269, District Court No: 2123

Also originally registered June 24, 1942, Volume: 258, Certificate No: 80351, District Court No: 5637

State of Minnesota

County of Hennepin

}

s.s.

Registration

This is to certify that

KATHARINE STOLTENBERG, whose address is 4425 North Shore Drive, Orono, Minnesota, 55364
and

SCOTT M ALBRECHT, whose address is 4425 North Shore Drive, Orono, Minnesota, 55364
as joint tenants

are now the owners of an estate in fee simple

In the following described land situated in the County of Hennepin and State of Minnesota:

Par 1: Lot 1, "Bergquist's Addition To Saga Hill, Hennepin Co. Minn."

Par 2: That part of Government Lot 3, Section 7, Township 117, Range 23, described as follows: Beginning at the most Southerly corner of Lot 1, Bergquist's Addition to Saga Hill, Hennepin Co. Minn.; thence Northeasterly along the Southeasterly line of said lot to its intersection with the Southwesterly line of the alley as platted in the rear of said Lot 1, thence Northwesterly along the said line to most Northerly corner of said lot; thence Northeasterly along an extension of the Westerly line of said lot to its intersection with the center line of the county road mentioned in Torrens Case No. 2123 and in Certificate of Title No. 76040; thence Easterly along said center line to its intersection with the Westerly line of the channel connecting West Arm, Lake Minnetonka with Forest Lake; thence Southwesterly along the Westerly line of said channel to the shore of West Arm; thence Westerly along said shore to the point of beginning.

Subject to the interests shown by the following memorials and to the following rights or encumbrances set forth in Minnesota statutes

chapter 508, namely:

1. Liens, claims, or rights arising under the laws or the Constitution of the United States, which the statutes of this state cannot require to appear of record;
2. Any real property tax or special assessment;
3. Any lease for a period not exceeding three years, when there is actual occupation of the premises under the lease;
4. All rights in public highways upon the land;
5. Such right of appeal or right to appear and contest the application, petition, or other proceeding affecting the title, as is allowed by law;
6. The rights of any person in possession under deed or contract for deed from the owner of the certificate of title;
7. Any outstanding mechanics lien rights which may exist under sections 514.01 to 514.17.

Scott Albrecht

From: Dan Schmidt <schmidt@sathre.com>
Sent: Wednesday, June 8, 2022 3:00 PM
To: Scott Albrecht; Bruce A Boeder
Subject: FW: Albrecht Survey - Orono
Attachments: ALBRECHT - 4425 NORTH SHORE DRIVE, ORONO - COS 6-8-22 (100001-001).pdf; BERGQUISTS ADDITION TO SAGA HILL.pdf; 4445 North Shore Drive 2013-as-built.pdf

Scott and Bruce

We have completed this survey. I feel confident in this boundary for the following reasons:

1. The west line of the Lot 1 is well monumented and matches the survey you provided by Schoell and Madson. The original iron we found at the lakeshore the first time we were out there was erroneous.
2. According to the plat of Bergquist's Addition to Saga Hill, Lot 2 should have 75 feet of Lakeshore and we are measuring 76.3 feet at the lakeshore.
3. We match the Survey by Gronberg on Lot 3. Lots 3 and 4 are about 1.5 feet short, but that can be expected with plats from the 1880's.
4. The distance from the Southwest corner of Lot 1 to the Southwest corner of Lot 6 is 375.6 at the shoreline (shoreline as shown on the Plat of Bergquist's Addition to Saga Hill). Plat distance is 375 ft.

Please let me know if you have any questions.

Thanks

Dan Schmidt
Sathre-Bergquist, Inc.

We have moved:
14000 25th Avenue North, Suite 120
Plymouth, MN 55447
(952) 476-6000 Office
(612) 741-9830 Mobile

From: Colyn Tvete <ctvete@sathre.com>
Sent: Wednesday, June 8, 2022 12:25 PM
To: Dan Schmidt <schmidt@sathre.com>
Subject: Albrecht Survey - Orono

Thank you,

Colyn Tvete

Colyn Tvete, L.S.I.T. | Survey Department | Sathre-Bergquist, Inc. |
14000 25th Avenue North, Suite 120 | Plymouth, MN 55447 |
Phone: 952.476.6000
Email: ctvete@sathre.com

****We moved!!! Our new address is:**

**Sathre-Bergquist, Inc.
14000 25th Avenue North, Suite 120
Plymouth, MN 55447
952-476-6000**

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CERTIFICATE OF SURVEY FOR
KRYSTYNA BLANK
OF LOT 3, BERGQUIST'S ADDITION TO SAGA HILL
HENNEPIN COUNTY, MINNESOTA

NORTH SHORE DRIVE
CO. RD. NO. 19

This survey intends to show the boundaries of the above described property, the location of an existing house, spot elevations and topography, and the location of all visible "hardcover" thereon. It does not purport to show any other improvements or encroachments.

Bearings shown are based upon an assumed datum.
— 917 — : denotes existing contour line, mean sea level datum
(908.3) : denotes existing spot elevation, mean sea level datum
● : denotes iron marker found

LEGAL DESCRIPTION OF PREMISES :
Lot 3, Bergquist's Addition to Saga Hill

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.

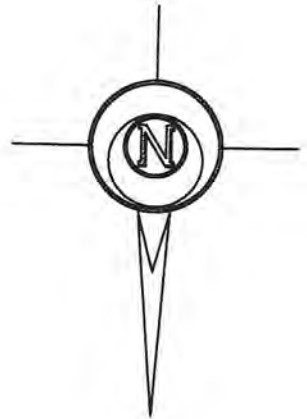
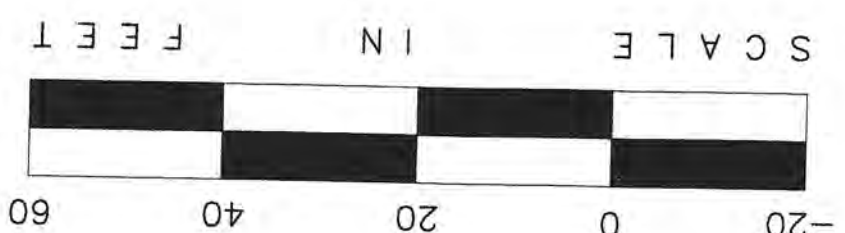
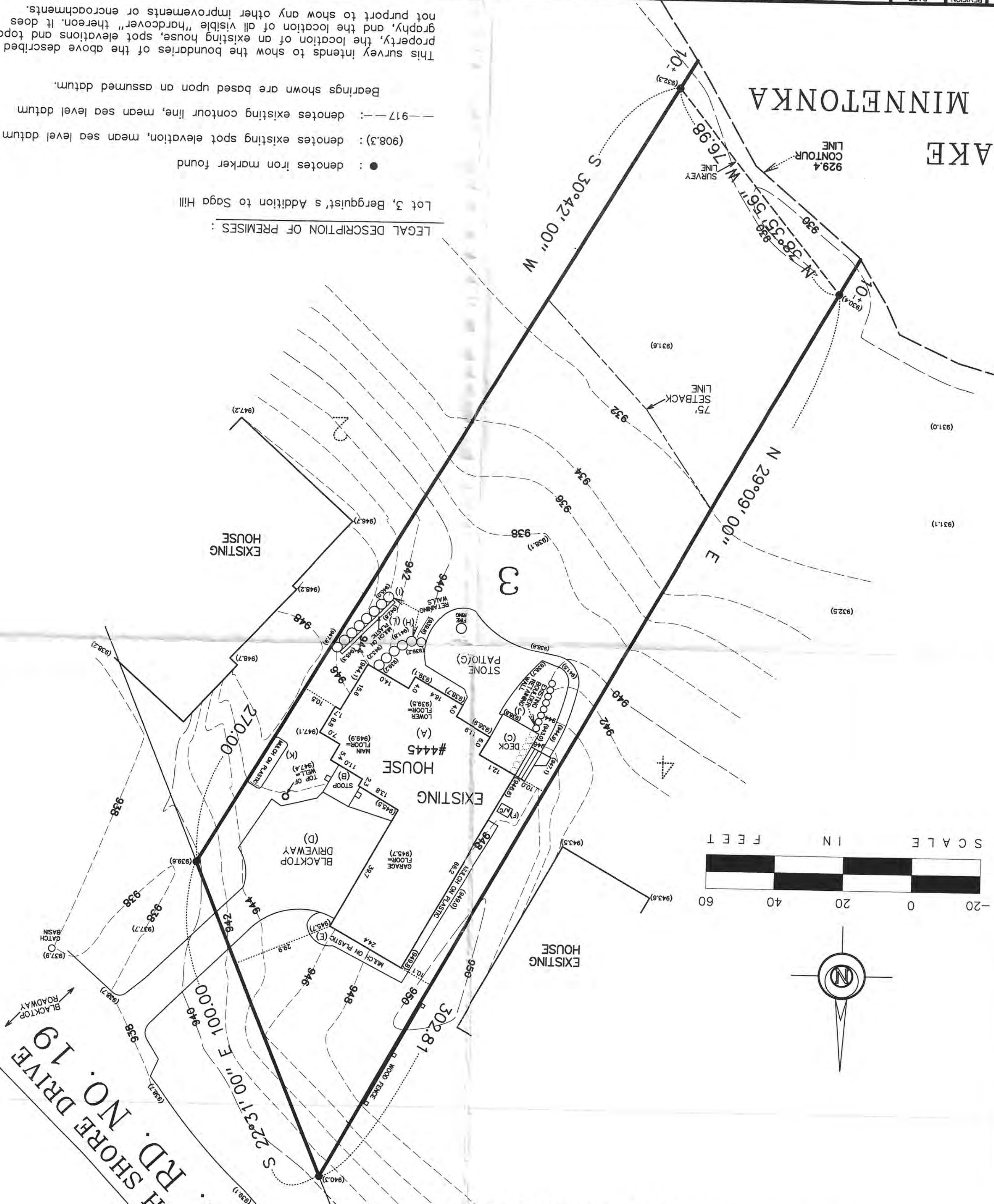
GRONBERG AND
ASSOCIATES, INC.
SURVEYORS & SITE PLANNERS
445 NORTH WILLOW DRIVE
LONG LAKE, MN. 55356
952-473-4141



REVISION	DATE	DESCRIPTION
1	8-18-14	LOCATED NEW MATCH ON PLASTIC
RECEIVED		
JUN 24 2014		
CITY OF ORONO		
JOB NO.	14-198	

SCALE
1"=20'
DATE
5-29-14
JOB NO.
14-198

445 North Shore Dr.
As-Built
2013-01038



DESCRIPTION OF PROPERTY SURVEYED

Par 1: Lot 1, "Bergquist's Addition To Saga Hill, Hennepin Co. Minn."

Par 2: That part of Government Lot 3, Section 7, Township 117, Range 23, described as follows: Beginning at the most Southerly corner of Lot 1, Bergquist's Addition To Saga Hill, Hennepin Co. Minn.; thence Northeasterly along the Southeasterly line of said lot to its intersection with the Southwesterly line of the alley as platted in the rear of said Lot 1, thence Northwesterly along the said line to most Northerly corner of said lot; thence Northeasterly along an extension of the Westerly line of said lot to its intersection with the center line of the county road mentioned in Torrens Case No. 2123 and in Certificate of Title No. 76040; thence Easterly along said center line to its intersection with the Westerly line of the channel connecting West Arm, Lake Minnetonka with Forest Lake; thence Southwesterly along the Westerly line of said channel to the shore of West Arm; thence Westerly along said shore to the point of beginning.

STANDARD NOTES

- Site Address:** 4425 North Shore Drive Orono, MN 55364
- 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 herein.
- Flood Zone Information:** X (area determined to be outside of the 0.2% annual chance floodplain) per Flood Insurance Rate Map, Community Panel No. 27053C0284F, effective date of 11/04/2016.
- Parcel Area Information:** Gross Area: 43.131 ± s.f. ~ 0.99 ± acres
*We do not affirmatively insure the quantity of acreage set forth in the description
- Benchmark:** Lake Minnetonka Benchmark, Brass disk in concrete curb at exit of Grays Bay Dam area = 932.7 feet (NGVD 29)
- Zoning Information:** The current Zoning for the subject property is LR-1B (One Family Lakeshore Residential) per the City of Orono's zoning map dated 12/21/2021. The setback, height, and floor space area restrictions for said zoning designation are as follows:

Principal Structure Setbacks - Streets(s): 35 feet (North Shore Dr.)
Side: 10 feet
Rear: 30 feet
Lake: 75 feet (From Ordinary High Water Line)
Height: 30 feet
Hardcover: 25 percent of lot area (No hardcover within 75 feet of Of High Water Line except driveways, stairways, lifts, landings and lockboxes)

Accessory Structure Setbacks - Front: 35 feet
Side: 10 feet
Rear: 75 feet (Lake Side- From Ordinary High Water Line)

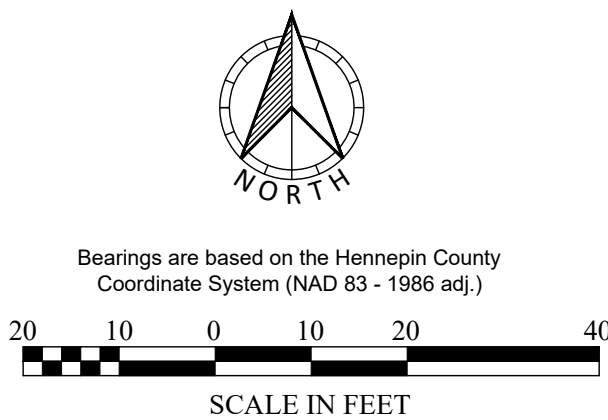
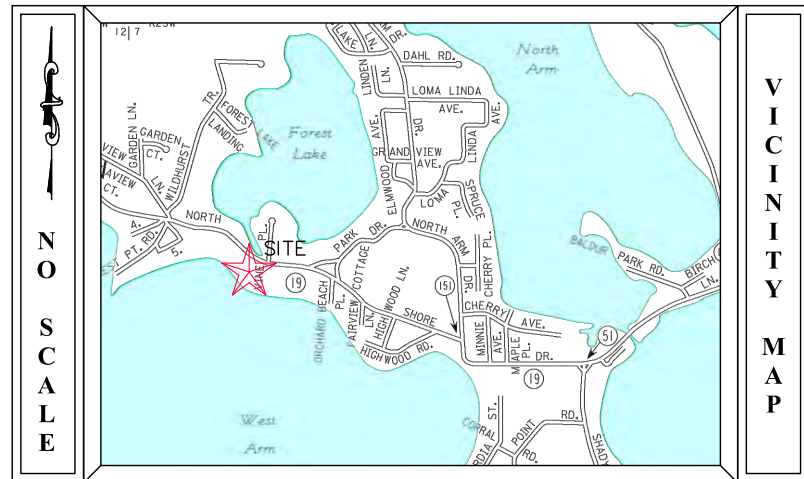
*Please note that the zoning information shown hereon may have been amended through a city process. We recommend that a zoning letter be obtained from the Zoning Administrator for the current restrictions for this site. All setback information and hardcover data for planning and design must be verified by all parties involved in the design and planning process prior to any planning or construction.

We have not received the current zoning classification and building setback requirements from the insurer.

- 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.

Existing Hardcover

Lot Area = 43.131 S.F.
House Area = 2,724 S.F.
Bituminous Area = 2,186 S.F.
Concrete Area = 675 S.F.
Rock Ret Wall = 90 S.F.
Boat House Area = 255 S.F.
Paver Area = 29 S.F.
Total Area = 5,931 S.F.
Coverage = 13.75%



SURVEY LEGEND

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

FIELD CREW	NO.	BY	DATE	REVISION
DM/AK				
DRAWN				
EMW				
CHECKED				
DLS				
DATE				
05/25/2022				

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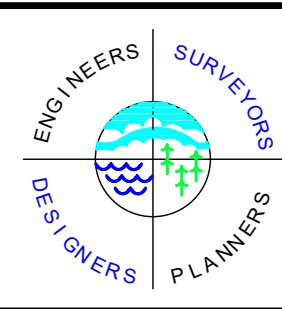
I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Dated this 8th day of June, 2022.

Daniel L. Schmidt

Daniel L. Schmidt, PLS
schmidt@sathre.com

Minnesota License No. 26147



SATHRE-BERGQUIST, INC.

14000 25TH AVENUE NORTH, SUITE 120
PLYMOUTH MN 55447 (952) 476-6000
WWW.SATHRE.COM

TWP:117-RGE:07-SEC.23
Hennepin County

ORONO,
MINNESOTA

CERTIFICATE OF SURVEY

PREPARED FOR:

SCOTT ALBRECHT

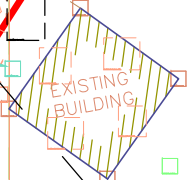
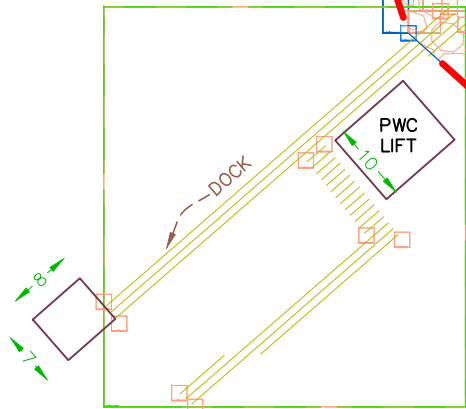
FILE NO.
100001-001

1

1

LAKE MINNETONKA WEST ARM

ORDINARY HIGH WATER LEVEL = 929.4 (NGVD29)
EDGE OF WATER LOCATED MAY 19, 2022
SHORELINE = 469 LINEAR FEET +/- AT O.H.W.L.



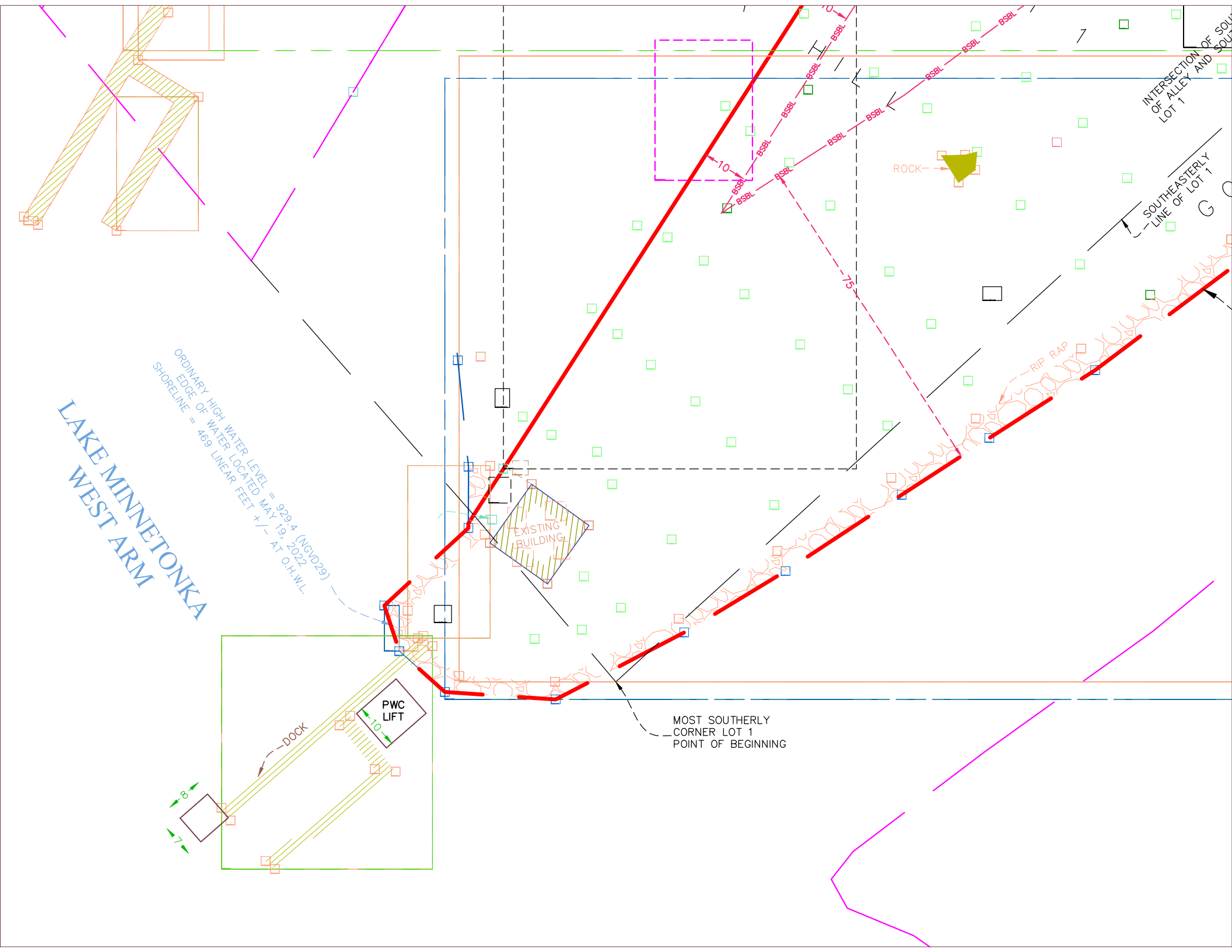
MOST SOUTHERLY
CORNER LOT 1
POINT OF BEGINNING



RIP RAP

SOUTHEASTERLY
LINE OF LOT 1

INTERSECTION OF SOUTH
ALLEY AND SOUTH
EAST LINE OF LOT 1



Scott Albrecht

From: Bruce A Boeder <bboeder@boederlaw.com>
Sent: Monday, June 20, 2022 7:41 PM
To: Scott Albrecht
Subject: LMCD Dock Enforcement

Scott, as we have discussed, I am of the opinion that your dock is located correctly in Lake Minnetonka.

Your dock extends into the lake straight out from your lot.

Your lot has benefited from accretions (additions to the shoreline caused by the washing of sand, dirt and gravel ashore) and you are entitled to the ownership of that additional land. Webber v. Axtell, 94 Minn. 375, 102 N.W. 915, a 1905 Minnesota Supreme Court case, which although and “old case” is still good law in Minnesota.

The Riparian rights, that is the rights of ownership for purposes such as the installation of docks, depends upon the ownership of the abutting shoreline. State, by Head v. Slotness 289 Minn.485, 185 N.W.2d 530 (1971). See also State. V. Korrer, 127 Minn.60, 148 N.W. 617 (1914) which specifically found that riparian rights include building and maintaining “wharves, piers, landings, and dock on and in front of” riparian land.

And as to the attempt proposed by your neighbor, which would unreasonably restrict your access to Lake Minnetonka, I would direct his attention to Lake Minnetonka Conservation District vs. Canning, A05-1811, June 27, 2006.

Although clearly the LMCD has the right to regulate private docks on Lake Minnetonka for the benefit of the public and navigation, it has to take into account your riparian rights.

I am of the opinion that your dock, as installed, both serves the purpose of allowing you to enjoy Lake Minnetonka pursuant to your rights as the owner of shoreline but also takes into account the interests of navigation, that is by not extending into the channel alongside your property and also not blocking your neighbors access to his shoreline.

Please let me know if I can be of any other assistance.

Regards,

Bruce A. Boeder
Bruce A. Boeder, P.A.
Attorney at Law
11919 Hilloway Road

Minnetonka, MN 55305

Mobile: 612.839.2634

Email: BBoeder@Boederlaw.com

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Webber v. Axtell, 94 Minn. 375 (1905)

March 24, 1905 · Minnesota Supreme Court · Nos. 14,213—(77)

94 Minn. 375

Case outline: [Majority](#) — Lovely, J., [Dissent](#) — Lewis, J.

Other formats: [PDF](#), [API](#)

Citing cases: [7 cases cite to this case](#)

[View citation history in trends](#)

CYRUS WEBBER

v.

J. A. AXTELL and Others

HEADNOTES

Riparian Rights on Inland Lake.

On an inland body of water which was a navigable lake under *Lamprey v. State*, [52 Minn. 181](#), a shore owner acquired from the United States four meandered lots. Fifteen rods from these lots, between the same and the center of the lake, was an island which was not surveyed or reserved to the government when the patent was issued. Several years after-wards other parties caused this island to be surveyed, and obtained a patent therefor from the United States. A controversy arose between the claimants under the two patents for possession of the property which was litigated in this suit. At the time it was commenced, accretions had established a sand bar between the island and the property of the shore owner. *Meld*, upon findings showing these facts:

1. That the riparian rights of the first patentee vested in him a contingent interest in all relictions and accretions by change of the wa-

ter line, which included the island in question at the date of the patent from the government.

2. That the first patentee could not be deprived by the later patentee of such vested interest.

3. That the evidence in this case was not sufficient to show that the first patentee had estopped himself from asserting his title as against the second patentee.

SUMMARY

*376 Action of ejectment in the district court for Martin county. The case was tried before Quinn, J., who found in favor of plaintiff. From an order denying a motion to amend the conclusions of law and denying a new trial, defendants appealed.

DISPOSITION

Affirmed.

ATTORNEYS

C. M. O'Neill, Albert R. Allen and De Forrest Ward, for appellants.

SUMMARY

Fox Lake is a navigable lake; public, as distinguished from private waters. *Lamprey v. State*, [52 Minn. 181](#). Being public waters, plaintiff's title to the shore lands extends only to low water mark, and does not include the island. *Railroad Co. v. Schurmeier*, [7 Wall. 272](#); *Lamprey v. State*, [supra](#); *Brisbine v. St. Paul & S. C. R. Co.*, [23 Minn. 114](#); *Union Depot, St. Ry. & T. Co. v. Brunswick*, [31 Minn. 297](#); *Village of Wayzata v. Great Northern Ry. Co.*, [50 Minn. 438](#); *Security L. & Exp. Co. v. Burns*, [87 Minn. 97](#); *Carli v. Stillwater St. Ry. & T. Co.*, [28 Minn. 373](#); *Hanford v. St. Paul & D. R. Co.*, [43 Minn. 104](#).

Since the lake is navigable, and at the time the original government survey was made in 1857 the island in question was a true island (as to which the original plat, the field notes and survey are conclusive) or in other words, since the island was not included in the original survey, plaintiff took no title to the same. Both parties, the government and the patentee, are bound by the patent and the plat. *Collins v. Asheville*, 128 N. C. 563; *Jones v. Johnston*, 18 How. 150; *Executors v. Hollister*, 18 Vt. 294; 13 Cyc. 548, 549; *Noonan v. Lee*, 2 Black, 499; *Slauson v. Goodrich*, 99 Wis. 20; 3 Washburn, Real Prop. 460; *Tiedeman*, Real Prop. § 841; 1 Warvelle, Vendors, § 375; *Cunningham v. Village of Willow River*, 68 Minn. 249; *St. Paul, S. & T. F. R. Co. v. First Division*, 26 Minn. 31; *Lamprey v. State*, *supra*; *Borer v. Lange*, 44 Minn. 281; *Reed v. Lammel*, 28 Minn. 306.

ATTORNEYS

Knox, Faber & Knox, for respondent.

SUMMARY

In this state the rule of the common law as applied to rivers above tide water has been fully adopted and extended to our inland lakes, with this modification, viz.: That where such rivers and inland lakes are in fact navigable either for commercial purposes or pleasure, the waters belong to the public to low-water mark and the title of the owner is held to extend only to such low-water mark; but in all other *377 respects the rule of the common law is recognized and followed, and the riparian owner in such streams and lakes is accordingly held to be the owner of all accretions, and of all land left dry by the recession of the waters, and of all islands to the thread or center of the stream. *Lamprey v. State*, 52 Minn. 181; *Railroad Co. v. Schurmeier*, 7 Wall. 272.

Meander lines are never boundaries, and the purchaser of land from the government which is meandered upon a body of water is not bound by the meander line between such meandered land and the water, but takes to the water. The title to the soil in fresh-water streams and lakes which can be navigated, including all intervening islands, is vested in the riparian owner subject to the public easement of navigation. *Tiedeman*, Real Prop. § 835; *Schurmeier v. St.*

Paul & Pac. R. Co., [10 Minn. 82](#) (102); *Lamprey v. State*, [supra](#); *Chandos v. Mack* (Wis.) [10 L. R. A. 207](#); *Hardin v. Jordan*, [140 U. S. 371](#); *Olson v. Thorndike*, [76 Minn. 399](#); *Everson v. City of Waseca*, [44 Minn. 247](#).

A patent issued by the United States passes the land not only as it was. at the time of the survey, but as it was at the date of the patent. *Jeiferis v. East Omaha Land Co.*, [134 U. S. 178](#). The riparian or shore owner, as such, is the owner of all unsurveyed islands between' the shore line and the thread or center of the stream or lake. *Schurmeier v. St. Paul & Pac. R. Co.*, [supra](#); *McCullough v. Wall*, 4 Rich. Law, 68; *Middleton v. Pritchard*, [3 Scam. 510](#); *Hardin v. Jordan*, [140 U. S. 371](#); *Chandos v. Mack*, [supra](#); *Mitchell v. Smale*, [140 U. S. 406](#).

To constitute an estoppel in pais the party estopped must be guilty of actual fraud or such culpable negligence as would operate as a fraud upon the opposite party. 11 Am. & Eng. Enc. (2d Ed.) 421; *Bigelow, Est.* (5th Ed.) 569; 2 *Pomeroy, Eq. Jur.* (2d Ed.) § 806; *Pence v. Arbuckle*, [22 Minn. 417](#); *Hawkins v. Methodist Episcopal Church*, [23 Minn. 256](#).

HEAD MATTER FOOTNOTES

- ¹ Reported in [102 N. W. 915](#).

Opinion

Author: [LOVELY, J.](#).

378 Plaintiff in this action seeks to recover an island in one of the smaller lakes of Martin county, about fifteen rods distant from four government lots which he entered and patented under the homestead laws ^{*378} of the United States. The cause was tried to the court, who, upon findings of fact, held as a conclusion of law that plaintiff was entitled to judgment declaring him to be the owner¹ of the land in suit, and ordered judgment in his favor. This appeal is from an order denying amended findings and for a new trial.

We are of the opinion that this cause must be determined upon the facts as found by the court, but it is necessary to premise, before calling particular attention thereto, that the original survey of township 103, range 32 (Martin county), was made by the United States in 1857, that partly located in this township is a small meandered body of water about three and a half miles in

length and one-half or three-fourths of a mile in width, known as Fox Lake, on the northwest shore of which is located a tract of land surveyed and platted by the government as lots 2, 3, 5, and 6 in section 31, town 103, range 32. About fifteen rods from the shore of this lake, and opposite the government lots referred to, is the tract of land in controversy. In making the original survey it was marked on the plat and indicated in the field notes as an island containing two acres, with good timber of oak, ash, and hackberry; but no actual survey was at that time made of such island, nor was it designated in any way as a specific part of the public domain, nor was there any indication on the plat that it was reserved as a part thereof. In 1865 plaintiff settled upon and entered lots 2, 3, 5, and 6 as a homestead, and then claimed that this so-called island was a part thereof; and the evidence supports the view that he occupied it as such until the fall of 1885, when, upon the application of a third party, one McConville, the United States caused the alleged island to be surveyed, platted and designated it as lot 10, then accepted McConville's entry. McConville made some improvements on the land, but did not continue his settlement, when, in 1887, one Rice made an entry to this tract under the homestead laws.

379 February, 1873, a patent was issued to the plaintiff for lots 2, 3, 5, and 6, and in 1891 a patent was issued to Rice for lot 10, being the so-called island, which had by recession of the water grown in size considerably. The defendants claim under Rice's entry to purchase. During a considerable portion of the time after Rice made his entry, the so-called island was occupied either by him or his tenants, and the question of adverse possession was litigated by the defendants ^{*379} under this contention. The substantial basis of plaintiff's claim to the land in controversy, however, rests upon the asserted rights accruing to him under his homestead entry of 1865. Defendants claim the island under Rice's entry and the patent issued to him in 1891. It is likewise insisted in defendants' behalf that, by the acts and representations of plaintiff himself, he is now estopped from asserting any interest therein.

The material facts above stated we do not regard as open to dispute, but at the trial evidence was received to show that from the time plaintiff settled upon his homestead there were attached to the so-called island (lot 10) two sand bars which at ordinary stages of water permitted access to it by teams at certain periods of the year, and it was found by the court, when the suit was brought, that the shore where plaintiff's lots were situated was connected with such island in times of ordinary low water by this means, and in times of high water submerged. This was contested. The claim that defendants held under adverse possession was clearly a question of fact, and the court held, upon sufficient evidence to justify its findings in this respect, that it had not been established. The court also declined to hold, upon application for amended findings, that the plaintiff was estopped from asserting his title to the land in controversy.

Had the trial court determined as a matter of fact that at the time of the patent to plaintiff either one of the sand bars referred to connected the island

with the shore line of his lots, there could be no doubt but that it would be our duty to hold that the decision of this case would be controlled by *Schurmeier v. St. Paul & Pac. R. Co.*, 10 Minn. 59 (82), wherein it was held that the water, instead of the meander line, must be regarded as the proper boundary of such tract. The decision of this case was sustained by the Supreme Court of the United States on writ of error (*Railroad Co. v. Schurmeier*, 7 Wall. 272), where it was decided that the meander lines on fractional tracts adjacent to public waters are designated in the field notes, not as boundaries, but for the purpose of ascertaining the quantity of land in the fraction, and also that the riparian owners retain their rights to construct suitable landings, wharves, etc., for the convenience of commerce and navigation, to the same extent as such proprietors on navigable streams affected by the ebb and flow of the tide at common law.

380 *380 But counsel insist that the facts as found by the trial court indicate that it did not give decided or sufficient significance to the time when the sand bars appeared between the plaintiff's lots and the island, and that such bars should have been formed previous to the commencement of the suit, and have been existing when plaintiff received his patent, to bring plaintiff's rights within the benefit of the *Schurmeier* case. Counsel argues that since the court did not find that the sand bars existed before the suit was commenced, or before the subsequent survey and patent to Rice in 1891, therefore the patent to the latter could not cut off the rights of Rice or those claiming under him. The decision in the *Schurmeier* case, both in the state and federal courts, impresses us very strongly that it was the accepted view that the riparian rights of the first proprietor vested in him a contingent interest in all accretions and relictions, which would necessarily involve the sand bars and adjacent island; for, if it be true that the right of the shore owner in a body of navigable water carries with it a dependent interest to accretions and relictions, which became established at the time of his patent, an attempt on the part of the government to interfere with such rights afterwards would be ineffectual to take from him such right or interest. See cases cited in *Sage v. Rudnick*, 91 Minn. 325, 98 N. W. 89, 100 N. W. 106.

There has been much discussion as to the distinction between navigable and nonnavigable lakes, so called, which arises from the relative rights of the public and shore owners to use the waters therein; but if Fox Lake was a navigable body of water, as must be conceded, the shore owner became vested with a contingent interest in such accretions as might be added to his land, which would follow as an incident thereto, and became his property. If the island between the shore and the center of the lake when the patent was first issued was unsurveyed, without any expressed intention on the part of the government to treat it as a portion of its dominion, it would accrue to plaintiff. We are very clear that this rule has been laid down in the case of *Lamprey v. State*, 52 Minn. 181, 53 N. W. 1139, where the distinction between navigable and nonnavigable lakes is considered and defined, and where it was held that the shore owner of a navigable stream or body of water is entitled to the riparian right of accretions, even though larger than the parent es-

381 tate, which is an incident to all riparian ownership, and *381 that this rule rests upon the broad principle that, to preserve the fundamental riparian right, viz., access to the water, upon which all others depend, and may constitute its principal value. This establishes the contingent interest to such accretions as would include the sand' bars and appurtenant island in this case.

The reasons for this- view áre fully considered and discussed in *Lamprey v. State*, supra, and, applying the rule there laid down to the fact that as to this small island, at the time of the government survey and patent to plaintiff, the government of the United States made no claim, but treated it as the bed of the lake, which belonged to the state, subject to the rights of riparian owners, it fully sustains the learned trial court in the conclusion that plaintiff's interest became vested at the time of his patent, and established his ownership thereto.

It was insisted on the argument that plaintiff had estopped himself from asserting his title to the property in question by reason of the fact that Rice was led to make his entry by plaintiff's advice and representations. The court declined to find, at the request of counsel, that plaintiff had estopped himself in this respect, and we are of the opinion that the evidence did not require such a finding. It appeared that plaintiff had, for several years after his occupation of the shore lots, occupied the land in question for pasturage, had fenced it, and continued to treat it as an appurtenant to the land he had entered until 1885, when one McConville had it surveyed and attempted to establish a resort on the island. The claim of McConville was contested by Rice, which resulted in the entry made by the latter. The facts regarding the situation were open to all parties, and while plaintiff showed partiality to Rice over McConville, and went to the land office with Rice as his witness, yet it does not appear that he gave Rice to understand that he would yield his own claim to the property or intended to do so. There is no evidence whatever upon which to base a finding that Rice was deceived or misled as to the facts upon which his ownership to the property could rest. Neither was there any renunciation of plaintiff's interest therein, nor that Rice was induced by any fraudulent act or misrepresentation to part with anything which he possessed or had acquired; also that in the struggle for the property Rice knew what plaintiff's rights were, and acted accordingly.

382 *382 Other assignments of error are unimportant, and need not be considered.

Order of the trial court is affirmed.

Opinion

Author: LEWIS, J.

(dissenting).

The decision is based upon the ground that the plaintiff, as riparian owner, was, by virtue of his patent, vested with a contingent interest in all relictions which might be subsequently developed.

According to the findings, it must be conceded that at the time of the second survey in 1885 the island had not become connected with the mainland by formation of the sand bar, although the lake had been falling gradually for several years. At the time his patent was issued, plaintiff acquired no right, title, or interest in the island upon any theory of the law. This is not within the doctrine of the Schurmeier case, for the reason that prior to 1885 there was a well-defined open and navigable portion of the lake between the shore and the island, and defendants' title vested before plaintiff's accrued. Plaintiff was not the owner at that time under the principles announced in the *Tamprey* case, for the reason that, the lake being navigable, his line of ownership was limited to the water's edge, and his title as riparian owner by reliction and accretion did not accrue in time to avail him.

I do not concur in the views upon which the decision rests, viz., that the riparian owner acquired with his patent to the shore land a contingent interest in and to the island, based upon the possibility that at some future time, either by the action of or the recession of the waters, the island would become connected with the mainland, regardless of other rights subsequently acquired. In stating the general principles with reference to the title to such bodies of water, it is said in the case of *Lamprey v. State*, supra: Where a meandered body of water is in fact nonnavigable, the patentee of the land bordering on it takes to the middle of the lake, and, where the lake is navigable in fact, its waters and bed belong to the state in its sovereign capacity, and the riparian patentee takes the fee only to the water's edge, but with all the rights incident to riparian ownership of navigable waters, including the rights of accretions formed or produced in front of his land by the action or recession of the waters; that such riparian *383 rights rest upon the title to the bank or shore, and not upon the title to the soil under the water.

The only theory which seems at all debatable to justify the views of the majority as to a contingent interest is that the government released and abandoned all claim to the island by not having originally surveyed it, although it was designated as an island on the plat and was mentioned several times in the field notes. It may have been considered too small to warrant a survey, but how does that fact indicate an intention on the part of the government to relinquish all title in favor of the shore land? If we are to adhere to the doctrine that the riparian owner is limited to the shore line of navigable waters, with the incidental right of access, etc., I am unable to see upon what theory the government should be held to have abandoned its claim to the island in question merely because it was not included in the original survey. And, if such was the effect at that time, the government afterwards asserted its claim, had the island surveyed, and recognized the title of defendants' grantors. At the time the government so took possession of the island in 1885, had it surveyed, and permitted defendants' grantors to take possession and

acquire title thereto, plaintiff had never asserted any right, title, or interest therein. The island in no manner originally entered into the computation to make up the number of acres applied for by him as a homestead. It was never treated either by him or the government as a part of his original claim.

On the other hand, as the evidence discloses, for a number of yéars plaintiff had acquiesced in the subsequent assertion of title by the government and those who settled thereon. While such acquiescence may not in law amount to an estoppel, it indicates very fully that up to that time, at least, plaintiff never asserted upon any ground whatever that he was entitled to the same. As bearing upon the question of title to islands under similar circumstances, the following cases may be considered: *Steinbuchel v. Lane*, [59 Kan. 7](#), [51 Pac. 886](#); *People v. Warner*, [116 Mich. 228](#), [74 N. W. 705](#); *Bonewits v. Wygant*, [75 Ind. 41](#); *Harding v. Minneapolis Northern Ry. Co.*, 55 U. S. App. 257, [84 Fed. 287](#), [28 C. C. A. 419](#). The last-named case was one involving title to a part of an island in the Mississippi river at Minneapolis, and has an important bearing upon the question under discussion. My ^{*384} view, is that, if the government claimed the island before it was acquired by plaintiff by recession of the waters, and defendants' grantors acquired title direct from the government before the alleged contingent interest in plaintiff became vested, they cannot be divested simply because subsequently a sand bar appeared, connecting the island with plaintiff's land.

A new trial should be granted.

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State, by Head v. Slotness

289 Minn. 485 (Minn. 1971) · 185 N.W.2d 530
Decided Mar 19, 1971

No. 42485.

March 19, 1971.

Riparian rights — artificially created land — taking by state — owner's right to compensation.

Where a riparian owner of dry upland property on a shore of a navigable lake creates new dry land out to the point of navigability by use of artificial land fill, the state may not take this new land for highway purposes without paying just compensation to the riparian owner.

Declaratory judgment action in the St. Louis County District Court instituted by the state to determine what compensation if any must be paid for the taking of certain property for highway purposes. The court, Patrick D. O'Brien, Judge, granted defendant Fred Robert Evens' motion for summary judgment, and plaintiff appealed from the judgment entered. Pending the appeal respondent died and Oscar Slotness, executor of his estate, was substituted. Affirmed.

Douglas M. Head, Attorney General, *Eric B. Schultz*, Acting Deputy Attorney General, and *Jerry H. Ketola*, Special Assistant Attorney General, for appellant.

Bruess, Boyd, Andresen Sullivan, Burke McKeon and *David P. Sullivan*, for respondent.

Heard before Knutson, C. J., and Otis, Rogosheske, Peterson, and Rosengren, JJ.

PETERSON, JUSTICE.

A declaratory judgment action was instituted by the state, during the pendency of condemnation proceedings for the acquisition of land for interstate highway purposes, to determine whether the state must pay just compensation to the defendant *486 condemnee for the taking of his land on the shore of Lake Superior. This appeal is from summary judgment adverse to the state.

The determinative issue is whether a riparian owner of dry upland property on the shore of a navigable lake, assumed for the purposes of summary judgment to have created new dry land out to the point of navigability by artificial land fill, is entitled to just compensation upon a public taking of the new land for highway purposes.

The land involved, owned by defendant Fred Robert Evens,¹ consists of two adjoining parcels of land in St. Louis County, described for purposes of this opinion as Parcels 49 and 49A. Parcel 49 is upland property. Parcel 49A, which more directly is in dispute, is lakeshore property. The *original* shoreline of Lake Superior forms the common boundary line between the two parcels, being the eastern boundary of Parcel 49 and the western boundary of Parcel 49A. The *present* shoreline of Lake Superior constitutes the eastern boundary of Parcel 49A. The state contends that Parcel 49A, from the original shoreline on the west to the present shoreline on the east, was created by artificial filling upon the submerged bed of Lake Superior. There is, by stipulation of the parties, no harbor line in existence which affects the disputed property.

1 Fred Robert Evens died during the pendency of this appeal. Oscar Slotness, as executor of decedent's estate, was ordered substituted for decedent as respondent pursuant to Rule 143.02, Rules of Civil Appellate Procedure.

1. The general rule concerning the rights of the owner of riparian land in this state is well settled. The riparian owner's title extends to the low-water mark. *State v. Korrer*, 127 Minn. 60, 76, 148 N.W. 617, 623, 1095, and cases cited. The state owns the bed of navigable waters below the low-water mark in trust for the people for public uses, which include commercial navigation, the drawing of water for various private and public purposes, recreational activity, and similar water-connected uses. *Nelson v. DeLong*, 213 Minn. 425, 7 N.W.2d 342; *State v. Korrer*, 127 Minn. 60, 148 N.W. 617, 1095; *Lamprey v. State*, 52 Minn. 181, 53 N.W. 1139; *Miller v. Mendenhall*, 43 Minn. 95, 44 N.W. 1141.

The riparian owner, in addition to his rights to the use of navigable waters as a member of the public, has other private rights as an incident to his ownership of the shoreland. His main right — on which other rights depend and which often constitutes the principal value of property so situated — is an exclusive right of access to the water in front of his land. *Lamprey v. State*, 52 Minn. 181, 197, 53 N.W. 1139, 1142. This right of access is the foundation for the rule that the riparian owner has a right to accretions and relictions in front of his land. *Ibid*.

The riparian owner may, to facilitate access to the water, build and maintain wharves, piers, landings, and docks on and in front of his land and extend the same into the water, even beyond low-water mark, to the point of navigability. *Brisbine v. St. Paul Sioux City Ry. Co.* 23 Minn. 114, 130. He may, for the same reason, improve, reclaim, and occupy the surface of submerged land out to the point of navigability. *Carli v. Stillwater St. Ry. Tr. Co.* 28 Minn. 373, 10 N.W. 205.²

2 The establishment of a harbor line gives the riparian owner implied authority to fill in and build out to such line. *Miller v. Mendenhall*, 43 Minn. 95, 44 N.W. 1141. See, also, *Bradshaw v. Duluth Imperial Mill Co.* 52 Minn. 59, 53 N.W. 1066; *Hanford v. St. Paul Duluth Ry. Co.* 43 Minn. 104, 42 N.W. 596, 44 N.W. 1144; *Union Depot St. Ry. Tr. Co. v. Brunswick*, 31 Minn. 297, 17 N.W. 626; *Brisbine v. St. Paul Sioux City Ry. Co.* 23 Minn. 114.

Riparian rights, however, are held subject to the stated public rights in navigable waters, and the mere exercise by the state of those public rights does not constitute a taking of riparian property. This principle is illustrated by *Minneapolis Mill Co. v. St. Paul Water Works*, 56 Minn. 485, 58 N.W. 33, in which it was held that a city could properly use a navigable stream for its water supply without paying compensation to a riparian owner who suffered incidental injury. The riparian owner, there, operated a dam for the purpose of producing electric power and had contended that the city must pay compensation because its water pumping diminished the dam's power-producing capacity.

2. The issue narrows to whether or not the taking of riparian land for highway purposes is one of the public purposes for which the state holds the lake bed in trust for the public. We hold that it is not.

The state concedes that defendant had a riparian owner's right to create new dry land out to the point of navigability, but it contends that in such circumstances he was merely a tenant at sufferance on this new dry land, subject to the state's absolute right to take the land, without compensation, for purposes of constructing a portion of the interstate highway system on land held in trust for the people.

State v. Longyear Holding Co. 224 Minn. 451, 29 N.W.2d 657, upon which the state places principal reliance, is not authority for the state's position. Longyear did hold that the state, in the exercise of its trust, could issue mining leases and permit the

temporary draining of a lake for purposes of mining the lake bed and that such action did not constitute an illegal alienation by the state of the lake bed held in trust for the people. We will not, however, extend the holding in Longyear beyond the unique situation upon which it was decided.

Authorities involving public improvements in aid of navigation are even less in point. We have held in numerous cases that the state may make improvements in aid of navigation without payment of compensation for its incidental effect upon the rights of riparian owners. *Fish v. Chicago G. W. R. Co.* 125 Minn. 380, 147 N.W. 431; *Heiberg v. Wild Rice Boom Co.* 127 Minn. 8, 148 N.W. 517; *State ex rel. Anderson v. District Court*, 119 Minn. 132, 137 N.W. 298; *In re Minnetonka Lake Improvement*, 56 Minn. 513, 58 N.W. 295. The United States Supreme Court has held that a state's grant of permission for a riparian owner to create land by artificial fill upon the submerged
 489 bed of navigable *489 waters is preempted by the Federal power to control navigation in furtherance of interstate commerce so that, in such circumstances and to like effect, the United States may remove such land without compensating the riparian owner for injuries sustained. *Philadelphia Co. v. Stimson*, 223 U.S. 605, 32 S.Ct. 340, 56 L. ed. 570; *Union Bridge Co. v. United States*, 204 U.S. 364, 27 S.Ct. 367, 51 L. ed. 523. See, also, *Greenleaf-Johnson Lbr. Co. v. Garrison*, 237 U.S. 251, 35 S.Ct. 551, 59 L. ed. 939; *Lewis Blue Point Oyster Cultivation Co. v. Briggs*, 229 U.S. 82, 33 S.Ct. 679, 57 L.ed. 1083.

The public ownership of the bed of navigable water in trust for public uses embraces, as a most obvious use, navigation of navigable waters. The construction of a public highway, however, is not remotely connected with navigation or any other water-connected public use. It is a land use and nothing more.

We think that the potential of a contrary holding is not in the public interest. "It is for the interest of the state," as we long ago stated in *Hanford v. St.*

Paul Duluth R. Co. 43 Minn. 104, 113, 42 N.W. 596, 44 N.W. 1144, 1146, "that such lands, not available for the public purposes for which alone the state exercises authority over them, shall be improved and used for profitable enterprises, rather than that they lie forever waste and unproductive." The state, moreover, by establishing lines of navigability, has impliedly invited riparian owners to reclaim submerged lake beds out to the point of navigability. Lands and structures developed in the bay area of Duluth, enormously important to the economy of Northeastern Minnesota, have been the result of such invitation.

We do not, by this decision, in any way determine the state's power to establish restrictions upon a riparian owner's future improvement or reclamation of the submerged lake bed of navigable waters necessary to the environmental interests of the people in public waters. We hold
 490 only that the state may not take *490 defendant's riparian right in the lawfully created land, for highway purposes, without the payment of just compensation.³

³ Our disposition of the issue makes unnecessary a determination of defendant's claim that pursuant to L. 1933, c. 164, codified as Minn. St. 508.15, he is deemed to have taken fee simple title to Parcel 49A by reliction or accretion because of pre-1933 decrees of registration to which the state was not made a party. We cannot assume, from the limited facts presented, that any or all of this disputed property was not submerged at the time of those registration proceedings. Without consideration of the basic premise of our decision, moreover, a question might be raised as to whether § 508.15 constituted an unconstitutional alienation of lands held in public trust.

Affirmed.



*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2004).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A05-1811**

Lake Minnetonka
Conservation District,
Respondent,

vs.

Miles B. Canning, et al.,
Appellants.

**Filed June 27, 2006
Reversed and remanded
Klaphake, Judge**

Hennepin County District Court
File No. 05-1854

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Considered and decided by Klaphake, Presiding Judge, Stoneburner, Judge, and Harten, Judge.*

U N P U B L I S H E D O P I N I O N

KLAPHAKE, Judge

Appellants Miles and Pamela Canning challenge the district court's grant of summary judgment to respondent Lake Minnetonka Conservation District (LMCD). The LMCD brought this enforcement action seeking an injunction to require appellants to remove their dock, which does not meet LMCD regulations.

Appellants argue: (1) the LMCD lacks authority to regulate the location or configuration of their private, noncommercial dock; (2) they have riparian rights to access the lake via their dock that cannot be eliminated without payment of just compensation; (3) their dock is a legal non-conforming use that cannot be removed by the LMCD absent use of eminent domain and the payment of fair compensation; and (4) the LMCD ordinances are an unconstitutional delegation of power because they allow neighboring landowners to withdraw consent to private docks. Because appellants have riparian rights to access navigable waters of the lake and because the position taken by the LMCD may interfere with those rights, we reverse and remand for further proceedings.

FACTS

Appellants own approximately 12 feet of lakeshore on Lake Minnetonka. It is undisputed that there has been a dock located on the property since the early 1930s, and appellants have maintained a dock and moored a boat there since they purchased the property in 1990. It is also undisputed that the dock fails to meet current LMCD regulations because it is outside appellants' authorized dock use area, which is a small triangular area as drawn by extension of the converging side lot lines into the lake, and because the extremely narrow width of the property makes it nearly impossible to meet the five-foot side setback requirements.

In July 2000, appellants applied for a variance from the side setback and authorized dock use area regulations to allow them to continue to maintain their dock and moor their boat there. Appellants decided to withdraw their application after the LMCD voted to delay a decision and referred the matter to staff.

In August 2003, one of appellants' neighbors e-mailed the LMCD and requested that it enforce its regulations against appellants' dock. LMCD representatives met with appellants and discussed several options, including applying for a variance; combining appellants' shoreline with the two abutting properties to the west and installing one dock; or securing mutual consent from appellants' neighbors to install a dock and store a boat outside the authorized dock use area, which could be revoked by either neighbor at any time.

In November 2003, appellants renewed their request for a variance. The LMCD discussed appellants' application at several meetings and appointed one of its members to work on a compromise

with appellants and their neighbors. At the LMCD's March 2004 meeting, this board member outlined three options for the board to consider. While appellants and their neighbors could not agree on any one option, they all appeared willing to compromise. Nevertheless, several board members expressed concerns about the extremely narrow width of appellants' lakeshore, the public safety issues associated with granting a variance to allow for no side setbacks, and the possible undesired precedent of granting a variance to allow continued historical dock usage. The board voted to deny appellants' variance and directed its attorney to prepare proposed findings. Two days later, however, appellants withdrew their variance application.

Appellants continued to use their existing dock. In October 2004, the LMCD brought this action seeking compliance with its regulations and injunctive relief against appellants.

In granting summary judgment to the LMCD, the district court determined that "[e]nforcing the ordinances in this case is appropriate and does not result in the taking of [appellants'] property without compensation."

D E C I S I O N

Appellants argue that they have riparian property rights that cannot be eliminated through LMCD regulation. They insist that they have the right to maintain a dock to the point of navigability. They further insist that enforcement of the ordinance in this case impermissibly impedes their right because the extension of their converging side lot lines into the lake does not allow them to maintain a dock to the point of navigability. Appellants finally complain that the LMCD has not shown how its regulations serve the public right of navigability as opposed to serving the private rights of appellants' abutting neighbors.

The owner of riparian land enjoys the right of exclusive access to water that is directly in front of his or her waterfront property, and "title extends to the low-water mark." *State, by Head v. Slotness*, 289 Minn. 485, 487, 185 N.W. 2d 530, 532 (1971). Riparian rights include the right to build and maintain suitable "wharves, piers, landings, and docks on and in front of" riparian land to the point of navigability. *Id.*; *State v. Korrer*, 127 Minn. 60, 71-72, 148 N.W. 617, 622 (1914). A riparian owner "has a right to make such use of the lake over its entire surface, in common with all other abutting owners, provided such use is reasonable and does not unduly interfere with the exercise of similar rights

on the part of other abutting owners.” *Johnson v. Seifert*, 257 Minn. 159, 169, 100 N.W.2d 689, 697 (1960).

In order to determine the extent of riparian rights, riparian boundaries must be ascertained. Minnesota case law does not endorse a specific method for drawing riparian boundaries, although a method is described in Edward S. Bade, *Title, Points & Lines in Lakes & Streams*, 24 Minn. L. Rev. 305, 306-07 (1940). Bade rejects a “rule of straight projection” to arrive at riparian rights and suggests a more proportionate method based on the shape of the lake. *Id.* at 341. While no single method applies in every case, what remains important is that the boundaries are drawn in a fair and equitable manner. *See, e.g., Rooney v. Stearns County Bd.*, 130 Minn. 176, 180-81, 153 N.W. 858, 860 (1915); *Scheifert v. Briegel*, 90 Minn. 125, 133, 96 N.W. 44, 48 (1903).

The method adopted here by LMCD regulations for defining the authorized dock usage area was firmly criticized by Bade in his article as being fraught with inequity. Bade at 331-34. And the LMCD’s strict application of its regulations to appellants’ property and reluctance to consider the equities involved appear to have seriously compromised appellants’ riparian rights. Because genuine issues of material fact exist regarding the extent of appellants’ riparian rights, we conclude that the district court erred in granting summary judgment to the LMCD. *See Minn. R. Civ. P. 56.02.*

While the LMCD may place some reasonable restrictions on the size and location of appellants’ dock and boat, appellants are correct in arguing that LMCD regulations cannot so restrict their riparian rights as to deny them access to the navigable waters of the lake. Under LMCD regulations, extension of the side lot lines of appellants’ abutting neighbors appears to cut off appellants’ reasonable access to navigable water. We therefore reverse the district court’s grant of summary judgment to the LMCD and remand for further proceedings. On remand, the district court should determine the extent of appellants’ riparian rights subject to reasonable enforcement of LMCD regulations against appellants’ property in a manner that is fair and equitable, while still addressing public safety concerns. *See State v. Kuluvar*, 266 Minn. 408, 418, 123 N.W.2d 699, 706 (1963) (riparian rights are “subordinate to the rights of the public and subject to reasonable control and regulation by the state”); *Johnson*, 257 Minn. at 165 n.5, 100 N.W.2d at 694 n.5 (riparian rights are subject to state regulation for public purposes).

Finally, we make the following comments in the interests of justice. First, the LMCD has authority to regulate private docks on Lake Minnetonka for the benefit of the public and navigation. *See* Minn. Stat. § 103B.611, subd. 3(6) (2004) (stating that LMCD has authority to “regulate the construction, installation, and maintenance of permanent and temporary docks and moorings”); *City of Birchwood Village v. Simes*, 576 N.W.2d 458, 462 (Minn. App. 1998) (statute creating White Bear Lake Conservation District, which is substantially similar to statute creating LMCD, “represents an effort by the local municipalities to cede authority to the board to regulate all manner of activities affecting the lake,” including size of boats that may be moored to private docks). Second, because riparian rights are always subject to state regulation in the public interest, a landowner’s preexisting and continuing use of his or her lakeshore property is not a lawful non-conforming use if the LMCD finds other factors, such as public safety, more important. *See Bartell v. State*, 284 N.W.2d 834, 838 (Minn. 1979). Finally, because we have determined that application of LMCD regulations to appellants’ property has caused the potential loss of their riparian rights, we need not decide whether those regulations are also unconstitutional because they allow the LMCD to delegate its authority to neighboring landowners.

Reversed and remanded.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

redemption. In my opinion they did not lose their right to question plaintiffs' void redemption by receiving from plaintiffs this money and forthwith offering to return it to them in the manner disclosed by the record in this case.

STATE v. ELIZA KORRER and Others.¹

September 11, 1914.

Nos. 18,551—(4).

Navigable water.

1. A meandered lake, approximately 150 acres in extent, naturally suitable for boating, bathing, hunting, fishing and other beneficial public uses, on the shore of which is situated a village of 2,000 inhabitants, is a public or navigable body of water.

Navigable and non-navigable water.

2. Natural bodies of water are classed as navigable or non-navigable. The term navigable, as used in this connection, has been extended beyond its technical signification. It is unnecessary that the water should be capable of commerce of pecuniary value. The division of waters into navigable and non-navigable is but another way of dividing them into public and private waters. If a body of water is adapted for use for public purposes, it is a public or navigable water.

Rule of the English common law.

3. Under the English common law the crown owned the soil under the tide water and also the soil under the water of navigable rivers up to the point reached by the flow of the tide. The soil under fresh water rivers above tide water and the soil under fresh water lakes belonged to the owners of the shore land.

¹ Reported in 148 N. W. 617.

Note.—What waters are navigable, see note in 42 L.R.A. 305.

Title to land under water, see notes in 42 L.R.A. 161, and 1 L.R.A. (N.S.) 762.

Right of riparian owner to erect and maintain wharves, see note in 40 L.R.A. 635.

Rule in Minnesota.

4. In the United States each state determines for itself the question of the ownership of the soil underlying its public waters. The United States government never owned the soil under public waters, and its patent to the shore land does not pass title to the land under the water. This belonged to the states, and if the riparian owner has acquired it at all it is by the favor or concession of the state. In Minnesota the title of the proprietor of abutting lands extends to low-water mark. The title to the soil under the waters below low-water mark is held by the state, not in the sense of ordinary absolute proprietorship, but in its sovereign governmental capacity, for common public use, and in trust for the people of the state, for the public purposes for which they are adapted. This rule applies to all public waters, lakes as well as streams.

Riparian rights of owner of shore land.

5. The shore owner has well defined riparian rights in the adjacent water and the soil under it below low-water mark. These rights include the right of access, the right to accretions and relictions, the right to wharf out and the right, absolute as respects every one but the state, to improve, reclaim and occupy the surface of the submerged land out to the point of navigability for any private purpose.

Same — subject to the control of the state.

6. These rights are not unrestricted but are subject to the control of the state. The state has power to conserve the integrity of its public lakes and rivers. The riparian owner has no right against the protest of the state to destroy the bed of a public lake for the private purpose of taking ore therefrom.

Diversion of bed of lake from public use.

7. The question is not wholly one of interference with present public use. The fact that in the opinion of the court the portions of the lake in controversy are, during low-water mark, not capable of any substantial beneficial use does not prevent the state from objecting to its diversion to a private use foreign to the public uses of the water and the soil under it.

Right in soil between high and low-water mark.

8. The fee to the soil between high and low-water is in the abutting owner, subject to the right of the public to use or reclaim it for public purposes. The shore owner has the right, during periods of recession of water, to take ore from this space, provided the state does not require it for public purposes, and provided he shall not measurably interfere with the utilization of it for such prospective uses.

Action in the district court for St. Louis county against Eliza Korrer, Edmund N. Korrer, Annie L. Korrer, John Brennan, White Iron Lake Iron Co., Albert B. Coates, Martha R. Coates, and Euclid Iron Mining Co. to enjoin defendants from interfering with the public waters of Longyear lake, from removing the iron ore under said lake and the natural waters thereof, from removing the iron ore from under that part of the bed of said lake which would be covered by the waters thereof in the natural condition of said lake at the time of the commencement of the action but for the erection by defendants of the embankment or dump mentioned in the complaint, and for an accounting as to any ore unlawfully removed prior to or pending the action. The case was heard before Cant, J., who made findings and ordered judgment in favor of defendants. From the judgment entered pursuant to the order for judgment, plaintiff appealed. Reversed.

Lyndon A. Smith, Attorney General, and *C. Louis Weeks*, Assistant Attorney General, for appellant.

Crassweller, Crassweller & Blu, Washburn, Bailey & Mitchell, John Brennan and *T. L. Doyle*, for respondents.

John R. Van Derlip, as *amicus curiæ*, filed a brief supporting the position of respondents.

HALLAM, J.

The bed of Longyear lake contains deposits of iron ore both between high and low-water mark and below low-water mark. Defendants own land abutting on the lake. Upon their taking steps to remove the ore beneath the bed of the lake, and for that purpose to fill in the lake bed from the shore to a point some distance below low-water mark, the state brought this action to restrain them. Both the state and the defendants claim a proprietary interest in the ore underlying the bed of the lake. The real issue involved is whether the state has such interest in this body of water and the bed thereof that it may enjoin the defendants from filling in and reclaiming the bed of the lake for the purely private purpose of removing the underlying ore. We shall address ourselves to this issue.

A consideration of this question requires some examination into

the character of this lake and into the history of the rights of the government and of the riparian owner in waters of this character.

1. The first question is: What is the character of this body of water? The trial court found "that Longyear lake is a meandered public body of water * * * having an area of more than one hundred and fifty acres in extent * * * that within the entire natural limits of said lake the same during high water is naturally suitable for boating, bathing, hunting, fishing and other beneficial public uses; that on the shore of said lake and in the main on the westerly shore thereof * * * is situated the village of Chisholm, having a population of more than two thousand inhabitants." The finding in substance is that these facts constitute Longyear lake a "public body of water." This finding is sustained by the evidence.

2. Natural bodies of water are *classed* as navigable or non-navigable. The term "navigable," as used in this connection, has been extended beyond its technical signification and embraces many bodies of water not navigable in the ordinary sense of that term. The division of waters into navigable and non-navigable is but another way of dividing them into public and private waters, and navigable waters embrace all bodies of water public in their nature. It is not necessary that the water should be capable of commerce of pecuniary value. If a body of water is adapted to use for public purposes other than commercial navigation, it is held to be public water, or navigable water, if the old nomenclature is preferred. Boating for pleasure is considered navigation, as well as boating for mere pecuniary profit. "Navigability for pleasure is as sacred in the eye of the law as * * * navigability for other purposes." *City of Grand Rapids v. Powers*, 89 Mich. 94, 50 N. W. 661, 14 L.R.A. 498, 28 Am. St. 276. "Many, if not the most, of the meandered lakes of the state, are not adapted to, and probably will never be used to any great extent for, commercial navigation; but they are used—and as population increases, and towns and cities are built up in their vicinity, will be still more used—by the people for sailing, rowing, fishing, fowling, bathing, skating, taking water for domestic, agricultural, and even city purposes, cutting ice, and other public purposes which cannot now be enumerated or even anticipated. To hand over all these lakes to private owner-

ship, under any old or narrow test of navigability, would be a great wrong upon the public for all time, the extent of which cannot, perhaps, be now even anticipated." Mitchell, J. in *Lamprey v. State*, 52 Minn. 181, 199, 200, 53 N. W. 1139, 1143, 18 L.R.A. 670, 38 Am. St. 541. See also *Chicago, M. & St. P. Ry. Co. v. City of Minneapolis*, 115 Minn. 460, 123 N. W. 169, Ann. Cas. 1912D, 1029.

Applying these rules, it must be held that this lake is a public body of water and is governed by the law applicable to public or navigable fresh water lakes.

3. The next question is: What are the respective rights of the state and the riparian proprietors in such public waters? It has been said that under the early common law there was no assertion of public right in the waters or the soil under them, and that all land under water which could be profitably used passed by the grants of the crown into private ownership. Farnham, *Waters & Water Rights*, § 36, p. 166. This may be true, but this private right received no recognition in any early judicial decision and received very little attention from the early commentators. In the reign of Elizabeth a lawyer named Digges advanced the theory that the proprietorship of all tide water and tide land, together with accretions and relictions, was in the crown, and that all use of the shore below high-water mark by the adjacent proprietors was illegal. Farnham, *Waters & Water Rights*, § 36, p. 167. The assertion of this alleged right by the crown was much opposed, and the claim was modified by royal concession and later by legislation, so that the title of the crown was to be considered as held for public uses and subject to certain riparian rights. The theory that the crown owned the title to the soil of navigable rivers up to a point reached by the flow of the tide of the sea was probably an outgrowth of this same doctrine. As applied to rivers this theory received judicial recognition early in the reign of James I, when, in the case of *The Royal Fishery of the Banne*, Davis Rep. 55, 56 (Moore, H. & L. of Foreshore & Seashore, 248) it was held that "every navigable river, so high as the sea flows and ebbs in it, is a royal river." See also *Bulstrode v. Hall*, 1 Sid. 148. Whatever its origin, the rule that the soil of tidal navigable rivers belongs to the crown has been consistently followed for several centuries as the com-

mon law of England. Lord Adv. v. Hamilton (1852) 1 Macq. (H. of L.) 46.

This doctrine did not apply to navigable fresh-water streams above tide water or to fresh-water lakes. There were few such streams and practically no such lakes in England, and the law applicable to such bodies of water received scant attention. Apparently there were no judicial decisions clearly defining rights in fresh-water lakes or rivers prior to the separation of the colonies from England. It is worthy of note that Blackstone, in his Commentaries published on the eve of the Revolution, makes no mention of this subject at all. After the Revolution, and in 1787, there was published a manuscript, written more than 100 years before by the eminent jurist and commentator, Sir Matthew Hale. This contained the following: "Fresh rivers of what kind soever, do of common right belong to the owners of the soil adjacent; so that the owners of the one side have, of common right, the propriety of the soil, and consequently the right of fishing, *usque filum aquæ*; and the owners of the other side the right of soil or ownership and fishing unto the *filum aquæ* on their side. And if a man be owner of the land of both sides, in common presumption he is owner of the whole river, and hath the right of fishing according to the extent of his land in length. With this agrees the common experience." De Juris Maris, Part I, c. I. These views were not at once accepted as settling the law of England. In 1863 doubt was expressed as to whether the soil of lakes belongs to the owners of the land on either side "*ad medium filum aquæ*." Marshall v. Ullewater Steam Navigation Co. 3 Best & S. 742; and as late as 1883 Lord Denman said in Williams v. Wilcox, 8 Ad. & El. 336, that the question whether the soil of public navigable rivers above the flow of the tide was at common law in the crown or the owners of the adjacent land was "a point perhaps not free from doubt." The views of Sir Matthew Hale are now, however, recognized as the common law of England. Hindson v. Ashby (1896) L. R. 2 Ch. Div. 78; Orr Ewing v. Colquhoun, L. R. 2 App. Cas. 839; Scott v. Napier (H. of L.) 7 Ct. of Sess. Cas. 35 (1869) (a Loch of Scotland); Bristow v. Cormican (1878), L. R. 3 App. Cas. 641 (a Lough of Ireland).

4. In the United States the rule is not uniform. The common law of England, as it existed at the time of the separation of the colonies, is followed here as far as applicable to our conditions. But, in the first place, the common law of England on this subject was not then well settled, and, secondly, the authorities are not agreed as to whether conditions are so similar here in this respect as to require the adoption of what is now established as the English rule. A classification of waters based upon the ebb and flow of the tide has been rejected in many cases as unsuited to our conditions, and it was long ago said by the United States Supreme Court: "If a distinction is made on that account, it is merely arbitrary, without any foundation in reason; and, indeed, would seem to be inconsistent with it." The *Genesee Chief*, 12 How. 443, 454, 13 L. ed. 1058. The most that has ever been said for this basis of classification is that it is a convenient test and easy of application. *Cobb v. Davenport*, 32 N. J. Law, 369; *Woodcliffe Land Imp. Co. v. New Jersey S. L. R. Co.* 72 N. J. Law, 137, 60 Atl. 44; *Illinois Central R. R. Co. v. Illinois*, 146 U. S. 387, 435, 13 Sup. Ct. 110, 36 L. ed. 1018. In another case that court declared that to permit private ownership of the beds of navigable waters was "at variance with sound principles of public policy." *Barney v. Keokuk*, 94 U. S. 324, 24 L. ed. 224. It is now well settled, however, that this is not a Federal question, but that each state must determine for itself the question of the ownership of the soil underlying its public waters. *Barney v. Keokuk*, 94 U. S. 324, 24 L. ed. 224. The result is much confusion. Courts of some states hold that title to the bed of navigable waters is in the riparian proprietor in a proprietary capacity. The *Steamboat Magnolia v. Marshall*, 39 Miss. 109; *Kinhead v. Turgeon*, 74 Neb. 580, 104 N. W. 1061, 109 N. W. 744, 1 L.R.A.(N.S.) 762, 7 L.R.A.(N.S.) 316, 121 Am. St. 740, 13 Ann. Cas. 43; *Wilson v. Watson*, 141 Ky. 324, 132 S. W. 563, 35 L.R.A.(N.S.) 227; *Johnson v. Johnson*, 14 Idaho, 561, 95 Pac. 499, 24 L.R.A.(N.S.) 1240; *Admrs. of Gavit v. Chamber & Coats*, 3 Ohio, 496. Others hold that the title to the bed of all navigable waters is in the state in a proprietary capacity. *Chapman v. Kimball*, 9 Conn. 38, 21 Am. Dec. 707. Others hold that the title to the beds of navigable rivers is in the state and the beds

of navigable lakes in the riparian owner. *Cobb v. Davenport*, 32 N. J. Law, 369. Others hold that the title to beds of navigable lakes is in the state and the beds of navigable rivers in the riparian owner. *Seaman v. Smith*, 24 Ill. 521; *Illinois Cent. R. R. Co. v. City of Chicago*, 173 Ill. 471, 50 N. E. 1104, 53 L.R.A. 408; *Schulte v. Warren*, 218 Ill. 108, 75 N. E. 783, 13 L.R.A.(N.S.) 745; *Fletcher v. Phelps*, 28 Vt. 257; *Willow River Club v. Wade*, 100 Wis. 86, 76 N. W. 273, 42 L.R.A. 305; *State v. Gilmanton*, 9 N. H. 461. Some courts hold, as we shall see more fully later on, that the title is in the state in its sovereign capacity in trust for the people.

In Minnesota the decisions bearing upon this subject are numerous. The earliest case is that of *Schurmeier v. St. Paul & Pac. R. Co.* 10 Minn. 59 (82), 88 Am. Dec. 59. This case is relied upon as adopting the rule of the English common law that the owner of land bordering on a navigable stream takes title to the middle of the bed of the stream. The case in fact involved the question of title to a so-called island which lay above low-water mark, and the decision of the court was that "a tract of land bounded on the Mississippi river extends at least to the low-water mark." The decision of this question determined the case. A majority of the court, however, took occasion to approve the English common-law rule as to the ownership of the beds of fresh-water streams. In this view Justice Berry did not concur, and the language of the majority of the court in this regard was not essential to a decision of the case.

On appeal to the Supreme Court of the United States, that court, referring to the provisions of the original act of May 17, 1796, providing for the sale of public lands, used the following pointed language: "The court does not hesitate to decide that Congress, in making a distinction between streams navigable and those not navigable, intended to provide that the common-law rules of riparian ownership should apply to lands bordering on the latter, but that the title to lands bordering on navigable streams should stop at the stream, and that all such streams should be deemed to be, and remain public highways." *Railroad Co. v. Schurmeir*, 74 U. S. (7 Wall.) 272, 238, 289 (19 L. ed. 74).

In *St. Paul, S. & T. F. R. Co. v. First Division St. Paul & Pac.*

R. Co. 26 Minn. 31, 49 N. W. 303, and *Morrill v. St. Anthony Falls Water Power Co.* 26 Minn. 222, 2 N. W. 842, 37 Am. Rep. 399, this court referred to its decision in the *Schurmeier* case as holding the English common-law rule in force in this state, but, deferring to the language of the United States Supreme Court in the same case on appeal, held that in the case of lands acquired by patent from the Federal government the title of the patentee "stops at the stream and that the title to the beds of such streams is reserved to the government." The last portion of this statement, that the title is reserved to the government, evidently meaning the Federal government, seems unwarranted by the Federal decision relied upon, and is directly contrary to earlier Federal decisions which held that "the shores of navigable waters, and the soils under them, were not granted by the Constitution to the United States, but were reserved to the states respectively; and the new states have the same rights, sovereignty and jurisdiction over this subject as the original states." (*Pollard's Lessee v. Hagan*, 44 U. S. [3 How.] 212, 11 L. ed. 565; *Mumford v. Wardwell*, 73 U. S. [6 Wall.] 423, 436, 18 L. ed. 756); and the doctrine that the matter was controlled by act of Congress had already been repudiated by the explicit declaration of the Federal court in the later case of *Barney v. Keokuk*, 94 U. S. 324, 24 L. ed. 224, to the effect that the determination of the rights of riparian proprietors in public waters is a question which each state must decide for itself. In view of this position of the Federal supreme court in the *Pollard*, *Mumford* and *Barney* cases, the declarations that the title to the bed of public waters was in the Federal government, or that the question of such title was governed by Federal law, could not be allowed to stand, and they were not followed in subsequent cases.

In *Union Depot, St. Ry. & T. Co. of Stillwater v. Brunswick*, 31 Minn. 297, 17 N. W. 626, 47 Am. Dec. 789, the subject was again fully considered. This case involved the extent and nature of the rights of the defendants, as riparian owners of land upon the shore of the navigable waters of the river or lake of St. Croix. The subject was fully considered and, so far as the title to the bed of the waters was concerned, was plainly deemed an open question. The decisions in *St. Paul, S. & T. F. R. Co. v. First Division St. Paul & Pac. R.*

Co. 26 Minn. 31, 49 N. W. 303, and *Morrill v. St. Anthony Falls Water Power Co.* 26 Minn. 222, 2 N. W. 842, 37 Am. Rep. 399, that the title to the bed was reserved in the Federal government, were not followed. *Barney v. Keokuk* was not cited, but the court accepted the doctrine of that case that the right of riparian owners in such cases "is wholly a matter for the state to determine the extent of its own rights." The *Schurmeier* case, 10 Minn. 59 (82), 88 Am. Dec. 59, was followed as settling the law "that the riparian owner has the fee to low-water mark," but was followed no further. The decision reached in the *Brunswick* case was that the title to the bed of the stream below low-water mark "vests in the state as a sovereign right." The failure of the court to follow the language of the majority in the *Schurmeier* case, 10 Minn. 59 (82), 88 Am. Dec. 59, as to ownership of the bed of the stream, was not apparently, as claimed by defendants, based upon the authority of *Morrill v. St. Anthony Falls Water Power Co.* 26 Minn. 222, 2 N. W. 842, 37 Am. Rep. 399, or *St. Paul S. & T. F. R. Co. v. First Division St. Paul & Pac. R. Co.* 26 Minn. 31, 49 N. W. 303, nor upon any misunderstanding of the effect of the Federal decisions, but rather upon what the court conceived to be the correct principle of law, for the court cites upon this point only the *Pollard* and *Mumford* cases, in which cases the doctrine of ownership in the state received decided approval. The decision in the *Brunswick* case that the state owns the bed of navigable waters settled the law on that subject, and it has been followed in a long line of cases. *Miller v. Mendenhall*, 43 Minn. 95, 44 N. W. 1141, 8 L.R.A. 89, 19 Am. St. 219; *Hanford v. St. Paul & Duluth R. Co.* 43 Minn. 104, 42 N. W. 596, 44 N. W. 1144, 7 L.R.A. 722; *Bradshaw v. Duluth Imperial Mill Co.* 52 Minn. 59, 65, 53 N. W. 1066; *Lamprey v. State*, 52 Minn. 181, 198, 53 N. W. 1139, 18 L.R.A. 670, 38 Am. St. 541.

At the risk of some repetition, the law on this branch of the case may be stated as follows:

When the American Revolution was concluded, the people of each state became themselves sovereign, and in that character held the absolute right to all their navigable waters and the soils under them for their own common use, and continued to do so subject only to the

rights since surrendered by the Constitution to the general government. The soil under navigable waters was not granted by the Constitution to the United States, but was reserved to the states respectively, and the new states had the same rights. *St. Anthony Falls Water Power Co. v. St. Paul Water Commrs.* 168 U. S. 349, 359, 18 Sup. Ct. 157, 42 L. ed. 497. When the United States government issues its patent to public land bordering upon navigable water, the land under the water does not pass to the riparian proprietor by force of the patent, because the United States does not own it, but if the riparian owner acquires it at all it is by the concession or favor of the state which does own it. *Barney v. Keokuk*, 94 U. S. 324, 24 L. ed. 224; *Hardin v. Shedd*, 23 Sup. Ct. 685, 47 L. ed. 1156, 190 U. S. 508, 519; *Franzini v. Layland*, 120 Wis. 72, 81, 82, 97 N. W. 499. We conceive that the state of Minnesota has never conceded away its title as sovereign to its navigable waters or to the soil under them, and that the law of the state now is that the title of the proprietor of lands abutting upon navigable waters extends to low-water mark; that the title to the bed of the stream or body of water, below low-water mark, is held by the state, not, however, in the sense of ordinary absolute proprietorship with right of alienation but in its sovereign governmental capacity, for common public use, and in trust for the people of the state for the public purposes for which they are adapted.

This rule is not peculiar to this state, but is adopted in many other jurisdictions. *Town of Brookhaven v. Smith*, 188 N. Y. 74, 80 N. E. 665, 9 L.R.A.(N.S.) 326; *Barnes v. Midland R. Terminal Co.* 193 N. Y. 378, 85 N. E. 1093, 127 Am. St. 962; *McLennan v. Prentice*, 85 Wis. 427, 444, 55 N. W. 764; *Rhode Island Motor Co. v. City of Providence (R. I.)* 55 Atl. 696; *Walbridge v. Robinson*, 22 Idaho, 236, 125 Pac. 812, 43 L.R.A.(N.S.) 240; *State v. Gerbing*, 56 Fla. 603, 47 South. 353, 22 L.R.A.(N.S.) 337. And it is not far from the English rule now prevailing in respect to tidal waters. *Gann v. Free Fishers*, 11 H. L. Cas. 192; *Attorney General v. Johnson*, 2 Wils. Ch. 87; *Attorney General v. Tomline*, L. R. 14 Ch. Div. 58.

In Minnesota the rights of shore owners of land bordering on lakes are the same as those of owners of land bordering on rivers. *Lamprey v. State*, 52 Minn. 181, 53 N. W. 1139, 18 L.R.A. 670, 38 Am. St.

541. As to the Great Lakes and other larger lakes like Lake Champlain, it is agreed that the title to underlying soil is in the state. 1 Farnham, Waters & Water Rights, p. 264, § 58; State v. Franklin Falls Co. 49 N. H. 240, 250, 6 Am. Rep. 513. As to smaller lakes the rule, as above indicated, is not uniform. When a lake is so small in size as to constitute merely a pond and to be entirely upon the land of one individual, no question of public ownership is raised. Between this class of lakes or ponds and the Great Lakes there are a large number which are more or less useful to the public. There is a point in the diminishing size, below which no one can doubt that the title should be in the individual. Conversely, there is a point above which every one will agree that the title must be in the state. 1 Farnham, Waters & Water Rights, p. 265, § 58a. In the Minnesota cases no distinction is made between the rights of the owner of land abutting upon Lake Superior and the rights of owners of land upon public waters of smaller size. This court has made navigability the dividing line. All public or navigable waters are placed in the same class. The rules applied to Lake Superior are likewise applied to smaller lakes, provided only they are in the class of public waters. The shore owner of land on non-navigable or private lakes takes title to the middle of the lake. Lamprey v. State, 52 Minn. 181, 53 N. W. 1139, 18 L.R.A. 670, 38 Am. St. 541; Tucker v. Mortenson, 126 Minn. 214, 148 N. W. 60. But the shore owner of land on navigable or public lakes takes only to low-water mark.

5. But while the shore owner owns the fee only to low water mark, he has certain well defined rights in the water and the soil under it below low-water mark. These rights are designated riparian rights. Riparian rights are incident to the ownership, not of the bed of the water, but of the shore land. The riparian owner has the right to the use of the water and has the right of access to it for that purpose. To that end he may follow it as it recedes. He has the title to the reliction caused by the gradual recession of the water and to the accretion caused by the washing of sand, dirt and gravel ashore. The rights of riparian owners have received very full consideration by this court. They include the right of the riparian owner to build and maintain, for his own and the public use, suitable wharves, piers and landings,

on and in front of his land, and to extend the same therefrom into the river, to the point of navigability, even though beyond low-water mark, and to this end exclusively to occupy the surface of the bed of the water, subordinate and subject only to the rights of the public, and to such needful rules and regulations for their protection as may be prescribed by competent legislative authority. *Brisbine v. St. Paul & Sioux City R. Co.* 23 Minn. 114, 130. This private right of use and enjoyment is not limited to purposes connected with the actual use of the navigable water, but may extend to any purpose not inconsistent with the public right. *Hanford v. St. Paul & Duluth R. Co.* 43 Minn. 104, 111, 42 N. W. 596, 44 N. W. 1144, 7 L.R.A. 722. The riparian owner has, subject to this public right, the exclusive right of possession and the entire beneficial interest in the surface of the underlying soil. *Union Depot, St. Ry. & T. Co. of Stillwater v. Brunswick*, 31 Minn. 297, 302, 17 N. W. 626, 47 Am. Rep. 297. He has the exclusive right—absolute as respects *every one but the state*, and limited only by the public interests of the state for purposes connected with public uses—to improve, reclaim and occupy the surface of the submerged land, out to the point of navigability, for any private purpose, as he might do if it were his separate estate. *Hanford v. St. Paul & Duluth R. Co.* 43 Minn. 104, 118, 42 N. W. 596, 44 N. W. 1144, 7 L.R.A. 722. The exercise of such rights, though subject to state regulation, can be interfered with only for public purposes. The rights which thus belong to him as riparian owner of the abutting premises are valuable property rights of which he cannot be divested without consent, except by due process of law, and, if for public purposes, upon just compensation. *Brisbine v. St. Paul & Sioux City R. Co.* 23 Minn. 114, 129.

6. Throughout all of these cases runs the thread of reserved state control. All of them were controversies between private parties. In all of them is distinctly recognized the power of the state to regulate and control the use of the water, particularly below low-water mark. While the Minnesota cases recognize the right to use the bed of the stream or lake for purposes not connected with the actual use of the water, we know of no case in Minnesota or elsewhere where the right of the riparian proprietor has been recognized as possessing the right

of utilizing the bed of a public body of water below low-water mark for purely private purposes disconnected with the use of the water, to the extent of destroying its existence, and against the protest of the state.

It may be noted that no decided case has ever sustained the title of the riparian owner to the minerals under public waters or the right to remove them under any circumstances. In most of the cases in which such questions have arisen the state is held to be the owner of the underlying soil in its proprietary capacity. *Steele v. Sanchez*, 72 Iowa, 65, 33 N. W. 366, 2 Am. St. 233; *Brandt v. McKeever*, 18 Pa. St. 70; *Taylor v. Commonwealth*, 102 Va. 759, 47 S. E. 875, 102 Am. St. 865; *Lord Adv. v. Wemyss* (1900) L. R. App. Cas. 50; See, also, *Gould, Waters*, § 10. In such cases it is held that "the state and it alone has the right to develop those hidden sources of wealth." *Taylor v. Commonwealth*, 102 Va. 776, 47 S. E. 875, 102 Am. St. 865. In Florida the rule as to title to the soil under navigable waters is substantially the same as in this state, and the rights of riparian owners are made by statute at least as large as they are in this state. In the case of *State v. Black River Phosphate Co.* 32 Fla. 82, it was held that the riparian owner had no right to take phosphate from the bed of a navigable river under any circumstances, except by consent of the state duly given by the law-making power and upon such terms and conditions as it may prescribe (p. 114). We need not in this case go even this far. Under the law of this state the state owns the soil under public waters in a sovereign not a proprietary capacity, but still the state owns it and the shore owner does not. Whether the riparian owner has any beneficial interest in the minerals underlying the bed of the lake where they can be removed without destroying the lake bed, we are not called upon to determine. We do hold that the state has the power to conserve the integrity of its public lakes and rivers and that riparian rights of the shore owner do not include the right to fill and destroy the bed of a navigable lake for the purpose of taking ore therefrom, against the protest of the state. Manifestly if the lake can be filled in for this private purpose it may be filled in for any private purpose, as for agriculture or grazing, upon a showing of greater utility being subserved by such private use. The

propriety of filling in the public lakes and streams of the state for such private purposes, is not primarily a judicial question. Other authorities bearing upon this particular question are not numerous, nor altogether direct, but we think they point to the conclusion just stated. In Gould, Waters (3d ed.) § 179, it is said:

"Riparian owners upon navigable *fresh* rivers and lakes may construct, in the shoal water in front of their land, wharves, piers, landings, and booms in aid of and not obstructing navigation. This is a riparian right, being dependent upon title to the bank and not upon title to the river bed. Its exercise may be regulated or prohibited by the state."

In Farnham, Waters & Water Rights, page 528, § 113, it is said as to the right of a riparian owner to wharf out:

"This right is subject to public regulation, and, if the public good requires that no wharves or piers shall be constructed at any particular place, they may be forbidden."

In Lincoln v. Davis, 53 Mich. 375, 19 N. W. 103, 51 Am. Rep. 116, where it is held that "the title to the soil under the navigable waters of the Great Lakes became vested in the state as sovereign," it was held that "the state can forbid any erections in navigable waters, and on navigable streams and along the Great Lakes can fix the distance beyond which private erections cannot be maintained."

In Attorney General v. Smith, 109 Wis. 532, 85 N. W. 512, it was held that a structure built by a riparian owner upon the bed of a navigable lake, not in aid of navigation, is an invasion both of the state's title and the rights of the public, and that it may be suppressed at the suit of the state.

City of St. Paul v. Chicago, M. & St. P. Ry. Co. 63 Minn. 331, 63 N. W. 267, 65 N. W. 649, 68 N. W. 458, 34 L.R.A. 184, bears upon this question. Defendant built a freight house on a public levee under license given by the city council, on condition that the city engineer be of the opinion that the same shall in no manner interfere with the navigation of the river. It was held that the state holds the levee in its sovereign capacity in trust for the public, for the purposes for which it was dedicated, that, if the freight house was used without reference to traffic with craft navigating the river, its construc-

tion would constitute a diversion of the property to a use foreign to that to which it was dedicated, and that the license for its construction was void and might be revoked. These cases are not directly in point, but we think they sustain the principle we have laid down.

We have not overlooked the finding of the trial court that in recent years the depth of the water in the lake has been substantially lessened so that during low water the portion here in controversy is not capable of any substantial beneficial use, and that the water is occasionally so low that it is incapable of any public use whatever. The question is not wholly one of interference with present public use. In *City of St. Paul v. Chicago, M. & St. P. Ry. Co.* 63 Minn. 330, 63 N. W. 267, 65 N. W. 649, 68 N. W. 458, the court said: "Neither does it appear whether there exists any present public necessity for the use of this land for levee purposes. This last consideration would, of course, not be controlling, for the fact that the land is not presently needed for levee purposes would not prevent the city or state, as the trustee of the public, from objecting to a diversion of the property to a use wholly foreign to or inconsistent with that to which it was dedicated."

It was said by Cooley, C. J., by way of illustration, in *Attorney General v. Evart Booming Co.* 34 Mich. 462, 473: "A highway usually includes within its limits more than is ever made use of for public purposes; but, as it is set apart for public use, provided there shall be occasion, the appropriation by an individual is unlawful, though it occasion no present inconvenience to any one, and it may be abated because the result of its being persisted in might be to obscure and, possibly, in the end, to defeat the public right altogether, and thus preclude enjoyment by the public in case the use of that which was inclosed should ever be needed for highway purposes."

The conclusion is that the defendants have no right to take ore from the bed of Longyear lake below low-water mark and for that purpose to fill in the bed of the lake.

8. The remaining question is as to the rights of the parties in the space between high and low water. We are of the opinion that within this space the riparian owner has a qualified right to mine. Many courts and text writers lay down the rule that the title of the riparian owner stops at high-water mark. Others hold that his title

extends to low-water mark. This is a matter for each state to determine for itself. In this state it has been settled for nearly 50 years that the title of the riparian owner extends to low-water mark. *Schurmeier v. St. Paul & Pac. R. Co.* 10 Minn. 59 (82), 88 Am. Dec. 59; *Union Depot, St. Ry. & T. Co. v. Brunswick*, 31 Minn. 297, 17 N. W. 626, 47 Am. Rep. 789; *Hanford v. St. Paul & Duluth R. Co.* 43 Minn. 104, 111, 42 N. W. 596, 44 N. W. 1144, 7 L.R.A. 722; *Village of Wayzata v. Great Northern Ry. Co.* 50 Minn. 438, 52 N. W. 913; *In re Minnetonka Lake Improvement*, 56 Minn. 513, 58 N. W. 295, 45 Am. St. 494; *Gniadck v. N. W. Imp. & Boom Co.* 73 Minn. 87, 75 N. W. 894; *Reeves v. Backus-Brooks Co.* 83 Minn. 339, 86 N. W. 337. While the title of a riparian owner in navigable or public waters extends to ordinary low-water mark, his title is not absolute except to ordinary high-water mark. As to the intervening space his title is limited or qualified by the right of the public to use the same for purpose of navigation or other public purpose. The state may use it for any such public purpose, and to that end may reclaim it during periods of low water, and protect it from any use, even by the riparian owner, that would interfere with its present or prospective public use, without compensation. Restricted only by that paramount public right the riparian owner enjoys proprietary privileges, among which is the right to use the land for private purposes. *Hanford v. St. Paul & Duluth R. Co.* 43 Minn. 104, 112, 42 N. W. 596, 44 N. W. 1144, 7 L.R.A. 722; *In re Minnetonka Lake Improvement*, 56 Minn. 513, 520, 58 N. W. 295, 45 Am. St. 494; *Gniadck v. N. W. Imp. & Boom Co.* 73 Minn. 87, 75 N. W. 894; *State v. District Court of Kandiyohi County*, 119 Minn. 132, 137 N. W. 298; *People v. Jones*, 112 N. Y. 597, 20 N. E. 577. The rights of the riparian owners are accordingly distinctly different in and to the space between high and low-water mark from what they are below low-water mark.

Applying the foregoing principles to this case, it appears to us:

That the defendants have the right during periods of recession of water to take ore from the space between high and low-water mark, provided the state does not require the use of this space for authorized public purposes, and provided they shall not measurably inter-

fere with the utilization of such space for such prospective public uses.

That the state is entitled to an injunction restraining the defendants from taking ore below low-water mark and from filling in or in any manner interfering with the bed of the lake below that point.

Judgment reversed and case remanded with directions to proceed in accordance with this opinion.

On November 20, 1914, the following opinion was filed:

PER CURIAM.

Defendants White Iron Lake Iron Company, John Brennan, Eliza Korrer, and Annie L. Korrer move for a reargument of the case. The state and the defendant Euclid Iron Mining Company both petition that further direction be given the trial court to the end that proper judgment may be given relative to the rights of the parties in certain ore which has already been taken from the bed of Longyear lake.

It will be borne in mind that the defendants Eliza Korrer and Annie L. Korrer were and are the owners of the shore land, that they gave a mining lease to the defendant White Iron Lake Iron Company, that this company in turn gave a mining lease to defendant Albert B. Coates, and this lease was assigned to the Euclid Iron Mining Company.

After the commencement of the action, and before the trial thereof, a stipulation was made between the state and defendant Euclid Iron Mining Company, which recited that, upon a certain area of Longyear lake below the low-water mark, the waters had been by said defendant forced back by an embankment, and that a body of ore within this area had already been stripped and prepared for mining, and it was stipulated that said defendant might remove the ore so stripped, and that said defendant should pay the state 60 cents per ton for ore it should so remove and which it should be finally adjudged did not at the beginning of the action belong to the fee owners of the shore land.

On this stipulation the trial court ordered that the Euclid Iron

Company be permitted to remove the ore so stripped and uncovered, and that it should pay to the state 60 cents per ton for ore which it might remove from said area, "for which, under the final determination of the court in this action, it is under no obligation to pay royalty to the fee owners and those claiming under them."

The trial court made no finding that any ore was in fact removed by the Euclid Company from this area. In fact the taking of evidence bearing on the right to ore taken from such area and to an accounting therefor was reserved until the rights of the parties should be further determined. We are assured, however, that ore was taken out of this area pursuant to this stipulation and order.

A majority of the court construe this stipulation as giving the state the right to an accounting only in the event the state is found to be the owner in a proprietary capacity of the mineral underlying Longyear lake. The decision of this court explicitly holds that the state owns the bed of this lake below low-water mark, "not, however, in the sense of ordinary absolute proprietorship with the right of alienation but in its sovereign governmental capacity, for common public use, and in trust for the people of the state for the public purposes for which they are adapted." From this it necessarily follows that the state has no right to recover the value of the ore, and no right to an accounting under the stipulation.

Whether the law-making power of the state and the shore owner may by joint action provide for the mining of the ore under the waters of this lake, is a question here not presented and it is not decided.

The several applications for a rehearing are denied.



To preserve and enhance the "Lake Minnetonka experience"

4425 NORTH SHORE DRIVE LANE WEST ARM, ORONO VARIANCE APPLICATION PUBLIC HEARING

Lake Minnetonka Conservation District

Board Meeting

July 27, 2022

Presented by: Vickie Schleuning, Executive Director

OVERVIEW

- Board Action
- History
- Background
- Agency and Public Comments
- Staff Recommendation
- Public Hearing
- Q & A

BOARD ACTION

- **Approval of Variance Request**
- **Continue Public Hearing**
- **Denial of Variance Request**

4425 NORTH SHORE DRIVE, ORONO



July 27, 2022

For illustrative purposes only

4425 NORTH SHORE DRIVE, ORONO



RECENT HISTORY HIGHLIGHT

- In 2021, addressed concern regarding dock placement
- In 2022, staff reviewed site and dock configuration.
 - Questions regarding available information for property boundary, but advised Applicant to proceed with variance process until determined. Advised to move easterly, not block channel, and not install platform on western side.
- Reviewed historical and current documents
- Required an updated survey with property boundaries and suggested private attorney to evaluate site characteristics
- Advised Applicant preferred variance proposal with 2 BSU lakeward likely not recommended by staff approval
- Updated site survey, proposed site plan, and documents submitted for Variance application

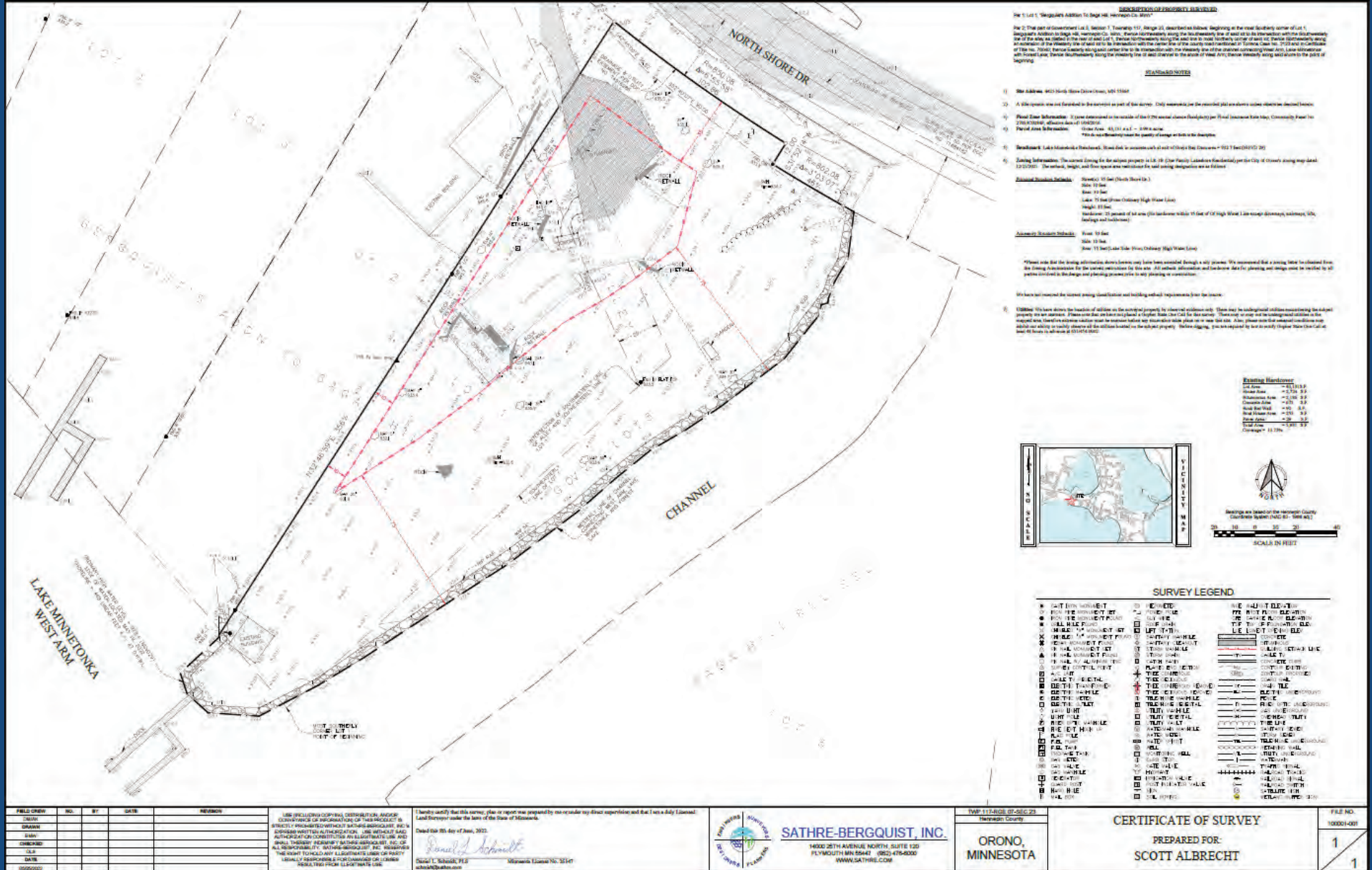
BACKGROUND

- Applicant's property has approximately 459 feet of 929.4 feet OHW shoreline. 90 feet of shoreline on peninsula, and 50 feet of shoreline between the extended side site lines per the Code description, given its unusual configuration.
- One parcel (PID 07-117-23-34-0003)
- Unusual configuration and slightly converging extended side site lines with a peninsula on the southwest side and a public navigation channel under authority of Hennepin County on the eastern side.

APPLICANT PROPOSAL SUMMARY

- 4 foot setback from the west side site line, with proposed platform.
- Zero-foot setback from the east side site line.
- Dock length of 60.5 feet, with proposed platform, and 52.5 feet without the platform
- 1 BSU, with a canopy, 11.5 ft wide by 31 feet long
- 2 BSUs for personal watercraft (tucked behind main BSU), 10 feet wide by 12 feet long
- 7 foot by 8 foot platform off western end of dock

EXISTING SITE PLAN



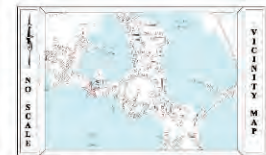
July 27, 2022

[illegible][illegible]


*Please note that the zoning information shown herein may have been amended through a city process. We recommend that a zoning letter be obtained from the zoning administration for the current conditions for this site. All setback information and lot/corner data for planning and design must be verified by all parties involved in the design and planning process prior to any planning or construction.

7) Utilities: We have shown the location of utilities on the surveyed property by ground evidence only. There may be underground utilities, including the subject property, we are unaware of. Please note that we have not called a Copier State OneCall for this survey. There may or may not be underground utilities at the property. Also, there may be other utilities that are not shown here. We are not responsible for any damage to or loss of any property or other loss caused by any utility not shown here. We are not responsible for any damage to or loss of any property or other loss caused by any utility not shown here. We are not responsible for any damage to or loss of any property or other loss caused by any utility not shown here.

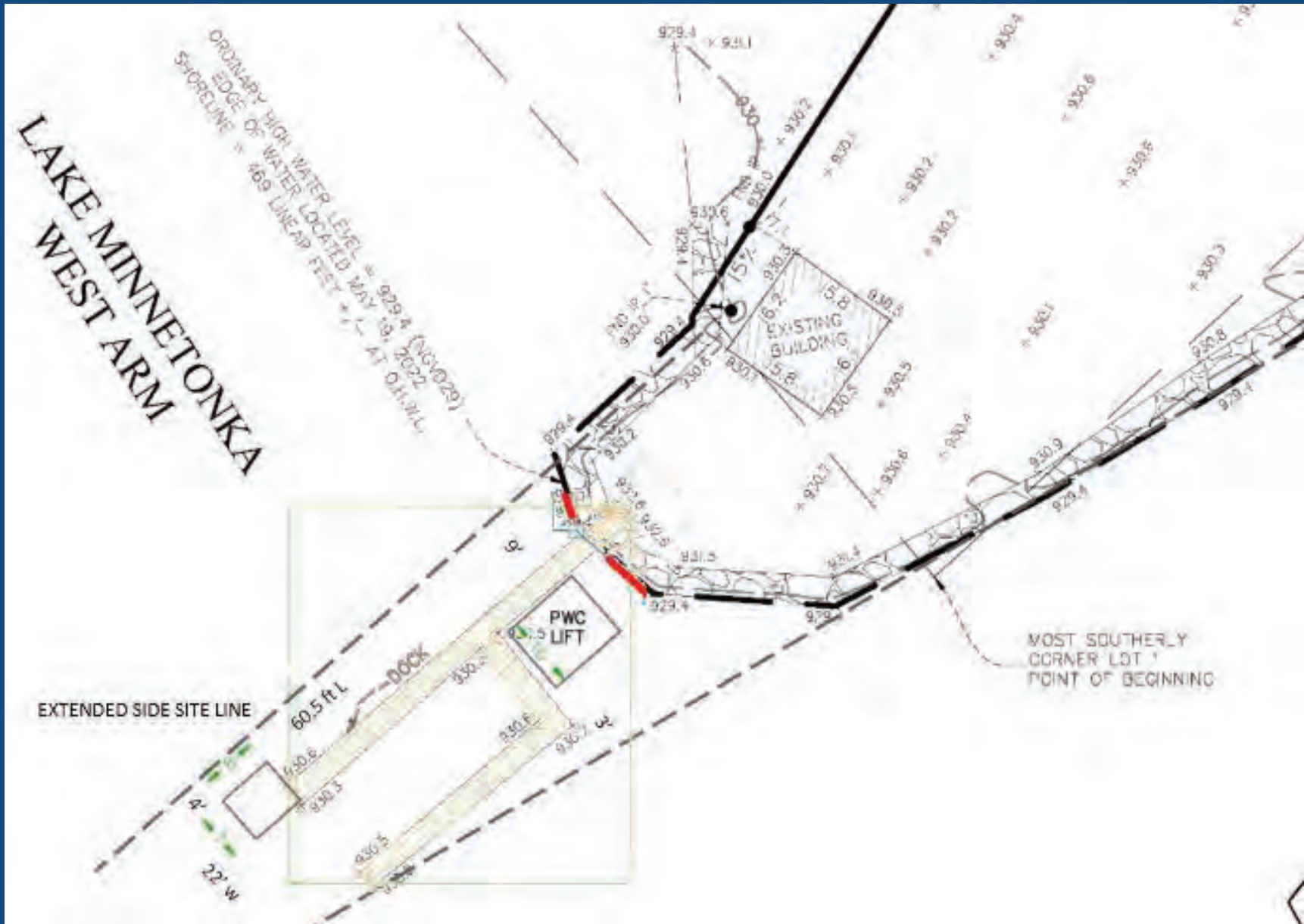
Existing Hardcover	
Lot Area	= 13,131
House Area	= 2,724
Driveway Area	= 2,188
Concrete Area	= 675
Rock Ret Wall	= 90
Boat House Area	= 255
Paver Area	= 20
Total Area	= 5,911
Coverage	= 15.55%



001 GAS MOTOR	004 REZONANCE	006 ELEVATOR ELEVATION
002 GAS MOTOR	005 POWER PULSE	007 FLOOR ELEVATION
003 GAS MOTOR	006 STOP SW	008 FLOOR ELEVATION
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PROPOSED SITE PLAN EXCERPT



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?

PUBLIC / REVIEW AGENCY COMMENTS

- **Agency Review of Application / Comments (General Permit)**
 - No comments were received from the MN DNR or the MCWD. The City of Orono does not have any comments or concerns with the proposal.
- **Public Comments**
 - No comments were received from the public as part of public hearing process

ON SITE REVIEW- CHANNEL



ON SITE REVIEW- LAND VIEW

View from 4425 North Shore Dr

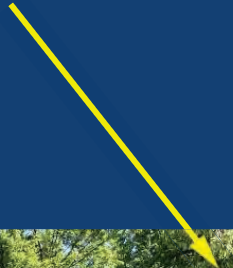


View from 4435 North Shore Dr



ON SITE REVIEW

4425 North Shore Dr



CONSIDERATIONS

- **Interaction of applicant's proposed dock configuration and adjacent dock use area to the north (4435 North Shore Dr.)**
 - LMCD Code Section 2-3.03, Subd. 3, paragraph (c):
 - (c) Sites with 50 feet of Width or Less – February 2, 1970. If a site in existence on February 2, 1970 has an authorized dock use area with a width of 50 feet or less, the authorized dock use area may be expanded to a side setback limitation of five feet, *provided that such setback in no way impairs access to neighboring docks.*
- **Amount of shoreline.** Applicant's parcel approximately 459 feet of shoreline, 90 feet of shoreline on the peninsula, approximately 50 feet of shoreline between the extended side site lines per the Code description.
- **Onsite Review.** Dock configuration does not appear to impede navigation, impair reasonable use of other dock use areas, and seems compatible with adjacent uses.
- **Considerations of Variance factors**

RECOMMENDATION (CONTINGENT PUBLIC HEARING COMMENTS)

If board chooses to approve variance, the minimum recommendations to consider:

1. Maintain a minimum 5-foot setback on the western side and a 0-foot setback on the eastern side from the extended side site lines as indicated on the site plan.
2. Maintain a maximum 60-foot dock length based on 929.4 ft OHW. Watercraft in BSUs not extend beyond designated boat slip area
3. Allow requested enclosed BSU with canopy and two BSUs indicated as PWC Lift.
4. Remove or reconfigure platform to enable a 5-foot setback on the westerly side.
5. Updated site plan with final configuration and measurements
6. Apply standard variance conditions reflecting environmental, nuisances, maintenance, etc.

RECOMMENDATIONS CONT...

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.

PUBLIC HEARING

- **Public Hearing Requirements**
 - Posted in official newspaper on July 7, 2020 (Sun Sailor) and also July 9, 2022 (Laker Pioneer)
 - Owners of properties within 350 feet notified, 10-day notice sent July 7, 2022
 - Posted online with meeting packet
- **Opportunity for interested individuals to present their views to Board for consideration**
- **Only items under the LMCD Code and Board authority may be considered as part of any Approve or Deny decision**



To preserve and enhance the "Lake Minnetonka experience"

QUESTIONS?

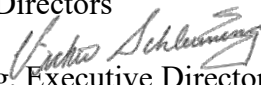


LAKE MINNETONKA CONSERVATION DISTRICT

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

DATE: August 10, 2022 (Prepared August 4, 2022)

TO: LMCD Board of Directors

FROM: Vickie Schleuning,  Executive Director

SUBJECT: Denial of New Watercraft for Hire Certificate of Registration Application, Andiamo

ACTION

Board approval of Findings of Fact and Order for denial of the Watercraft for Hire Certificate of Registration application from Stephen Crumley of Andiamo.

BACKGROUND

At the August 10, 2022 meeting, the LMCD Board reviewed an application from Stephen Crumley of Andiamo ("Applicant") for a Watercraft for Hire Certificate of Registration.

After receiving a presentation by LMCD staff and receiving comments from the applicant and the public, the Board discussed the application and ultimately voted to have legal counsel and staff draft Findings of Fact and Order for denial of the request. The draft Findings of Fact and Order document is attached, as well as the memos and presentations from the previous meeting, without attachments.

BUDGET

N/A

STRATEGIC PRIORITIES

<input type="checkbox"/> Operational Effectiveness	<input type="checkbox"/> Clear & Timely Communications	<input type="checkbox"/> Effective Governance	<input checked="" type="checkbox"/> Lake Protection	<input type="checkbox"/> Other
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ATTACHMENTS

- Draft Findings of Fact and Order
- July 27, 2022 Presentation
- July 27, 2022 Memo Regarding Application (without attachments)
- Watercraft for Hire Application and Letter (June 22, 2022)

Type: Denial – Watercraft for Hire
Certificate of Registration
Date: August 10, 2022
Applicant: Stephen Crumley
Berth Location: PID: 21-117-23-44-0002
Address: 4581 Manitou Road
Tonka Bay, MN 55331
Site Owners: Michael R Sack &
Michelle E Sack

**LAKE MINNETONKA CONSERVATION DISTRICT
HENNEPIN COUNTY, MINNESOTA**

IN RE:

Application of Stephen Crumley for a
Watercraft for Hire Certificate of Registration

**FINDINGS OF FACT
AND ORDER**

The Lake Minnetonka Conservation District (“**LMCD**”) received an application from Stephen Crumley (“**Applicant**”) for a Watercraft for Hire Certificate of Registration (“**Certificate**”) for a 29 foot long, 2021 Sea Ray SDX 290, bow rider named Andiamo (“**Watercraft**”). The Applicant proposes to berth the Watercraft at a residential dock (“**Residential Dock**”) the Applicant supposedly would lease at 4581 Manitou Road, Tonka Bay (“**Property**”) and to use the City of Excelsior’s docks as the port of call (“**Port of Call**”). Certificates of registration are issued administratively by the LMCD Executive Director without a public hearing. However, because the Executive Director proposed to deny the requested Certificate, the Executive Director forwarded the application to the LMCD Board of Directors (“**Board**”) at its July 27, 2022 meeting for review and direction. The Board acted at the meeting to direct the LMCD attorney to prepare an order denying the requested Certificate. Based on the proceedings and the record of this matter, the Board hereby makes the following Findings of Fact and Order:

FINDINGS OF FACT

1. The Residential Dock is located in the City of Tonka Bay, on Old Channel Bay, which is part of Lake Minnetonka (“**Lake**”). The Applicant’s home is located at 2445 Acorn Run, Victoria, MN 55386.
2. Anyone proposing to operate a watercraft for hire on the Lake is required by Article 7, Chapter 1 of the LMCD Code of Ordinances (“**Code**”) to obtain a Certificate from the LMCD and to comply with certain other requirements.
3. The Applicant included a letter dated June 20, 2022 with his application describing his

proposed operation. In his letter, the Applicant indicates he proposes to use the Excelsior City docks as his Port of Call, though it appears he has not actually secured the right to use the dock from the city as the letter simply indicates he has been advised he can pay a fee to use the dock to embark and disembark guests. He proposes to fuel the Watercraft at a licensed marina on the Lake, would not offer food or beverages on the Watercraft, and intends to operate a few times a week. He also indicated that any maintenance on the Watercraft would occur at his home, which would require him to trailer and transport the Watercraft to his home in each such instance.

4. The Residential Dock at which the Application proposes to berth the Watercraft is owned by Michael Sack and Michelle Sack (“**Owners**”). The property contains approximately 1.5 acres, with the dock being off a small portion of parcel (roughly 1,260 square feet), with approximately 50 feet of shoreline, located between the Lake and County Highway 19.
5. LMCD staff informed the Applicant in advance of submitting his application that the LMCD has refused to issue certificates of registrations for watercraft for hire proposed to be berthed at anything other than a commercial dock. Despite this notification, the Applicant elected to submit his application.
6. Section 6-5.13, Subd. 2 of the Code designates the Executive Director as the issuing authority for Certificates. However, the provision requires the Executive Director to “refer to the Board any application that the Executive Director proposes to deny.”
7. The Executive Director indicated to the Applicant her intent to deny the application because it proposes to berth the Watercraft at a residential dock. Because of the proposed denial, the Executive Director indicated she would forward the application to the Board for review and a final decision.
8. A public hearing is not held on the issuance of a Certificate, but the Applicant was given an opportunity to speak to his request for a Certificate at the July 27, 2022 Board meeting.
9. Section 6-5.13, Subd. 1(d) of the Code requires the Applicant to identify the berthing location for the Watercraft. As noted, the Applicant identified the Residential Dock, which is located at someone else’s property, as the berthing location. The Residential Dock is not licensed as a commercial dock.
10. Additional information regarding the Applicant’s request for a Certificate is provided in the LMCD staff report dated July 27, 2022 and the presentation made thereon at the July 27, 2022 meeting (collectively, the “**Staff Reports**”). The Staff Reports are incorporated herein by reference. The findings contained herein shall be controlling to the extent there are any inconsistencies.
11. Commercial uses of the Lake have been a recurring topic of discussion and debate by the Board. Commercial uses can have both positive and negative impacts on the Lake as well as on those who live and recreate on the Lake.

12. While the Board understands the Applicant does not propose to use the Residential Dock as a Port of Call, allowing a commercial watercraft to be operated from a residential dock can produce negative impacts to the surrounding residential properties that are different than the impacts arising from the storage of a non-commercial watercraft. While the Applicant asserts that its use of the Residential Dock will not produce any negative impacts in the neighborhood, there is no practical way for the LMCD to monitor the day-to-day operations at the Residential Dock to determine if they are disruptive. Instead, the Board has made a policy decision to not allow residential docks to be used to berth watercraft for hire.
13. A watercraft for hire is defined in Section 1-3.01, Subd. 118 of the Code as a “watercraft carrying passengers for hire on the Lake.” There is no question the operation of a watercraft for hire is a commercial use of the Lake.
14. For regulatory purposes, the Code distinguishes among the various types of docks based their use. A dock used for a commercial use is considered a commercial dock. The definition of “commercial use” in Section 1-3.01, Subd. 21 of the Code “includes any use of a dock or dock structure by a person or entity in conjunction with a commercial or other revenue producing business enterprise.” Storing a watercraft for hire at a dock is using the dock in conjunction with a commercial or revenue producing business enterprise. Under Section 3-3.11, Subd. 1, “[n]o person may locate, construct, install, or maintain a commercial structure on the shoreline of the Lake . . . without first obtaining a license from the LMCD in accordance with Article 6.”
15. The site at which a watercraft for hire is berthed is part of its operations. While the Applicant indicates he does not intend any activities such as cleaning, stocking, loading staff, etc. at the Residential Dock, the LMCD has determined to not expose the neighboring owners to the potential that such activities would begin to occur at a residential dock.
16. The Applicant disagrees with the LMCD’s interpretation of the Code on this matter. He asserts his use does not constitute a commercial use. However, operating a watercraft for hire is a commercial operation that, as noted above, includes the location at which the watercraft is berthed.
17. The Residential Dock is not a commercial dock, the Owners have not applied for a commercial dock license, and so mooring the Watercraft (if it is issued a Certificate) at the Residential Dock would constitute a prohibited commercial use of a non-commercial dock.
18. Earlier this year, the Board debated the issue of a watercraft for hire being berthed at a residential dock. The Board concluded that discussion by agreeing with the Executive Director’s analysis (set out above) and understood historical interpretation that the Code requires a watercraft for hire to be berthed at a commercial dock. Nothing has changed in the Board’s interpretation of the Code in the handful of months since that discussion.
19. During the July 27, 2022 meeting, the LMCD attorney specifically pointed out that the Board could give direction to prepare an ordinance to allow watercraft for hire to be berthed at a residential dock. The Board refused to give that direction and instead acted in accordance

with its past decisions and directed the LMCD attorney to prepare an order denying the application for final action at its August 10, 2022 meeting.

20. The Board has determined it is in the best interests of the LMCD and the public to continue to interpret and apply the Code to require a watercraft for hire to be stored at a commercial dock. Because the Applicant proposes to store the Watercraft at the Residential Dock, the Applicant is not eligible for the Certificate. The requested Certificate must be denied on that basis without the Board needing to consider the Applicant's compliance with the other requirements associated with obtaining a Certificate.

ORDER

ON THE BASIS OF THE FOREGOING AND THE RECORD OF THIS MATTER, IT IS ORDERED by the Board as follows:

1. Denial. The Executive Director's proposed denial of the requested Certificate for the Watercraft is upheld and the Applicant's request is hereby denied.
2. Authorization. The LMCD staff is authorized and directed to provide a copy of this Order to the Applicant.

BY ORDER OF THE BOARD OF DIRECTORS of the Lake Minnetonka Conservation District this 10th day of August 2022.

Gregg Thomas, Chair

ATTEST:

Dan Baasen, Secretary



ITEM 13A

LAKE MINNETONKA CONSERVATION DISTRICT

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

DATE: Prepared June 30, 2022

TO: LMCD Board of Directors

FROM: Thomas Tully, Environmental Administrative Technician

THROUGH: Vickie Schleuning, Executive Director

RE: New Watercraft for Hire Certificate of Registration Application, Andiamo

ACTION

Board consideration of Andiamo, new 2022 Watercraft for Hire Certificate of Registration application and review of charter boat berthing requirements. The sole proposed port of call is the Excelsior City Docks. If not denied, a Municipal Certificate will be sent to the City of Excelsior for approval or denial.

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 draft Findings of Fact and order approving Andiamo's application for Watercraft for Hire Certificate of Registration upon completion of all applicable requirements < and with the following conditions...>.

Denial:

I make a motion to direct LMCD legal counsel to draft Findings of Fact and order denying the Andiamo application for Watercraft for Hire Certificate of Registration based on the following reasons...

BACKGROUND

Stephen Crumley of Andiamo ("Applicant") has submitted the attached watercraft for hire application for a vessel named *Andiamo*. Applications for Watercraft for Hire certificates can be processed and approved administratively, without a public hearing or formal Board review. LMCD staff would like Board input regarding the application prior to denying the application. Therefore, the application is being brought forward to the Board for its review as prescribed by LMCD Code. At this time, the Applicant has not submitted an application for liquor/alcohol license, which would require Board approval.

On June 22, 2022, the LMCD received an application submitted by the applicant for a Watercraft for Hire certificate. The applicant had proposed to store the vessel at a residential property on Old Channel Bay in Tonka Bay. In the past, staff have explained that the residential location would

need to receive a Commercial Dock License from the LMCD in order to be eligible as a berthing location for a commercial, revenue-producing vessel. Further, the application would likely trigger zoning review by the City of Tonka Bay. Previously, the applicant's 2021 submission was deemed incomplete.

In 2021 and 2022, the Board has received comments and reviewed similar requests to berth watercraft for hire at non-commercial sites and discussed LMCD Code language regarding charter boat licensure. The Board touched on whether or not watercraft could be berthed at non-commercial sites, but ultimately did not take action to change the Code or give staff direction to change the traditional interpretation of the Code.

The applicant's 2022 submission, which is the application before the Board, is for a similar setup – the same vessel is proposed to be berthed at the same residential location. The sole proposed port of call is the Excelsior City Docks. If not denied, a Municipal Certificate will be sent to the City of Excelsior for approval or denial and all other criteria would need to be met. The Applicant is proposing some operational procedures in an effort to minimize potential impact to the lake and adjacent properties. The concern is that the watercraft remains a commercial vessel as part of a watercraft for hire operation.

STAFF RECOMMENDATION

The staff's approach has been to regulate the berth location as it appears to have been traditionally enforced. The Board has been aware and watchful of the pressure to further expand commercial activities on Lake Minnetonka. This expansion could change the Lake Minnetonka experience, as well as potentially negatively impact lakeshore owners from the higher use of activities and creep into residential areas due to the commercial use. Therefore, LMCD staff recommends that the Board deny the Watercraft for Hire Certificate of Registration Application due to lack of a compliant berth location.

BUDGET

N/A

STRATEGIC PRIORITIES

<input type="checkbox"/> Operational Effectiveness	<input type="checkbox"/> Clear & Timely Communications	<input type="checkbox"/> Effective Governance	<input checked="" type="checkbox"/> Lake Protection	<input type="checkbox"/> Other
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ATTACHMENT

- Watercraft for Hire Application and Letter (June 22, 2022)



Lake Minnetonka Conservation District (LMCD)

To preserve and enhance the "Lake Minnetonka experience"

Watercraft for Hire Application Review-
Commercial Berthing at Residential Structure
LMCD Executive Director Vickie Schleuning

07/27/2022 LMCD Board Meeting

Application Status

- ▶ Application received from Stephen Crumley of Andiamo for Watercraft for Hire Certificate of Registration
 - ▶ Proposed berthing location is at a residential dock, 4581 Manitou Road, Old Channel Bay, Tonka Bay
 - ▶ No Liquor License requested yet
- ▶ Generally, Watercraft for Hire Certificates can be approved administratively (without Board review)
- ▶ Staff anticipated denial of the Application since it does not meet the LMCD code.
- ▶ Therefore, this application is referred to the Board for review of the Watercraft for Hire application in accordance with LMCD Code Section 6-5.13, Subd. 2. A separate application was deemed incomplete in 2021.

Board Action

- ▶ **Deny:** Direct staff and legal counsel to prepare findings of fact and order to deny application on basis of proposed berthing location not being commercial site and bring back to the board on August 10, 2022.
- ▶ **Approve with Conditions:** Direct staff and legal counsel to prepare findings of fact and order to approve the application on condition of satisfaction of requirements other than commercial berthing (inspections, insurance, equipment, etc.) and bring back to the board on August 10, 2022.

General Application Information

- ▶ Vessel: *Andiamo*
 - ▶ 29-foot Sea Ray (Cruiser)
- ▶ Total Capacity (including crew): 15
 - ▶ Passenger Capacity: 13
- ▶ Proposed Port of Call (municipal certificate not yet sent):
 - ▶ Excelsior City Docks
- ▶ Berthing location: Residential dock on Old Channel Bay
 - ▶ Main issue for the Board to consider this meeting

Proposed Berthing Location

4581 Manitou Road, Tonka Bay



Code Excerpts, Section 1-3.01

- ▶ Subd. 21. Commercial Use. “Commercial use” is, unless specifically noted otherwise, a general reference to commercial marinas, club facilities, qualified commercial marinas, qualified sailing schools, and qualified yacht clubs. The term includes any use of a dock or dock structure by a person or entity in conjunction with a commercial or other revenue producing business enterprise. The owner of a commercial use is eligible to apply for a license for a commercial structure.
- ▶ Subd. 86. Residential Single Dock. “Residential single dock” means a single dock constructed or maintained at a single-family residential property for the private use of the residents of the dwelling on the property.
- ▶ Subd. 118. Watercraft for Hire. “Watercraft for hire” means a watercraft carrying passengers for hire on the Lake.

Key Considerations cont...

- ▶ Staff's approach has been to regulate berth location as it appears to have been traditionally enforced.
- ▶ Code seems clear regarding commercial use and commercial dock for Watercraft for Hire berth location. Board touched on this issue in 2021/2022 and did not direct changes to code or its interpretation at that time. Applicant has attempted to try to minimize the commercial impact to adjacent properties with certain proposed changes to the operation.
- ▶ Regardless, cities may not allow a Watercraft for Hire/Charter to be berthed at a residential property due to city regulations.

Key Considerations

- ▶ Residential lakeshore owners may apply for a commercial dock license with the LMCD.
 - ▶ Cities may not approve it based on their city business regulations
 - ▶ Residential sites may not have adequate dock use area for a commercial license
- ▶ Lake Minnetonka has experienced significant pressure from certain parties wanting to monetize their recreational watercraft for business operations. Expansion of commercial activities associated with the berth location could negatively impact lakeshore owners from a higher use of activities and these activities carried over into residential areas.
- ▶ Regulation and enforcement challenges may exist associated with mixed uses of commercial and residential, therefore, standards would need review.

Board Direction & Questions?



Stephen Crumley
2445 Acorn Run
Victoria, MN 55386

Vickie Schleuning
Lake Minnetonka Conservation District
5341 Maywood Road
Suite 200
Mound, MN 55364

June 20, 2022



Dear Vickie,

I am herewith submitting my application for a permit for Watercraft for Hire for the 2022 season. As part of this application, I would like to make a few important distinctions that pertain specifically to my situation.

First, and most importantly, our mission is to provide an opportunity for guests to visit, enjoy, and become more educated on Lake Minnetonka in a safe and enjoyable manner. As I have discussed with you previously, we intend to be good stewards of the lake, and will support education of others in any way we are able. This could include operational training of other captains, encouraging the safe and legal use of the lake by licensed captains as well as recreational boaters, or other opportunities you may suggest.

My credentials are:

- Boat Master as licensed by the State of Minnesota, Lic #MA 778893
- My boat is a 2021 Sea Ray SDX 290. It is modern, and fully equipped with all required safety equipment. This includes: 17 Type 1 life jackets, including two for children, all properly labeled; high water alarm; Bilge fume alarm with automated blower activation; Type 4 throwable Ring Buoy with 60 feet of line and floating lighted marker; fixed and portable bilge pumps that operate automatically as well as manual pump; State approved first aid kit; Batteries properly secured and protected; appropriate communication equipment; automatic bilge fire suppression equipment; appropriately sized fire extinguisher mounted by the helm; These meet LMCD and State of Minnesota requirements as noted in section 7-1.05 of the LMCD Code of Ordinances.
- The boat is registered with the State of Minnesota as a Watercraft for Hire and has been properly inspected. Registration number: Andiamo-BOA2103-0001. This meets LMCD and State of Minnesota requirements as noted in section 7-1.03 of the LMCD Code of Ordinances.
- My boat is certified to carry up to 15 passengers and crew. This is properly marked at the helm of the boat, and has been certified by the Minnesota Boiler Inspector. Our intent is to carry 10 passengers or less, so we are well within the capacity of the vessel. This meets LMCD and State of Minnesota requirements as noted in section 7-1.07 of the LMCD Code of Ordinances.
- We agree to meet all requirements of section 7-1.09, Operational Rules of the LMCD Code of Ordinances.

- The size of the boat falls well within the limitations of section 7-1.11 regarding watercraft size, as found in the LMCD Code of Ordinances.
- Based on these criteria, we meet ALL requirements within the LMCD code under Article 7, Chapter 1, Watercraft for Hire.
- We have no intent to use the vessel for any "Adult Uses" as outlined in Chapter 2.
- We will apply for Alcoholic Beverage Licensing as required in Chapter 3 of the LMCD Code in Article 7 once we receive your approval of our application.
- Based on this, we have met all requirements to operate a charter in the State of Minnesota. Additionally, we have fulfilled all requirements to operate a Watercraft for Hire, per Article 7 of LMCD Code, approved and published February 17, 2022.
- While it is not detailed in the Code, we will carry commercial insurance with a minimum liability of \$1,000,000 and property damage insurance coverage with a minimum of \$500,000.

I know that in the past, LMCD has cited Article 3, Commercial Lake Uses and Structures, Chapter 2, Commercial uses section 3-2.01, which defines a commercial dock as a reason to require that a commercially operated vessel be berthed at a commercial dock. Paraphrasing from the Commercial Uses chapter, section 3-2.01:

- "The commercial uses identified in this section are eligible to apply for commercial (dock) licenses on the lake."
- "The LMCD does not license these uses, but the licenses issued [for] a particular (dock) use will identify the particular commercial use designation recognized by the LMCD."
- "The commercial uses, including qualified commercial uses, identified in this code are as follows:
 - a. Commercial marinas
 - b. Club facilities
 - c. Qualified commercial marinas
 - d. Qualified sailing schools; or
 - e. Qualified yacht clubs"

Clearly, this Article is intended to describe a dock structure, how it is designed, identified and maintained. The title of the Article, "Commercial Structures" seems to delineate that its focus is structures, not Watercraft for Hire, which has its own Article. I am unable to identify any language in this Article saying all commercial boats must be "berthed" in a specific manner. In fact, the word "berth" does not appear in the LMCD Code. Section 3-3.09 does refer to commercial mooring areas, but it describes an area, not a vessel.

I have also noted that LMCD has also cited the definition of a commercial dock. In Chapter 3, section 1-3.01. Definitions, Subd. 21, a commercial dock is defined: "Commercial Use. "Commercial use" is, unless specifically noted otherwise, a general reference to commercial marinas, club facilities, qualified commercial marinas, qualified sailing schools, and qualified yacht clubs. The term includes any use of a dock or dock structure by a person or entity in conjunction with a commercial or other revenue producing business enterprise. The owner of a commercial use is eligible to apply for a license for a commercial structure."

Our use doesn't qualify as a marina, club facility, sailing school or yacht club. As such, it does not seem to be covered under this definition.

Having said this, I fully recognize the importance of respecting the neighborhood where I store my boat. Your letter to me last season indicated that commercial activities that may impact a dock include embarking and disembarking guests or crew, refueling, catering, maintenance, and parking a variety of vehicles in the area. While I'm also unable to find any of these terms in the LMCD code as it relates to a commercial vessel, I completely agree that none of these activities should occur at a residential dock.

Our plan for these activities is as follows:

- Fueling will be done at local commercially approved marinas that are designed for fueling services.
- Embarking and disembarking of guests will occur at the commercial dock in Excelsior. I've been advised by the City of Excelsior that I can pay a fee for use of the commercial dock for the purpose of guests embarking and disembarking, which will meet the LMCD desires – after you have approved my permit to charter on Lake Minnetonka.
- Crew and parking refer only to me, and sometimes my wife assists in the operation of the boat. There will be no other vehicle traffic at our dock, and this is consistent with recreational use of a dock.
- Our charter activity will be limited to only a few times per week and will have no impact on dock use that is inconsistent with recreational use.
- Catering of food and beverage will not be offered.
- Maintenance will be done at my home, on our trailer.

Based on these facts, no activity in conjunction with any commercial activity will be happening at our dock. The dock itself will not be used in any operations that are revenue generating. Therefore, we don't see a reason that the dock must be certified as Commercial, nor can we find a reason we must "berth" the boat at a commercial dock. All commercially related activity will happen at a commercial dock, such as the gas dock or the Excelsior docks.

Lastly, I want to reiterate that we don't have any intention to compete with larger commercial operations. Our differentiation includes: we won't serve food; we won't serve alcohol; we allow swimming in appropriate areas; we will offer custom itineraries, including cruising to areas unavailable to larger charter boats (such as Lost Lake); we won't have rigid schedules; guests can have a private charter at a cost far less than that of large charter operations. Those large charter operations offer numerous options we cannot: seating for more than 10 guests; dance floor; buffet dinners; table service; and much more.

Based upon careful review of the LMCD Code of Ordinances, and our plan to fully comply with all of these regulations, I believe this application now meets your requirements for approval of our application to operate a Watercraft for Hire. If there is anything we can clarify for you, please feel free to reach out to me at any time.

Again, our goal will be to operate a safe, fun way for the public to experience the beauty of Lake Minnetonka with a sober, trained, certified captain operating a certified safe vessel. We look forward to our partnership with you, LMCD and the Water Patrol.

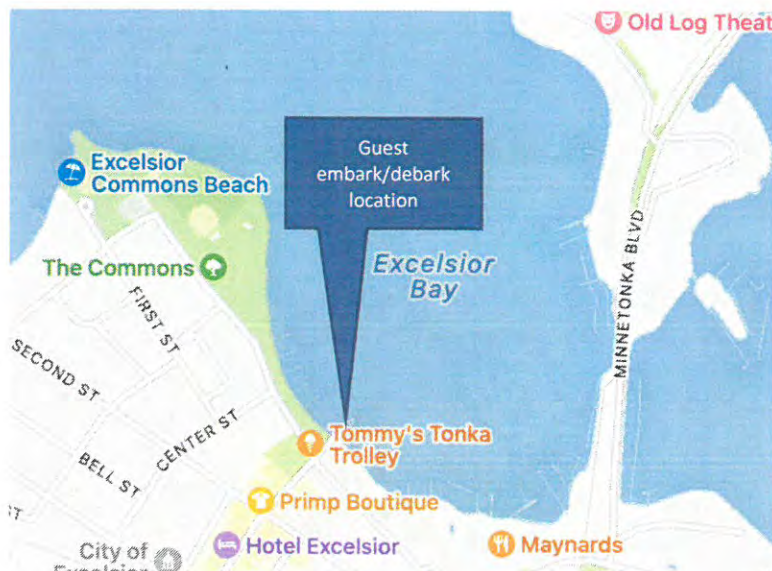
In consideration of the above, I'd like to request that we be granted a lawful permit to operate our small charter business on Lake Minnetonka for the 2022 season. Upon your approval, we will again complete the state inspection, Sheriff's inspection, and will submit our application for a liquor license.

Thank you for your consideration!



Steve Crumley, 612-865-1786

CC: Timothy Matuszak, Attorney at Law





LAKE MINNETONKA CONSERVATION DISTRICT
5341 Maywood Road, Suite 200
Mound, MN 55364
Phone: (952) 745-0789



WATERCRAFT FOR HIRE REGISTRATION APPLICATION

LMCD Receipt # _____

Pursuant to Lake Minnetonka Conservation District Code Section 3.07, no person shall operate or offer to operate any watercraft carrying passengers for hire on Lake Minnetonka without an LMCD certificate of registration.

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

Name of Vessel: Andiamo
 MN License #: MN 6077 MB

Name of Applicant: Stephen Crumley MA778893 MN Boat Master
 Name of Business: Andiamo
 Address: 2445 Acorn Run Phone: 612-865-1786
Victoria, MN 55386 Email: stephenlane@mindspring.com

Owner of vessel if different from applicant:

Address & phone: _____

Business Name: _____

Chief Pilot: Stephen Crumley License expiration date: 18 March 2023

Other Pilots:

- | | |
|--|--|
| 1. _____
Name & License expiration date | 3. _____
Name & License expiration date |
| 2. _____
Name & License expiration date | 4. _____
Name & License expiration date |

A. Boat
 Type: Bow Rider Capacity
 Make: Sea Ray Crew: 2
 Length: 29 Passengers: 13
 Year: 2021 Total: 15

B. Number of USCG-approved PFSs (Type I required): Adult: 15
 Children: 2

C. Toilet facilities: Type: Pump Out Head
 Pump-out point(s): 1
 Capacity in gallons: 10

D. Berthed at 4581 Manitou Road, Tonka Bay, MN

Watercraft for Hire Registration Application

On Old Channel Bay

E. List passenger pickup points (Ports of Call) in order of frequency of use (include letter of permission of permit from authorized person):

1. Port of Excelsior
2. _____
3. _____
4. _____

F. Public liability insurance: Amount \$1,000,000 Company: State Farm

G. The following must be received for your application to be complete:

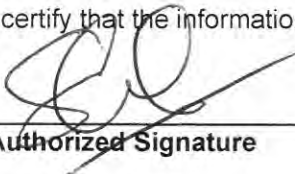
- *1. Copy of Hennepin County Sheriff's Water Patrol Charter Boat Inspection report (submit as soon as possible).
- *2. Copy of current state inspection certificate of operation (submit as soon as possible)
- *3. Copy of all current state pilot (Boat Master) licenses
- *4. Copy of all current charter boat insurance endorsement.
- *5. Locator map showing boat storage and pickup-up points.
- *6. Application fee of \$150 is due in the LMCD office by March 1..... **\$150.00**

Renewals Only - Late fee: If received after March 1 = \$ 50.00 **\$ 50.00**

TOTAL FEE ENCLOSED

\$ 150.00

I certify that the information provided herein and the attachments hereto are true and correct.


Authorized Signature

~~04/28/2022~~ 6/20/2022
Date

Owner _____

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




ITEM 12A

LAKE MINNETONKA CONSERVATION DISTRICT

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

DATE: August 10, 2022 (Prepared August 5, 2022)

TO: LMCD Board of Directors

FROM: Vickie Schleuning,  Executive Director

SUBJECT: Watercraft and Personal Watercraft Speed Limit Code Amendment

ACTION

Continued Board review regarding potential code amendments about watercraft and personal watercraft speed limits and associated wakes.

BACKGROUND

Many community members have expressed concerns about the large wakes created by boats, such as wake surf boats and large cruisers, on Lake Minnetonka. These wakes make it difficult for people with small watercrafts, including kayaks and canoes, to use the lake safely. Wakes close to shorelines also damage property, Lake Minnetonka's environment, and contribute to shoreline erosion. At the same time, we have heard from other community members who believe boats, like wake surf boats, are a great recreational outlet and have a right to be on the lake. Lake Minnetonka is one of the busiest lakes in our state, and it is important to balance the competing uses to help make sure everyone can use it safely.

Earlier this summer, the LMCD Board launched a thorough review process that included hosting a public listening session, gathering data, reviewing research, and connecting with member cities and boating industry leaders. More information about the process for [Boat-Generated Wakes Review](#) may be found on the LMCD website.

On June 8, 2022, the LMCD Board hosted a listening session to hear and gather public feedback on wake rules. After a tremendous turnout, the Board took time to carefully review all the written comments submitted by the public. At its July 13, 2022 meeting, the Board thoroughly discussed the comments during its work session.

As a result, one step the LMCD Board is considering is to update the rule on watercraft speeds and associated wakes near the shoreline, docks, and swimmers. The code amendment would place a five-miles-per-hour speed limit on all boats within 300 feet of shorelines, beaches, docks, anchored boats, swimmers, diver's flags, and similar. This would be an increase from the current rule of 150-feet. On July 27, 2022, the Board reviewed a draft of the proposed ordinance and received public comments at the meeting and through written submissions.

Based on preliminary feedback at the July 27, 2022 Board Meeting, two options for a code amendment have been drafted to help facilitate the discussion. The first draft amendment is the

Watercraft and Personal Watercraft Speed Limit Ordinance
LMCD Board Meeting
August 10, 2022

one previously reviewed by the Board with a 300-foot distance instead of the existing 150-foot distance buffer from shore, structures, swim areas, diving flags, and anchored watercraft. The second draft option includes a 300-foot distance from shore and maintains the 150-foot distance in the existing code from structures, swim areas, diving flags, and anchored watercraft.

To aid in the visual depiction of the distance options, three maps have been developed to highlight the proposed changes and overall impact to the use of the lake. Information will be updated on the LMCD Safety & Boat Generated Wakes webpage and Boat Generated Wakes Review webpage. More information will be produced for the Board to consider as the process evolves, and more information is gathered.

In addition, two buoys marked with distances are installed at the public launch at Surfside Park, Mound. The buoys are located just within 150 feet and 300 feet as measured from the end of the launch dock. If you are interested in viewing the distances on the lake, we recommend visiting the launch site to test your knowledge.

STRATEGIC PRIORITIES

<input type="checkbox"/> Operational Effectiveness	<input type="checkbox"/> Clear & Timely Communications	<input type="checkbox"/> Effective Governance	<input checked="" type="checkbox"/> Lake Protection	<input type="checkbox"/> Other
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ATTACHMENT

- Attorney Memo Regarding Draft of Watercraft Speed Limit Code Amendment
- Two Draft Code Amendments for Slow No-Wake Areas
- Maps Illustrating Current Buffer Distances and Options

Kennedy

&

Graven

CHARTERED

Troy J. Gilchrist
150 South Fifth Street
Suite 700
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 Civil Attorney

Date: August 4, 2022 (August 10, 2022 Board Meeting)

Re: Watercraft and Personal Watercraft Speed Limits – Two Draft Ordinances

Based on the discussion of the draft ordinance at the July 27, 2022 LMCD Board ("Board") meeting, I thought it would be helpful to also include a revised amendment that reflects the 300 feet from the shoreline and 150 feet from objects approach that appeared to be favored by at least some Directors at the meeting. I have attached the original draft ordinance (unchanged) as Option 1 and the revised ordinance as Option 2. I am certainly not suggesting these are the only options, I am simply attempting to assist the Board in its discussion on this policy issue.

In addition to making the 300/150 foot distinction in the Option 2 ordinance, I also changed the effect date to January 1, 2023 to address concerns raised about the initial proposed 30 day effective date.

I will be happy to answer any questions the Board may have at the meeting.

**LAKE MINNETONKA CONSERVATION DISTRICT
STATE OF MINNESOTA**

ORDINANCE NO. _____

**AN ORDINANCE AMENDING WATERCRAFT AND PERSONAL
WATERCRAFT SPEED LIMITS UNDER THE LAKE MINNETONKA
CONSERVATION DISTRICT CODE OF ORDINANCES**

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

Article I. Definitions. Article 1, Chapter 3, Section 1-3.01 of the LMCD Code is hereby amended by adding a new definition as follows and renumbering the subdivisions as needed:

Subd. . Slow-No Wake. “Slow-no wake” means operation of a watercraft at the slowest possible speed necessary to maintain steerage, but in no case greater than five miles per hour.

Article II. Watercraft Speed Limits. Article 8, Chapter 2, Section 8-2.03, Subd. 1 of the LMCD Code is hereby amended as follows:

8-2.03. Watercraft Speeds.

Subd. 1. Limits. No person shall operate a watercraft on the Lake at a speed greater than is reasonable and prudent under the conditions and with regard to the actual and potential hazards then existing. In every event speed shall be so restricted as may be necessary to avoid colliding with any person, watercraft, or structure in or upon the Lake which is in compliance with legal requirements and the duty of all persons to use due care. No watercraft may be operated on the Lake at a speed in excess of the following limits:

- (a) Forty miles per hour during the daytime;
- (b) Twenty miles per hour during the nighttime;
- (c) Five miles per hour in the following areas:
 - (1) A quiet waters area established by this Chapter;
 - (2) Within ~~150~~ 300 feet of the shoreline; and
 - (3) Within ~~150~~ 300 feet of an authorized bathing area or swimmer, an authorized scuba diver’s warning flag, an anchored raft or watercraft, or a dock or pier except that from which a watercraft with a person in tow is being operated; and

(4) Areas posted with a five miles per hour limit.

(d) Ten miles per hour for a watercraft for hire in excess of 70 feet in length.

Subd. 2. Posting Limits. The Sheriff and the Executive Director may provide for the erection of signs at appropriate locations on the Lake to inform operators of watercraft of the speed limitations established by this chapter.

Subd. 3. Prima Facie Rule. Operation of watercraft in excess of the speeds set forth in this Section is prima facie evidence that the watercraft is being operated in a careless, reckless, or grossly negligent manner in violation of Section 8-2.01, subdivision 1.

Subd. 4. Exceptions. The speed limit provisions of this Section, and the other speed limit and no wake provisions of this Code, do not apply to law enforcement officers or to fire or rescue personnel operating a government watercraft while engaged in the performance of their duties in responding to an emergency, provided the watercraft is operated with due regard for the safety of others on the Lake. The provisions of this Section do not apply to seaplanes during takeoff or landing.

Article III. Personal Watercraft Speed Limit. Article 8, Chapter 3, Section 8-3.07 of the LMCD Code is hereby amended as follows:

8-3.07. Speed Limits.

Subd. 1. ~~150 Feet of the Shoreline~~. No person shall operate a personal watercraft at greater than slow-no-wake speed within ~~150~~ 300 feet of any shoreline, bathing area or swimmer, authorized scuba diver's warning flag, anchored boat raft or watercraft, person fishing, mooring, dock, or other water structure.

Subd. 2. ~~300 Feet of the Shoreline~~. ~~No person shall operate a personal watercraft at a speed in excess of five miles per hour or at a speed which results in more than a minimum wake between 150 feet and 300 feet of the shoreline, unless the personal watercraft is being driven perpendicular to the shoreline and to or from the nearest point of water 300 feet from the shoreline or parallel to the shoreline from one location to another in a manner which is not repetitive.~~

Article IV. Effective Date. This Ordinance is effective 30 days after the first day of publication.

Article V. Incorporation of Amendments. The LMCD Attorney is authorized to incorporate these amendments into the LMCD Code and is authorized to make such corrective changes as may be needed to correct formatting, maintain internal consistency, renumber sections, and as may otherwise be needed to implement the changes intended by this ordinance.

Article VI. 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 _____ 2022.

BY THE BOARD OF DIRECTORS

Gregg Thomas, Chair

ATTEST:

Dan Baasen, Secretary

Date of Publication: _____, 2022.

Effective Date: _____, 2022.

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

**LAKE MINNETONKA CONSERVATION DISTRICT
STATE OF MINNESOTA**

ORDINANCE NO. _____

**AN ORDINANCE AMENDING WATERCRAFT AND PERSONAL
WATERCRAFT SPEED LIMITS UNDER THE LAKE MINNETONKA
CONSERVATION DISTRICT CODE OF ORDINANCES**

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

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- (b) Twenty miles per hour during the nighttime;
- (c) Five miles per hour in the following areas:
 - (1) A quiet waters area established by this Chapter;
 - (2) Within ~~150~~ 300 feet of the shoreline; and
 - (3) Within 150 feet of an authorized bathing area or swimmer, an authorized scuba diver’s warning flag, an anchored raft or watercraft, or a dock or pier except that from which a watercraft with a person in tow is being operated; and

(4) Areas posted with a five miles per hour limit.

(d) Ten miles per hour for a watercraft for hire in excess of 70 feet in length.

Subd. 2. Posting Limits. The Sheriff and the Executive Director may provide for the erection of signs at appropriate locations on the Lake to inform operators of watercraft of the speed limitations established by this chapter.

Subd. 3. Prima Facie Rule. Operation of watercraft in excess of the speeds set forth in this Section is prima facie evidence that the watercraft is being operated in a careless, reckless, or grossly negligent manner in violation of Section 8-2.01, subdivision 1.

Subd. 4. Exceptions. The speed limit provisions of this Section, and the other speed limit and no wake provisions of this Code, do not apply to law enforcement officers or to fire or rescue personnel operating a government watercraft while engaged in the performance of their duties in responding to an emergency, provided the watercraft is operated with due regard for the safety of others on the Lake. The provisions of this Section do not apply to seaplanes during takeoff or landing.

Article III. Personal Watercraft Speed Limit. Article 8, Chapter 3, Section 8-3.07 of the LMCD Code is hereby amended as follows:

8-3.07. Speed Limits.

Subd. 1. ~~150 Feet of the Shoreline~~. No person shall operate a personal watercraft at greater than slow-no-wake speed within ~~150~~ 300 feet of any shoreline; or within 150 feet of a bathing area, swimmer, authorized scuba diver's warning flag, anchored boat raft or watercraft, person fishing, mooring, dock, or other water structure.

Subd. 2. ~~300 Feet of the Shoreline~~. No person shall operate a personal watercraft at a speed in excess of five miles per hour or at a speed which results in more than a minimum wake between 150 feet and 300 feet of the shoreline, unless the personal watercraft is being driven perpendicular to the shoreline and to or from the nearest point of water 300 feet from the shoreline or parallel to the shoreline from one location to another in a manner which is not repetitive.

Article IV. Effective Date. This Ordinance is effective on January 1, 2023.

Article V. Incorporation of Amendments. The LMCD Attorney is authorized to incorporate these amendments into the LMCD Code and is authorized to make such corrective changes as may be needed to correct formatting, maintain internal consistency, renumber sections, and as may otherwise be needed to implement the changes intended by this ordinance.

Article VI. 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 _____ 2022.

BY THE BOARD OF DIRECTORS

Gregg Thomas, Chair

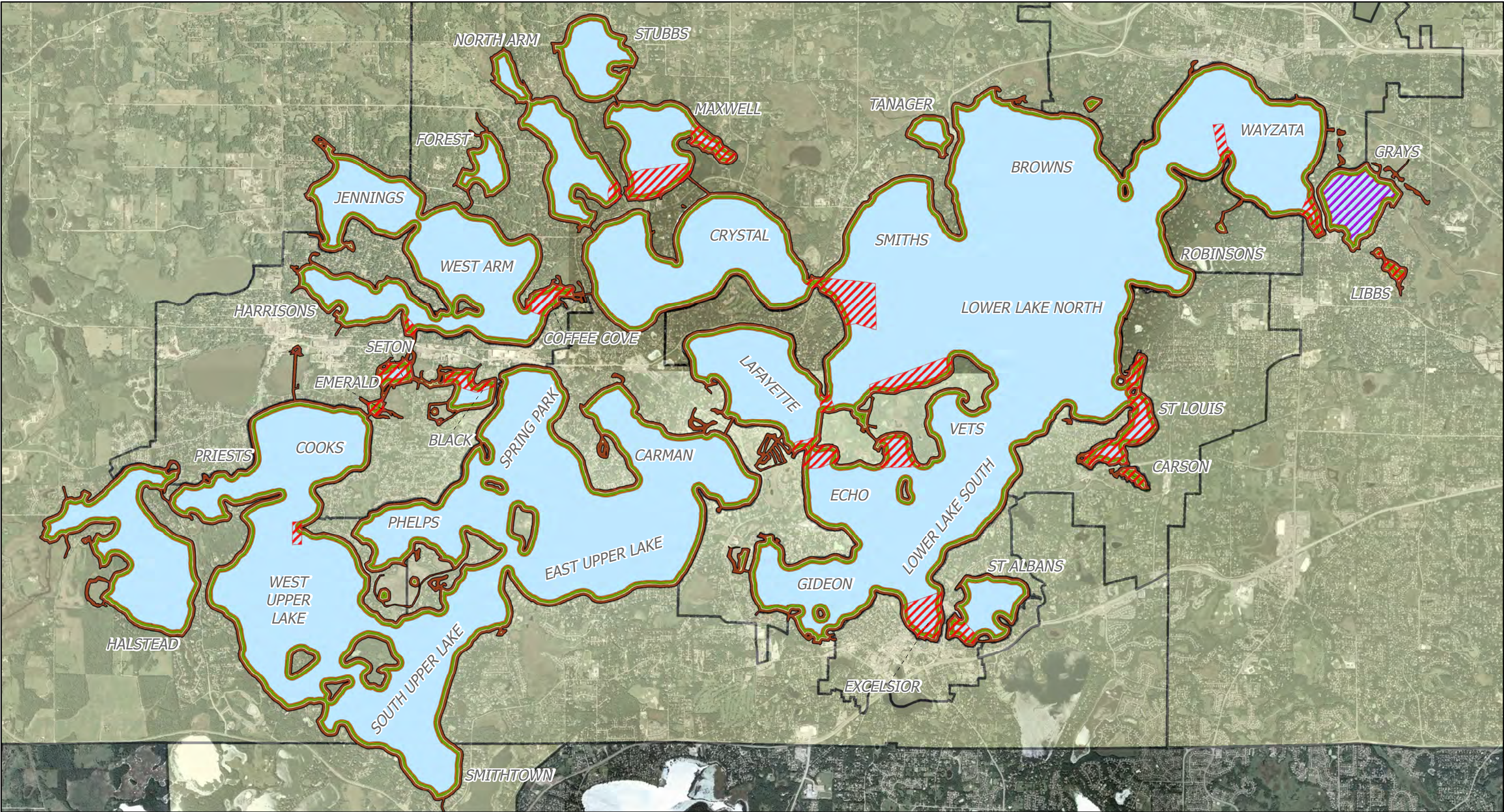
ATTEST:

Dan Baasen, Secretary

Date of Publication: _____, 2022.

Effective Date: _____, 2022.

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



BUFFER DISTANCE ON LAKE MINNETONKA

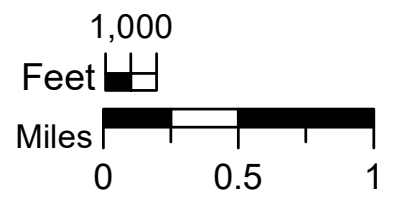
Existing Regulations- 150 ft Shore/Structure/People, 300 ft PWC








5 mph slow/no wake: 150 ft from shoreline; from bathing area or swimmer, scuba diver's warning flag, anchored raft/watercraft, dock; QWA
300 ft from shore: PWC for repetitive passes, and unless perpendicular to shore

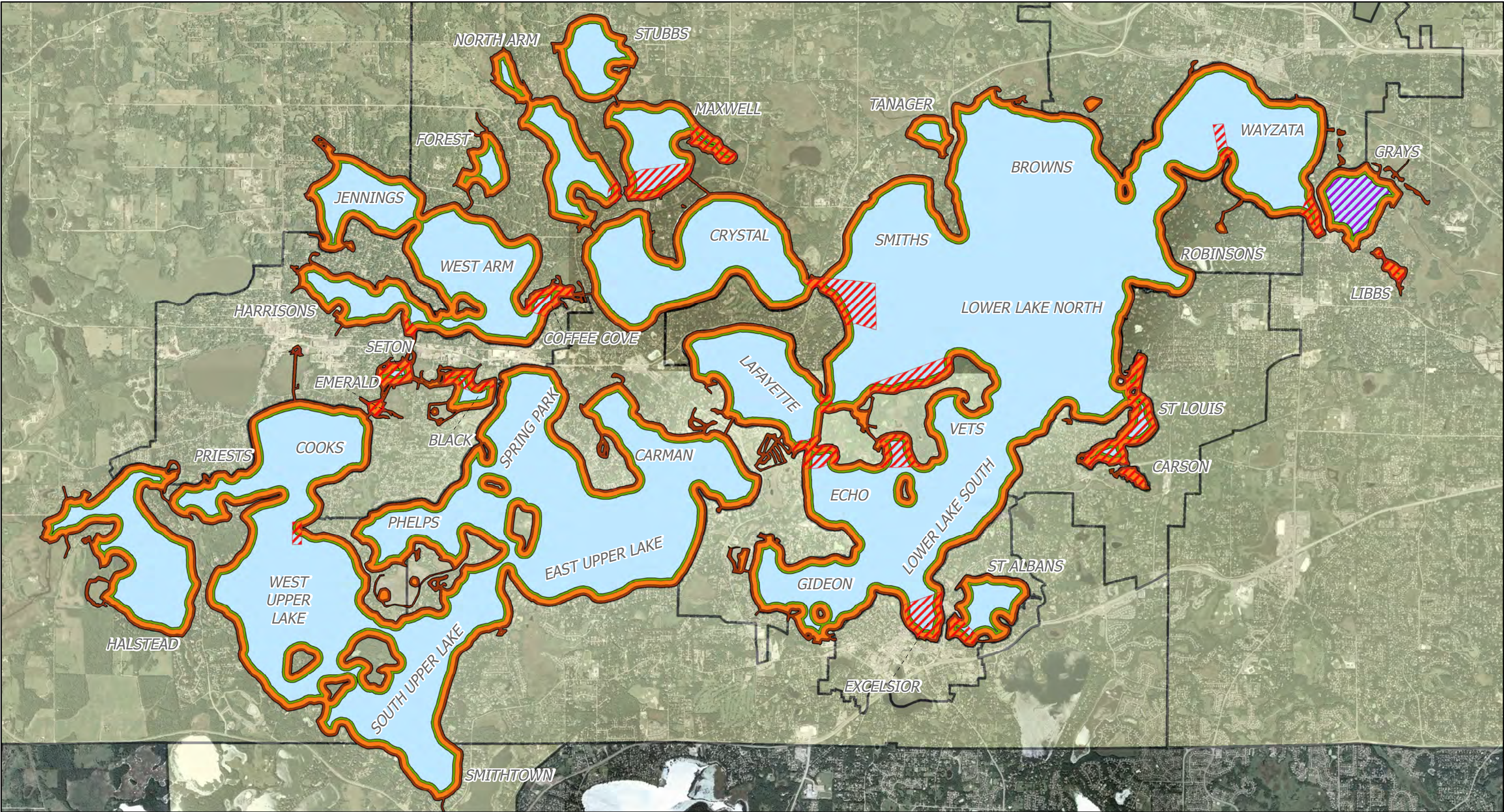
Disclaimer: This map is based on estimates and intended for illustrative purposes only.



PREPARED BY THE LMCD
(08.05.2022)



-  Lake Minnetonka
-  Estimated Dock Length 100 ft Buffer
-  150 ft Buffer From Shore
-  150 ft Buffer From Docks
-  300 ft PWC Buffer From Shore
-  Quiet Water / Slow Area (QWA)
-  Weekend & Holiday Quiet / Slow Area



BUFFER DISTANCE ON LAKE MINNETONKA

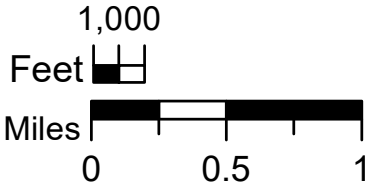
Option 1- 300 ft Shore, 300 ft Structure/People







5 mph slow/no wake: 300 ft from shoreline;
300 ft from bathing area or swimmer, scuba diver's warning flag,
anchored raft/watercraft, dock; QWA

Disclaimer: This map is based on estimates and intended for illustrative purposes only.



 **PREPARED BY THE LMCD**
(08.05.2022)



	Lake Minnetonka
	Estimated Dock Length 100 ft Buffer
	300 ft Buffer From Shore
	300 ft Buffer From Dock
	Quiet Water / Slow Area (QWA)
	Weekend & Holiday Quiet / Slow Area

