



# LAKE MINNETONKA CONSERVATION DISTRICT

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

## AGENDA

### LAKE MINNETONKA CONSERVATION DISTRICT

**Wednesday, October 26, 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

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*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.*

- No Work Session- Meeting Starts at 7:00 p.m.

## FORMAL MEETING AGENDA

**7:00 p.m.**

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*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**
- 6) APPROVAL OF MINUTES (09/14/2022 LMCD Regular Board Meeting)**

**7) APPROVAL OF CONSENT AGENDA**

- A) Audit of Vouchers (09/16/2022 – 09/30/2022), (10/01/2022 – 10/15/2022), (10/16/2022 – 10/31/2022)
- B) Resolution Accepting Save the Lake Contributions (09/08/2022 – 09/22/2022)

**8) RECOGNITIONS**

- A) Save the Lake Contributions

**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**

- A) Variance for Adjusted Dock Use Area and Setbacks, 135 Mound Avenue, Tonka Bay, Gideons Bay
- B) New Multiple Dock License, 540 Big Island, Orono; Lower Lake South- Continued to November 9, 2022

**11) OTHER BUSINESS**

**12) OLD BUSINESS**

**13) NEW BUSINESS**

- A) Authorization of Draft RFP and Materials for Civil Attorney Legal Services
- B) LMCD 2023 Employee Benefits Package
- C) Draft Letter to Cities 2023 LMCD Board Member Appointments

**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**

- Watercraft for Hire- Additional Review of Berthing Requirements
- Deicing Operation License Eligibility Expansion Discussion
- Code Change for Qualified Commercial Marina

# ITEM 6

**LAKE MINNETONKA CONSERVATION DISTRICT  
BOARD OF DIRECTORS**  
7:00 P.M., September 14, 2022  
Wayzata City Hall

**1. CALL TO ORDER**

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

**2. PLEDGE OF ALLEGIANCE**

**3. ROLL CALL**

**Members present:** Rich Anderson, Orono; Ann Hoelscher, Victoria; Bill Cook, Greenwood; Dan Baasen, Wayzata; Ben Brandt, Mound; Gabriel Jabbour, Spring Park; 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 Thomas Tully, Environmental Administrative Technician.

**Members absent:** Gregg Thomas, Tonka Bay.

**Persons in Audience:** Thomas Delacy, Eric Evenson, LMA; Others in Audience may not have signed attendance sheet.

**4. APPROVAL OF AGENDA**

**MOTION:** Kroll moved; Walesch seconded to approve the agenda as submitted.

**VOTE:** Motion carried unanimously.

**5. CHAIR ANNOUNCEMENTS**

There were no Chair announcements.

**6. APPROVAL OF MINUTES - 08/24/22 LMCD Regular Board Meeting**

**MOTION:** Cook moved, Baasen seconded to approve the 08/24/2022 LMCD Regular Board Meeting minutes as submitted.

**VOTE:** Ayes (11), Abstained (2), (Walesch, Zorn). Motion carried.

**7. APPROVAL OF CONSENT AGENDA**

**MOTION:** Anderson moved; Stone seconded to approve the consent agenda as presented. Items so approved included: 7A) Audit of Vouchers (09/01/2022 – 09/15/2022).

**VOTE:** Motion carried unanimously.

## **8. RECOGNITIONS**

Baasen commented that they are well on their way to reaching their goal and urged the Board to reach out to those that may wish to contribute prior to the end of the year.

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

There were no public comments.

## **10. PUBLIC HEARING**

There were no public hearings.

## **11. OTHER BUSINESS**

- A) Public Hearing Follow Up North Shore Marina, New Multiple Dock License Clarification Change, 1449 Shoreline Drive, Orono, Browns Bay and Tanager Lake

Anderson stepped down as he is the applicant.

Schleuning reported that this is a continued review for North Shore Marina at Browns Bay and Tanager Lake which was discussed at the last meeting. She noted that new information was brought up by the applicant at the public hearing that was not reviewed or discussed in the Board memo which created confusion. She stated that staff and legal counsel reviewed all the information and original meeting minutes and noted that information is within the Board memorandum including responses to the public comments. She stated that based on that information, it is reaffirmed that Board approval is required to reclassify a commercial marina to a qualified commercial marina. She noted that the applicant signed the extension request through September 16<sup>th</sup> and this is the last Board meeting to act prior to that date. She stated that if a commercial marina does not wish to change its use, it continues to be renewed in that classification. If a commercial marina wishes to change its classification to a qualified commercial marina (QCM), the initial application will go before the Board. She explained that the notice placed on the license was just a notice, although that may have been confusing and North Shore Marina would still need to apply for the QCM license to make sure they would meet the requirements. She stated that findings of fact were included in the Board packet along with actions the Board could choose to take.

Zorn stated that she read the minutes from the last meeting, noting that she was freshly appointed to the Board in 2014 and did not recall that someone would need to apply for a change in licensure as the intention was to simplify this for marinas. She believed that process provided the reclassification and that marinas would not need to reapply.

Baasen commented that he was also a member of the Board at that time and involved in that process. He commented that the last meeting was unfortunate as the original intent of the ordinance change in 2014 was

meant to simplify. He stated that when the Board adopted the change in 2014, there was not a time limit that said someone had to apply to change its classification. He was unsure that was clarified by the information in the packet. He stated that the change in the code was meant to recognize the value that most of the marinas provide to the lake and the services they provide to the lake and community. He stated that some marinas were out further than others and they decided that the code change would clarify the 200-foot line, although not automatically giving that extension. He stated that the change also was not automatic in the 1 for 10 densities but that could be applied for. He stated that they also went to the sailing schools, yacht clubs, and communities themselves to identify the revision of what their rights were. He found it frustrating to have gone through that lengthy process that had a lot of community input to now go back to square one. He believed that the Board should go back and review this code language because this was not the intention of the Board. He stated that the applicant thought they had the QCM all along and when he found out he did not, he had to go back through all the hoops again. He believed that the Board should do the right thing and bring this to a close.

Klohs stated that he was also a part of this Board in 2014, noting that the marinas were over scrutinized before these changes were made which made it difficult to even move a pole. He stated that this created an envelope concept where the marinas could respond to market conditions without having to go through the process with the Board. He stated that the other concept allowed flexibility to go out past 100 feet, with the concept that a marina could take up less lakeshore which would be more efficient and aesthetically pleasing. He stated that he did not believe that anyone ever expected that a change from a linear 100-foot dock system could go to a 200-foot concept without coming back to the Board.

Hoelscher echoed the comments thus far. She stated that she recalled that one main purpose of the code revision was to recognize the value of marinas on the lake and get rid of the special amenities that were required by the code as a lot of those were obsolete. She stated that her understanding was consistent with that of legal counsel, that a marina would have to come to the Board to request the change but if they met the conditions, it would be granted. She stated that major changes as mentioned by Klohs would have to come to the Board, but minor changes would not. She stated that if the ordinance needs to be cleaned up, she suggests that be done at a later meeting and the application be addressed tonight.

Jabbour commented that he was also there during the process and helped to draft the code. He confirmed the statements of the Board members that spoke thus far are true. He stated that the intention was to protect the marinas from subdivisions, noting that he still receives offers from developers to turn his marina into residential. He provided background information on the LMCD changes from 300 feet to 200 feet for marinas and the change then to 100 feet. He noted the other changes that have been made since that time such as ADA compliance and fire code. He confirmed that a marina could not automatically go to 200 feet with the change. He stated that the intention was to allow the Executive Director to change the designation to QCM, but major changes would still go before the Board. He stated that the license states that a marina is a qualified marina but if it chooses not to be, it must provide the amenities. He stated that after the marinas got the designation they continued to apply for a license with no change. He noted that the language on the license changed, but the applicants did not change anything. He stated that it is within the power of the Board to designate the path forward. He stated that most marinas are not going to go out to 200 feet because they are already there. He stated that the classification is irrelevant if they fit the criteria. He stated that it makes

him furious that the applicant applied on March 17<sup>th</sup>, and this is still going on when it should have been a simple issue.

Cook stated LMCD Board should reaffirm the designation of North Shore Marina as a Qualified Commercial Marina as stated in the 2015 license certificate, stating that the notice is a notice of instruction and not a definition; the application fee should be returned to the applicant.

**MOTION:** Cook moved; Kroll seconded that the LMCD Board reaffirm the designation of North Shore Marina as a Qualified Commercial Marina as stated in the 2015 license certificate, stating that the notice is a notice of instruction and not a definition; the application and fee should be returned to the applicant.

Further discussion: Klohs stated that this is going back a long time and there is a packet of 129 pages of information. He asked if this motion would cover the Board going forward.

Gilchrist stated that the Board has the authority to make this motion. He stated that from reviewing this it does not answer the questions, such as what this means for other commercial marinas on the lake. He stated that there is obviously disagreement and there should be a Board policy discussion to follow about the status of the policy. He stated that automatically granting this designation and wiping out special density could be a problem. He stated that the Board must act on this application tonight. He noted that if the motion passes, the Board should expect staff to bring back amendment language to address this, in a workshop setting. He noted that this should be clarified prior to issuing licenses for next year.

Hoelscher stated that clearly the applicant believes that he had this status. She asked the number of marinas, noting that it is unknown how many marinas believe they have a QCM. She asked if the marinas could ask to designate what they want in their license renewal.

Gilchrist stated that could be done but there would need to be code language to back that up. He stated that the Board needs to set the policy and then move forward with public outreach to the marinas. He stated that it could be a few sentences to clarify the code language and does not need to be a major undertaking.

Hoelscher asked if the Board could direct legally counsel to come back with such language.

Gilchrist stated that he would prefer to keep this motion clean, and direction could be given after that.

Baasen thanked the members for the motion and second. He stated that this was a code adoption in 2014 that was reviewed, stripped, and dissected. He stated that this becomes not only a historical issue but also an issue of integrity. He stated that there are also legalities involved. He believed that North Shore Marina has adhered to the legalities of the law. He commented that this also comes down to consistency and it bothers him a great deal that this will need to be rehashed. He believed that the Board would be doing a discredit to the lake if they rehash this again.

Kroll commented that he believes that it would be constructive to ask that the Executive Director send out a

letter to each marina advising them of their status and that way the Board could immediately find out if there is confusion on the status of other marinas.

Newell stated that a QCM would have the ability to extend to 200 feet, with the approval of the Board. He stated that if the letter suggested by Kroll goes out and there are a number of marinas believe they are qualified, there would be a plethora of applications to extend to 200 feet. He asked if this would open an assortment of problems.

Klohs stated that it is very unusual for the Board to have an application that does not request any changes, such as this. He failed to understand what the concern of the applicant is.

Zorn appreciated and respected the opinion of legal counsel and staff but felt that the intent and effort of the code was opposite of the input from counsel and staff.

Walesch stated that he spent a lot of time reviewing the previous packet and watched the meeting. He stated that it seems clear from the review of the 2014 memo and subsequent language in the licenses in 2015 that the intent was to grant QCM status. He stated that language went on to say they no longer needed to provide the amenities and further went on to stay that if the status was desired to change or if they cease to be a QCM, they will need to apply for a new special density license. He stated that is the opposite of what the premise of staff and counsel is. He stated that he talked to a lot of previous Board members and while some were a little fuzzy, most confirmed that the intent was consistent with what the Board members have said tonight that participated in that process in 2014. He was unsure why the language was removed from licenses later, but it seemed like that made a question of what the status then was. He stated that when the language was on the license it seemed clear they were QCMs.

Jabbour stated that most of the marinas have already been here to have that change because they changed their dock configurations. He did not think the response would be shocking and suggested that staff should figure out who is and is not before a letter is sent out that could cause confusion. He stated that if a letter is sent, it should be explained as to what is going on.

Hoelscher agreed that it should be explained. She invited the applicant to speak.

Rich Anderson, applicant, stated that he is perturbed that he had to go through this process. He stated that January 1, 2022, he mentioned this issue at the Executive Committee meeting because he and Jabbour had already brought this issue up to staff, but nothing happened. He stated that he had to fill out the application, paying \$2,400 to get to this point and make this point for the marinas. He asked which marina came to the Board to request a QCM status without also requesting a reconfiguration. He confirmed that the intent was to change the status, but if a reconfiguration were desired, that marina would need to come before the Board. He stated that he requested his permits/licenses on June 21<sup>st</sup> and still had not received them prior to the last Board meeting. He noted that the Board packets were provided at 11 p.m. the Friday prior to the meeting and the follow up packet with the information for his marina came out to the Board at 4:30 p.m. Monday prior to the meeting. He noted that information was not to his marina, as the applicant. He stated that the Board has now seen the previous permits/licenses which show that the language was changed. He stated that when he

went to the Officers meeting, the permits/licenses were provided that still had not yet been provided to him as the applicant. He displayed the language from the 2015 license which is also on the 2016 and 2017 licenses. He stated that in 2018 that changed to a special density license, and he reviewed the different requirements, including tours/fishing trips that could expose the marina to liability. He stated that he is not a special density license and is a QCM and he is here to clarify that. He stated that staff has not checked the amenities at any time during that period and he has not hosted the tours/fishing trips.

**VOTE:** Motion carried unanimously.

Hoelscher noted Kroll's earlier suggestion and asked if a motion would be necessary.

Kroll asked if a motion would be necessary or whether staff felt that direction was adequate.

Schleuning stated that the Board should do what it feels it should do. She stated that the Board should draft something to be sent.

Kroll suggested that the letter state, Dear marina owner, our records show that you are a QCM or CM, if you have any disagreement on this please reach out to staff.

Schleuning stated that it is more complicated than that as the direction of the Board goes against what was approved at the time. She stated that communication needs to be clear and concise and believes that a work group should manage that task.

Hoelscher asked for guidance on how the policy and ordinance could be clarified.

Gilchrist stated that he feels there should be a discussion of this in a policy committee or Board workshop. He stated that he is not entirely clear on how the Board would like this to work going forward.

Hoelscher asked the date of the next meeting of the Operations Committee and whether this would be appropriate for that group.

Zorn noted that the committee is scheduled to meet at the end of the month but believed that there is also a boat tour. She believed that a workshop would be the appropriate format and then the Operations Committee could wrap up the discussion after receiving that input from the full Board.

Walesch stated that he would be interested to know the number of marinas on the lake, noting that it would seem simple to make a spreadsheet that shows the name of the marina, anyone that has reconfigured as that would change the status. He noted that would show how many are left and then it could also reflect the number of marinas that had this language that was then removed from subsequent licenses. He did not believe this would impact that many marinas.

Hoelscher stated that this information can be brought to a workshop where staff can supply that information and the Board can further discuss the topic. She thanked the Board and staff for their time and consideration

on this topic.

## **12. OLD BUSINESS**

There was no old business.

## **13. NEW BUSINESS**

There was no new business.

## **14. TREASURER REPORT**

Anderson reported that he met with Schleuning following the last Board meeting and additional clarification was needed. He hoped to present the quarterly reports at the second meeting in October.

## **15. EXECUTIVE DIRECTOR UPDATE**

### **A) Website and Social Media Statistics Update**

Schleuning stated that there was a previous request to have information about the new website that was launched in June of 2021. She summarized some of the updates that were made at that time in attempt to enhance the customer experience. She stated that they gathered statistics of the new website as well as social media interaction. She reviewed the different statistics with the Board and summarized additional follow up.

Hoelscher stated that this is a terrific addition and commented that it will be great to continue to improve the website as they move forward.

Brandt asked if staff has noticed a reduction in calls since the update to the website.

Schleuning stated that it would be hard to say because of the more controversial topics that have come up this past year that generated a lot of calls and interest. She noted that there has been a reduction in general calls and there has been a reduction in the length of calls for those general topics because many people have reviewed the information prior to contacting the office.

Brandt noted that he has referred people to a specific page on the website when he receives questions.

Kroll commented that the website update has been great. He noted that sometimes internet providers show a different location and therefore he would not worry too much about that data point.

Schleuning agreed and stated that she does not put too much emphasis in the location but found it interesting on the split between lake communities and those from other areas.

Newell stated that as more of the views come from mobile devices, and maps are offered, maps could pull GPS information from the device to give them specific information for that area of the lake and related regulations, such as no wake bays.

Schleuning stated that is something staff has discussed. She stated that some of the price quotes for that service have been hefty but hoped that technology would be available in the future.

**B) General**

Schleuning provided the following information:

- Information was sent out with the results of Starry Trek

**16. STANDING LMCD COMMITTEE/WORKGROUP**

Aquatic Invasive Species: No report.

Communications: Hoelscher reported that the group met the previous day and there is a boat tour scheduled in place of the next Board meeting. She provided details on the tour and noted that spouses are invited. She stated that the committee has been collaborating with its consultant, who has been doing an excellent job assisting staff with communications. She stated that the committee is discussing its role now that there is a consultant collaborating with staff on communications and PR. She stated that the consultant is also working to prepare a template for the fall and spring newsletters, noting that the winter rules may also be sent out. She stated that there has been a proposal from the consultant to purchase software which would allow more efficient email blasts, noting that the software does not have an excessive cost. She stated that the committee will bring that to the Board when the expenditure occurs.

Klohs commented that recently the LMCD has been receiving more coverage than he has ever seen which indicates that people are paying attention. He believed that it was positive.

Hoelscher agreed and noted that the website is a great asset and should contain the most current information from the Board.

Walesch stated that he received the communication that was sent to the cities about the 300-foot rule, noting that he got the impression that the communication was soliciting feedback. He stated that he believes that there were a few statements that were included to provide context on the 300-foot rule that he did not agree with and did not reflect the reason he supported that change. He commented that if that type of information is going to be included, it should reflect the opinions of most of the Board. He provided examples of the language with which he did not agree such as wakes causing erosion and being safer for kayaks. He stated that there are people on the Board that agree with those statements but believed that there should be a threshold of Board agreement when making declarations such as those. He stated that if most of the Board does not agree with those statements, they should be removed, whereas if most of the Board agreed with those statements, they could remain.

Hoelscher stated that she did see that same notice and thought it was fine. She stated that she does not want to be in a position where she is wordsmithing every communication from the Executive Director.

Anderson stated that he agrees with Walesch. He stated that the verbiage was received in an email and did not believe those statements were included in the motion from the Board. He stated that he also had exception with that language when he read it as well.

Brandt stated that the first sentence was great as it updated the community with the changes but stated that he also does not agree with the second statement which singles out small and specific watercraft. He stated that the beauty of the ordinance change was to apply the regulation unilaterally and not call out several types of watercrafts. He stated that this statement goes against the narrative of the Board.

Jabbour commented that he believes that it is a bad idea to open the logic under which the decision was made as there are 14 members of the Board and it was a controversial topic. He stated that the statement should have just specified the rules update and moved on.

Kirkwood appreciated the sensitivity of the language but noted that he did not have any problem with that as this was exactly what he heard the public say when they were in the room.

Kroll stated that he serves on a lot of boards and generally when a resolution is adopted the press release is not word smithed. He stated that there is a basic rule and style that you never hide numbers inside words. He believed that five should be 5 to make it clear and stand out to the reader. He commented that he believed that the release was fine.

Zorn commented that in hearing the comments tonight and the input from the public hearing, the first three paragraphs could be eliminated, and the communication could begin with the fourth paragraph describing the rule change. She stated that an additional statement could be added stating that the hope is to make the lake a safer environment and some concerns from the public hearing could be listed.

Hoelscher appreciated the input and acknowledged that each person would craft the release in a different manner. She asked how involved the Board would like to be in what is said. She believed that it is the prerogative of the Executive Director unless there is a giant issue.

Walesch stated that is not at all what he would suggest either. He stated that this is more of a broad comment that statements are made that are not LMCD Board statements. He stated that there is no reason a statement like that would need to be in a press release and asked that staff refrain from creating narratives or perspectives that may not reflect most of the Board. He asked that the release stay more with the facts and less with a narrative.

Schleuning stated that she could put information such as statistics from USCG that show force from waves and wakes is a contributing factor to accidents and that kayaks and canoes are most susceptible to that. She acknowledged that it would be difficult to write something that everyone would agree with and stated that she had not received any negative comments from the public.

Hoelscher stated that she did receive questions about the new 300-foot rule and asking for details but did not get any questions about those statements. She thanked Walesch and the Board for the feedback and hoped that everyone will be at the tour.

Finance: No report.

Operations: Zorn reported that the committee has not met this summer. She noted that the committee typically meets before the second meeting of the month, which will be the tour and therefore will discuss an alternate date for the committee to meet. She stated that she has been Chair of the committee for the second year but will need to step back from that leadership position, although she would remain on the committee. She noted that will be discussed at the next committee meeting. She noted that Chase was on the committee and welcomed Jabbour to join the committee.

Hoelscher stated that Chase was also on the Communications Committee and would welcome Jabbour to join as well.

Save the Lake: Baasen reported that the fall appeal letter will hopefully be sent by the end of October. He stated that the committee will meet in October both in person and via conference call. He provided an update on the James J. Hill event in Wayzata. He commented that these public events are a benefit and provide an additional link to the public as people are interested and have questions.

## 17. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:38 p.m.

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Ann Hoelscher, Acting Chair

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Dan Baasen, Secretary

1:42 PM  
10/20/22

Lake Minnetonka Conservation District  
Check Detail  
September 16 - 30, 2022

ITEM 7A

Date	Num	Name	Memo	Account	Class	Paid Amount
09/29/2022	EFT-22-100	US Bank		Alerus Checking		
				1087M10 · US Bank (Credit Card)	Admin.	-2,723.46
TOTAL						-2,723.46
09/29/2022	EFT-22-101	ADP Service Fee		Alerus Checking		
			Payroll 9/16/22 - 9/30/22	4180M10 · Professional Service...	Admin.	-89.62
TOTAL						-89.62
09/29/2022	EFT-22-102	ADP		Alerus Checking		
			Salaries - Admin P.E.R.A. ER PERA ER/FICA Medicare - Admin Long Term Disability	4020M10 · Salaries-002 - Admin 2020 · Payroll Liabilities - 4022M10 · ER PERA - Admin 4021M10 · ER Share of Admin F... 2020-LT · Payroll Liabilities - UN...	Admin. Admin. Admin. Admin. Admin.	-12,934.35 1,804.87 -966.90 -986.27 84.96
TOTAL						-12,997.69
09/29/2022	EFT-22-103	SelectAccount Group Service Fee		Alerus Checking		
			HSA Administrative fee for September 2022	4380M10 · Employee Benefits - ...	Admin.	-2.40
TOTAL						-2.40
09/29/2022	EFT-22-104	Health Partners		Alerus Checking		
			October Dental Insurance (Schleuning) October Dental Insurance (Duncan) October Dental Insurance (Tully)	4380M10 · Employee Benefits - ... 4380M10 · Employee Benefits - ... 4380M10 · Employee Benefits - ...	Admin. Admin. Admin.	-58.83 -58.83 -58.83
TOTAL						-176.49
09/29/2022	EFT-22-105	P.E.R.A		Alerus Checking		
			Payroll 9/16/22 - 9/30/22	2020 · Payroll Liabilities -	Admin.	-1,804.87
TOTAL						-1,804.87

1:42 PM

10/20/22

**Lake Minnetonka Conservation District**  
**Check Detail**  
**September 16 - 30, 2022**

Date	Num	Name	Memo	Account	Class	Paid Amount
09/29/2022	EFT-22-106	Medica		Alerus Checking		
			Health Insurance, September 2022 (Vickie Schleuning)	4380M10 · Employee Benefits - ...	Admin.	-721.50
			Health Insurance, September 2022 (Tammy Duncan)	4380M10 · Employee Benefits - ...	Admin.	-721.50
			Health Insurance, September 2022 (Thomas Tully)	4380M10 · Employee Benefits - ...	Admin.	-721.50
TOTAL						-2,164.50
09/29/2022	22218	City of Mound		Alerus Checking		
09/29/2022	October 2022		Rent, October 2022	4320M10 · Office Rent - Admin.	Admin.	-1,733.48
TOTAL						-1,733.48
09/29/2022	22219	LMCC		Alerus Checking		
09/15/2022	Inv.#1506		VOD Services for Meeting 9/14/22	4182M10 · Media (Cable/Internet...	Admin.	-100.00
TOTAL						-100.00
09/29/2022	22220	Maisyn Prueter		Alerus Checking		
08/20/2022	Parking Star...		Parking for Starry Trek	4401M30 · Mileage Exp's. - AIS ...	AIS	-14.70
TOTAL						-14.70
09/29/2022	22221	Minnesota Trophies & Gifts		Alerus Checking		
09/14/2022	Inv.#33449		Name Plate for Gabriel Jabbour, Spring Park	4230M10 · Meeting Exp. - Admin.	Admin.	-23.12
TOTAL						-23.12
09/29/2022	22222	Thomas Tully		Alerus Checking		
09/14/2022	Mileage 7/1...		Mileage 7/14/22 - 9/14/22	4400M10 · Mileage/Exp's - Admin.	Admin.	-56.25
08/20/2022	Parking Star...		Parking for Starry Trek	4401M30 · Mileage Exp's. - AIS ...	AIS	-21.35
TOTAL						-77.60

1:42 PM

10/20/22

**Lake Minnetonka Conservation District**  
**Check Detail**  
September 16 - 30, 2022

Date	Num	Name	Memo	Account	Class	Paid Amount
09/29/2022	22223	Your Computer Hero		Alerus Checking		
09/14/2022	Inv.#7278		recycle tube monitor, flat screen monitor	4181M10 · Professional Comp. ...	Admin.	-23.57
TOTAL						-23.57
09/29/2022	22224	Chuck Struck		Alerus Checking		
09/29/2022	Inv.#INV0023		Board Meeting 9/14/22	4182M10 · Media (Cable/Internet...)	Admin.	-90.00
TOTAL						-90.00
09/29/2022	22225	North Shore Marina (Browns Bay)		Alerus Checking		
09/27/2022	Refund		Refund Northshore Marina Check21366	3110M10 · Multiple/Perm. Dock ...	Admin.	-2,423.75
TOTAL						-2,423.75
09/29/2022	22226	Ventur Holdings, LLC (Ventur Rental)		Alerus Checking		
09/27/2022	Refund		Refund Venture Check20220421	3280M10 · Liquor/Beer/Wine Lic...	Admin.	-500.00
TOTAL						-500.00
09/29/2022	22227	Freshwater Scientific Services, LLC	VOID:	Alerus Checking		
TOTAL						0.00
09/29/2022	22228	Carp Solutions, LLC		Alerus Checking		
09/29/2022	Inv.#Minnet...		3 electrofising surveys for carp	4181M30 · Prof. Services	AIS	-1,582.00
TOTAL						-1,582.00

10:25 AM

10/11/22

**Lake Minnetonka Conservation District**  
**Check Detail**  
**October 1 - 15, 2022**

**ITEM 7A**

Date	Num	Name	Memo	Account	Class	Paid Amount
10/13/2022	EFT-22-107	ADP Service Fee		Alerus Checking		
			Payroll 10/1/22 - 10/15/22	4180M10 · Professional Services - ...	Admin.	-89.62
TOTAL						-89.62
10/13/2022	EFT-22-108	WEX Health, Inc.		Alerus Checking		
			HSA Contribution October 2022 (Schleuning) HSA Contribution October 2022 (Tully) HSA Contribution October 2022 (Duncan)	4380M10 · Employee Benefits - Ad... 4380M10 · Employee Benefits - Ad... 4380M10 · Employee Benefits - Ad...	Admin. Admin. Admin.	-116.67 -116.67 -116.67
TOTAL						-350.01
10/14/2022	EFT-22-109	ADP		Alerus Checking		
			Salaries - Admin P.E.R.A. ER PERA ER/FICA Medicare - Admin Long Term Disability	4020M10 · Salaries-002 - Admin 2020 · Payroll Liabilities - 4022M10 · ER PERA - Admin 4021M10 · ER Share of Admin FIC... 2020-LT · Payroll Liabilities - UNUM	Admin. Admin. Admin. Admin. Admin.	-10,104.77 1,408.73 -754.68 -769.80 84.96
TOTAL						-10,135.56
10/14/2022	EFT-22-110	P.E.R.A		Alerus Checking		
			Payroll 10/1/22 - 10/15/22	2020 · Payroll Liabilities -	Admin.	-1,408.73
TOTAL						-1,408.73
10/13/2022	22229	AIS Advanced Imaging Solu...		Alerus Checking		
10/13/2022	Inv.#4833766...		8/20/2022 - 9/20/2022 (New Copier Contract Payment) Prop Damage Surcharge (Refunded next Invoice)	4140M10 · Office Equipment R&M ... 4140M10 · Office Equipment R&M ...	Admin. Admin.	-447.95 -55.75
TOTAL						-503.70
10/13/2022	22230	ECM Publishers, Inc.		Alerus Checking		
10/13/2022	Inv.#913397		Sun Sailor - PH Wischmeier	4110M10 · Public Info Legal Fees-...	Admin.	-67.65
TOTAL						-67.65

10:25 AM

10/11/22

**Lake Minnetonka Conservation District**  
**Check Detail**  
October 1 - 15, 2022

Date	Num	Name	Memo	Account	Class	Paid Amount
10/13/2022	22231	Freshwater Scientific Servic...	VOID:	Alerus Checking		
TOTAL						0.00
10/13/2022	22232	NCPERS Group Life Insuran...		Alerus Checking		
10/13/2022	October 2022		Life Insurance, October 2022	4380M10 · Employee Benefits - Ad...	Admin.	-48.00
TOTAL						-48.00
10/13/2022	22233	TimeSaver Off Site Secretari...		Alerus Checking		
10/13/2022	Inv.#M27644		Board Minutes 9/24/22	4230M10 · Meeting Exp. - Admin.	Admin.	-227.00
TOTAL						-227.00
10/13/2022	22234	Freshwater Scientific Servic...		Alerus Checking		
10/06/2022	Inv.#2022-89		Plant Survey - Black Lake	4181M30 · Prof. Services	AIS	-892.50
TOTAL						-892.50
10/13/2022	22235	Hennepin County Treasurer		Alerus Checking		
10/13/2022	Inv.#1000192...		Law Enforc & Boat Safety Patrol Service per agreement	4160M20 · Public Safety- SL	STL	-84,000.00
TOTAL						-84,000.00

1:21 PM

10/20/22

**Lake Minnetonka Conservation District**  
**Check Detail**  
October 16 - 31, 2022

**ITEM 7A**

Date	Num	Name	Memo	Account	Class	Paid Amount
10/27/2022	EFT-22-112	WEX Health, Inc. Service Fee		Alerus Checking		
			HSA Svc Fee November 2022 (Schleuning) HSA Svc Fee November 2022 (Tully) HSA Svc Fee November 2022 (Duncan)	4380M10 · Employee Benefits - ... 4380M10 · Employee Benefits - ... 4380M10 · Employee Benefits - ...	Admin. Admin. Admin.	-2.75 -2.75 -2.75
TOTAL						-8.25
10/27/2022	EFT-22-114	Medica		Alerus Checking		
			Health Insurance, October 2022 (Vickie Schleuning) Health Insurance, October 2022 (Tammy Duncan) Health Insurance, October 2022 (Thomas Tully)	4380M10 · Employee Benefits - ... 4380M10 · Employee Benefits - ... 4380M10 · Employee Benefits - ...	Admin. Admin. Admin.	-721.50 -721.50 -721.50
TOTAL						-2,164.50
10/31/2022	EFT-22-115	ADP		Alerus Checking		
			Salaries - Admin P.E.R.A. ER PERA ER/FICA Medicare - Admin Long Term Disability	4020M10 · Salaries-002 - Admin 2020 · Payroll Liabilities - 4022M10 · ER PERA - Admin 4021M10 · ER Share of Admin F... 2020-LT · Payroll Liabilities - UN...	Admin. Admin. Admin. Admin. Admin.	-8,730.62 1,216.36 -651.62 -664.67 84.96
TOTAL						-8,745.59
10/31/2022	EFT-22-116	P.E.R.A		Alerus Checking		
			Payroll 10/16/22 - 10/31/22	2020 · Payroll Liabilities -	Admin.	-1,216.36
TOTAL						-1,216.36
10/27/2022	22236	City of Mound		Alerus Checking		
10/27/2022	November 2...		Rent, November 2022	4320M10 · Office Rent - Admin.	Admin.	-1,733.48
TOTAL						-1,733.48
10/27/2022	22237	ECM Publishers, Inc.		Alerus Checking		
10/27/2022	Inv.#913861		Laker Pioneer - PH Wischmeier	4110M10 · Public Info Legal Fee...	Admin.	-43.75
TOTAL						-43.75

1:21 PM

10/20/22

**Lake Minnetonka Conservation District**  
**Check Detail**  
**October 16 - 31, 2022**

Date	Num	Name	Memo	Account	Class	Paid Amount
10/27/2022	22238	Goff Public		Alerus Checking		
10/27/2022	Inv.#18116		Public Relations	4183M10 · Prof/ Serv. - Commu...	Admin.	-4,561.25
TOTAL						-4,561.25
10/27/2022	22239	Kennedy & Graven		Alerus Checking		
10/27/2022	August 2022		Legal Fees August 2022	4620M10 · Civil Legal Fees - Ad...	Admin.	-4,004.00
TOTAL						-4,004.00
10/27/2022	22240	PLM Lake and Land Management Corp.		Alerus Checking		
10/27/2022	Inv.#2001718		ProcellaCOR Treatment for EWM - Crystal Bay	4181M30 · Prof. Services	AIS	-10,701.00
TOTAL						-10,701.00
10/27/2022	22241	Steven M. Tallen Attorney At Law		Alerus Checking		
10/27/2022	September ...		Prosecution Cost September 2022	4640M10 · Prosecution Legal Fe...	Admin.	-3,924.63
TOTAL						-3,924.63
10/27/2022	22242	Your Computer Hero		Alerus Checking		
10/27/2022	Inv.#7348		Hero Remote Support, Ticket Work, Darrell 9/28/22	4181M10 · Professional Comp. ...	Admin.	-105.00
TOTAL						-105.00
10/27/2022	22243	Freshwater Scientific Services, LLC		Alerus Checking		
10/27/2022	2022.85		Plant Survey -Harrison Bay	4181M30 · Prof. Services	AIS	-483.00
TOTAL						-483.00

# ITEM 7B



## RESOLUTION 244

### 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.

**RESOLUTION #244**

Page 2

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 26th day of October 2022.

ATTEST:

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Gregg Thomas, Chair

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Dan Baasen, Secretary

DRAFT

**Lake Minnetonka Conservation District  
Transaction Detail By Account  
September 8 - 22, 2022**

**Resolution #244 Attachment 1 - Save the Lake Contributions**

Date	Num	Name	Memo	Amount
<b>Contributions</b>				
<b>3001M20 · Donations (General) - S/L</b>				
09/08/2022	7410	OPT OUT	STL Donation (General)	100.00
09/08/2022	14372	Matthew Levitt	STL Donation (General)	250.00
09/22/2022	0543048	Mark and Lori Kroll Fund	STL Donation (General)	1,000.00
09/22/2022	5034	Bradley & Erica Berman	STL Donation (General)	100.00
<b>Total 3001M20 · Donations (General) - S/L</b>				<b>1,450.00</b>



## ITEM 10A

# LAKE MINNETONKA CONSERVATION DISTRICT

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

**DATE:** October 26, 2022 (Prepared October 21, 2022)

**TO:** LMCD Board of Directors

A handwritten signature in black ink, appearing to read "Thomas Tully".

**FROM:** Thomas Tully, Environmental Administrative Technician

**CC:** Vickie Schleuning, Executive Director

**SUBJECT:** Variance for Adjusted Dock Use Area and Side Setback, 135 Mound Avenue, Tonka Bay

### ACTION

Board consideration of a variance for an adjusted dock use area including side setbacks for 135 Mound Avenue on Gideon Bay in the City of Tonka Bay (PID 28-117-23-43-0054) 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 Dennis G. Nelson and Barbra Franta for the property located at 135 Mound Avenue in Tonka Bay for final approval at the November 9, 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 Dennis G. Nelson and Barbra Franta for the property located at 135 Mound Avenue in Tonka Bay for a final vote at the November 9, 2022, LMCD Board meeting based on...

### APPLICATION SUMMARY

The applicant, Dennis G. Nelson and Barbra Franta, ("Applicant") has submitted an application for a variance to adjust the dock use area including side setbacks for 135 Mound Ave in Tonka Bay; ("Site"). The Applicant's parcel has approximately 38 feet of 929.4 feet OHW shoreline. The request includes sharing of the shoreline and dock use area of the adjacent City of Tonka Bay fire lane. The variance application was submitted in an effort to resolve concerns over the years between the Applicant and City of Tonka Bay.

#### Site Background

The Applicants current dock does not meet the standard LMCD Code requirements. A dock has existed at this location for many years, with some reconfiguration. The Applicant's parcel has

Application for Variance at 135 Mound Avenue in Tonka Bay

LMCD Board Meeting October 26, 2022

Page 2

approximately 38 feet of 929.4 feet OHW shoreline with lot lines that converge. The adjacent fire lane to the north has 58 feet of 929.4 feet OHW shoreline. This variance would allow for sharing the shoreline between both sites for consideration of the proposed dock structure at 135 Mound Avenue, while maintaining the current public access to the lake from the fire lane. This fire lane shoreline measurement is not used as part of the calculation for boat density for the City of Tonka Bay municipal dock license.

The Applicant site has 38 feet of 929.4 feet OHW shoreline. The length of the dock is 78 feet, the total width of the dock structure is 33.2 feet, and two Boat Storage Units (BSUs) are proposed. The LMCD Code allows properties that were in existence on or before February 2, 1970 with a shoreline less than 40 feet to extend dock structure out to four (4) feet of water depth or a maximum of 60 feet into the lake, whatever is achieved first. The LMCD Code also allows a 5 foot side setback without a canopy. However, for purposes of the review, the code analysis will be based on the option to share the City of Tonka Bay fire lane with a shoreline measurement up to 96 feet.

After meeting with the Applicant and City representatives, the Applicant wishes for the Board to consider the original submittal that is attached and an additional option. The applicant is requesting that:

1. the current dock structure be allowed to remain in its current placement as indicated on the submitted site plan, or
2. to reduce the width of the dock by two (2) feet in order to install a canopy instead of the current lift to better accommodate the watercraft onsite.

Additionally, the water depths shown on the site plan for 135 Mound Ave were not based off the 929.4 feet OHW. The water depths shown on the site plan were provided by the Applicant on August 1, 2022, and were not verified by the surveyor. LMCD staff visited the property on October 4, 2022, and verified that water depths based on the 929.4 feet OHW contour would have been marked at approximately 6.2 feet at the end of the dock, and 4.6 feet at the start of BSU #1. This variance application is not based on water depth, noting that lake water levels were below normal this boating season.

**Proposed Setbacks**

**Original Submittal**

The original proposal as indicated on the submitted site plan includes a side setback of 10.1 feet to 10.8 feet shore to lakeward on the southern side. This variance proposal would require a 15 foot setback for a dock length beyond 50 feet from the 929.4 ft OHW and a 20- foot setback for a canopy. With the incorporation and use of the city fire lane, the setback on the northern side would be 43.8 feet to 29.5 feet extending from BSU 2 and from platform, respectively. The platform is 7 feet wide by 12 feet excluding the walkway.

**Option**

The Applicant's proposed option would include a setback of 12.1 feet to 12.8 feet, as measured from BSU 1 as it extends into the lake on the southern side of the site. This variance proposal would require a 15 foot setback for a dock length beyond 50 feet from the 929.4 ft OHW and a 20-foot setback for a canopy.

Application for Variance at 135 Mound Avenue in Tonka Bay

LMCD Board Meeting October 26, 2022

Page 3

This reduction in width of the dock structure was proposed to allow for the use of a canopy in place of the current boat lift installed at 135 Mound Ave. However even with this change the side setbacks for both a canopy and dock structure would still not meet LMCD requirements. The north side setback is the same as the original submittal.

**Proposed Dock Length**

For the original submittal and option requested, the Applicant's current dock structure on the site is approximately 78 feet long. In consideration of a shoreline measurement up to 96 feet, the LMCD Code allows the dock length up to the shoreline measurement, but not to exceed 100 feet if no safety, navigation, or other negative impacts would occur.

**Proposed BSUs**

**Original Submittal**

The applicant proposes one boat storage unit (BSU) with a canopy to replace the current boat lift that currently is in place, and one BSU with a boat lift for a second watercraft. The enclosed BSU would measure 14.2 feet wide by 40 feet long. The second BSU measures 8.25 feet wide by 17 feet long and is located along the north side of the dock structure.

**Option**

The applicant proposes one boat storage unit (BSU) with a canopy to replace the current boat lift that currently is in place, and one BSU with a boat lift for a second watercraft. The enclosed BSU would measure 12.2 feet wide by 40 feet long. The second BSU measures 8.25 feet wide by 17 feet long and is located along the north side of the dock structure.

**CONSIDERATIONS OF VARIANCE**

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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**

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In compliance with MN DNR General Permit 97-6098, the MN DNR, MCWD, and the City of Tonka Bay were provided information regarding the application on October 12, 2022. City and agency comments were due by October 22, 2022. Comments received as of October 21, 2022, are summarized below. Any comments received after October 21, 2022, will be provided at the Board meeting for review.

- There have been no agency comments regarding the application.
- Staff from the City of Tonka Bay have provided a general indication that the proposal is acceptable. However, formal consideration and review is anticipated at an upcoming Council Meeting and will be provided prior to the LMCD Board action tentatively scheduled for November 9, 2022.

As of October 21, comments received by LMCD staff from the general public are summarized below:

- The LMCD Office has received no general public comments regarding the application.

## **PUBLIC HEARING**

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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 October 13, 2022, edition of the Sun Sailor (official newspaper) and the October 15, 2022, edition of the Laker Pioneer. On October 13, 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**

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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. Receive formal approval from the City of Tonka Bay for the shared use of the fire lane.
2. Ensure the shared uses are compatible and understand the City's desire to use the fire lane for riparian purposes may change in the future.
3. For the northern side setbacks, maintain a minimum 43.8 foot-setback and a 29.5 foot-setback, from shore as it extends into the lake as indicated on the site plan. If the Board prefers, the option to shorten or remove the platform exists to increase setback distances.

Application for Variance at 135 Mound Avenue in Tonka Bay

LMCD Board Meeting October 26, 2022

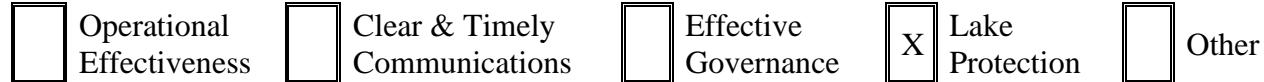
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4. For the southern side setbacks, the Board should consider whether it is reasonable to:
  - a. For the original submittal, allow the proposed setbacks with the existing configuration submitted, for a variance distance of 4.2 feet, or
  - b. For the optional request, allow the addition of a canopy since it is increases noncompliance beyond the dock configuration and use that has generally existed at this site. The setback variance would be 4.4 feet toward shore and 3.7 feet as it extends into the lake respectively to the canopy material if installed within the dock walkway. From the dock structure, the setback variance would be 2.2 feet,
  - c. For both original and optional request, suggest the Applicant review a modification of the dock structure location or configuration to meet LMCD Code requirements for setbacks,
5. The length of the dock structure and storage should be no longer than proposed 78 feet from the 929.4 feet OHW since water levels appear sufficient during normal OHW.
6. Allow up to two (2) BSUs for the Site.
7. Provide an updated site plan with final configuration and measurements as approved by the Board.
8. Apply standard variance conditions reflecting environmental, nuisances, maintenance, etc.

**BUDGET** \_\_\_\_\_

N/A

**STRATEGIC PRIORITIES** \_\_\_\_\_



**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



**Section 2-3.03. Determination of Authorized Dock Use Area.**

Subd. 1. Generally. The dimensions of an authorized dock use area for sites bordering the Lake are determined in accordance with this Section. The authorized dock use area shall be measured from the point which forms the shoreline when the Lake is at elevation 929.4, National Geodetic Vertical Datum of 1929 ("NGVD"). The authorized dock use area includes the area on, under, and over the surface of the Lake.

Subd. 2. Length. The length of the authorized dock use area is measured on a line parallel to the site side lines as extended into the Lake and is limited as provided in this subdivision.

- (a) General Limit. The length of an authorized dock use area extends into the Lake a distance equal to the length of shoreline frontage of the site as measured at right angles to the side site lines as extended into the Lake. The total length of the authorized dock use area shall not extend beyond 100 feet, even if the site has more than 100 feet of shoreline frontage, unless otherwise specifically provided in this Section.
- (b) Commercial Structures – August 30, 1978. The authorized dock use area for sites with commercial uses that have a commercial structure that was in existence on August 30, 1978 shall extend into the Lake a distance of 200 feet. The lakeward extension of the authorized dock use area more than 100 feet from the shoreline shall be limited to the distance from shore of the docks in existence on said date and that portion of said docks more than 100 feet from the shoreline may not be altered or expanded.
- (c) Qualified Commercial Uses. The authorized dock use area for qualified commercial marinas, qualified sailing school, and qualified yacht clubs extends into the Lake a distance of 200 feet.
- (d) Existing Site – February 5, 1970. The authorized dock use area for a site in existence on February 5, 1970 shall be determined as follows:
  - (1) Over 40 feet of Frontage. If the site has a Lake frontage of 40 feet or more, but less than 60 feet, the authorized dock use area extends into the Lake a distance of 60 feet.
  - (2) Under 40 feet of Frontage. If the site has a Lake frontage of less than 40 feet, the authorized dock use area extends into the Lake to the point necessary to reach a water depth of four feet, measured from 929.4 NGVD, except that no such dock shall be located or extended more than 60 feet into the Lake. Side setbacks requirements shall be observed unless the Board issues a setback variance under Section 6-5.01.

Application for Variance at 135 Mound Ave, Tonka Bay

LMCD Board Meeting

October 26, 2022

- (e) Public Safety Docks. The authorized dock use area for dock facilities owned and operated by state agencies, Hennepin County, the LMCD, or municipalities bordering on the Lake and used exclusively for law enforcement, public safety, or LMCD purposes extends into the Lake a distance of 125 feet.

Subd. 3. Width. The width of an authorized dock use area is determined in accordance with the provisions of this subdivision.

- (a) Setbacks. The width of an authorized dock use area is limited by the following setbacks, which are measured from the side site lines as extended in the Lake:

For that portion of the length of the authorized dock use area which extends from the shore:	The setback from the side site line as extended in the Lake shall be:
Zero to 50 feet	10 feet
50 to 100 feet	15 feet
100 to 200 feet	20 feet

Where boat slips open toward a side site line, the setback provided shall be at least equal to the slip depth, but shall not be less than 20 feet.

- (b) Setbacks Doubled. Setbacks shall be doubled for all multiple docks or mooring areas and commercial single docks on each side where such structures are not located adjacent to another multiple dock, mooring area, or commercial single docks.

(1) Exception – May 3, 1978. Multiple docks, mooring areas, and commercial single docks in existence on May 3, 1978 shall be considered nonconforming structures and shall not be subject to setback doubling if such structures are not expanded. The reconfiguration of the structure pursuant to Article 2, Chapter 8 shall not be considered an expansion.

- (c) Sites with 50 feet of Width or Less – February 2, 1970. For a site in existence on February 2, 1970 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 impair access to neighboring docks.

- (d) Canopies. Canopies must be setback from side site lines a minimum distance of 20 feet.

**Section 2-4.05. General Density Rule.**

Subd. 1. How Density is Determined. The number of restricted watercraft that may be stored at a site, which is referred to herein as restricted watercraft density, shall be determined in accordance with this Section and any applicable special density rules set out in Section 2-4.09. The restricted watercraft density for a site may be increased if a special density license is issued as provided in Section 2-4.11. For purposes of this Chapter, a site is considered to be used for mooring or docking more than the permitted number of restricted watercraft if a greater number of restricted watercraft than are allowed by this Chapter are moored, docked, anchored, or secured at the site,

Application for Variance at 135 Mound Ave, Tonka Bay

LMCD Board Meeting

October 26, 2022

for any period of time, on three or more calendar days in any 14-day period.

Subd. 2. General Density Rule. A site is allowed one restricted watercraft density for each 50 feet of continuous shoreline. If the site has continuous shoreline greater than 100 feet and the shoreline measurement would result in the allowance of a fractional restricted watercraft density any fraction up to and including one-half shall be disregarded, and fractions over one-half shall be counted as one additional restricted watercraft density.

Subd. 3. Compliance with Density. No docks or mooring areas shall be constructed, established or maintained that provide space for, or are used for, mooring or docking a greater number of restricted watercraft than is allowed under this Section unless authorized to do so by special density license issued in accordance with Sections 2-4.11 and 6-2.13.

**Section 2-4.09. Special Density Rules.**

The number of restricted watercraft stored at a site under the general density rules may be increased as provided in this Section. With respect to residential sites, the homestead or non-homestead status of property for ad valorem real estate tax purposes has no bearing on or application to this Section.

Subd. 1. Additional Watercraft Density. Unless a greater number is authorized under this Section, up to four restricted watercraft may be moored or docked at a dock or mooring area located on any site if all of the conditions of this subdivision are met.

(a) There must be one, and no more than one, single-family residential structure on the site. If there is no residential structure on a site, any one off-lake lot, parcel, or other piece of property may be designated to be a part of one site by the owner for purposes of this subdivision if it:

- (1) Is legally subdivided and recorded in the office of the County Recorder;
- (2) Adjoins the site or is separated from the site only by a public right-of-way;
- (3) Is under common ownership and unified use with the site; and
- (4) Is occupied by one single-family residential structure.

(b) The dockage rights at the site are owned exclusively by the owners of the lot parcel or other piece of property on which the residential structure referred to in paragraph (a) of this subdivision is located.

(c) All of the restricted watercraft moored or docked at a dock or mooring at the site must be owned by and registered to persons who live in the one residential structure referred to in paragraph (a) of this subdivision.

Subd. 2. Sites in Existence on August 30, 1978. Unless a greater number is authorized by the provisions of this Section, up to two restricted watercraft may be moored or docked at any dock or mooring facility that is located on a site that was in existence on August 30, 1978.

**Section 6-5.01. Variances.**

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

Application for Variance at 135 Mound Ave, Tonka Bay

LMCD Board Meeting

October 26, 2022

variances granted by the LMCD shall be governed by the provisions of this Section.

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

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

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

**Variance Application for Adjusted Dock Use Area and Side Setbacks**

**Property: 135 Mound Ave, Tonka Bay, 55331 (Property Owners: Dennis Nelson/Barbra Franta)**

*For illustrative purposes only. Source: Hennepin County Interactive Property Map, 10/10/2022*



**Variance Application for Adjusted Dock Use Area and Side Setbacks**

**Property: 135 Mound Ave, Tonka Bay, 55331 (Property Owners: Dennis Nelson/Barbra Franta)**

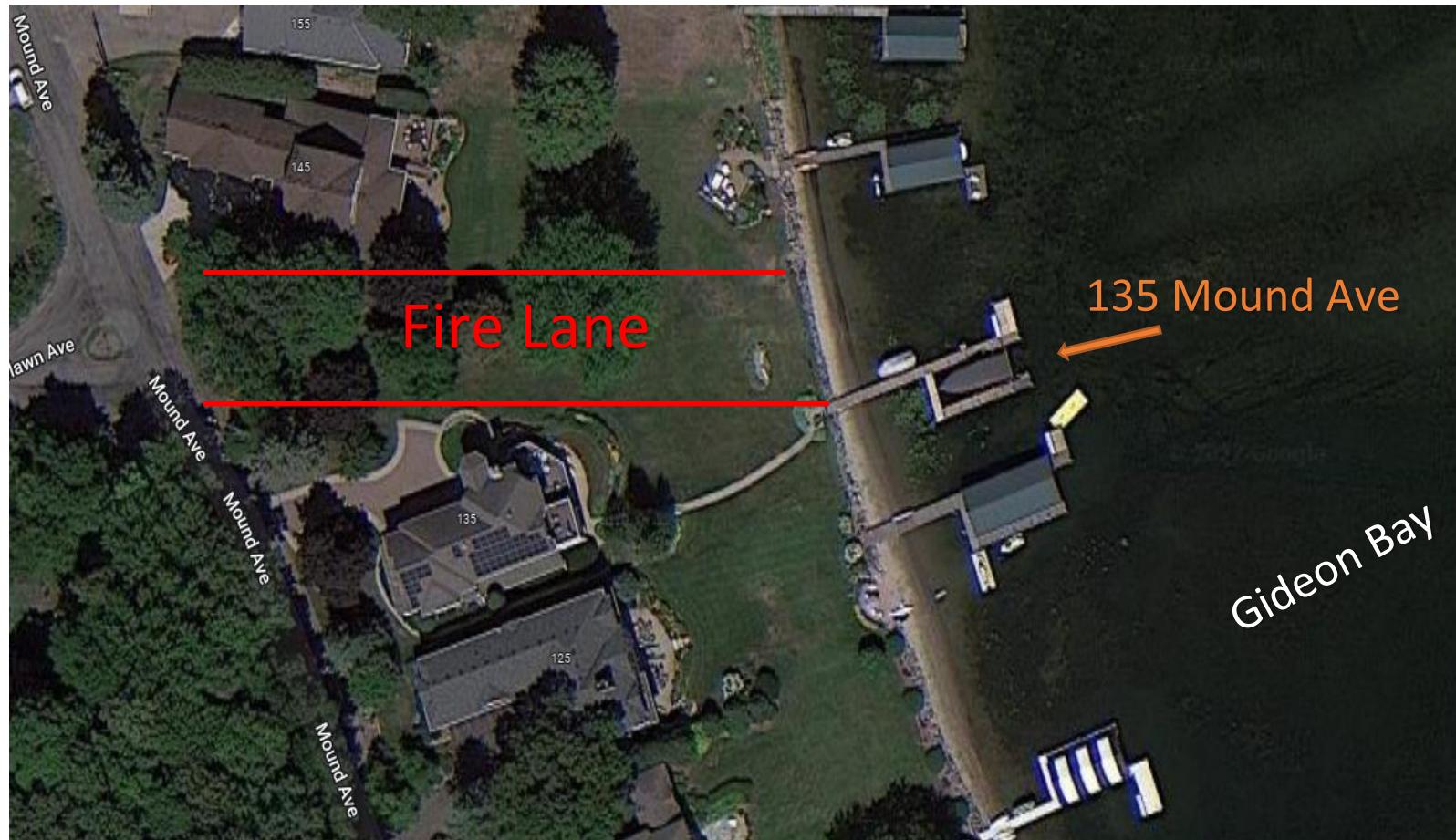
*For illustrative purposes only. Source: Hennepin County Interactive Property Map, 10/10/2022*



**Variance Application for Adjusted Dock Use Area and Side Setbacks**

**Property: 135 Mound Ave, Tonka Bay, 55331 (Property Owners: Dennis Nelson/Barbra Franta)**

*For illustrative purposes only. Source: Google Maps, 10/10/2022*



LEGAL DESCRIPTION:

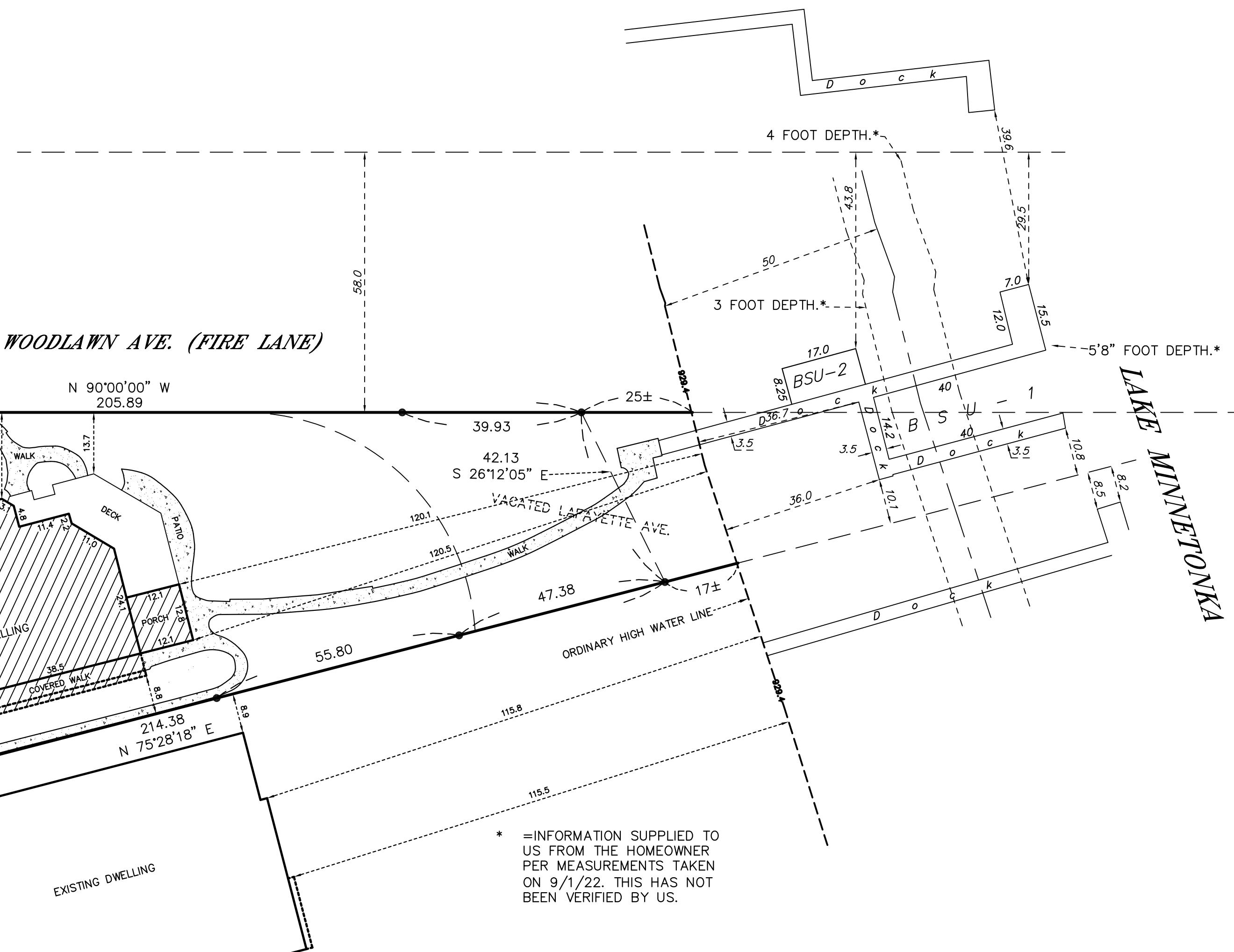
Lot 6, that part of adjoining vacated Mound Avenue and that part of adjoining vacated Lafayette Avenue, Slocum's Rearrangement of Manitou Forest all described as beginning at the intersection of the extension Westerly of the Southerly line of said Lot 6 with a line drawn parallel with and 20 feet Westerly from the Westerly line of said Lot 6; thence Northerly parallel with the Westerly line of said Lot 6 to an intersection with the extension West of the North line of said Lot 6; thence East along the last mentioned extension and along the North line of said Lot 6 and its extension to the shore of Lake Minnetonka; thence Southerly along said shore to its intersection with the extension Easterly of the Southerly line of said Lot 6; thence Westerly to the point of beginning.

SCOPE OF WORK & LIMITATIONS:

1. Showing the length and direction of boundary lines of the legal description listed above. The scope of our services does not include determining what you own, which is a legal matter. Please check the legal description with your records or consult with competent legal counsel, if necessary, to make sure that it is correct and that any matters of record, such as easements, that you wish to be included on the survey have been shown.
2. Showing the location of observed existing improvements we deem necessary for the survey.
3. Setting survey markers or verifying existing survey markers to establish the corners of the property.
4. Existing building dimensions and setbacks measured to outside of siding or stucco.
5. This survey has been completed without the benefit of a current title commitment. There may be existing easements or other encumbrances that would be revealed by a current title commitment. Therefore, this survey does not purport to show any easements or encumbrances other than the ones shown hereon.
6. The plat of Slocum's Rearrangement of Manitou Forest is old and vague. We have found and show various iron monuments from previous surveys. We have used these irons as our best evidence as to the location of said Lot 6, Mound Ave, and Lafayette Ave.

STANDARD SYMBOLS & CONVENTIONS:

"●" Denotes iron survey marker, found, unless otherwise noted.





# VARIANCE APPLICATION

LAKE MINNETONKA CONSERVATION DISTRICT

For LMCD use:

Fee Amount: \_\_\_\_\_ Check #: \_\_\_\_\_ Date Received: \_\_\_\_\_

## 1. CONTACT INFORMATION

Applicant: Dennis G. Nelson Title (Owner, Authorized Agent, etc.): Owner  
Address: 135 Mound Ave.  
City, State, Zip: Tonka Bay, MN 55331  
Phone: 612-703-4375 Email: dg99nelson@mchsi.com  
Property Owner (if different from applicant): Dennis G. Nelson & Barbara A. Franta  
Relationship to Property Owner: Self and Spouse  
Address: Same  
City, State, Zip: Same  
Phone: Same Email: Same

## 2. PROPERTY INFORMATION

Site Address: 135 Mound Ave., Tonka Bay, MN 55331. PID No. 28-117-23 43 0054  
Abutting Lakeshore Property Owners (Name and Mailing Address)  
North or West: Shawn and Kathleen Mallery, 145 Mound Ave., Tonka Bay, MN 55331  
Also Includes City of Tonka Bay easement for the Woodlawn firelane  
South or East: Tom and Felicia Lindquist, 125 Mound Ave., Tonka Bay, MN 55331  
  
Other affected parties: City of Tonka Bay as previously indicated

## 3. PROPOSED VARIANCE

Type of Variance: Variance from Prescribed Authorized Dock Usage Area  
State practical difficulties causing the variance to be required: \_\_\_\_\_  
See Attachment #1 for Practical Difficulties discussion  
\_\_\_\_\_  
\_\_\_\_\_

#### 4. ATTACHMENTS

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

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

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



Name

*Owner*

Title

*10-4-22*

Date

Return to:

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

LEGAL DESCRIPTION:

Lot 6, that part of adjoining vacated Mound Avenue and that part of adjoining vacated Lafayette Avenue, Slocum's Rearrangement of Manitou Forest all described as beginning at the intersection of the extension Westerly of the Southerly line of said Lot 6 with a line drawn parallel with and 20 feet Westerly from the Westerly line of said Lot 6; thence Northerly parallel with the Westerly line of said Lot 6 to an intersection with the extension West of the North line of said Lot 6; thence East along the last mentioned extension and along the North line of said Lot 6 and its extension to the shore of Lake Minnetonka; thence Southerly along said shore to its intersection with the extension Easterly of the Southerly line of said Lot 6; thence Westerly to the point of beginning.

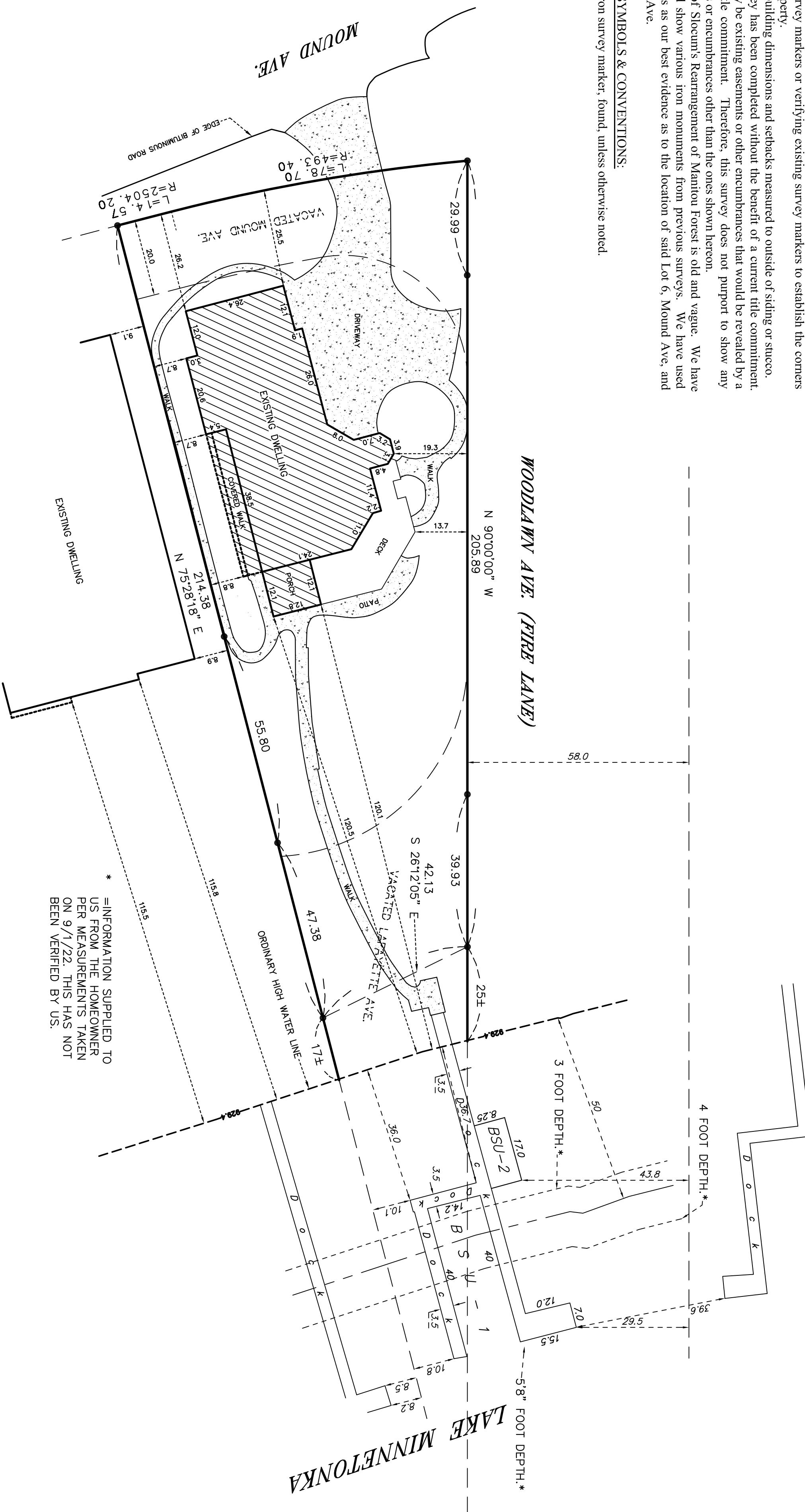
## SCOPE OF WORK & LIMITATIONS:

1. \_\_\_\_\_

Showing the length and direction of boundary lines of the legal description listed above. The scope of our services does not include determining what you own, which is a legal matter. Please check the legal description with your records or consult with competent legal counsel, if necessary, to make sure that it is correct and that any matters of record, such as easements, that you wish to be included on the survey have been shown.
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"●" Denotes iron survey marker found unless

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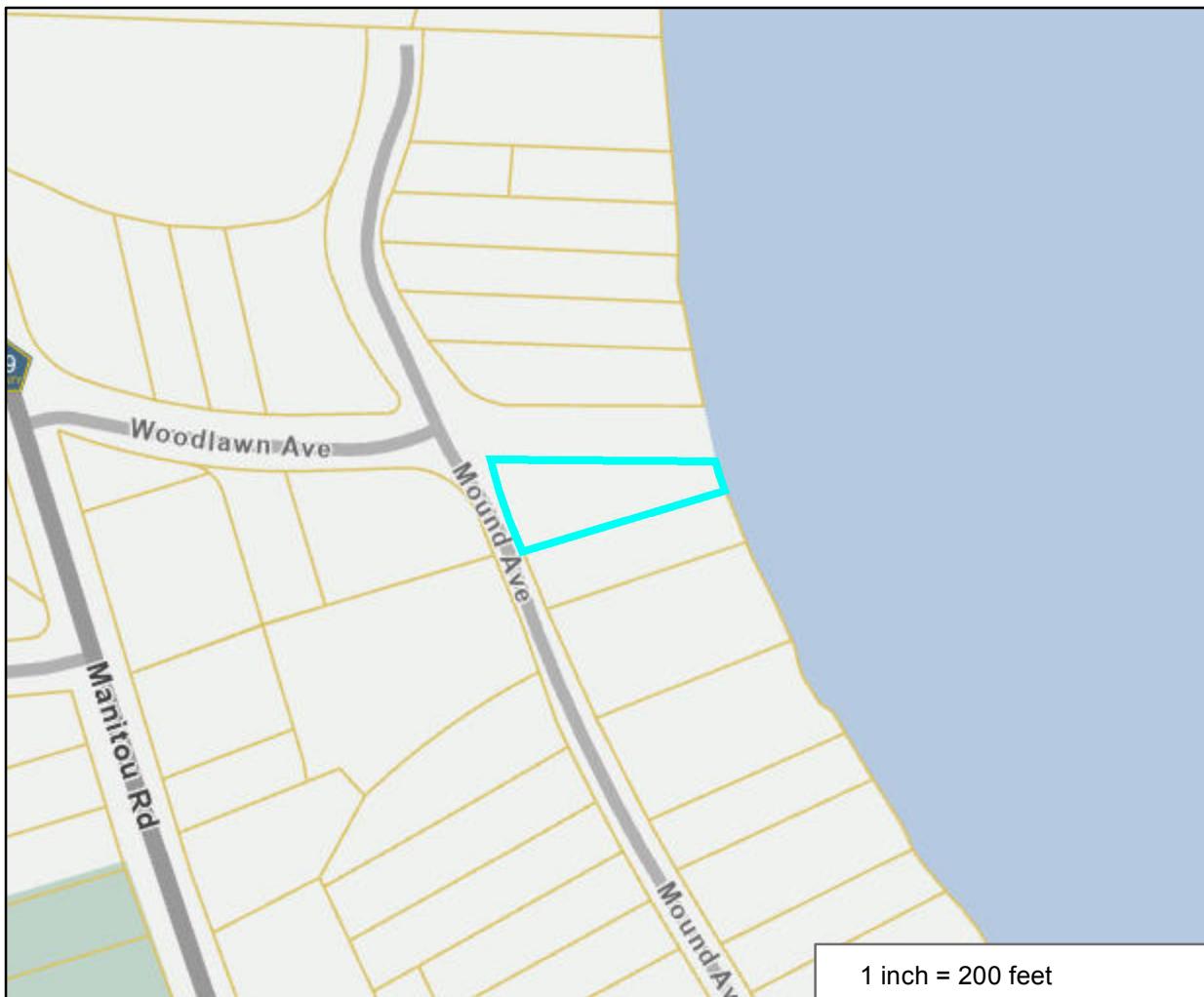


DATE	REVISION DESCRIPTION	DWG/G ORIENTATION	SCALE	CLIENT/JOB ADDRESS
9/8/22	ADD DOCKS ONLY. NO OTHER UPDATES SHOWN, IF THERE ARE ANY, FROM 2017			<b>DENNIS NELSON</b> <i>Surveying &amp; Engineering, Co.</i>
				<b>Advance</b> <i>Surveying &amp; Engineering, Co.</i>
				<b>S1</b>
				SHEET 1 OF 1
		I HEREBY CERTIFY THAT THIS PLAN, SURVEY OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY REGISTERED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF MINNESOTA.  <i>Wayne W. Prebus</i>	DATE SURVEYED:	
			EXISTING SURVEY	
			MARCH 28, 2017	
			SHEET SIZE: 17 X 22	
			DATE DRAFTED:	
			APRIL 5, 2017	
			DRAWING NUMBER	
			221646 TB	
		17917 Highway No. 7 Minnetonka, Minnesota 55345 Phone (952) 474-7364 Web: www.advsur.com	Wayne W. Prebus #43503 LICENSE NO. APRIL 5, 2017 DATE	



# Hennepin County Property Map

Date: 9/12/2022



PARCEL ID: 2811723430054

## Comments:

OWNER NAME: D Nelson & B Franta

PARCEL ADDRESS: 135 Mound Ave, Tonka Bay MN 55331

PARCEL AREA: 0.36 acres, 15,743 sq ft

A-T-B: Torrens

SALE PRICE: \$250,000

SALE DATE: 06/1989

SALE CODE: Warranty Deed

ASSESSED 2021, PAYABLE 2022

PROPERTY TYPE: Residential

HOMESTEAD: Homestead

MARKET VALUE: \$1,143,000

TAX TOTAL: \$14,570.98

ASSESSED 2022, PAYABLE 2023

PROPERTY TYPE: Residential

HOMESTEAD: Homestead

MARKET VALUE: \$1,454,000

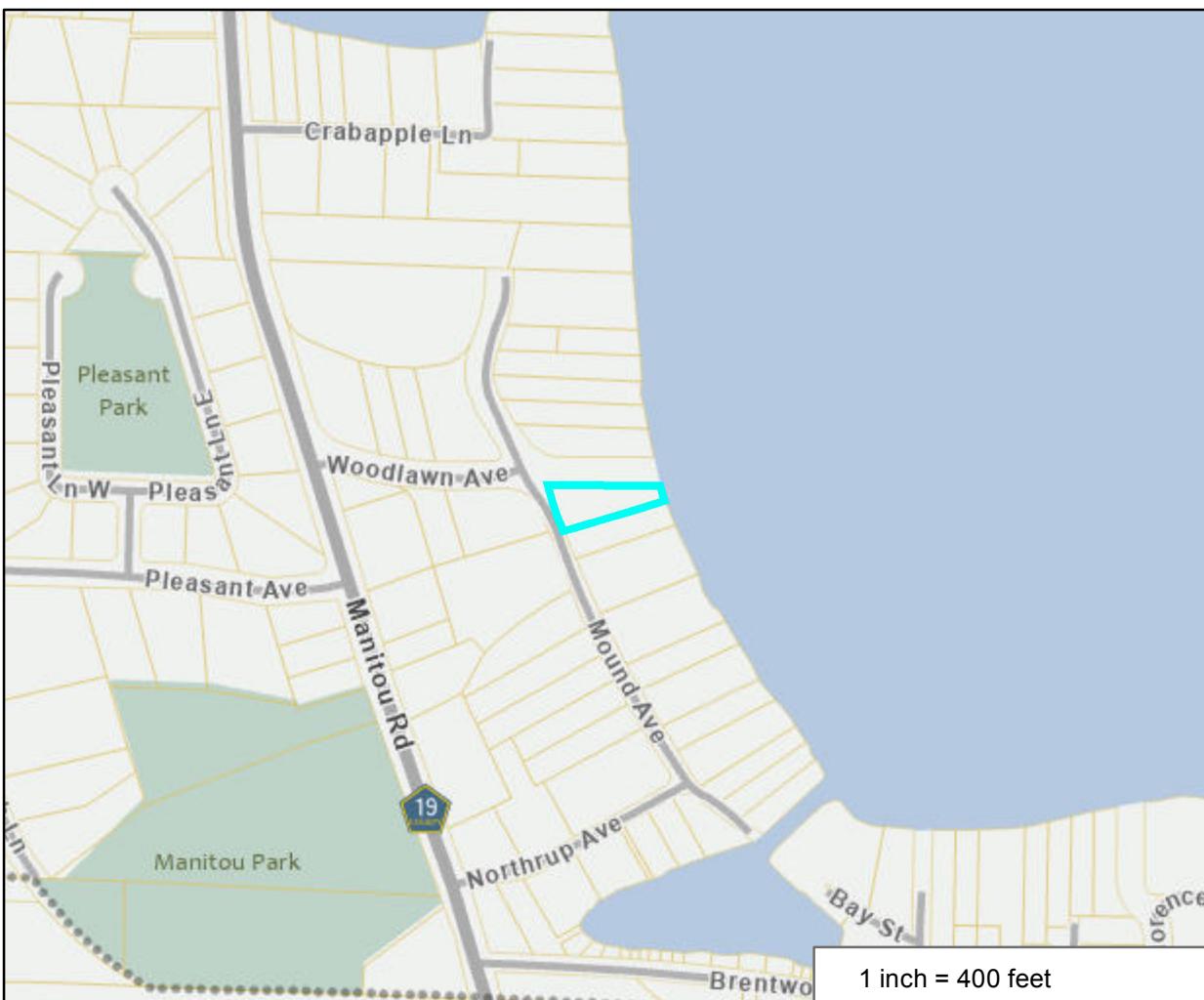
This data (i) is furnished 'AS IS' with no representation as to completeness or accuracy; (ii) is furnished with no warranty of any kind; and (iii) is not suitable for legal, engineering or surveying purposes. Hennepin County shall not be liable for any damage, injury or loss resulting from this data.

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# Hennepin County Property Map

Date: 9/12/2022



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PROPERTY TYPE: Residential

HOMESTEAD: Homestead

MARKET VALUE: \$1,454,000

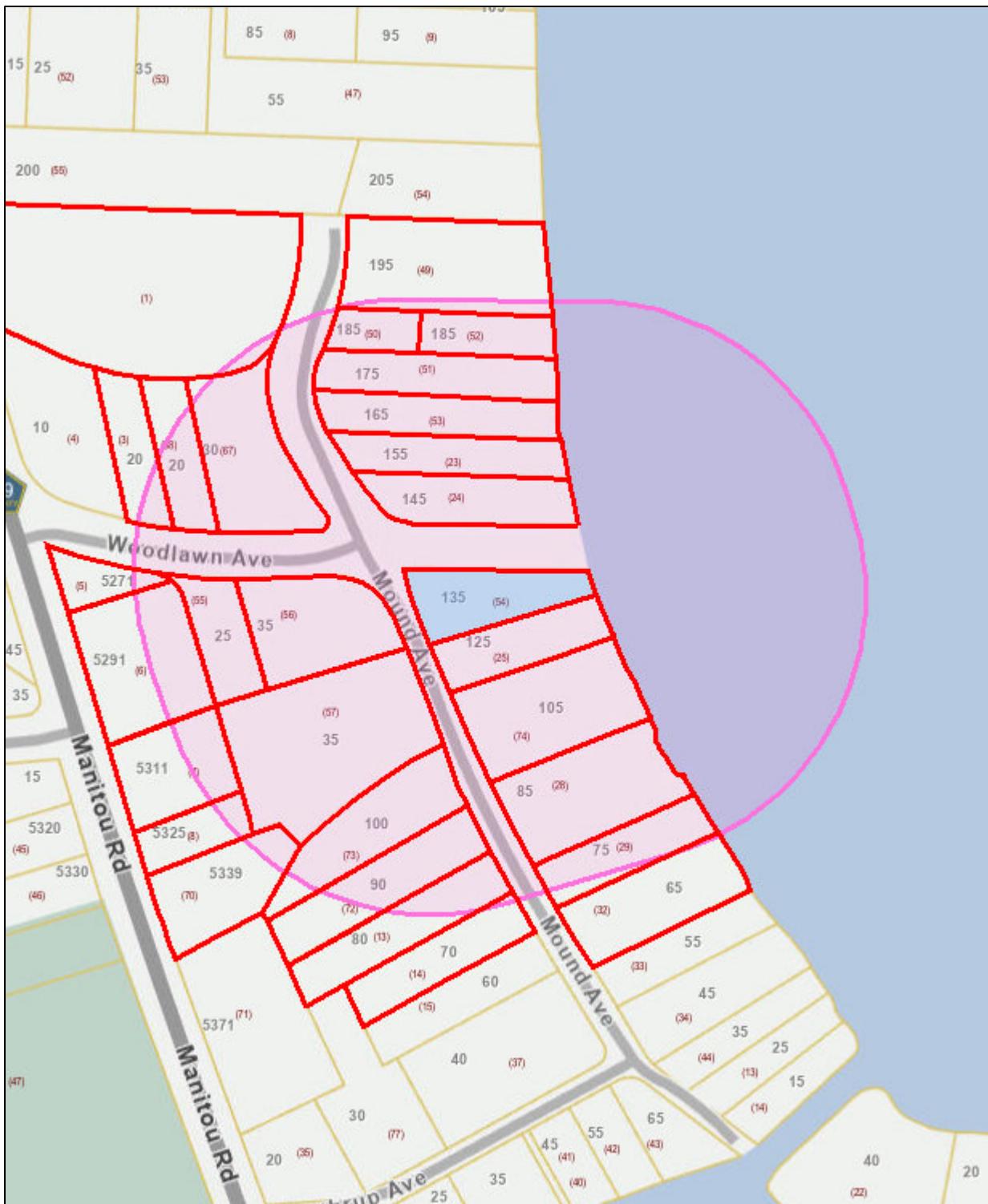
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# Hennepin County Locate & Notify Map

Date: 9/12/2022



**Buffer Size:** 350

**Map Comments:**

0 50 100 200 Feet  
[Scale Bar]

This data (i) is furnished 'AS IS' with no representation as to completeness or accuracy; (ii) is furnished with no warranty of any kind; and (iii) is not suitable for legal, engineering or surveying purposes. Hennepin County shall not be liable for any damage, injury or loss resulting from this data.

For more information, contact Hennepin County GIS Office  
300 6th Street South, Minneapolis, MN 55487 / gis.info@hennepin.us

97 28-117-23 43 0001  
 HENNEPIN FORFEITED LAND  
 97 ADDRESS UNASSIGNED  
 TONKA BAY MN 00000  
 CITY OF TONKA BAY  
 4901 MANITOU RD  
 TONKA BAY MN 55331

97 28-117-23 43 0025  
 THOMAS LINDQUIST TRUST ET AL  
 125 MOUND AVE  
 TONKA BAY MN 55331  
 THOMAS H LINDQUIST  
 FELICIA R LINDQUIST  
 125 MOUND AVE  
 TONKA BAY MN 55331

97 28-117-23 43 0055  
 JOHN KOHMAN ETAL  
 25 WOODLAWN AVE  
 TONKA BAY MN 55331  
 JOHN T KOHMAN  
 25 WOODLAWN AVE  
 TONKA BAY MN 55331

97 28-117-23 43 0003  
 CRAIG ZAIM  
 20 WOODLAWN AVE  
 TONKA BAY MN 55331  
 CRAIG ZAIM  
 20 WOODLAWN AVE  
 TONKA BAY MN 55331

97 28-117-23 43 0028  
 JACQUIN PRIV FAM TR/DAVID TR  
 85 MOUND AVE  
 TONKA BAY MN 55331  
 HEIDI LYNN JACQUIN  
 DAVID MICHAEL JACQUIN JR  
 751 SHILOH TERRACE  
 SANTA ROSA CA 95403

97 28-117-23 43 0056  
 EDWARD HUGH SAKRY  
 35 WOODLAWN AVE  
 TONKA BAY MN 55331  
 EDWARD HUGH SAKRY  
 35 WOODLAWN AVE  
 EXCELSIOR MN 55331

97 28-117-23 43 0005  
 C R & M A MATTSON  
 5271 MANITOU RD  
 TONKA BAY MN 55331  
 CHARLES R MATTSON  
 5271 MANITOU RD  
 TONKA BAY MN 55331

97 28-117-23 43 0029  
 WILLIAM B NELSON  
 75 MOUND AVE  
 TONKA BAY MN 55331  
 WILLIAM B NELSON  
 75 MOUND AVE  
 TONKA BAY MN 55331

97 28-117-23 43 0057  
 EDWARD HUGH SAKRY  
 35 WOODLAWN AVE  
 TONKA BAY MN 55331  
 EDWARD HUGH SAKRY  
 35 WOODLAWN AVE  
 EXCELSIOR MN 55331

97 28-117-23 43 0006  
 RICHARD A COULT  
 5291 MANITOU RD  
 TONKA BAY MN 55331  
 RICHARD A COULT  
 5291 MANITON RD  
 EXCELSIOR MN 55331

97 28-117-23 43 0032  
 ERIN WILBUR HEARST 2014 TRST  
 65 MOUND AVE  
 TONKA BAY MN 55331  
 ERIN WILBUR HEARST 2014 TRST  
 17001 THESTRAND  
 MINNETONKA MN 55345

97 28-117-23 43 0067  
 JOSEPH J FISHER  
 30 WOODLAWN AVE  
 TONKA BAY MN 55331  
 JOSEPH J FISHER  
 30 WOODLAWN AVE  
 TONKA BAY MN 55331

97 28-117-23 43 0007  
 MARY BRAY  
 5311 MANITOU RD  
 TONKA BAY MN 55331  
 MARY BRAY  
 5311 MANITOU RD  
 TONKA BAY MN 55331

97 28-117-23 43 0049  
 M G SCHWARTZ/C K SCHWARTZ  
 195 MOUND AVE  
 TONKA BAY MN 55331  
 MICHAEL G SCHWARTZ  
 CYNTHIA K SCHWARTZ  
 195 MOUND AVE  
 TONKA BAY MN 55331

97 28-117-23 43 0068  
 CRAIG ZAIM  
 20 WOODLAWN AVE  
 TONKA BAY MN 55331  
 CRAIG ZAIM  
 20 WOODLAWN AVE  
 TONKA BAY MN 55331

97 28-117-23 43 0008  
 BENNETT BROS REAL ESTATE LLC  
 5325 MANITOU RD  
 TONKA BAY MN 55331  
 BENNETT BROS REAL ESTATE LLC  
 5325 MANITOU RD  
 TONKA BAY MN 55331

97 28-117-23 43 0050  
 NICHOLAS S JOHNSON ETAL  
 185 MOUND AVE  
 TONKA BAY MN 55331  
 NICHOLAS S JOHNSON  
 185 MOUND AVE  
 TONKA BAY MN 55331

97 28-117-23 43 0070  
 TYLER CRONK & BROOKE CRONK  
 5339 MANITOU RD  
 TONKA BAY MN 55331  
 TYLER G & BROOKE CRONK  
 5339 MANITOU RD  
 TONKA BAY MN 55331

97 28-117-23 43 0013  
 COLSON CUSTOM HOMES LLC  
 80 MOUND AVE  
 TONKA BAY MN 55331  
 COLSON CUSTOM HOMES LLC  
 80 MOUND AVE  
 TONKA BAY MN 55331

97 28-117-23 43 0051  
 K SCHLEETER & L L SCHLEETER  
 175 MOUND AVE  
 TONKA BAY MN 55331  
 KEITH SCHLEETER  
 LAURIE LICENCE SCHLEETER  
 6600 IROQUOIS TR  
 EDINA MN 55439

97 28-117-23 43 0072  
 C J & S A KOXVOLD  
 90 MOUND AVE  
 TONKA BAY MN 55331  
 CHARLES & SHARON KOXVOLD  
 90 MOUND AVE  
 TONKA BAY MN 55331

97 28-117-23 43 0014  
 P & S BISSEN  
 70 MOUND AVE  
 TONKA BAY MN 55331  
 PAUL D & SUZANNE K BISSEN  
 70 MOUND AVE  
 TONKA BAY MN 55331

97 28-117-23 43 0052  
 NICHOLAS S JOHNSON ETAL  
 185 MOUND AVE  
 TONKA BAY MN 55331  
 NICHOLAS S JOHNSON  
 185 MOUND AVE  
 TONKA BAY MN 55331

97 28-117-23 43 0073  
 CINDY SUE HEIMERL  
 100 MOUND AVE  
 TONKA BAY MN 55331  
 CINDY SUE HEIMERL  
 100 MOUND AVE  
 TONKA BAY MN 55331

97 28-117-23 43 0023  
 PAUL J KASTER ETAL  
 155 MOUND AVE  
 TONKA BAY MN 55331  
 PAUL J KASTER  
 2600 CASCO POINT RD  
 WAYZATA MN 55391

97 28-117-23 43 0053  
 NATHALIE K LY LIVING TRUST  
 165 MOUND AVE  
 TONKA BAY MN 55331  
 NATHALIE K LY LIVING TRUST  
 165 MOUND AVE  
 TONKA BAY MN 55331

97 28-117-23 43 0074  
 S KRISHNA/B NANDAKUMAR JT TR  
 105 MOUND AVE  
 TONKA BAY MN 55331  
 SURESH KRISHNA  
 BHUVANA NANDAKUMAR  
 105 MOUND AVE  
 TONKA BAY MN 55331

97 28-117-23 43 0024  
 J S MALLERY & K A MALLERY  
 145 MOUND AVE  
 TONKA BAY MN 55331  
 JAMES & KATHLEEN MALLERY  
 145 MOUND AVE  
 TONKA BAY MN 55331

97 28-117-23 43 0054  
 D NELSON & B FRANTA  
 135 MOUND AVE  
 TONKA BAY MN 55331  
 DENNIS NELSON/BARBARA FRANTA  
 135 MOUND AVE  
 TONKA BAY MN 55331

Hennepin County has developed electronic forms of certain property information databases. Hennepin County makes reasonable efforts to produce and publish the most current property information available. The viewer should understand, however, that Hennepin County makes no representation or warranties, either express or implied, or as to merchantability or fitness for a particular purpose regarding the accuracy and/or completeness of the information contained herein.

**Attachment 1**  
**Practical Difficulties Discussion**

**Applicant Submittal**

Page | 1

I may cite some court cases in my discussion below, but I am fully aware of the unique powers the Lake Minnetonka Conservation District (LMCD) holds to resolve dock placement issues on Lake Minnetonka. I acknowledge that for practical reasons the LMCD has been effectively appointed by enactment of legislation by the Minnesota State Legislature to be "Judge and Jury" with respect to what is reasonable sharing of riparian rights.

The subject property has approximately 35ft of shoreline (without considering the property that is part of the easement known as Woodlawn firelane) at the 929.4 OHWL with extreme pieing of the extended south easement line with my extended south property line. This is created by the layout of the Woodlawn firelane which happened sometime in the 1800s. This firelane was originally 60ft wide but is now 58ft due to a 1965 Vacation on the other side of the firelane (i.e. Mallery or north side). This easement ends at the water's edge (the 929.4 OHWL) based on Minnesota Supreme Court precedent. This condition creates the practical difficulty as this easement was originally designed as a street with an angle to make it easier for horses to get up the hill on Woodlawn Ave. to Mound Ave. from Lafayette Ave. Lafayette Ave. was a street that ran along the shore of Lake Minnetonka and was Vacated many decades ago except where it intersected with Woodlawn Ave.

In addition to the extreme pieing of the extended easement line with my extended south property line, created by the Woodlawn firelane layout, there are several other factors to consider here that I will address below:

- 1) This property has had a dock on it prior to 1978. Attached are pictures which we believe show the pre-1978 placement of a dock on this property and where my original dock was placed when I put in my first new dock after I bought the property in 1989 (See original dock pics attached). The historical aspect of docks on this property is an important consideration when considering the reasonable nature of sharing of riparian rights as set forth in the original code of the LMCD.
- 2) The property owners have exchanged correspondence with the City of Tonka Bay a few times over the years regarding our dock placement and usually with a new city administrator (see attachment #2). We have consistently responded with the practical difficulties we are faced with but have never effectively reached a written resolution. In working with the current city administrator (Dan Tolsma) we have decided to proceed with this formal Variance request to the LMCD to resolve this issue so it does not continue to come up as a potential issue. One of the issues that has been unclear is whether the dock which is attached to my property as it proceeds into the lake is in the firelane when it intersects beyond the 929.4 OHWL with the extended south easement line of the Woodlawn firelane. I believe that based on the Court of Appeals case in Shussler vs Minnetonka Beach (attachment #3) the court clearly states based on prior Minnesota Supreme Court precedent that the city's firelane ends at the water's edge. As such, this becomes an issue of reasonably sharing riparian rights versus the issue of building a structure in the firelane. I fully agree that the City of Tonka Bay has riparian rights related to the Woodlawn firelane, but I believe the current placement of my dock is a reasonable sharing of riparian rights with the Woodlawn firelane and will address that more fully in my following points.
- 3) My dock was reviewed by the LMCD for its canopy and placement 21 years ago and the proceedings were communicated to the City of Tonka Bay and its representative on the LMCD

**Attachment 1**  
**Practical Difficulties Discussion**

**Applicant Submittal**

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board (see attachment #2). My understanding was once I removed my canopy the issue was resolved. It would be arbitrary and capricious to now, 21 years later, deny me my dock placement that was reviewed, canopy removed and I thought resolved with the LMCD with communication along the way to the City of Tonka Bay and it's LMCD representative.

- 4) The Woodlawn firelane (firelane #16) is a class one firelane under Tonka Bay ordinance and its prescribed public use is as follows:

Class I shall only be used for pedestrian access to the lake, fishing from shore, launching and retrieving small boats or watercraft not requiring a trailer and which are not used for commercial purposes.

My dock placement does not impede any member of the public from carrying on these activities as the entire shoreline of firelane #16 is unimpeded and the 40ft that separates my dock from my neighbors, at its closest point (which is approximately 78 ft out into the lake), is more than adequate to allow any such public users easy access to the entire surface of Lake Minnetonka. A Minnesota Court of appeals case that would be relevant here is the McLafferty vs St. Aubin (Attachment #4). In this case the court allowed fee title owners (with no property directly abutting the lake, as the right of way was between their properties and the lake) to continue to maintain their docks which attached to the right of way until the city prescribed what riparian activities would be prescribed for the public and then evaluate if such use conflicted with keeping the docks there. In my case my dock attaches to my property clear of the easement, but the discussion is instructive for purposes of your review of my request.

- 5) The City of Tonka Bay has approved and/or allows reasonable divergence from the ADUA for several abutting property owners to class one, two and three firelanes in Tonka Bay. The most recent involving a variance from the LMCD for a similar situation to mine at 435 Lakeview Ave. which abuts class one firelane #9. The property at 435 Lakeview Ave. has approximately 51ft of lake shoreline abutting Lake Minnetonka (without considering the property that is part of the easement) with a dock that is approximately 84ft long. The easement line angles or pieing of the easement line with the opposite lot line, created by the firelane #9 easement layout, created conflicting riparian interests. The City of Tonka Bay approved the dock placement for 435 Lakeview Ave. at the December 8, 2020, city council meeting (Proposed dock placement survey – Attachment #5 and city approval minutes – Attachment #6) prior to final LMCD variance approval.

These approvals resolved a dock placement that originally stretched thru the entire ADUA, and in fact through the extended easement line of the property on the other side of the firelane. The city approved a new dock placement that allows the dock to extend within the extended fire lane easement lines and covering over 95% of the 25ft wide firelane. This dock also has a canopy/boat house that under LMCD ADUA rules would require a 20ft set back from the property line. As a result, the allowance from the prescriptive ADUA rules is about 35ft. The closest straight line between this dock and the dock on the other abutting property to the firelane is about 34ft. Apparently, the city and LMCD believes this allows for reasonable access for class one firelane #9 riparian activities creating a reasonable sharing of riparian rights. I agree with this conclusion and believe this is also instructive with respect to my request.

**Attachment 1**  
**Practical Difficulties Discussion**

**Applicant Submittal**

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- a) There are other firelanes in Tonka Bay where the City of Tonka Bay allows for reasonable sharing of riparian rights with abutting riparian rights holders. They all appear to me to allow placement of docks by abutting property owners outside the City of Tonka Bay and LMCD ADUAs in a reasonable way. Most docks on these properties appear to cross into the extended easement lines of the abutting firelane and all allow for allowances from the ADUAs. These situations involve firelanes #1, #3, #5, #8, #10, #12, #15, #18, #19 and #21. Firelanes #1, #9, #10, #12, #15, #19 and #21 are class one firelanes. Firelanes #3, #8 and #18 are class two firelanes. Firelane #5 is a class three firelane.
  - b) The placement of my dock is presented on the survey I have included with abutting property owners' docks (note: survey only includes sections of dock that are abutting to my property as each has a Canopy boat house and the typical "h" configuration (see "pic from Lower Walkout" attached). My dock is similar in size and length to almost all the docks on riparian lots on Mound Ave. and to most docks on Lake Minnetonka. When compared to the City of Tonka Bay and LMCD approved dock at 435 Lakeview Ave. my dock only extends into the extended easement line of the firelane by less than 50% of the firelane width (28.5ft out of 58ft) compared to the over 95% (24ft out of 25ft) for 435 Lakeview Ave. In addition, my dock has a 40ft opening between my dock and my neighbors dock to allow access to Lake Minnetonka for public users of the firelane compared to the 34ft for the 435 Lakeview dock and in that situation, it requires public users to maneuver between the docks as it is not a spread that is parallel to the shoreline like my situation. This survey with dock presentation shows that my dock is a reasonable sharing of riparian rights with the City of Tonka Bay Woodlawn firelane #16.
- 6) I would like to have the opportunity to add a boat house canopy to my dock as I am having issues with low water and my boat lift with automatic cover requires the lake to be above 928.13 to get my boat off the lift without scraping the boat against the lift as it is backed out. I had to take my boat off my lift on 9/6/22 as the lake level reached 928.13 and park it next to my dock with mooring covers on and awaiting rain and lake level rise to get it back on the lift. As of filing date of this variance request my boat still cannot go back on my lift. My fear is I may be gone for an extended period some summer and come back and not be able to get the boat off the lift at all. However, a boat house canopy would work much better since the prospect of low lake levels with global warming are a continuing threat.

My lower-level walkout patio is approximately 21ft above the 929.4 OHWL as well as the walkout level of all the neighboring properties with the closest properties either the same height or higher at their walkout levels. As a result, a boat house canopy would not restrict the lake views of any neighboring properties. In addition, for those using the firelane there would be close to 50ft of the "extended" firelane with no boat canopy to block a view from shore (see "pic from middle of firelane shore" attached). One additional benefit of a boat house canopy would be that I could reduce the width of my slip as I had to expand it by two feet to fit the lift. I could use that 2ft to get to approximately 13ft from my south neighbor's property line and the canopy about 16 to 17ft from that property line.

- 7) I would like to summarize and clarify the variances that I am seeking. First, I would like to state that I have been in preliminary discussions with the City of Tonka Bay to allow me to use the

shoreline of the Woodlawn firelane to be included with my shoreline (without considering the amount of my property that is part of the Woodlawn firelane easement) when considering how long my dock is permitted to be under LMCD guidelines. With my easement free shoreline of 35ft and the Woodlawn firelane at 58ft that would allow for a dock of 93ft. The length of my current dock and proposed dock is approximately 78ft. If the Tonka Bay city council approves of this consolidation of shoreline for this purposes my length variance is zero. If the city council does not approve, then the length variance is calculated based on where the 4ft water depth is reached. Based on my water depth readings on September 1, 2022 (at approximately 59ft out on the dock from 929.4 OHWL) requiring a variance of approximately 19ft. The variance could be slightly more if the point where the 4ft water depth is reached is to be measured when the lake is at the 929.4 OHWL as the water level of Lake Minnetonka on 9/1/2022 was 928.25ft.

The variance from the extended property line and easement lines are as follows:

The variance for a canopy boat house (which would allow me to shrink the width of the "h" by 22inches) from my extended south property line would be about 3ft for the dock beyond 50ft from 929.4 OHWL as the setback would be a approximately 12ft compared to a 15ft LMCD prescribed set back. The variance for the set back of the canopy would also be about 3ft as the canopy would be set back approximately 17ft from the extended south property line compared to a 20ft LMCD prescribed set back.

The variance request for my dock without a canopy boat house from my south extended property line would be approximately 4.5ft for the portion of the dock beyond 50ft from the 929.4 OHWL

The variance requested from the extended easement line are extensive as the pieing peaks the further into the lake you get. With that said, I understand Tonka Bay has no separate ordinance for canopy boat houses and only has a dock set back requirement of 10ft. As a result, the variance from the easement line at its furthest into the lake is 38.5ft (58ft wide easement less 29.5ft from extended north easement line plus the 10ft prescribed set back by Tonka Bay ordinance). From the closest point of the 929.4 OHWL the variance requested would be zero under LMCD rules (5ft set back allowed for properties with less than 50ft of shoreline and in existence on 02/02/1970) and 5ft under Tonka Bay ordinance prescribing 10ft. So, the variances requested from LMCD prescribed side set backs (from the extended easement line closest to my extended south property line) scales from zero at the 929.4 OHWL to 38.5ft at the most northerly point of the dock 78ft out into the lake.

## Conclusion

Based on all the facts, laws, administrative decisions and Minnesota court decisions I have discussed above it seems clear that the placement of my dock under either of the scenarios requested is a reasonable sharing of riparian rights. To further support this conclusion one can, look to the Minnesota Supreme Court decision in Johnson vs Seifert (Attachment #7) which held as follows:

**Attachment 1**  
**Practical Difficulties Discussion**

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...that and abutting or riparian owner of a lake, suitable for fishing, boating, hunting, swimming, and other uses, domestic or recreational, to which our lakes are ordinarily put in common with other abutting owners, 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, regardless of the navigable or public character of the lake and regardless of the ownership of the bed thereof. It does not follow that the foregoing riparian-rights rule applies to every pothole or swamp frequented by wild fowl and over which a small boat might be poled to retrieve game, but which as a practical matter does not lend itself in any substantial degree to the customary propulsion of boats by outboard motors or oars.

My dock does not interfere with the riparian activities of the public as set forth in the City of Tonka Bay ordinance for Class One fire lanes and given the unique character of the property, with its severe easement line angles, it shares the competing riparian interests in a reasonable way that is similar to other similar properties in Tonka Bay. As previously pointed out, one of these properties dock placement has been recently approved by the City of Tonka Bay and the LMCD and the resulting variances allow for more liberal sharing of competing riparian interests than exists related to my property and fire lane #16. The variances requested from my extended south property line are relatively small compared to the prescribed LMCD set backs and zero when compared to Tonka Bay ordinances. I respectfully ask the LMCD to approve my variance requests for my current dock placement and allow a boat house canopy cover.

# **Applicant Submittal**

Dennis G. Nelson  
135 Mound Ave.  
Tonka Bay, MN 55331

August 5, 2021

## **CERTIFIED MAIL**

Ms. Kathy Laur  
City Administrator  
City of Tonka Bay  
4901 Manitou Road  
Tonka Bay, MN 55331

Dear Ms. Laur:

I received your letter of August 2, 2021 on August 4, 2021 (copy attached). I believe there is a misunderstanding regarding the dock. In August of 2001, I worked diligently with the LMCD to resolve the dock issue with a reasonable accommodation for my dock. At that time the LMCD communicated with the City of Tonka Bay Administrator (Robert Rys) and our other neighbor regarding the issue. The issue was resolved with the LMCD and our neighbors for a reasonable accommodation of our dock which is the same configuration we now have 20 years later. The unusual nature of the property line is due to the intersection of two old streets (one vacated and the other turned into Woodlawn firelane) at an extreme angle, requiring the need for a reasonable accommodation.

I believe the Ordinance 906.01 you site is not relevant to this situation as my dock is not in the firelane but rather it is attached to my property and proceeds into Lake Minnetonka. Based on the unusual lot line configuration, history of docks on this lot, work with the LMCD and communication with the city of Tonka Bay I believe my dock is legal and represents a reasonable sharing of riparian rights.

It is for these reasons we believe our dock is in compliance and hope there are notes from the previous city administrator that you could find that would confirm the resolution of these issue from twenty years ago.

Very truly yours,

Dennis G. Nelson  
135 Mound Ave.  
Tonka Bay, MN 55331

# **Applicant Submittal**

June 29, 2009

## **CERTIFIED MAIL**

Ms. Jessica Loftus  
City Administrator  
City of Tonka Bay  
4901 Manitou Road  
Tonka Bay, MN 55331

Dear Ms. Loftus:

We received your letter of June 19, 2009 on June 25, 2009 due to the fact that it was sent certified mail. We believe there is a misunderstanding regarding the dock. You included a copy of a letter from the LMCD sent in August of 2001. At that time, we worked diligently with the LMCD to resolve the issue with a reasonable accommodation for our dock. At that time the LMCD communicated with the City of Tonka Bay Administrator (Robert Rys) and our other neighbor regarding the issue. The issue was resolved with the LMCD and our neighbors for a reasonable accommodation of our dock which is the same configuration we now have almost eight years later. The unusual nature of the property line is due to the intersection of two old streets (one vacated and the other turned into Woodlawn firelane), requiring the need for a reasonable accommodation.

It is for these reasons we believe our dock is in compliance and hope there are notes from the previous city administrator that you could find that would confirm the resolution of this issue from eight years ago.

Very truly yours,

Dennis G. Nelson  
Barbara A. Franta  
135 Mound Ave.  
Tonka Bay, MN 55331  
Phone: 952-474-9113

DGN:dgn



# Applicant Submittal

## LAKE MINNETONKA CONSERVATION DISTRICT

18338 MINNETONKA BLVD. • DEEPHAVEN, MINNESOTA 55391 • TELEPHONE 952/745-0789 • FAX 952/745-9085

Gregory S. Nybeck, EXECUTIVE DIRECTOR

August 13, 2001

AUG 15 2001

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Minnetonka Beach  
Herb J. Suerth  
Woodland  
Katy Van Hercke  
Minnetonka  
Sheldon Wert  
Greenwood

Mr. Dennis Nelson & Ms. Barbara Franta  
135 Mound Avenue  
Tonka Bay, MN 55331

Dear Mr. Nelson & Ms. Franta:

It came to our attention that the placement of your dock and boat storage at your residence may not be in compliance with LMCD Code. Staff believes it may not be contained within your authorized dock use area. Specifically, it appears that the dock may not comply with LMCD side setback and dock length requirements.

The authorized dock use area is defined as "that area in the Lake which may be used for docks, moorings, boat storage, swimming floats, ski jump storage, or diving towers, or which may be enclosed on three sides for any of these purposes." The authorized dock use area is further defined by extending the side site lines into the lake in the same direction that they are platted on land. The three sides of the authorized dock use area are further defined by dock length and side setback restrictions.

LMCD Code Section 2.01 allows for the location of your dock and boat storage as follows:

- Canopies require a minimum 20 foot side setback within its authorized dock use area.
- A site in existence on February 5, 1970, which has a Lake frontage of less than 40 feet may have a dock which extends beyond the authorized dock use area to the point necessary to reach a water depth of four feet. Measured from 929.4 feet NGVD, and no further; provided that no such dock shall be located or extended more than 60 feet into the Lake. Side setback requirements shall be observed.

Please call the LMCD office at (952) 745-0789 to discuss your options to bring your dock in compliance with LMCD Code. Your cooperation in complying with LMCD Code is greatly appreciated.

Sincerely,

LAKE MINNETONKA CONSERVATION DISTRICT

Judd J. Harper  
Administrative Technician

Cc: Doug Babcock, LMCD Board – Tonka Bay  
Robert Rys, City of Tonka Bay



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# Applicant Submittal

A20-0919  
STATE OF MINNESOTA IN COURT OF APPEALS

## Schussler v. City of Vill. of Minnetonka Beach

Decided Feb 22, 2021

A20-0919

02-22-2021

Steven Schussler, et al., Appellants, v. City of the Village of Minnetonka Beach, Respondent, Lake Minnetonka Conservation District, et al., Respondents.

James H. Gilbert, Adam L. Sienkowski, Jody Nahlovsky, James H. Gilbert Law Group, P.L.L.C., Eden Prairie, Minnesota (for appellants) Paul D. Reuvers, Jason J. Kuboushek, Iverson Reuvers Condon, Bloomington, Minnesota (for respondent City of the Village of Minnetonka Beach) Justin L. Templin, Hoff Barry, P.A., Eden Prairie, Minnesota (for respondents Lake Minnetonka Conservation District, et al.)

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Rodenberg, Judge

*This opinion is nonprecedential except as provided by Minn. R. Civ. App. P. 136.01, subd. 1(c). Affirmed in part, reversed in part, and remanded*

**Rodenberg, Judge** \* Hennepin County District Court

File No. 27-CV-20-2647 James H. Gilbert, Adam L. Sienkowski, Jody Nahlovsky, James H. Gilbert Law Group, P.L.L.C., Eden Prairie, Minnesota (for appellants) Paul D. Reuvers, Jason J. Kuboushek, Iverson Reuvers Condon, Bloomington, Minnesota (for respondent City of the Village of Minnetonka Beach) Justin L. Templin, Hoff Barry, P.A., Eden Prairie, Minnesota (for respondents Lake Minnetonka Conservation District, et al.) Considered and decided by Slieter, Presiding Judge; Gaitas, Judge; and Rodenberg, Judge. \*<sup>2</sup>

<sup>2</sup> Considered and decided by Slieter, Presiding Judge; Gaitas, Judge; and Rodenberg, Judge. \*

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

### NONPRECEDENTIAL OPINION

**RODENBERG, Judge**

When respondent, City of the Village of Minnetonka Beach (the city), applied for a municipal multiple use dock permit from respondent Lake Minnetonka Conservation District (LMCD), appellants Steven Schussler and Sunhi Ryan-Schussler (appellants) objected. At issue was Dock #10, one of 24 docks on Lake Minnetonka managed by the city. Dock #10 is situated at the end of a dedicated fire lane that runs along and over the southernmost 30 feet of appellants' property. Appellants sued, asserting that Dock #10 interferes with their riparian rights as fee owners of the fire lane, is not legal under the relevant LMCD ordinance, constitutes a nuisance, and that their rights as property owners are otherwise violated by the existence and placement of Dock #10.

After all parties moved for summary judgment, the district court concluded that appellants own the fire lane in fee and that the public, via the city as trustee, has an easement over it for use as an "avenue." But the district court declined to adopt appellants' remaining contentions that they hold a superior interest in the fire lane and

# Applicant Submittal

that Dock #10 is not legal.

We determine that the district court did not err in granting in part and denying in part appellants' motion for summary judgment on the issues of the parties' property interests in the fire lane and the LMCD Code of Ordinances consent requirement. And we discern no error in the district court's determinations that the city has riparian rights consequent to the city's fire lane that ends at the water's edge, that the city may construct and maintain a dock at the water's edge for access to the lake and rent boat storage units \*<sub>3</sub> on the dock to members of the public, that appellants cannot defeat the city's riparian rights by declining to consent to Dock #10, and that Dock #10 lawfully existed in 1984. Therefore, we affirm those portions of the summary judgment. Because we conclude that genuine issues of material fact remain concerning whether the city's use of Dock #10 is a reasonable exercise of the city's riparian rights and whether the changes to the legal nonconforming dock that existed in 1984 render it no longer a permitted nonconforming use, we reverse in part, and remand.

## FACTS

Appellants own fee title to a homestead in Minnetonka Beach. The property includes approximately 110 feet of shoreline on Lake Minnetonka with attendant riparian rights. A 30-foot-wide "fire lane" over appellants' lot was dedicated to the city in an 1889 supplemental plat. The 1889 plat states that "The Avenues, Streets, Alleys and Parks as shown on the annexed plat are hereby dedicated to the public for the uses contemplated therein."

Dock #10, a municipal dock owned and licensed by the city, has been situated at the lake's edge since at least 1977. At that time, six boat storage units were installed on Dock #10 and the dock was 90 feet long. Since 1977, the number of boat storage units has decreased to four, the length of the dock increased to 158 feet, and the configuration of the dock has changed as neighboring land owners provided or rescinded their consent for the dock to encroach on their authorized dock use areas (ADUA).<sup>1</sup> \*<sub>4</sub>

<sup>1</sup> An authorized dock use area is an area extending into the lake which can be used for mooring or docking boats. LMCD Code of Ordinances (LMCD Code) § 1-3.01, subd. 8 (2019). The ADUA is bounded on one end by the shoreline. LMCD Code § 2-3.03, subd. 2(a) (2019). The sides of the ADUA are the extended lot lines of the property and are parallel into the lake. *Id.*

The diagram below shows the configuration of Dock #10 in relation to appellants' property as of 2019:

Image materials not available for display.

Appellants' property narrows as it approaches the lake. Because of this shape, the extended lot lines are not parallel, but instead meet and cross one another some distance into Lake Minnetonka. The fire lane, on the other hand, has parallel lot lines. In 2019, Dock #10 had four boat storage units, extended 158 feet into the lake, and was configured so that it was parallel with the extended lot lines of the fire lane. But because appellants' property and corresponding ADUA narrows as it extends into the lake, Dock #10, although \*<sub>5</sub> still within its own ADUA, extended into the sightlines of appellants' homestead. Appellants also claim that their ability to use the lake in front of their home is impaired by the dock's existence because, among other things, the lake is quite shallow well out into the lake in that area.

Since at least 1978, Dock #10 has been subject to a permitting system established by the LMCD. The LMCD is the regulatory body for Lake Minnetonka. LMCD Code § 1.1.01(d) (2019); [Minn. Stat. § 103B.611](#), subd. 3 (2018). Under the LMCD's permitting scheme, the city must apply annually for a municipal multiple dock use license in order to maintain docks on the lake.<sup>2</sup> LMCD Code §§ 4-1.03; 4-2.05, subd. 4 (2019). Then, the city

## Applicant Submittal

may lease individual boat storage units on those docks to city residents and members of the public for use. Minnetonka Beach, Minn. City Code (MBC) § 906(1)(B), (2)(A) (2008). Like the city, lease holders must reapply annually. *Id.*, § 906(2)(C), (F); (5) (2008).

<sup>2</sup> A municipal multiple dock is any dock constructed for the storage of five or more watercraft that is owned, operated, or licensed by a municipality, county, or state agency. LMCD Code § 1-3.01, subds. 52, 55 (2019). Because the parties do not raise any issue as to Dock #10 only holding four boat storage units, we do not address the question here.

In 2019, appellants objected to the city's application for a municipal multiple dock license for 2020. Appellants believed their rights to the fire lane were superior to those of the city, and that the city did not have the authority build or maintain Dock #10. Despite appellants' objections, the city submitted the application to the LMCD. In response, appellants sued.

Appellants made a number of claims in their complaint concerning their riparian rights as fee owners of the fire lane and the validity of Dock #10. Appellants also moved \*<sup>6</sup> the district court for a temporary restraining order to bar the LMCD from granting the city's license. The district court denied appellants' motion, but instructed the city not to issue permits for Dock #10 until the proceedings in district court were completed.

All parties then moved the district court for summary judgment. Appellants sought summary judgment declaring that: (1) appellants own fee title to the entire fire lane; (2) the fire lane was dedicated to the public for use as an avenue by the 1889 plat; (3) the public has an easement over the fire lane for use as an avenue; (4) the city's permitting and licensing of the use of Dock #10 violates the 1889 plat and Minnesota law; (5) the city must void all permits related to Dock #10; (6) the city must no longer issue any permits related to the fire lane or Dock #10; (7) the 2020 municipal dock license application violates the LMCD Code and is void as a matter of law because it is unsupported by the consent of the fee owners of the fire lane; and (8) no dock can be placed at the end of the fire lane without appellants' consent as fee owners. Appellants also moved for a temporary injunction. The city and LMCD argued in their motions for summary judgment that the use of the fire lane was consistent with the 1889 plat, was consistent with the relevant LMCD ordinances, was a preexisting nonconforming use, and did not interfere with appellants' riparian or other rights.

After a hearing on the motions, the district court granted appellants' motion in part and denied it in part. The district court declared that appellants are the fee owners of the fire lane, that the fire lane is statutorily dedicated for public use as an avenue by the 1889 plat, and that the general public has an easement over the fire lane. But the remainder of appellants' motion was denied. The district court also denied as moot appellants' motion \*<sup>7</sup> for a temporary injunction. Except for the declarations the district court made in favor of appellants, and the denial of LMCD's claim that appellants' complaint was barred, all other portions of the respondents' motions for summary judgment were granted.

This appeal followed.

## DECISION

Appellants raise five arguments before this court. First, they assert that the fire lane, as a publicly dedicated avenue, cannot be used for placement of a "private" dock. Second, appellants assert that, even if maintaining Dock #10 is a valid exercise of the city's riparian rights, it violates LMCD Code because appellants have not consented as fee owners to the dock's existence. Underlying these arguments is appellants' third contention that there remain unresolved genuine issues of material fact with regard to their riparian rights. Next, appellants argue that the dock was never lawfully in existence, but if it was, subsequent changes in the dock's structure

## Applicant Submittal

have defeated the dock's status as a legal nonconforming use. Finally, appellants claim that the district court erroneously based its decision on appellants' knowledge of these property issues before they bought their home.<sup>3</sup>

<sup>3</sup> Appellants challenge the district court's dismissal of counts 1, 2, 3, 4, and 9 of their complaint. Their briefing on appeal does not expressly challenge the dismissal of counts 5 (nuisance), 6 (implied easement for view, air, and light over the fire lane), 7 (due-process violations), or 8 (open-meeting-law violations).

Appellate courts review a district court's ruling on motions for summary judgment de novo. *Montemayor v. Sebright Prods., Inc.*, [898 N.W.2d 623, 628](#) (Minn. 2017). A grant of summary judgment is appropriate where there are no genuine issues of material fact and the district court correctly applied the law. *Id.* With this legal standard in mind, we turn to appellants' arguments.

We begin our de novo review of the district court's partial denial of appellants' motion for summary judgment by considering the foundational question of whether the city has riparian rights to the lake via the fire lane and whether it validly exercised those rights in the construction and regulation of Dock #10. Then we consider whether the consent requirement in the LMCD Code is unenforceable, whether Dock #10 was once a legal nonconforming structure, and whether subsequent changes to the dock's structure and configuration have resulted in the loss of that status. Finally, we address whether the district court improperly relied on appellants' knowledge of these issues before they bought the home. **I. The district court did not err in determining that the city has riparian rights as a result of the dedication of the fire lane in the 1889 plat, but there is an unresolved genuine issue of material fact concerning the reasonableness of the exercise of the city's riparian rights in constructing and maintaining Dock #10 as it now exists.**

Appellants argue that the city's current use of the fire lane is impermissible. They assert that the city's rights with respect to the fire lane are limited to uses specifically identified by the 1889 plat and are subordinate to appellants' rights as fee owners of the fire lane. Based on this interpretation, appellants contend that the city's use of the fire lane and Dock #10 is illegal because it allows for private use of a public easement.

The district court granted appellants' motion for a summary declaration that they own the fire lane in fee, but it granted respondents' motion for summary judgment that Dock #10 and the city's permitting scheme are a valid exercise of the city's authority. The <sup>9</sup> district court determined that the city, as trustee of the public's riparian rights to the fire lane, has "paramount" rights to the lane.

### A. The district court correctly concluded that the city easement over the fire lane includes riparian rights to access Lake Minnetonka.

Land donated for public purposes via plat dedication is held in trust for the public by the municipality in which the land is located and for the purposes described in the dedication language. [Minn. Stat. § 505.01](#), subd. 1 (2018). A "public way dedicated or donated on a plat shall convey an easement only." *Id.*; see also *Bolen v. Glass*, [755 N.W.2d 1, 4](#) (Minn. 2008) (concluding that when land is transferred via plat dedication, the property interest conveyed is a terminable easement). Where dedicated land ends at a body of water, the dedication includes riparian rights to that water. *Troska v. Brecht*, 167 N.W. 1042, 1044 (Minn. 1918).<sup>4</sup> Fee title to the dedicated land remains with the dedicator and subsequent fee owners while the municipality maintains an easement over the land—so long as the easement is used for the purposes described in the dedication. *Bolen*, [755 N.W.2d at 4](#).

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- <sup>4</sup> In Minnesota, a riparian owner has the "right to make such use of the [waterway] over its entire surface, in common with all other abutting owners." *Johnson v. Seifert*, 100 N.W.2d 689, 697 (Minn. 1960). These rights include the right to "build and maintain, for private or public use, wharves, piers, and landings and extending into the water," and the right to use the water for "hunting, fishing, boating, sailing, [and] irrigating." *McLafferty v. St. Aubin*, 500 N.W.2d 165, 168 (Minn. App. 1993).

Here, the 1889 plat dedication specified that "The Avenues, Streets, Alleys, and Parks as shown on the annexed plat are hereby dedicated to the public for the uses contemplated therein." It identified a fire lane as one such dedication along the southern \*<sup>10</sup> boundary of the lot now owned by appellants. By this language, the dedication conveyed to the city a terminable easement over the fire lane, held in trust for the "uses contemplated therein" by the public. Because the fire lane ends at the shore of Lake Minnetonka, the easement includes riparian rights to the lake. *Troska*, 167 N.W. at 1044.

The city currently provides for public use of Dock #10 via a permitting system. Anyone may apply for a permit to use one or more of the four boat storage units that the city places on Dock #10. MBC § 906(2)(C). The city has a system of priority in place that may favor one applicant over another, but no member of the public is restricted from applying to use Dock #10's boat storage units. *Id.* Nor does the city's regulation of Dock #10 conflict with the public's ability to use the dock, fire lane, or shoreline for other purposes. Furthermore, the regulation of public access to the dock is within the city's authority to "prescribe rules to secure to the public the public uses of which the waters are susceptible and to preserve public order." *Nelson v. De Long*, 7 N.W.2d 342, 349 (Minn. 1942). Therefore, the regulated use of Dock #10 is within the scope of uses contemplated by the 1889 plat dedication.

Appellants attempt to persuade us that the city cannot use the fire lane by placing Dock #10 at the end of it. They cite a number of cases not involving riparian rights, but concerning parcels of land dedicated for public use. In one such case, *Headley v. City of Northfield*, the issue was whether the city could convert a majority of the town's public square into a high school athletic complex and playground. 35 N.W.2d 606, 607 (Minn. 1949). The appropriate use of a public square was also at issue in *City of Zumbrota v. Strafford Western Emigration Co.*, where the municipality sought to sell the square to a \*<sup>11</sup> private developer for the construction of a senior citizen's home. 290 N.W.2d 621, 622 (Minn. 1980). But these cases, and others relied upon by appellants to support their argument, do not address the issue of *riparian rights*. And riparian rights are central here. As such, we decline to accept appellants' invitation to import the reasoning in those cases to the analysis here. The law on which we rely is Minnesota's well-established law concerning riparian rights.

We agree with the district court's conclusion that, as a matter of law, the city has a terminable easement over the fire lane which includes riparian rights to Lake Minnetonka. Because the city's use of Dock #10 as trustee for the public's easement interest is compatible with the uses contemplated by the 1889 plat, the city may use and regulate the public use of both. *Bolen*, 755 N.W.2d at 4; Minn. Stat. § 505.01, subd. 1.

The district court correctly applied the relevant law in its analysis. It did not err in determining that the city has riparian rights as a result of the dedicated easement over the fire lane and that those rights do not, as a matter of law, violate appellants' riparian rights as fee owners of the fire lane. But that does not end our analysis. Because the city and appellants have competing riparian rights, we turn to the common law concerning riparian rights to determine whether any genuine issues of material fact exist with regard to the appellants' legal and equitable claims.

### B. There remains a genuine issue of material fact concerning appellants' claim that Dock #10 impairs their riparian rights.

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Both appellants and the city have riparian rights based on their property interests. Appellants argue that, as fee owners of the fire lane, their rights are superior to the city's \*12 rights. But the district court concluded that, when riparian interests are in conflict, a fee owner may not interfere with an easement holder's rights. Citing the Minnesota Supreme Court decision in *McLafferty*, the district court determined that the city, as holder of the public's rights to the fire lane, has "paramount" rights to the fire lane. [500 N.W.2d at 168](#). On that basis, it summarily dismissed appellants' complaint. But because both the district court and this court are bound by supreme court precedent, *State v. Curtis*, [921 N.W.2d 342, 346](#) (Minn. 2018), and because one owner of riparian rights may not unduly interfere with another's enjoyment of riparian rights, we must reverse and remand.

When riparian rights are in conflict, as they are here, the rights are held in common and must be shared. *Seifert*, [100 N.W.2d at 697](#). No rights holder may unduly impede another's ability to enjoy their riparian rights. *Id.* at 696-97. Whether a rights holder's use is permissible is a question of reasonableness. *Id.* ("[A]n abutting or riparian owner of a lake . . . 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."). Reasonableness "is a question of fact to be determined from the circumstances of each case." *Petraborg v. Zontelli*, [15 N.W.2d 174, 182](#) (Minn. 1944). The question of reasonableness must be considered even though the public's right to use the water body may be "paramount" to the rights of other riparian owners. *Nelson*, [7 N.W.2d at 349](#) ("[T]he riparian rights of all concerned were subject to the paramount rights of the public to public use of the waters and to the power of the state to adopt reasonable regulations to secure such uses to the \*13 public." (Emphasis added)). The *McLafferty* decision, relied upon by the district court in granting the city's dispositive motions, supports this reasonableness test.

In *McLafferty*, the parties disputed a city's ability to restrict abutting property owners with attendant riparian rights from using an avenue for lake access. [500 N.W.2d at 166](#). Although the city had riparian rights by virtue of a street easement along the lake, the Minnesota Supreme Court determined that the city did not hold *exclusive* riparian rights over the avenue. *Id.* at 167-68. Instead, the supreme court, citing *Seifert*, affirmed that when riparian rights are in conflict, the question of whether a party's use is permitted by the law is one of reasonableness. *Id.* at 168.

Here, although the city has riparian rights by virtue of the 1889 plat dedication, those rights are not exclusive. The city's exercise of riparian rights must still be measured for its reasonableness. *Seifert*, [100 N.W.2d at 697](#).

As shown in the diagram above, appellants' lot is much narrower at the shoreline than it is in the portions of the lot remote from the shoreline. The extension of appellants' north lot line intersects with the extension of the south lot line at a point somewhat farther into the lake than the end of Dock #10. Appellants contend that, because Lake Minnetonka is very shallow in the area, Dock #10 impairs their ability to enjoy their riparian rights. Although appellants complain mightily about the impact of Dock #10 on their view of the lake, it is not the only impairment they claim. They also claim that Dock #10's current configuration prevents them from navigating motorized boats into the portion of the lake in front of their home. According to an expert affidavit produced by the appellants, the existence of Dock #10 in its current configuration presents an unreasonable risk of danger \*14 to swimmers entering the lake from appellants' property and to users of non-motorized watercraft in the area.

The district court erred in determining that, as a matter of law, the city is not impairing appellants' riparian rights by its placement of Dock #10. On our de novo review, we conclude that there remains an unresolved fact issue concerning whether the city's exercise of its riparian rights is reasonable. We therefore reverse the district

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court's summary judgment dismissing that portion of appellants' complaint alleging violation of their riparian rights. We remand for resolution of the factual issue of the reasonableness of the city's use of Dock #10 in its current configuration. Factors to consider include the purpose of the use, the way in which the right is used, the necessity of the use, and the injury alleged by the other rights holder. *Petraborg*, 15 N.W.2d at 182. We hold only that the fact issue remains for resolution on this record; we express no opinion concerning how that issue will be or should be resolved by the finder of fact on remand.

### II. The district court correctly concluded that the LMCD Code provision requiring the appellants' consent to Dock #10 is unenforceable.

Appellants next argue that, even if Dock #10 is a valid use of the fire lane contemplated by the 1889 plat, it is still invalid under the LMCD Code. According to appellants, the LMCD Code requires the city to obtain appellants' consent to construct and use Dock #10 because appellants own fee title to the fire lane. The district court disagreed. It determined that although the LMCD Code, read strictly, requires the consent of fee owners, the provision conflicts with common law principles concerning riparian rights and cannot be enforced. Because

15 we determine that the district court applied the correct legal \*15 standard and that there are no genuine issues of material fact concerning that issue, we affirm the district court's summary judgment dismissing this aspect of appellants' complaint. *Montemayor*, 898 N.W.2d at 628.

The LMCD Code provides that "No person shall use any area of the Lake within any authorized dock use area for docks, moorings, [or] watercraft storage . . . without the consent of the riparian owner." LMCD Code § 2-3.01, subd. 2 (2019). An owner is "the fee owner of land or the beneficial owner of land whose interest is primarily one of possession and enjoyment in contemplation of ultimate ownership." LMCD Code § 1-3.01, subd. 67 (2019). Based only on a strict reading of LMCD Code, the city would be required to obtain the consent of appellants, fee owners of the fire lane with appurtenant riparian rights, to construct Dock #10. But our analysis does not end here.

As discussed above, Minnesota common law requires that holders of riparian rights share access to the body of water, and must act reasonably. *Seifert*, 100 N.W.2d at 696-97. Rights holders must ensure that their use of the water body is reasonable and does not unduly impair the ability of other users to enjoy the water body. *Id.* at 697. But the LMCD Code conflicts with these well-established common law principles because the code purports to permit one user to restrict another's use of his or her riparian rights, regardless of the reasonableness of the restriction. Therefore, we agree with the district court's conclusion that, as a matter of law, the consent requirement in LMCD Code is unenforceable as inconsistent with well-established Minnesota law concerning

16 riparian rights. *Curtis*, 921 N.W.2d at 346. \*16 **III. The district court properly determined that Dock #10 lawfully existed in 1984, but there remains a genuine issue of material fact regarding whether subsequent changes to Dock #10, including extension of the dock's length to 158 feet, renders it ineligible for treatment as a prior nonconforming use.**

Appellants argue that the city's municipal multiple dock system was never "a legal nonconforming use." They further argue that, even if it had once been a legal nonconforming use, it has since lost that status because of changes made since 1984. The district court, focusing only on Dock #10, disagreed with appellants' assertions. The district court determined that Dock #10 was a legal nonconforming structure in 1984 and that the subsequent changes in dock length and configuration did not make Dock #10 illegal. We consider the district court's summary judgment on this issue de novo.<sup>5</sup> *Montemayor*, 898 N.W.2d at 628.

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5 Although appellants contend that the entire dock system of the city is illegal, the district court properly focused only on Dock #10. The LMCD Code provides no indication that if one dock in a municipal multiple use system violates code provisions, the entire system should be considered invalid. Moreover, the only dock that has any impact on appellants is Dock #10. This case presents no occasion for examining the legality or appropriateness of docks remote from appellants' property, which plainly have no effect on appellants' riparian or other asserted rights.

All docks on Lake Minnetonka must comply with the LMCD Code. § 2-2.01 (2019). But there is a limited exception to this general rule for some docks with a historical presence on the lake. Docks in existence as of May 3, 1978, may continue to exist—even if they fail to comply with current LMCD Code provisions—so long as the number of restricted watercraft docked at that location does not exceed the number docked there on May 17 3, 1978. LMCD Code § 2-4.09, subd. 3 (2019). Such nonconforming docks may not \*17 be changed or reconfigured from their state on May 3, 1978, without the approval of the LMCD. LMCD Code § 2-8.05, -8.11 (2019).

If a change or a reconfiguration of a legal nonconforming dock is proposed, the LMCD must consider whether the proposed changes would result in increased boat storage units, linear footage of boat storage units, or the nonconforming nature of the dock, or if it would create new nonconformities. *Id.*, § 2-8.11. If the LMCD finds that any of these changes would occur, the LMCD may not issue a license for the proposed changes. LMCD Code § 6-2.17, subd. 1 (2019). With these provisions of the LMCD Code in mind, we look to the history of Dock #10 to determine whether it was a legal nonconforming dock in existence on May 3, 1978.

In 1984, the LMCD approved the city's application for a new multiple dock license "from 1977" for 86 boat storage units. Included in the license was Dock #10, which at that time had six boat storage units and was 90 feet long. We agree with the district court that, as a matter of law, Dock #10 was in existence as a legal nonconforming dock as of May 3, 1978, by virtue of the 1984 license for the city's docks dating back to 1977.

We next consider whether the subsequent changes to Dock #10 have resulted in the dock no longer being a legal nonconforming use.

Since 1984, Dock #10 has undergone a number of changes and reconfigurations. As of 2019, Dock #10 had four boat storage units and extended 158 feet into Lake Minnetonka. Dock #10 was also positioned parallel to the extended lot lines of the fire lane in 2019; in 1984, it was angled slightly southward and was not located 18 entirely within \*18 the fire lane's ADUA. As such, the dock was then angled away from the water directly in front of appellants' home.

As explained above, the LMCD Code does not allow any changes to a nonconforming dock that would result in increased boat storage units, increased linear footage of boat storage units, increased nonconforming nature of the dock, or the creation of new nonconformities. LMCD Code § 2-8.11.

Whether the extension of Dock #10 to 158 feet and its reorientation are permissible changes involve questions of fact. The extension of Dock #10 to the length of 158 feet cannot be said as a matter of law to be an insubstantial modification of the preexisting nonconforming use. And the orientation of the dock to put it more directly in front of the appellants' home and nearer appellants' ADUA at least raises a fact question about whether changes to the prior nonconforming use deprives Dock #10 of its status as a nonconforming use that may be lawfully continued.

It is true, as the district court noted in granting summary judgment, that Dock #10 as it is currently oriented is "cabined" in the ADUA defined by the extended lot lines of the fire lane. But since those lot lines are parallel, the extensions of them would continue across the lake to the opposite shoreline without crossing one another,

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meaning that a dock could extend to the opposite shore of the bay and still remain within the ADUA. It seems axiomatic that not every extension of the dock within the ADUA as so defined would be a permissible change to the city's prior nonconforming use. And Dock #10 is now 68 feet longer than it was in 1984—extending over 50 yards into the lake. Here again, we hold only that the district court improperly granted summary judgment 19 where there exist \*19 genuine issues of material fact; we express no opinion concerning resolution of the fact issues.

Although the district court correctly determined that Dock #10 was a legal nonconforming structure as of May 3, 1978 as a matter of law, it erroneously concluded that no genuine issue of material fact exists concerning whether the changes to the dock after 1984 result in its no longer being a legal nonconforming structure.<sup>6</sup>

<sup>6</sup> We also note that, while the LMCD approved the changes to and reconfiguration of Dock #10 over the years, the LMCD's lack of enforcement of the LMCD Code does not necessarily mean those changes were valid. *McCavic v. De Luca*, 46 N.W.2d 873, 877 (Minn. 1951) ("[T]he validity of an ordinance is not affected by failure to enforce it or by its wrongful enforcement or by the fact that it is repeatedly violated."). On this record, we see no determination by the LMCD concerning these fact issues. Accordingly those fact issues are appropriate for resolution on remand. -----

### IV. The district court did not improperly rely on appellants' knowledge of the history of their property when it ruled on the summary-judgment motions.

Finally, we address the appellants' claim that the district court improperly relied on appellants' prior knowledge of these property issues in ruling on the competing motions for summary judgment. Although the district court did reference appellants' knowledge of the property's unique challenges before they bought their house—a fact on which the parties agree—it did not improperly rely on that fact.

Appellants' predecessor in interest had the same concerns that appellants have in this lawsuit. The purchase price negotiated by appellants reflected these concerns, along with other buyer-seller considerations. But the district court did not summarily adjudicate appellants' claims for this reason. Instead, the district court noted the reality that there has been prior litigation concerning the city's dock system and that appellants were aware that 20 \*20 the LMCD was allowing Dock #10 to exist at the 158 foot length in the configuration about which they now complain. We see no error in the district court having accurately characterized the history of how this protracted dispute resulted in appellants' current claims.

In sum, on de novo review of the district court's summary adjudication, we affirm the district court's judgment except insofar as it determines as a matter of law that Dock #10 as currently situated is a *reasonable* exercise of the city's riparian rights and that Dock #10 continues to be a legal nonconforming use despite changes to its orientation and length after May 3, 1978. On those issues, there remain genuine issues of material fact for resolution on remand.

**Affirmed in part, reversed in part, and remanded.**

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500 N.W.2d 165  
Court of Appeals of Minnesota.

Patrick J. McLAFFERTY, et al., Appellants,

v.

John B. **ST. AUBIN**, et al., Defendants,  
and

City of Shoreview, Intervenor, Respondent.

No. C5-92-2249.

|

May 25, 1993.

### Synopsis

Landowners brought quiet title action against city to clarify riparian rights on their land, across which city had dedicated street easement. The District Court, Ramsey County, **Mary L. Klas**, J., entered judgment in favor of city, and landowners appealed. The Court of Appeals, **Davies**, J., held that: (1) owner of easement and owner of underlying fee share riparian rights, and (2) landowner's use of riparian land to construct docks and other improvements did not impermissibly burden city's riparian rights.

Reversed.

**Procedural Posture(s):** On Appeal.

West Headnotes (5)

- [1] **Water Law**—Title and rights in general  
**Water Law**—Easements Over Riparian Lands and for Access to and Use of Waters

Owner of easement and owner of underlying fee share riparian rights.

- [2] **Water Law**—Title and rights in general

City which held dedicated street easement bordering lake did not have exclusive riparian rights.

1 Cases that cite this headnote

- [3] **Water Law**—Nature and Extent of Rights in General  
**Water Law**—Right to construct or maintain

"Riparian rights" are generally described as the rights to use and enjoy the profits and advantages of the water; riparian rights include the right to build and maintain, for private or public use, wharves, piers, and landings on the riparian land and extending into the water, and also includes such rights as hunting, fishing, boating, sailing, irrigation, and growing and harvesting wild rice.

4 Cases that cite this headnote

- [4] **Water Law**—Wharves, docks, piers and similar structures

Landowners' lakeshore improvements consisting of docks and beaches did not unreasonably interfere with city's exercise of riparian rights resulting from its dedicated street easement on the land where the city was not planning to build a beach or public dock or make any other use of the shoreline to accommodate public access; and landowners could maintain their docks and other improvements without burdening the city.

1 Cases that cite this headnote

- [5] **Water Law**—Wharves, docks, piers and similar structures

Even if landowners' docks and other improvements on riparian land gave the impression that dedicated street easement across the land was private property, thus having a chilling effect on the public's exercise of the

city's riparian rights, that chilling effect did not rise to the level of an impermissible interference with the city's riparian rights where the city was not actively asserting any particular riparian right for the public's benefit.

## 2 Cases that cite this headnote

### \***166 Syllabus by the Court**

1. A dedicated street easement does not confer exclusive riparian rights on the municipality owning the easement.
2. A decision by a municipality with a lakeside street easement to allow the lakeshore to return to its natural state is not an exercise of riparian rights depriving other owners of their riparian rights.

## Attorneys and Law Firms

Peter J. McCall, Stapleton, Nolan & McCall, P.A., St. Paul, for appellants.

Jerome P. Filla, John Michael Miller, Peterson, Fram & Bergman, St. Paul, for respondent.

Carla Heyl, League of Minnesota Cities, Shoreview, for amicus curiae.

Considered and decided by AMUNDSON, P.J., and CRIPPEN and DAVIES, JJ.

## OPINION

DAVIES, Judge.

Property owners in quiet title action challenge decision ordering them to cease exercise of their riparian rights. We reverse.

## FACTS

Appellants Patrick and Brenda McLafferty and Frederick and Lois Gelmann ("the property owners") own property abutting Lake Wabasso in Shoreview. Their property and other private property along the lake is subject to a street easement that runs along the shore of Lake Wabasso. The city has never improved or maintained the avenue (Wabasso Avenue) despite its dedication to public use a century ago.

The property owners have maintained docks on the lake since the 1940s. And for at least 20 years, the property owners, and a number of their neighbors, have mowed the grass within the easement, planted trees and shrubbery, and maintained the shoreline of the lake so it would be suitable for their recreational use. They have also removed lake vegetation and sometimes added fill and constructed small beaches.

Some members of the public currently use the easement for walking and for access to an adjacent county park. In the past, the public has used the easement to camp, swim, boat, and walk. Until the 1960s, the public used the area to trap, fish, and frog-hunt.

In 1986, the property owners petitioned the city to vacate the avenue. After a study committee appointed by the city concluded that the shoreline included in the avenue should be allowed to return to its natural state, the city denied the petition for vacation and ordered the property owners to remove their docks from the shore and riparian waters.<sup>1</sup>

The property owners refused to remove the docks and brought a quiet title action to clarify their rights. The trial court found that both the city and the property owners hold riparian rights, but that the city's riparian rights are paramount. The court also found the property owners' docks, beaches, and removal of vegetation to be incompatible with the city's exercise of its riparian rights. The court ordered the property owners to refrain from any actions that would interfere with the public's right of access to the lake, to remove the existing docks and man-made beaches, and to refrain from any further exercise of any rights other than those granted them as members of the general public. The court also ordered the property owners to refrain in the future from interfering with the city's riparian rights, including the city's right to construct docks or beaches or to allow the shoreline to

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McLafferty v. St. Aubin, 500 N.W.2d 165 (1993)

return to its natural state.

[t]he public right of use was not exclusive so as to cut off the [fee owner's] communication between the land and the water, and he could therefore use and enjoy the riparian rights.

## ISSUES

- I. Does the dedicated street easement bordering Lake Wabasso confer exclusive riparian rights on the city?
- II. Is the city's current exercise of its riparian rights sufficient to require the property owners to remove lakeshore improvements?

## \*167 ANALYSIS

### I.

The trial court first ruled that the riparian rights appurtenant to the street easement are exclusive and that the property owners have no rights other than those granted them as members of the general public.

<sup>[1]</sup> Under Minnesota law, however, the owner of an easement and the owners of the underlying fee share the riparian rights. In  *Brisbine v. St. Paul & Sioux City R.R.*, 23 Minn. 114 (1876), the supreme court determined that the riparian rights appurtenant to a strip of property extending from the middle of a dedicated street easement to the shore of the Mississippi belonged to the fee owner of the property.  *Id.* at 129–130. Because the fee owner held riparian rights, the city did not hold exclusive riparian rights, although it owned the street easement bordering the river.

In  *Hanford v. St. Paul & Duluth R.R.*, 43 Minn. 104, 42 N.W. 596 (1890), the court distinguished from *Brisbine* a situation where a railroad had acquired the *exclusive* right to occupy and use land to which riparian rights attached.  *Id.* at 110,  42 N.W. at 597–98. In that case, the railroad's right of occupancy carried with it exclusive riparian rights.  *Id.* at 109, 42 N.W. at 597. In *Brisbine*, in contrast,

*Id.* at 110,  42 N.W. at 598.

The *Brisbine* principle also applied in  *Wait v. May*, 48 Minn. 453, 51 N.W. 471 (1892). There, the court specifically indicated that riparian rights were held by a fee owner who held property extending to a lakeshore and subject to a street easement bordering the lake.  *Id.* at 461–62, 51 N.W. at 473.

<sup>[2]</sup> Authority outside Minnesota supports the conclusion that the city does not hold exclusive riparian rights. See *Marshall v. Hartman*, 104 Fla. 143, 139 So. 441, 445 (1932); *Johnson v. Grenell*, 188 N.Y. 407, 81 N.E. 161, 161 (Ct.App.1907). At least one case holds that in this situation, a street easement carries with it *no* riparian rights. *Tolchester Beach Improvement Co. v. Boyd*, 161 Md. 269, 156 A. 795, 798 (Ct.App.1931). Further, a treatise on the subject asserts that riparian rights depend on the owner's property touching the water. Thus,

to have the effect of destroying the [riparian] rights of the abutting owner, the *fee* of a highway [bordering a navigable water] must be in the public.

1 Henry P. Farnham, *Waters and Water Rights* § 144 (1904) (emphasis added).

The city contends that Minnesota cases decided after *Wait* recognize exclusive riparian rights in the easement holder. But the cases the city cites all involve fact patterns different from this case and do not address the issue here. For example, in  *Village of Wayzata v. Great N. Ry. Co.*, 50 Minn. 438, 52 N.W. 913 (1892), while determining that a street easement bordering a lake conferred riparian rights on the public, the court did not consider, or even mention, the rights of the fee owner of the street. The issue in that case involved the railroad's responsibility to facilitate public access to the water, given the existence of public riparian rights. See  *id.*,

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McLafferty v. St. Aubin, 500 N.W.2d 165 (1993)

50 Minn. at 443–44, 52 N.W. at 914.

In other cases, the issue was the ownership of riparian rights when a street provides ingress and egress to a body of water, a concern different from that in bordering street easement cases. See  *Flynn v. Beisel*, 257 Minn. 531, 537–39, 102 N.W.2d 284, 289–90 (1960);  *Troska v. Brecht*, 140 Minn. 233, 238–39, 167 N.W. 1042, 1044 (1918). An ingress/egress easement (perpendicular to the shore) ordinarily does not have the potential to deprive a fee owner of all riparian rights because the fee owner owns adjoining property abutting the lake and providing separate riparian rights. Further, none of these cases have determined that the riparian rights incidental to a municipality's easement are exclusive. See  *Flynn*, 257 Minn. at 539, 102 N.W.2d at 293 (township had riparian rights to be enjoyed in common with the fee owners of \*168 the property);  *Troska*, 140 Minn. at 237–38, 167 N.W. at 1044 (holding that persons “other than fee owners may possess riparian rights”).

The city, therefore, under the *Brisbane* line of cases, does not have exclusive riparian rights here and cannot order the fee owners to remove their docks on the basis of exclusivity.

## II.

The trial court ruled that, if the riparian rights in the property are shared, the city’s rights are paramount and include the right to influence the character of the shoreline. Thus, the court ordered the property owners to remove any improvements made to the lakeshore. The court decided this was a valid exercise of the city’s riparian rights, to which the property owners’ secondary rights must yield.

<sup>[3]</sup> Riparian rights are generally described as the rights *to use and enjoy* the profits and advantages of the water. See 78 Am.Jur.2d *Waters* § 263 (1975). The 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).

Riparian rights include the right to build and maintain, for private or public use, wharves, piers, and landings on the riparian land and extending into the water.  *State v. Korrer*, 127 Minn. 60, 71–72, 148 N.W. 617, 622 (1914). They also include such rights as hunting, fishing, boating, sailing, irrigating, and growing and harvesting wild rice. *In re Application of Central Baptist Theological Seminary*, 370 N.W.2d 642, 646 (Minn.App.1985), pet. for rev. denied (Minn. Sept. 19, 1985).

<sup>[4]</sup> The city has not established that it is presently exercising its riparian rights. Riparian rights are generally positive rights, fostering use of the water for navigation, recreation, or harvest. At this point, the city does not intend to build a beach, a public dock, or make any other use of the shoreline that will accommodate public access to or use of the lake. Thus, the city is attempting to impede the property owner’s exercise of traditional riparian rights, but not by purposeful use of its own valid riparian rights. Under these circumstances, the property owner’s lakeshore improvements do not unreasonably interfere with the city’s exercise of riparian rights, although the improvements may frustrate some nascent thoughts of zoning.

If, in the future, the city decides to exercise its riparian rights purposefully, the property owners may be required to yield. At this point, however, the property owners may maintain their docks and other improvements without burdening the city.

<sup>[5]</sup> The trial court found that the property owners’ docks and other improvements gave the impression that Wabasso Avenue was private property and thus had a “chilling” effect on the public’s exercise of the city’s riparian rights. Even if this is true, the “chilling effect” does not rise to the level of an impermissible interference because the city is not actively asserting any particular riparian right for the public’s benefit and the property owners’ use of the avenue and shoreline does not unduly burden the present passive use by the public. See  *Johnson*, 257 Minn. at 169, 100 N.W.2d at 697.

Moreover, the city may be equally responsible for deterring the public from exercising the city’s riparian rights. The avenue does not appear to be marked as a

# Applicant Submittal

McLafferty v. St. Aubin, 500 N.W.2d 165 (1993)

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street or even as public property. If the property owners removed their docks and did not mow the grass, the public would probably still continue to view the avenue as “private” property, unless the city took some step to identify it as a public way.

The city’s current exercise of riparian rights is insufficient \*169 to require the property owners to cease exercise of their own riparian rights by removing lakeshore improvements.

**Reversed.**

**All Citations**

500 N.W.2d 165

## DECISION

The city and the property owners share the riparian rights appurtenant to the strip of property bordering the lake.

## Footnotes

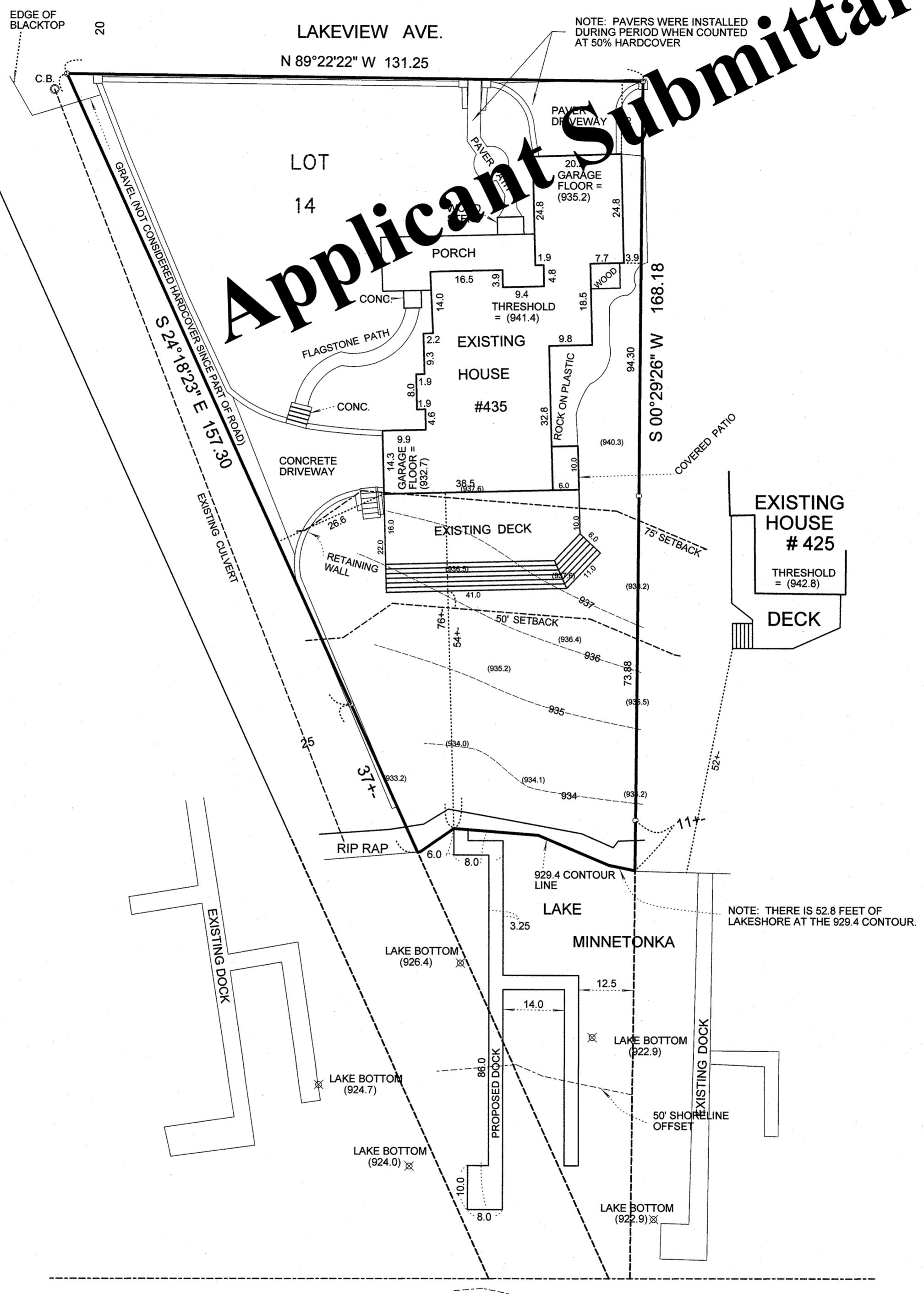
- <sup>1</sup> The city had earlier formulated a plan to construct a recreational trail on the easement, but it does not intend to implement that plan until at least 1995.

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End of Document

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**CERTIFICATE OF SURVEY FOR  
CAROL LARSEN  
OF LOT 14, AUDITORS SUBDIVISION NUMBER NUMBER 113  
HENNEPIN COUNTY, MINNESOTA**



LEGAL DESCRIPTION OF PREMISES:

Lot 14, AUDITOR'S SUBDIVISION NUMBER 113,  
Hennepin County

- : Denotes iron marker
- - - : Denotes existing spot elevation
- - - : Denotes existing contour lines
- ☒ : Denotes location of existing lake bottom elevation

Bearings shown are based on assumed datum.

This survey shows the boundaries of the above described property, and the location of an existing house, driveways, retaining walls, and existing "hardcover" thereon. It does not purport to show any other improvements or encroachments.

EXISTING HARDCOVER

HOUSE	= 2211 SQ.FT.
PORCH	= 369 SQ.FT.
DECK	= 1011 SQ.FT.
COVERED PATIO	= 60 SQ.FT.
PAVER DRIVEWAY	346 SQ.FT X .5=173 SQ.FT.
CONCRETE DRIVEWAY	= 518 SQ.FT.
RETAINING WALLS	= 376 SQ.FT.
CONCRETE	= 39 SQ.FT.
WOOD	= 62 SQ.FT.
PAVER PATH	130 SQ.FT X .05=65 SQ.FT.
FLAGSTONE PATH	= 83 SQ.FT. (75% COVER)
ROCK ON PLASTIC	= 396 SQ.FT.
TOTAL HARDCOVER	= 5363 SQ.FT.

LOT AREA = 15601+ SQ.FT.

5363 / 15601 x 100 = 34.38%



**GRONBERG & ASSOCIATES, INC.**  
CIVIL ENGINEERS, LAND SURVEYORS, LAND PLANNERS  
445 N. WILLOW DRIVE LONG LAKE, MN 55356  
PHONE: 952-473-4141 FAX: 952-473-4435

REVISIONS	DESIGNED	REMARKS	DRAWN	CHECKED	DATE	SCALE	JOB NO.	SHRINKAGE
2-24-20		I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.			1-30-20	1'=20'	20-027	1/2
ADDED LAKESHORE OFFSETS AND 929.4 DISTANCE								

# Applicant Submittal

City of Tonka Bay  
Regular City Council Meeting  
December 8, 2020

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increased height and floor area for the garage.

Jennings and Ramler-Olson discussed the height restrictions.

De La Vega opened the public hearing.

Matt Granger, property owner, explained the thought process of the design and noted they would like to eventually connect the house and garage.

De La Vega closed the public hearing.

Jennings, Ansari, De La Vega, Ramler-Olson, Preisler, LaBelle and Granger discussed the proposal, principal versus accessory structures and the neighbor's runoff concerns.

De La Vega recommended the applicant look into attaching the garage to the home.

De La Vega, Ansari, Jennings and Granger discussed the request.

Council directed staff to provide a waiver of extension on the variance decision.

## 8. **OLD BUSINESS**

### **A. LMCD Request for Review and Comments for 435 Lakeview Ave.**

Laur explained that Carol Larsen, 435 Lakeview Avenue, was requesting to keep her dock in the fire lane. Laur explained the history of the dock and the measures the applicant had taken to get closer to compliance.

Carol Larsen explained the history of the dock and explained she had been working with the LMCD for the past year and a half on the dock and had reconfigured the dock twice along with moving it 8 feet.

De La Vega, Larsen, Biggerstaff, Jennings, LaBelle, Ansari and Anderson discussed the request, the permanency language of the request and safety concerns.

**Anderson moved directing staff to prepare a favorable report to give to the LMCD regarding the dock at 435 Lakeview Avenue.**

De La Vega noted the favorable report was for the current dock placement and fire lane.

**Anderson amended the motion to direct staff to prepare a favorable report to**

# Applicant Submittal

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the LMCD based on the current placement of the dock. Ansari seconded the amended motion. Ayes: LaBelle, Anderson, Ansari, De La Vega. Nay: Jennings. Motion carried.

**9. NEW BUSINESS**

None.

**10. MATTERS FROM THE FLOOR**

Brian Hallblade asked about the inflow and infiltration ordinance and requested the information be shared.

Laur, De La Vega, LaBelle and Hallblade discussed the inflow and infiltration requirements and communications about it.

**11. REPORTS**

- A. Administrator's Report –  
No report.
- B. Jeff Anderson – Finance, Fire Lanes and Public Access, Technology –  
No report.
- C. Elli Ansari – Parks and Playgrounds, LMCD, Sanitation and Recycling –  
Ansari thanked Council and noted it had been a pleasure to serve alongside the other Councilmembers.
- D. Adam Jennings – EFD, Commercial Marinas, Municipal Docks –  
Jennings noted the fourth quarter fire meeting was scheduled to take place on December 16. Jennings provided background on the concrete project bids.

Jennings read a letter from Police Chief Meehan regarding the efforts of the Excelsior Fire Department in saving a resident trapped in a sinking vehicle.

Jennings thanked Ansari and De La Vega for their service.

- E. Bill LaBelle – Building Inspection, Municipal Buildings and Grounds –  
LaBelle thanked Ansari and De La Vega for their service and also the Police and Fire Departments.
- F. Attorney's Report –  
No report.
- G. Gerry De La Vega –SLMPD, Administration, Public Works –

# Applicant Submittal

Johnson v. Seifert, 257 Minn. 159 (1960)

100 N.W.2d 689



KeyCite Yellow Flag - Negative Treatment

Declined to Follow by [Ace Equipment Sales, Inc. v. Buccino](#), Conn., April 5, 2005

257 Minn. 159  
Supreme Court of Minnesota.

Perry N. **JOHNSON**, Appellant,  
v.  
Frank L. **SEIFERT** and R. Gail **Seifert**,  
Respondents.  
  
No. 37692.  
|  
Jan. 8, 1960.  
|  
Rehearing Denied Feb. 3, 1960.

## Synopsis

Action between plaintiff and defendants, riparian owners of lake shore, to enjoin defendants from restricting plaintiff's use of lake surface and from withdrawing irrigation water. The District Court, Washington County, Rollin G. **Johnson**, J., rendered judgment for defendants, and plaintiff appealed. The Supreme Court, Matson, J., held that where lake was suitable for uses to which lakes are ordinarily put, in common among abutting owners, owner of portion of shore was, as a riparian right, entitled to use of entire surface, in common with other abutting owners and regardless of navigability of lake or ownership of lakebed, and was entitled to injunction against fence erected through lake on property line of defendants who owned most of shore line.

Reversed in part and affirmed in part.

West Headnotes (10)

- [1] [Water Law](#)—Nature and quality of waters giving rise to riparian rights  
[Water Law](#)—Test of navigability in general  
[Water Law](#)—Ownership and Control in General

The Federal test of navigability is designed for the narrow purpose of determining ownership of lakebeds and for additional purpose of identifying waters over which Federal

government has paramount authority in regulation of navigation, and test does not determine riparian rights to water.

- [2] [Water Law](#)—Title and rights in general

Riparian rights arise from ownership of the shore, rather than ownership of the lakebed and do not depend upon navigability of the waters.

- [3] [Water Law](#)—Extent of right to use water in general

Riparian rights are subject to state regulation for public purposes, such as the regulation of navigation.

- [4] [Water Law](#)—Extent of right to use water in general

If a lake is navigable, a riparian owner has the right to use the entire surface for all suitable purposes in common with all riparian owners, both as a member of the public and as a riparian owner.

8 Cases that cite this headnote

- [5] [Water Law](#)—Reasonable use

An abutting or riparian owner of a lake, suitable for fishing, boating, hunting, swimming, and other uses, domestic or recreational, to which our lakes are ordinarily put in common with other abutting owners, has a right to make such

# Applicant Submittal

Johnson v. Seifert, 257 Minn. 159 (1960)

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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 exercise of similar rights on part of other abutting owners, regardless of navigable or public character of the lake and regardless of ownership of bed thereof, but same rule does not apply to minor bodies of water which have no over-all utility. (Overruling

 Lamprey v. Danz, 86 Minn. 317, 90 N.W. 578.)

31 Cases that cite this headnote

[6] **Water Law**—Extent of right to use water in general  
**Water Law**—Injunction

Where lake was suitable for uses to which lakes are ordinarily put in common among abutting owners, owner of portion of shore was, as a riparian right, entitled to use of entire surface, in common with other abutting owners and regardless of navigability of lake or ownership of lakebed, and was entitled to injunction against fence erected through lake on property line of defendants who owned most of shore line. (Overruling  Lamprey v. Danz, 86 Minn. 317, 90 N.W. 578.)

16 Cases that cite this headnote

[7] **Water Law**—Right to Flow, or to Raise and Set Back Water Onto, Another's Land

Riparian owner has obligation to do nothing to affect water level of lake so as to do substantial harm to another riparian owner.

[8] **Water Law**—Use for agricultural purposes

Each riparian lake owner has privilege to use water for beneficial purposes, such as irrigation, provided such use is reasonable in respect to

other riparian owners and does not unreasonably interfere with their beneficial use.

2 Cases that cite this headnote

[9] **Water Law**—Use for agricultural purposes

In action between plaintiff and defendants, riparian owners of lake shore, to enjoin defendants from removing water for irrigation, evidence supported finding that irrigation was a reasonable use of the riparian waters.

[10] **Water Law**—Rights to Use Water

Under circumstances presented in action by one riparian owner to enjoin another from interfering with use of surface and from withdrawing irrigation water from lakes, plaintiff-owner had acquired no prescriptive rights in the use of lakes or their beds.

6 Cases that cite this headnote

\*\***691** Syllabus by the Court

\***159** 1. Riparian rights are an incident, not of ownership of the bed of the lake, but of the ownership of the shore.

2. An abutting or riparian owner of a lake, suitable for fishing, boating, hunting, swimming, and other domestic or recreational uses to which our lakes are ordinarily put in common with other abutting owners, 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, regardless of the navigable or public character of the lake and regardless also of the ownership of the bed thereof.

# Applicant Submittal

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3. A minor body of water which by its nature and character reasonably has no overall utility common to two or more abutting owners would fall outside the foregoing rule.

4. Each riparian owner has the privilege to use the water for any beneficial purpose, such as irrigation, provided such use is reasonable in respect to other riparian owners and does not unreasonably interfere with their beneficial use.

5. Taking of water for irrigation purposes under the facts found here was a reasonable use.

## Attorneys and Law Firms

\*160 Thoreen, Thoreen & Lawson and Chester S. Wilson, Stillwater, for appellant.

Raymond A. Haik and Erickson, Popham & Haik, Minneapolis, amici curiae.

Karl G. Neumeier, Neumeier, Rheinberger & Eckberg, Stillwater, for respondents.

## Opinion

MATSON, Justice.

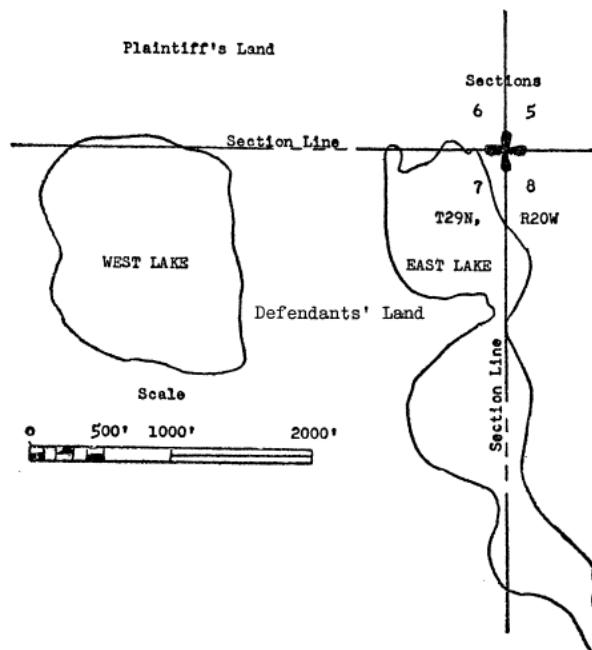
Appeal from a judgment determining rights of riparian owners to use of waters of intertract lakes.

The principal question raised by this appeal is whether the owner of a tract abutting on a lake, suitable for fishing, boating, hunting, swimming, and other domestic or recreational uses to which our lakes are ordinarily put in common with other abutting owners, has a right to make use of the lake over its entire surface, irrespective of whether the lake is navigable and irrespective of the ownership of the lakebed.

This was an action by plaintiff-appellant-to enjoin defendants from constructing and maintaining a fence through and across two lakes and from taking water from one of the lakes for irrigation purposes. The trial court found that the waters of each lake border partly on the land of plaintiff and partly on the land of defendants. Both lakes are unmeandered. Each lake is approximately 35 acres in area and neither has an inlet or outlet. The depth of one of the lakes, referred to in the record as the west lake, is approximately 32 feet at its deepest part. The depth of the other lake, referred to as the east lake, is not shown.

The west lake contains several species of fish, and the east lake is used for duck hunting. The section line dividing the property of plaintiff from that of defendants runs near the northern shoreline of each lake, so that approximately 5 percent of the water area of each lake is on plaintiff's side of the section line. Defendants own all the land surrounding the west lake, except as noted above, and own much of the land surrounding the east lake, although there are several parcels of land owned by others also abutting on that lake. There is no public access to either lake. Defendants have constructed a \*161 fence along the section line common to them and plaintiff through the bodies of both lakes so as to prevent plaintiff from having free access to the main body of either lake. The relative \*\*692 location of plaintiff's and defendants' land with respect to the two lakes is illustrated by the outline map herein reproduced as figure 1.

Figure 1



\*162 The trial court found that both lakes are and were in 1858 nonnavigable and that the beds thereof are privately owned. It decreed that the waters overlying each party's portion of the bed are the private property of the owner of the bed and subject to his complete and exclusive control, and that plaintiff had no right to fish, hunt, swim, water cattle, or otherwise trespass on the waters overlying that part of the beds belonging to defendants. It further found that defendants' sole obligation to plaintiff in connection

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with the lakes was not to lower or raise the level thereof so as to materially harm plaintiff's use thereof. It found that defendants' use of lake water for irrigation was reasonable. It further found that plaintiff had not established any right to use the lakes by reason of prescriptive easement.

Plaintiff contends that he has a right to use the entire surface of both lakes for \*\*693 such purposes as watering cattle, boating, swimming, fishing and hunting. With commendable foresight and prudence, plaintiff throughout this litigation has based his contention on more than one theory. His claim is based on the assertion, first, that the lakes are navigable and the beds thereof are owned by the state; second, that if the lakes are not navigable under the Federal test, the state test should be applied; third, that regardless of ownership of the bed, he has a riparian right to use the entire surface of the lakes for such purposes in common with other riparian owners; and fourth, that he has acquired a right to use the lakes for such purposes by reason of prescriptive use.

In view of our conclusion as to the applicability and the nature of the intertract riparian rights involved herein, it does not matter whether the beds of these lakes are privately owned, and therefore it does not matter whether the Federal or the state test of navigability should be applied to determine such ownership and the incidents thereof.

1. The principal question relates therefore to the nature of the rights of one owner of land abutting on a portion of an unmeandered, intertract lake to the use and enjoyment of the water and entire surface of such lake as against the rights of another such owner. No public rights are involved. The trial court cited as authority for its decision

 [Lamprey v. Danz, 86 Minn. 317, 90 N.W. 578, and State, by \\*163 Burnquist, v. Bollenbach, 241 Minn. 103, 63 N.W.2d 278.](#) Lamprey v. Danz, *supra*, was a suit to enjoin the defendant from shooting ducks over that part of a large but relatively shallow lake overlying lands owned by plaintiff, and from operating a boat on the surface thereof for the purpose of picking up ducks shot. In upholding the injunction order, this court stated that

 [86 Minn. 321, 90 N.W. 580:](#)

'It is elementary that every person has exclusive dominion over the soil which he absolutely owns; hence such an owner of land has the exclusive right of hunting and fishing on his land, and the waters covering it.'

During the nearly 60 years intervening since the Lamprey decision this question has not again arisen until the present case. The Lamprey case has been cited in only one subsequent Minnesota case involving lakes, that case being *State, by Burnquist, v. Bollenbach, supra*, which involved the right of the state, under a condemnation statute, to condemn a public access to a lake completely surrounded by the land of one owner. This court there held that the lake was nonnavigable and that the bed was owned by the abutting landowner. From this it was concluded, following the Lamprey case, that the waters thereof were also private property, and that the lake was not a public lake to which the state had power to condemn such an access. No question of riparian rights was involved since there was but one owner. This is clear from the statement of the issue in that case ([241 Minn. 118, 63 N.W.2d 288](#)):

'Thus the issue in its simplest terms is whether, under the federal test, the evidence sufficiently established Five Lake to be navigable in fact in 1858, for, if it was not navigable in fact at that time, it conclusively and correctly follows that Five Lake is not navigable at law; that respondent Bollenbach is the owner of the fee to the bed of Five Lake; And that those waters are private waters upon which the public has no right to hunt and fish.' (Italics supplied.)

The citation of the Lamprey case in the Bollenbach case was solely for the proposition that the right to hunt and fish is an incident of ownership of the soil. The quotation from that case was particularly [\\*164](#) apt because it also involved the question of rights in waters overlying privately owned lakebed land, and thus was in point as authority for the proposition that the waters, as well as the land, were privately owned. But there was no question in the [\\*\\*694](#) Bollenbach case as to the respective Private hunting and fishing rights of two or more shore owners in an intertract lake since all the land surrounding and underlying the lake was owned by one person.

In view of the pronouncements of this court in other decisions,<sup>1</sup> as well as in view of the ever-increasing significance of the customary use of lake waters of this state (irrespective of whether the lakes are meandered or unmeandered<sup>2</sup> and irrespective of whether they be navigable or nonnavigable), it becomes desirable to reexamine the theory upon which *Lamprey v. Danz, supra*, was decided in 1902. That case involved the right of use of an unmeandered and shallow 500-acre body of water known as Howard Lake. Danz, as lessee, was in possession of 6 acres which included a part of the lake. Lamprey's lands embraced the remainder of the lake.

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According to unchallenged findings of fact, it appears that it was always possible to pole or row a small boat on the lake, but owing to the character of the shores and the bottom, and because of the heavy growth of wild rice therein, it was impracticable if not impossible for the public to use the lake for boating, sailing, bathing, or skating, and it had never been used by the public except for the purpose of hunting ducks. Despite the fact that the sole issue involved the respective rights of two abutting landowners to the use of the entire waters of the lake, this court held that No riparian rights were involved, and then concluded that Lamprey as owner of the soil beneath the lake waters had absolute supremacy and \*165 control of the waters as if they were solid land and that he had therefore the exclusive right of hunting and fishing in and on said waters. The basic error of the Lamprey case-irrespective of whatever other errors are embraced therein-is that no riparian rights were involved.

[1] [2] [3] Any assumption that a lake-whether it be meandered or not-whose shore is owned by more than one tract owner does not involve riparian rights unless it is navigable under the Federal test of navigability is wholly untenable and must be rejected. It is not to be overlooked that the Federal test of navigability is designed for the narrow purpose of determining the ownership of lakebeds,<sup>3</sup> and for the additional purpose of identifying waters over which the Federal government is the paramount authority in the regulation of navigation.<sup>4</sup> Whether waters are navigable has no material bearing on riparian rights<sup>5</sup> since such rights do not arise from the ownership of the lakebed but as an incident of the ownership of the shore.<sup>6</sup>

That riparian rights do not stem from the ownership of the lakebed but from shore ownership, and that the ownership of the lakebed does not carry with it a right of control over the overlying waters, has been clearly indicated by our more recent decisions. \*\*695 In [Petraborg v. Zontelli, 217 Minn. 536, 547, 15 N.W.2d 174, 180](#), which involved a navigable lake, we said:

'As to a public lake, a mutual right of enjoyment exists between and is shared by riparian owners and the public generally. Insofar as such recreational benefits as boating, hunting, and fishing therein, the riparian proprietor has no exclusive privileges. [Sanborn v. People's Ice Co., 82 Minn. 43, 50, 84 N.W. 641, 642, \\*166](#) 51 L.R.A. 829, 83 Am.St.Rep. 401, where we said, however, with reference to the vested interests of the shore owners:

"\* \* \* There are certain interests and rights vested in the shore owner which grow out of his special connection with such waters as an owner. These rights are common to all riparian owners on the same body of water, and they rest entirely upon the fact of title in the fee to the shore

land.'

'To say that a shore owner does not have additional private rights and interests distinct from the public is to ignore completely those rights which attach by reason of his shore ownership.' (Italics supplied.)

In discussing the Petraborg case in [State v. Adams, supra](#), this court speaking through Mr. Commissioner Magney stated ([251 Minn. 546, 89 N.W.2d 678](#)):

\* \* \* The decision was based exclusively upon the ground that riparian owners had the right to the maintenance of the waters in their natural condition. That right must exist whether a body of water be navigable or nonnavigable. \* \* \* The ownership of beds of streams and lakes is quite a different matter from the right to control waters.' (Italics supplied.)

Upon petition for rehearing in the Adams case, Mr. Justice Thomas Gallagher made it clear again ([251 Minn. 560, 89 N.W.2d 687](#)) that a determination of the ownership of the lakebed did not involve a determination of the right of control of the overlying waters.

[4] Under our decisions there could be no dispute that if the lakes involved herein were navigable or public lakes plaintiff would have the right to use the entire surface of the lake for all suitable purposes in common with all other riparian owners. This right would not be his merely as a member of the public but as a riparian owner of the sharehold. We can see little logic in a rule of law which would restrict such riparian rights because the riparian owner happens to own not only shoreland but also a part of the bed of the lake. Illogical as the rule may be, it must be conceded that a few states have taken the position that ownership of the bed of a nonnavigable or private lake carries with it complete and exclusive control and ownership of the overlying waters, but for the most part these states have few lakes or rivers of \*167 any value either to the public or to riparian owners. Significantly, however, states which like Minnesota have extensive waters of recreational or commercial value hold that an abutting or riparian owner has a right of reasonable use of the entire overlying water, and no distinction is made between navigable and nonnavigable, meandered or unmeandered, or public or private lakes.

The Supreme Court of Michigan in [Beach v. Hayner, 207 Mich. 93, 95, 173 N.W. 487, 488, 5 A.L.R. 1052](#), which involved an injunction to prevent trespass, stated the issue as follows:

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'The important legal question involved in the case is whether or not, where more than one person owns the bed of an inland pond with neither outlet nor inlet, can one owner exclusively use and control his property against the trespass of the public who claim to have a license from the other \*\*696 owners of land in the lake, to go thereon?'

The Michigan court then quoted with approval from a dissenting opinion in a prior Michigan case, [Sterling v. Jackson, 69 Mich. 488, 508, 37 N.W. 845, 856](#), as follows:

'It is the law of this state that the riparian owner on any kind of water has presumptively the right to such uses in the shores and bed of the stream as are compatible with the public rights, if any exist, or with private rights, connected with the same waters. \* \* \* if, which does not often happen, there is any occasion for making partition of the surface, it can only be reached by some measure of proportion requiring judicial or similar ascertainment, and not by running lines from the shore. Small and entirely private lakes are sometimes divided up for such purposes as require separate use; but for uses like boating, and similar surface privileges, The enjoyment is almost universally held to be in common. This was held by the house of lords in [Menzies v. Macdonald, 36 Eng. Law & Eq. 20](#). It was there held that for all purposes of boating and fishing, the whole lake was open to every riparian owner; while for such fishing as required the use of the shore, each was confined to his own land for drawing seines ashore, and the like uses.' (Italics supplied.)

The court went on to say ([207 Mich. 98, 173 N.W. 489](#)):

\*168 \* \* \* we are of the opinion that the judge was right in holding that, where there are several riparian owners to an inland lake, such proprietors and their lessees and licensees may use the surface of the whole lake for boating and fishing, so far as they do not interfere with the reasonable use of the waters by the other riparian owners.'

A recent Florida decision, [Duval v. Thomas, Fla.App., 107 So.2d 148](#), affirmed, [Fla., 114 So.2d 791](#), involved, as in the instant case, the issue of whether the owner of a portion of the bed of a nonnavigable, landlocked lake has the right to exercise Exclusive dominion and control of the overlying waters. One of the defendants had built a fence through the lake along the boundary line of plaintiffs' property and the other defendant had built an obstruction along the other boundary line in the lake so as to effectively prevent the plaintiffs from gaining access to that prior of the lake overlying the lands of the defendants. In holding that the plaintiffs had the right to use the entire lake for boating and fishing, the court stressed the practical necessity and desirability of reasonable common use among riparian owners in a state which has over 30,000 lakes.<sup>7</sup>

Other jurisdictions likewise hold that an abutting owner on a nonnavigable lake has the right to use the entire surface of the lake for all suitable and reasonable purposes in common with all other riparian owners.<sup>8</sup>

[5] [6] 2-3. In the light of the foregoing we expressly overrule [Lamprey v. Danz, 86 Minn. 317, 90 N.W. 578](#),<sup>9</sup> and hold that and abutting or \*169 riparian owner of a lake, suitable for fishing, boating, hunting, swimming, and other uses, domestic or recreational, \*\*697 to which our lakes are ordinarily put in common with other abutting owners, 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, regardless of the navigable or public character of the lake and regardless of the ownership of the bed thereof.<sup>10</sup> It does not follow that the foregoing riparian-rights rule applies to every pothole or swamp frequented by wild fowl and over which a small boat might be poled to retrieve game, but which as a practical matter does not lend itself in any substantial degree to the customary propulsion of boats by outboard motors or oars. A minor body of water which by its nature and character reasonably has no overall utility common to two or more abutting owners would fall outside the rule. No hard-and-fast line can be drawn and each case must be determined according to its own peculiar facts.<sup>11</sup>

[7] [8] [9] 4-5. The trial court found that there was a duty to maintain the water level of the west lake and not to unreasonably lower such water level by irrigation use. The court stated that this was not a riparian right but rather something akin to the right of lateral support. While we cannot agree with the trial court's basis for this duty, we do agree that such a duty exists as a riparian obligation. One of the incidents of riparian ownership is the obligation to do nothing which affects the water level

# Applicant Submittal

Johnson v. Seifert, 257 Minn. 159 (1960)

100 N.W.2d 689

of the lake so as to do substantial harm to another riparian owner. See, Petraborg v. Zontelli, *supra*. Each riparian owner has the privilege to use the water for any beneficial purpose, such as irrigation, provided such use is reasonable in respect to other riparian owners and does not unreasonably interfere with their beneficial use.<sup>12</sup> We hold \*170 that the evidence supports the trial court's conclusion that the use made here for irrigation was in all respects a reasonable use of riparian waters.

[10] We also affirm that part of the trial court's determination excluding any prescriptive rights in the use of the lakes or their beds for any purpose under the facts presented. Although this question is largely immaterial under our disposition of the case, it might become significant if the lakes in question should at some time in the future recede beyond plaintiff's land so that his riparian rights would be eliminated or suspended.<sup>13</sup>

The judgment of the trial court is reversed in so far as it denies plaintiff the right to use the entire surface of both lakes for purposes such as fishing, boating, hunting, swimming, and other similar domestic or recreational uses. The decision is affirmed, however, in so far as it permits defendants to use the lake waters for irrigation subject to the proviso that such right of use must be exercised reasonably so as not to lower the water levels to the plaintiff's detriment.

Reversed in part and affirmed in part.

## All Citations

257 Minn. 159, 100 N.W.2d 689

## Footnotes

<sup>1</sup> See, Petraborg v. Zontelli, 217 Minn. 536, 15 N.W.2d 174;  State v. Adams, 251 Minn. 521, 546, 560, 89 N.W.2d 661, 678, 687, certiorari denied, 358 U.S. 826, 79 S.Ct. 45, 3 L.Ed.2d 67.

<sup>2</sup> The existence or nonexistence of meander lines has no bearing upon the issue of navigability. As to the true purpose of meander lines, see  State v. Adams, 251 Minn. 521, 560, 89 N.W.2d 661, 687, certiorari denied, 358 U.S. 826, 79 S.Ct. 45, 3 L.Ed.2d 67; Lamprey v. State, 52 Minn. 181, 192, 53 N.W. 1139, 1140, 18 L.R.A. 670; Roch v. Urlaub, 357 Mich. 261, 98 N.W.2d 509; 24 Minn.L.Rev. 305, 306.

<sup>3</sup> See, State v. Adams, *supra*.

<sup>4</sup> See,  Nelson v. DeLong, 213 Minn. 425, 433, 7 N.W.2d 342, 347.

<sup>5</sup> Riparian rights are of course subject to state regulation for public purposes such as the regulation of navigation.  Nelson v. DeLong, 213 Minn. 425, 7 N.W.2d 342;  State v. Korrer, 127 Minn. 60, 148 N.W. 617, 1095, L.R.A.1916C, 139; Meyers v. Lafayette Club, Inc., 197 Minn. 241, 266 N.W. 861; Petraborg v. Zontelli, 217 Minn. 536, 15 N.W.2d 174; 56 Am.Jur., Waters, s 289.

<sup>6</sup> State v. Korrer, *supra*;  Collins v. Gerhardt, 237 Mich. 38, 211 N.W. 115; 56 Am.Jur., Waters, ss 273, 274.

<sup>7</sup> See 5 U. of Fla.L.Rev. 166 for excellent note on extent of private rights in nonnavigable lakes.

<sup>8</sup> Other decisions so holding are:  Snively v. Jaber, 48 Wash.2d 815, 296 P.2d 1015, 57 A.L.R.2d 560;  Greisinger v. Klinhardt, 321 Mo. 186, 9 S.W.2d 978;  Improved Realty Corp. v. Sowers, 195 Va. 317, 78 S.E.2d 588; State Game and Fish Commission v. Louis Fritz Co., 187 Miss. 539, 193 So. 9;  Harris v. Brooks, 225 Ark. 436, 283 S.W.2d 129, 54 A.L.R.2d 1440;  Burt v. Munger, 314 Mich. 659, 23 N.W.2d 117; Kerley v. Wolfe, 349 Mich. 350, 84 N.W.2d 748; Taylor v. Tampa Coal Co., Fla., 40 So.2d 392.

<sup>9</sup> State, by Burnquist, v. Bollenbach, *supra*, was not decided on any theory involving riparian rights.

# Applicant Submittal

Johnson v. Seifert, 257 Minn. 159 (1960)

100 N.W.2d 689

<sup>10</sup> See, 3 S.D.L.Rev. 109.

<sup>11</sup> As to riparian rights in an artificially created body of water, see  Greisinger v. Klinhardt, 321 Mo. 186, 9 S.W.2d 978; 3 Farnham, Waters and Water Rights, s 820.

<sup>12</sup> Red River Roller Mills v. Wright, 30 Minn. 249, 15 N.W. 167; Pinney v. Luce, 44 Minn. 367, 46 N.W. 661; St. Anthony Falls Water-Power Co. v. City of Minneapolis, 41 Minn. 270, 43 N.W. 56; 21 Minn.L.Rev. 512, 522; Meyers v. Lafayette Club, Inc., 197 Minn. 241, 266 N.W. 861.

<sup>13</sup> There may be a distinction between a riparian owner's right to accretions and relictions when the lakebed is privately owned and when the lakebed is owned by the sovereign. See, Lamprey v. State, 52 Minn. 181, 198, 53 N.W. 1139, 1143; 56 Am.Jur., Waters, s 490.

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**LAKE MINNETONKA  
CONSERVATION DISTRICT  
PUBLIC HEARING NOTICE  
7:00 PM, OCTOBER 26, 2022**

**Dennis G. Nelson**

**135 Mound Ave,**

**Tonka Bay, MN 55331**

**Gideons Bay, Lake Minnetonka**

The Lake Minnetonka Conservation District (LMCD) will hold a public hearing to consider an application from Dennis G. Nelson of 135 Mound Ave, Tonka Bay to adjust the residential site's dock use area to include a fire lane of the City of Tonka Bay and a variance. All interested persons will be given an opportunity to comment. Details are available at the LMCD Office, 5341 Maywood Road, Suite 200, Mound, MN 55364 or by calling (952) 745-0789.

The meeting will be held at Wayzata City Hall, 600 Rice Street E, Wayzata, MN 55391. Information about meeting location and meeting logistics will be available on the LMCD website, [www.lmcd.org](http://www.lmcd.org). Details are available at the LMCD Office, 5341 Maywood Road, Suite 200, Mound, MN 55364 or by calling (952) 745-0789

**Published in the**

**Sun Sailor**

**October 13, 2022**

**1264450**



## LAKE MINNETONKA CONSERVATION DISTRICT

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

**DATE:** October 13, 2022

**TO:** Property Owner 

**FROM:** Thomas Tully, Environmental Administrative Technician  
Vickie Schleuning, Executive Director

**SUBJECT:** Public Hearing Notice- Variance 135 Mound Avenue, Tonka Bay, Gideons Bay

You are receiving this notice since Hennepin County property records indicate you own or reside upon property within 350 feet of a site being considered for a variance for an adjusted dock use area including side setback adjustments. The Lake Minnetonka Conservation District (LMCD) will hold a public hearing to consider the variance application. The site is located at 135 Mound Avenue in Tonka Bay and has shoreline on Gideons Bay. The applicants are Dennis G. Nelson and Barbra Franta of 135 Mound Avenue, Tonka Bay, 55331.

The applicant proposes to adjust the dock use area for the site as well as the setbacks to include use of a City of Tonka Bay fire lane adjacent to the property. All interested persons will be given an opportunity to comment. An aerial image and proposed site plan are enclosed for your reference.

### Public Hearing Information

A public hearing will be held at 7:00 PM, October 26, 2022. The items detailed above will be reviewed and considered for approval. All interested persons will be given an opportunity to comment. Alternatively, please submit comments in writing to the LMCD (address below) or by emailing staff at [lmcd@lmcd.org](mailto:lmcd@lmcd.org).

Those desiring to participate in the hearing may also email the Executive Director at [vschleuning@lmcd.org](mailto:vschleuning@lmcd.org) for information. The meeting place is Wayzata City Hall, 600 Rice Street, Wayzata, MN 55391. Information about meeting logistics will be available on the LMCD website, [www.lmcd.org](http://www.lmcd.org).

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

# ITEM 10B



## LAKE MINNETONKA CONSERVATION DISTRICT

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

**DATE:** October 26, 2022 (Prepared October 20, 2022)

**TO:** Board of Directors  


**FROM:** Thomas Tully, Environmental Administrative Technician

**THROUGH:** Vickie Schleuning, Executive Director

**SUBJECT:** New Multiple Dock License, 540 Big Island, Orono; Lower Lake South  
Continued to November 9, 2022

Per a request by the applicant, Shawn Wischmeier, the public hearing to consider a new multiple dock license for 540 Big Island will be continued to the November 9, 2022 LMCD Board meeting due to a scheduling conflict. Because of the timeliness of the notification, the public notice provided to the adjacent properties within 350 feet included the updated schedule. A copy of the public hearing mailing notice is attached.



## LAKE MINNETONKA CONSERVATION DISTRICT

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

**DATE:** October 13, 2022

**TO:** Property Owner 

**FROM:** Thomas Tully, Environmental Administrative Technician  
Vickie Schleuning, Executive Director

**SUBJECT:** Public Hearing Notice – 540 Big Island, Orono, Lower Lake South

You are receiving this notice because Hennepin County property records indicate you own and/or reside upon property within 350 feet of a property being considered for a new multiple dock license. The LMCD will hold a public hearing to consider the application.

The applicant, Shawn Wischmeier, has submitted a revised application for a new residential multiple dock license for 540 Big Island in Orono (PID 22-117-23-42-0001). The previous application in October 2021 included a variance request for length, which is no longer needed for the new proposal. The new proposal includes a shorter dock length. The applicant proposes to store nine (9) watercraft at the site. The site has approximately 475 feet of shoreline (929.4-foot elevation contour / OHW).

The proposed dock extends to a maximum of approximately 100 feet from the 929.4 OHW. Further, the proposal would meet LMCD Code requirements for side setbacks and watercraft density.

An aerial image of the site is enclosed. The aerial image was made using the Hennepin County interactive property map. The site is outlined in red and indicated by a red line and red text. The proposed site plan, as submitted by the applicant, is also enclosed with this notice. Please contact the LMCD office if you have questions regarding the application or documents provided

### Public Hearing Information

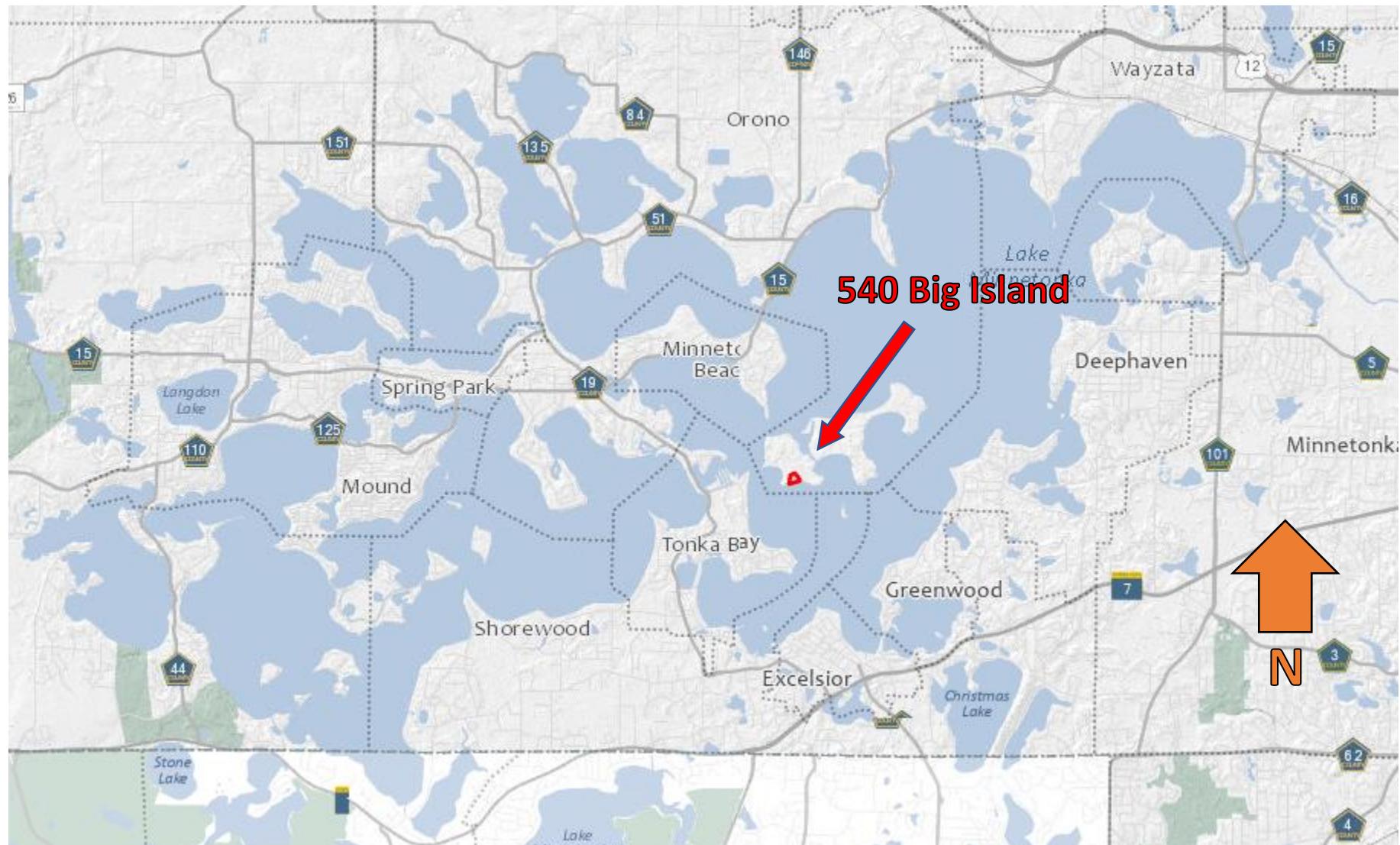
A public hearing was originally scheduled for October 26, 2022, but the public hearing will be continued and held at **7:00 PM, on November 9, 2022** as requested by the Applicant due to a scheduling conflict. The items detailed above will be reviewed and considered for approval. All interested persons will be given an opportunity to comment. Alternatively, please submit comments in writing to the LMCD (address below) or by emailing staff at [lmcd@lmcd.org](mailto:lmcd@lmcd.org).

Those desiring to participate in the hearing may also email the Executive Director at [vschleuning@lmcd.org](mailto:vschleuning@lmcd.org) for information. The meeting place is Wayzata City Hall, 600 Rice Street, Wayzata, MN 55391. Information about meeting logistics will be available on the LMCD website, [www.lmcd.org](http://www.lmcd.org).

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

540 Big Island, Orono | MDL VAR Applications

For illustrative purposes only. Taken from Hennepin County Locate & Notify Map 10/26/2021.



540 Big Island, Orono | MDL VAR Applications

For illustrative purposes only. Taken from Hennepin County Locate & Notify Map 10/26/2021. Aerial imagery appears to be from 2020.



540 Big Island, Orono | MDL VAR Applications

For illustrative purposes only. Taken from Hennepin County Locate & Notify Map 10/26/2021. Aerial imagery appears to be from 2020.



RECEIVED  
AUG 26 2022  
By

CERTIFICATE OF SURVEY FOR  
**KELLY AND SHAWN WISCHMEIER**  
IN LOTS 1-10 AND VACATED ROADS, KATE B. PLUMMERS SUBDIVISION  
OF LOT 2, KITCHEL'S SUBDIVISION OF GOV'T LOTS 5 & 6,  
SEC. 22, T. 117 N., R 23 W.  
HENNEPIN COUNTY, MINNESOTA

LEGAL DESCRIPTION OF PREMISES:  
Lots 1 to 10 inclusive including the adjoining vacated  
Elm Street and Maple Place, also including the adjoining half  
of vacated Linden Street, all in Kate B. Plummer's Subdivision of  
Lot 2, Kitchel's Subdivision of Government Lots 5 & 6, Section  
22, Township 117 N., Range 23 W.

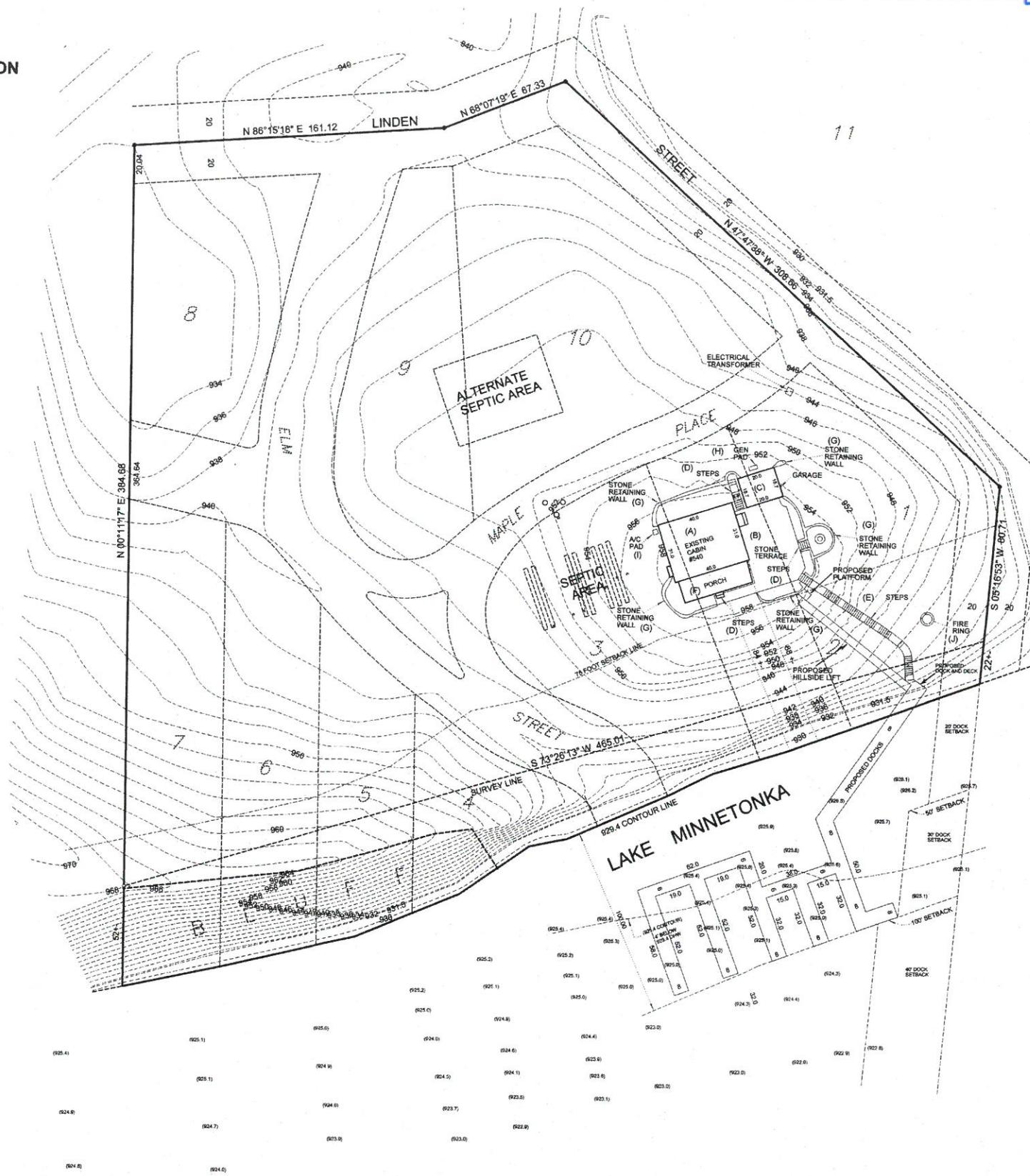
This survey shows the boundaries of the above described property,  
the topography of the land, and the location of an existing deck and shed  
thereon. It does not purport to show any other improvements  
or encroachments.

• Denotes iron marker found  
○ Denotes iron marker set  
Existing contour line

Bearings shown are based upon an assumed datum



0 30 60 120  
SCALE IN FEET



<b>GRONBERG &amp; ASSOCIATES, INC.</b>	
CIVIL ENGINEERS, LAND SURVEYORS, LAND PLANNERS	
445 N. WILLOW DRIVE LONG LAKE, MN 55356	
PHONE: 952-473-4141 FAX: 952-473-4435	
DATE	10-31-19
DESIGNED	10-31-19
DRAWN	10-31-19
CHECKED	10-31-19
REVISIONS	REMARKS
6-12-20	SHORELINE ADJUSTED PER ADDNL SHOTS
9-10-21	ADDED PROPOSED DOCKS
9-17-21	REVISED PROPOSED DOCKS
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7-21-22	REVISED PROPOSED DOCK
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DESIGNED	10



## ITEM 13A

### LAKE MINNETONKA CONSERVATION DISTRICT

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

**DATE:** October 26, 2022 (Prepared October 20, 2022)

**TO:** LMCD Board of Directors

**FROM:** Vickie Schleuning, Executive Director  
*Vickie Schleuning*

**SUBJECT:** Authorization of Draft RFP and Materials for Civil Attorney Legal Services

#### **ACTION**

---

Board feedback and authorization of Draft Request for Proposal (RFP) and Materials for Civil Attorney Legal Services.

Approval:

I make a motion to authorize the Executive Director to begin the RFP process including the RFP document and materials for Civil Attorney Legal Services <or with the following changes>.

Denial:

I make a motion to deny authorization of Draft RFP and Materials for Civil Attorney Legal Services.

#### **BACKGROUND**

---

On September 30, 2022, Kennedy & Graven Chartered law firm provided a 60-day written notice of termination of the Agreement of Legal Services effective November 29, 2022.

Given the important function of these legal services to the organization and stakeholders, a draft RFP to secure Civil and Legal Services Attorney for 2022/2023 was subsequently prepared and sent to the Board by email October 13, 2022 for preliminary review. A copy is attached for official Board input and action. The draft RFP posting is also attached for review.

In 2015, the LMCD conducted an RFP process for civil attorney legal services. The process included appointing a Selection Committee to spearhead the process, which consisted of the LMCD Board Officers, two additional Board members, and the LMCD Executive Director. A table outlining the suggested selection process and timeframe is provided below.

<b>ACTION</b>	<b>DATE</b>
<b>Post RFP</b>	October 28, 2022
<b>RFP Submittal of Questions Deadline</b>	November 11, 2022

RFP for Civil Attorney Legal Services  
LMCD Board Meeting  
October 26, 2022

<b>RFP Submittal Deadline</b>	November 23, 2022, by 3 p.m.
<b>Evaluation of Submitted RFPs by Selection Committee</b>	November 30, 2022
<b>Proposal Interviews by Selection Committee</b>	December 7, 2022
<b>Approval by LMCD Board of Directors</b>	December 14, 2022

**CONSIDERATIONS**

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- Does the Board wish to continue this position as a contract basis?
- Does the Board have any feedback regarding the draft RFP?
- Does the Board have any feedback regarding the process and timing?
- Are there any Board members that would like to volunteer to be part of the Selection Committee?
- Other?

**BUDGET**

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N/A

**STRATEGIC PRIORITIES**

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

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1. LMCD Legal Services RFP Draft
2. RFP Cover Letter
3. Draft RFP Posting



# LAKE MINNETONKA CONSERVATION DISTRICT

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

October 28, 2022

«MrMrs» «Contact\_»  
«Title»  
«Firm»  
«Address»  
«City\_MN\_Zip»

Dear «MrMrs»«Greetings»:

RE:     Solicitation of RFPs for 2022/2023 LMCD Civil Attorney Legal Services

The Lake Minnetonka Conservation District (LMCD) is seeking qualified law firms to submit proposals to serve as the LMCD's civil and legal services attorney in 2022/2023. On October 26, 2022, the LMCD Board of Directors approved the Request for Proposals (RFP) for this service. The LMCD invites you to submit an RFP for this important advisory position. The anticipated timeline is provided below.

Action	Date
Post RFP	October 28, 2022
RFP Submittal of Questions Deadline	November 11, 2022
RFP Submittal Deadline	November 23, 2022 at 3 p.m.
Evaluation of Submitted RFPs by Selection Committee	November 30, 2022
Proposal Interviews by Selection Committee	December 7, 2022.
Approval by LMCD Board of Directors	December 14, 2022

If you have any questions, I am available to field those questions through the process established under Section 3 (C), "Instructions to Proposers" within the RFP. We look forward to hearing from you.

Sincerely,

Vickie Schleuning, MBA, REHS  
Executive Director

Enc. - RFP Guideline



# Lake Minnetonka Conservation District

## REQUESTS FOR PROPOSALS FOR CIVIL ATTORNEY LEGAL SERVICES

2022/2023

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

**Submission Deadline: November 23, 2022, at 3:00 p.m.**  
Posted: October 28, 2022

# **REQUEST FOR PROPOSALS FOR CIVIL ATTORNEY LEGAL SERVICES**

**Submissions Due: November 23, 2022**

The Lake Minnetonka Conservation District (LMCD) is soliciting proposals for civil attorney legal services from qualified law firms. Preference will be given to those submittals demonstrating experience in this area of municipal and water resources law. The successful applicant(s) shall possess sufficient resources to ensure that the demands for the LMCD's legal needs will be met on a timely basis. The relationship would be on a consulting or contractual basis, as opposed to a staff position and the LMCD will be awarding an annual renewal of the contract. Included in this Request for Proposal (RFP) is a more detailed description of the services to be provided, an outline of the proposal requirements, a description of the proposal review process, and a description of required contract ethics.

## **1. PURPOSE**

The Lake Minnetonka Conservation District (LMCD) is requesting proposals from firms experienced in municipal and water resources law to provide civil legal services to the LMCD in 2022/2023. Preference will be given to those submittals that demonstrate experience in these areas. As LMCD Civil and Legal Services Attorney (LMCD Attorney), the selected law firm will be expected to provide a wide range of legal services as described throughout this RFP. The LMCD Attorney will be appointed by the LMCD Board of Directors and will work under the direction of the Executive Director.

## **2. BACKGROUND**

The LMCD was created under Minnesota State enabling legislation in 1967 and was granted a wide variety of powers under Minnesota Statutes 103B.611 to manage Lake Minnetonka. The LMCD is governed by a Board of Directors composed of one member appointed by each of the governing bodies of the municipalities surrounding the district within two counties. Those governing bodies include the cities of Deephaven, Excelsior, Greenwood, Minnetonka, Minnetonka Beach, Minnetrista, Mound, Orono, Shorewood, Spring Park, Tonka Bay, Victoria, Wayzata, and Woodland. The LMCD has 3.8 Full Time Equivalent employees.

The jurisdiction of the LMCD is considered the ordinary high-water mark for Lake Minnetonka (929.4 feet NGVD). This jurisdiction includes 14,043 acres of usable water surface and 125 miles of shoreline on Lake Minnetonka.

Over the years, the LMCD has established a comprehensive Code of Ordinances unique to Lake Minnetonka. Some of these ordinances include: 1) dock placement and boat density restrictions (licensed and unlicensed sites), 2) regulation of watercraft and other craft/vehicles during the summer and winter (e.g., speed limits and watercraft for hire), 3) environmental regulations, and 4) liquor regulations (for licensed watercraft for hire/charters). Activities that are permitted or licensed by the LMCD include: multiple dock and district mooring area facilities, watercraft for hire (with associated liquor, wine, or beer licenses), de-icing facilities, and temporary structures or special event licenses (case-by-case basis). The LMCD partners with the Hennepin County Sheriff's Office (working closely

with the Water Patrol unit), prosecuting attorney, and municipalities in the enforcement of the LMCD regulations.

### **3. INSTRUCTIONS TO PROPOSERS**

- A. All proposals must include complete information as described within this RFP and be submitted no later than November 23, 2022, 3:00 p.m. Submit proposals to:

Vickie Schleuning, Executive Director  
Lake Minnetonka Conservation District  
5341 Maywood Road, Suite 200  
Mound, MN 55364  
(952) 745-0789  
[vschleuning@lmcd.org](mailto:vschleuning@lmcd.org)

- B. One (1) electronic copy of the proposal must be submitted, along with two (2) hard copy mailed to the Office. The copies shall be sealed and clearly identified with the title "LMCD Civil Attorney RFP."
- C. The proposer shall designate one contact person who will be the representative of the law firm to which the LMCD will respond. In order to ensure a fair review and selection process, firms submitting a proposal are requested to not contact LMCD Board members or staff regarding these proposals. Questions pertaining to the RFP should be directed to the LMCD Executive Director Vickie Schleuning at 952-745-0789 or [vschleuning@lmcd.org](mailto:vschleuning@lmcd.org). Questions and responses may be sent to RFP participants, via email under blind copy, for clarification purposes.

### **4. SCOPE OF WORK**

Other than the knowledge of municipal and riparian law, the LMCD Attorney will also be required to advise in a variety of areas such as: 1) the LMCD's scope of financial investments, 2) the development and interpretation of ordinances and resolutions, 3) contract and environmental law (including advising on insurance and performance/payment bonds); 4) zoning, housing, land use and subdivision law, and 5) riparian rights and associated case law. The following list is an attempt to identify the LMCD Attorney's services or requirements (not all encompassing):

- Attendance at LMCD Board of Director meetings (second and fourth Wednesday of each month) at 7:00 p.m. and some Work Sessions starting at 6:00 p.m. Meeting elimination or adjustments may occur due to holidays or special meetings.
- Routine legal opinions and support via telephone, emails, and personal consultations, with the LMCD Staff, and periodically Board of Directors.
- Represent the LMCD in resolving claims or disputes against the LMCD in accordance with insurance policies and state law.
- Assistance in the preparation and review of ordinances, Findings of Fact and Order, resolutions, agreements, contracts, forms, notices, and other documents required by the LMCD.
- Attendance at LMCD committee meetings as requested by the LMCD Board of Directors or Executive Director.
- Attendance at LMCD staff driven meetings as requested.

- Facilitate annual training session(s) for LMCD Board of Directors and staff. Training sessions could include the LMCD Code, Open Meeting Law, Public Gift Law, Conflict of Interest Law, and Minnesota Data Practices Laws, legislation, and other legal matters as requested.

## 5. PROPOSAL CONTENT

The proposal must include the following items to address the scope of work in Section 4. The proposal must be consecutively organized and should not exceed 25 pages in length. Resumes and licenses are not included in this page count.

- A. Title Page:** Include the RFP subject, name of the respondent's firm, address, telephone number, e-mail, name of contact person authorized to represent the proposer, and the date.
- C. Executive Summary:** Introduce the proposal and summarize the key provisions of the proposal. Provide a statement describing why the proposer is qualified to perform this work and name the qualifications of the individual who would serve as the LMCD Attorney.
- D. Statement of Understanding:** Include a detailed statement of understanding of the LMCD Attorney's services to be provided. If there are services listed in this RFP that the law firm will not be able to provide, describe those services in this section.
- E. Firm Background:** Include information on the following:
  - Brief history of the firm including the nature of the firm's practice.
  - Number of attorneys, partners, associates, and areas of specialty.
  - Provide an overview of capabilities, qualifications, training, areas of specialization of each attorney, partner, and/or associate.
  - Office location(s).
  - Support staff services available (clerical, paralegals, and other non-attorney staff).
  - Current use of technology, capability for computerized legal research, and for sharing/editing documents electronically.
  - State if the firm or any of the attorneys employed by the firm have ever been sued by cities or other clients for malpractice, been the subject of complaints filed with the State Bar, or had discipline imposed by the State Bar within the past five years. Please provide information about the nature of the incident, the dates of when the matter began and was concluded, and the results of the situation.
  - Describe malpractice insurance coverage: carrier, limits, and exemptions and provide a copy of Malpractice/Liability Insurance Certificate in a minimum amount of \$2,000,000.
  - Statement of compliance with federal and state laws pertaining to and respecting civil rights.
- F. Attorney Qualifications:** Name the person whom you propose to designate as the LMCD lead attorney and as alternative LMCD Attorney(s) in his or her absence. Provide the following for each:

- Certificates or licenses (including the number and date of admission to the Minnesota Bar Association).
- Description of education (including name of educational institution(s) and degrees conferred).
- Professional background and associations.
- Experience and knowledge with municipal law.
- Experience and knowledge of riparian, public waters, and protection of water resources law.

**G. LMCD/Attorney Relationship:** Provide information on the following:

- Provide a statement of how the workload of the LMCD would be accommodated and what kind of priority it would be given. Be sure to address items outlined in the scope of services section.
- Describe your legal library and research capabilities, with specific emphasis on municipal law and water resources publications, computer links, and the firm's capability to maintain a proposed response time for legal reports and memorandums, and response to individual LMCD inquiries, projects, research, or litigation.
- Describe the process that would be established for monthly invoicing.

**H. References:** – Provide a reference list of three (3) recent (within five years) municipal or water resource clients. If these clients are not available, other major clients may be submitted. Particular attention will be given to municipal and natural resource client references. Please provide contact information including, address, phone number and e-mail address.

**I. Conflict of Interest Statement:** Provide information on the following:

- List all public clients for whom the firm currently provides services under a fee or retainer basis. Indicate the services provided. Identify any potential conflicts of interest that could result from such representation and the manner in which the firm would propose to resolve such conflicts.
- For the person to be designated as LMCD Attorney, list all public clients that person presently represents, along with the meeting dates and times for each governing body.
- List all private clients that could potentially pose a conflict of interest with the firm's representation of the LMCD including, but not limited to, board members or marina owners, understanding that the specific parties are subject to change. Describe how your firm would mitigate any potential conflict to best serve the LMCD, Lake Minnetonka, and all stakeholders.
- Identify all situations in the last five years in which the firm has been adverse to public entities, either in litigation or administrative matters.
- Indicate what procedures your firm would utilize to identify and resolve conflicts of interest.

**J. Additional Information:** Any other information the proposer feels is applicable to the evaluation of the proposal, including qualifications for accomplishing the legal services, should be included in this section. You may use this section to address aspects of the services that distinguish one firm from the other.

**K. Basis for Compensation:** Provide information on the following:

- The LMCD is requesting that all services be provided at an hourly rate. Firms shall indicate: 1) the rate of each member of the firm providing the service, i.e., attorney, paralegal, clerk, etc. and 2) the minimum increment of time billed for each service including phone calls, correspondence, and personal.
- Firms shall indicate all other costs and reimbursable expenses including travel (per mile rate), telephone, printing, copying, etc.
- Confirmation that monthly billing statements will include:
  1. Itemized dates of service;
  2. Identification of personnel and time spent providing the service;
  3. A detailed description of the service provided;
  4. An organized billing on the basis of activity and LMCD contact; and
  5. A project summary to date (if requested).
- If the firm wishes to provide an alternative method to charge for legal services, describe the fees and how they would be applied to a specific service that the LMCD would request.

**6. EVALUATION OF RFP SUBMISSIONS**

An LMCD Selection Committee including the 2022 LMCD Board Officers, two additional members of the LMCD Board of Directors, and the LMCD Executive Director will evaluate the RFP submissions based on the following criteria (not ranked in order):

- Meets all qualifications and requirements;
- Complete and clear responses;
- Breadth and relevance of the firm's experience;
- The firm and their individual attorney's professional ability to provide high-quality service with demonstrated sound judgment, integrity, and reliability;
- Demonstrated knowledge with laws and regulations governing Minnesota local governments and operating procedures;
- Demonstrated municipal law experience;
- Demonstrated public waters and water resources law (desired);
- Demonstration of workload capacity and a level of experience commensurate with the level of service required by the LMCD;
- The proposer's ability to work cooperatively with the LMCD Board of Directors, LMCD staff, members of the business community, lakeshore owners, and general public as demonstrated by positive current client references;
- The cost of providing the services (although this is not necessarily the most critical factor in evaluating a firm's RFP submittal); and
- Any supplemental information provided by the proposer.

**7. AFFIRMATIVE ACTION**

The LMCD requires affirmative action and therefore, the firm selected shall not discriminate under the contract against any person in accordance with federal, state and local regulations. The LMCD does not discriminate on the basis of race, color, national origin, sex, religion, age, sexual preference, disability or any other basis protected by law in the admission or access to, or treatment or employment in, its programs, activities or services.

## **8. TERMS AND CONDITIONS**

- A. The LMCD reserves the right to: cancel or amend the RFP at any time, determine the successful respondent, reject any or all proposals, waive irregularities and informalities, request additional information from all respondents, and further reserves the right to select the proposal which furthers the best interests of LMCD.
- B. The LMCD will not reimburse any expenses incurred by the responder including, but not limited to, expenses associated with the preparation and submission of the response and/or attendance at interviews.
- C. The firm shall not assign any interest in this proposal and shall not transfer any interest in the same without the prior written consent of the LMCD.
- D. For the purposes of this service, the LMCD Attorney shall be deemed an independent contractor and not an employee of the LMCD. Any and all agents, servants, or employees of the firm or other persons, while engaged in the performance of any work or services required to be performed for the LMCD, shall not be considered employees of the LMCD and any and all actions which arise as a consequence of any act or omission on the part of the firm, its agents, servants, employees or other persons shall in no way be the obligation or responsibility of the LMCD. The law firm, its agents, servants, or employees shall be entitled to none of the rights, privileges, or benefits of organization employees except as otherwise may be stated herein.
- E. No official or employee of the LMCD who exercises any responsibilities in the review, approval, or carrying out of the proposal shall participate in any decision which affects his or her direct or indirect personal or financial interest.
- F. The LMCD Attorney agrees to comply with Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, and all other applicable state and federal laws relating to data privacy or confidentiality. The LMCD Attorney shall immediately report to the LMCD any requests from third parties for information. All data created, collected, received, stored, used, maintained, or disseminated by the LMCD Attorney in performing its obligations is subject to the requirements of the Act, and the LMCD Attorney must comply with those requirements as if it were a government entity. The LMCD agrees to promptly respond to inquiries from the LMCD Attorney concerning data requests. The LMCD Attorney agrees to hold the LMCD, its officers, and employees harmless from any claims resulting from the LMCD Attorney's failure to disclose data maintained by the LMCD Attorney authorized for release by the LMCD or from the LMCD Attorney's unlawful disclosure or use of data protected under state and federal laws.
- G. The approval of the firm selected, and the contract award will be made by the LMCD Board. The LMCD reserves the right to negotiate the final terms and conditions of the contract to be executed. Should the LMCD and a consultant be unable to mutually agree upon the entire contract, the LMCD reserves the right to discontinue negotiations, select another consultant or reject all of the statements of proposal. Upon completion of negotiations agreeable to the LMCD and the consultant, a contract shall be executed. Once a contract is awarded, the term of contract duration shall be subject to ongoing review and evaluation by the LMCD Board and Executive Director.

## **9. ANTICIPATED SCHEDULE FOR REQUEST FOR PROPOSALS**

Action	Date
Post RFP	October 28, 2022
RFP Submittal of Questions Deadline	November 11, 2022
RFP Submittal Deadline	November 23, 2022 at 3 p.m.
Evaluation of Submitted RFP's by Selection Committee	November 30, 2022
Proposal Interviews by Selection Committee	December 7, 2022.
Approval by LMCD Board of Directors	December 14, 2022

**Exhibit A**

LMCD  
Vickie Schleuning, Executive Director  
5341 Maywood Road, Suite 200  
Mound, MN 55364

**REQUEST FOR PROPOSAL CIVIL ATTORNEY LEGAL SERVICES**

**CONSENT FOR RELEASE OF RESPONSE DATA**

\_\_\_\_\_, on behalf of \_\_\_\_\_, hereby consents to the release of its proposal in response to the Request for Proposals for Civil Attorney Legal Services and waives any claims it may have under Minnesota Statutes Section 13.08 against the LMCD for making such information public. The foregoing consent and waiver does not extend to financial statements, if any, submitted under separate confidential cover. Such information provided under separate cover may be public data but will be treated by the LMCD consistent with Minnesota Statutes Chapter 13.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## RFP Posting for Civil Attorney Legal Services

CIVIL ATTORNEY LEGAL SERVICES. The Lake Minnetonka Conservation District (LMCD) is soliciting proposals for civil attorney legal services from qualified law firms. Preference will be given to those submittals demonstrating experience in the areas of municipal and water resources law. The successful applicant(s) shall possess sufficient resources to ensure that the demands for the LMCD's legal needs will be met on a timely basis. The relationship would be on an annual consulting or contractual basis. The full RFP can be found on the website, [www.LMCD.org](http://www.LMCD.org) or directly at the following link: [www.lmcd.org](http://www.lmcd.org)XXX. PROPOSALS DUE: November 23, 2022, by 3 p.m. SUBMIT: one (1) Digital Copy to [vschleuning@lmcd.org](mailto:vschleuning@lmcd.org) and (2) hard copies to LMCD, 5341 Maywood Road, Suite 200, Mound MN 55364. If questions, contact Vickie Schleuning, LMCD Executive Director, [vschleuning@lmcd.org](mailto:vschleuning@lmcd.org) or 952-745-0789.

DRAFT



## Item 13B

# LAKE MINNETONKA CONSERVATION DISTRICT

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

**DATE:** October 26, 2022 (Prepared October 17, 2022)

**TO:** Board of Directors

A handwritten signature in black ink that reads "Vickie Schleuning".

**FROM:** Vickie Schleuning, Executive Director

**SUBJECT:** 2023 LMCD Employee Benefits Package

### **ACTION**

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Board consideration of the 2023 Employee Benefits Package.

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

#### Approval:

I make a motion to approve the employee benefit package as recommended with the employer paying up to \$883 per single coverage and up to \$1,450 family coverage for health insurance and continuing the other portions of the current benefit package <or with the following changes>.

#### Denial:

I make a motion to deny the proposed health insurance coverage and employee benefit package and direct staff to ...

### **BACKGROUND**

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The Lake Minnetonka Conservation District is required to confirm the contract for benefits for 2023. As such, the following information is being brought forward for consideration of approval by the Board. The benefit package is based on the current Personnel Policy.

The quotes for 2023 for health insurance indicates a 5% increase and dental insurance indicates a 3.5% increase. During the budget preparation period in June, estimates were sought from the providers, but estimates were not available until recently.

The health insurance rate quoted for 2023 for the Medica health plan is \$757.58 per employee per month, with a \$1,500.00 annual deductible. The rate quoted for 2023 for a family plan is \$1,857.45 per employee per month, with a \$3,000.00 annual deductible. The medical health plan is a high deductible health savings account (HSA). A high deductible health plan is a consumer-directed health plan that theoretically facilitates consumer consideration of health care options prior to use and provides the opportunity for payment of pretax healthcare expenses through a health savings account.

The dental insurance rate quoted for 2023 for the Health Partner plan is \$60.91 per employee per month, with a \$25.00 annual deductible and \$1,000 maximum. The family rate for dental insurance is \$152.26, with an annual deductible of \$75.00 and \$1,000 maximum.

In previous years, the Board has wanted to ensure the LMCD would continue to be competitive with other government agencies for its benefit package. In comparing benefits and rates with some other cities and small organizations in the past, this benefit package seems competitive.

### **Options – Health Insurance**

For health insurance, the base premium rate becomes \$757.58 per month for a single coverage, and \$1,857.45 per month for family coverage. The deductibles are \$1,500, for single plan and \$3,000 for family plan.

#### Option 1 – Current Plan Including Family Coverage Option

- If the employer continues to cover the premium and deductible for health, the rate would be \$883 per month for a single plan per month. Four employees are eligible for benefits. For family coverage, the employer amount of contribution would be up to \$1,450 per month per person. The remainder of family coverage would be covered by the employee.

#### Option 3 – Current Plan Not Including Deductible Coverage

- Another option would be for the employees to incur out-of-pocket expenses for all or a portion of the of \$1,500 deductible for single coverage and \$3,000 for family coverage. The added amount for a family plan would be paid for by the employee.

### **HISTORY**

The LMCD is part of the Southwest West Central Service Cooperative (SWWC), which provides a larger pool of employees to provide a more consistent, competitive benefit package. The SWWC facilitates a member committee to research benefit packages and pricing earlier in the year.

### **RECOMMENDATION**

Option 1. Employees of the LMCD (regularly work 30 hours or greater on a weekly basis) are provided the following employee benefits:

- Health Insurance
- Dental Insurance
- Life Insurance
- Long-Term Disability Insurance

Permanent employees that regularly work less than 30 hours per week are provided a public pension through the Public Employee Retirement Association (PERA). Additionally, LMCD provides Long-Term Disability Insurance to permanent employees (salaries and hourly rates are grossed up).

## **CONSIDERATIONS**

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- Are the benefits provided sufficient to maintain or compete with our member cities or other agencies?
- What options are available?
- Does the Board wish to consider an “opt out” payment option for health insurance?
- Are sufficient funds available for the recommendations?

## **BUDGET**

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The employee benefit package for single coverage was considered in the adopted 2023 budget for three employees, with the understanding that four employees are available, and fits within the budget for personnel. Four employees are eligible if they do not opt out of these benefits. While a family plan was added for 2021, it is undetermined whether this option will be chosen in 2023. Due to the organization’s favorable experience, LMCD received a refund of \$3,541.49 in 2022 for the year 2021. It has been discussed that reserve funds could also be used to fund any overages due to unavailable information during the budget process.

## **STRATEGIC PRIORITIES**

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

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- 2018 – 2023 LMCD Benefit Package Summary

**2018 - 2023 LMCD BENEFIT PACKAGE SUMMARY – BASED ON MONTHLY RATES**

PERA (Coordinated Plan)					
Year	Employee Rate	Employer Rate	Employer Additional	Employer Total	Staff Participation
2018	6.50%	6.50%	1%	7.50%	4 (1 vacant)
2019	6.50%	6.50%	1%	7.50%	3 (1 vacant)
2020	6.50%	6.50%	1%	7.50%	4 (0 vacant)
2021	6.50%	6.50%	1%	7.50%	4 (0 vacant)
2022	6.50%	6.50%	1%	7.50%	4 (0 vacant)
2023	6.50%	6.50%	1%	7.50%	4 (0 vacant)
HEALTH PARTNERS (DENTAL) Premiums Only					
Year	Rate	Percent Increase	Staff Participation		
2018	\$53.99	0.99%	3		
2019	\$55.88	3.50%	3		
2020	\$56.95	1.90%	3		
2021	\$56.95	0.00%	3		
2022	\$58.83 Single \$147.05 Family	3.0%	3 (4 eligible)		
2023	60.91 Single \$152.26 Family	3.5%	3 (4 eligible)		
*MEDICA (SWWC Service Coop) Premiums Only					
Year	Rate	Percent Increase	Staff Participation		
2018	\$722.00	35.46%	2 (reorganized)		
2019	\$697.00	4%	2		
2020	\$721.50	3.54%	3		
2021	\$721.50 Single \$1,769.00 Family	0%, Family Coverage not reflected in past	3		
2022	\$721.50 Single \$1,769.00 Family HSA \$1,400, \$116.67/employee	0%, Family Coverage Optional	3 (4 eligible)		
2023*	\$757.58 Single \$1,857.45 Family HSA \$1,500, \$125.00/Employee	5%, Family Coverage Optional	3 (4 eligible)		
NCPERS Group Life Insurance					
Year	Rate	Percent Increase	Staff Participation		
Life Ins Policy	\$16/Participant	N/A	3 (4 eligible)		
UNUM Long Term Disability Insurance					
Employee	Current Monthly Prem	based on age & earnings	Staff Participation		
2021	\$170.07	-	3 (4 eligible)		
2022	\$169.92	-	3 (4 eligible)		
2023	\$176.71	-	3 (4 eligible)		



# ITEM 13C

## LAKE MINNETONKA CONSERVATION DISTRICT

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

**DATE:** October 26, 2022 (Prepared 10/06/2022)

**TO:** LMCD Member Cities (Mayors, Managers, Administrators, Clerks)

**FROM:** Vickie Schleuning, Executive Director  
*Vickie Schleuning*

**RE:** 2023 City Appointments of LMCD Board Members

The terms for some members of the Lake Minnetonka Conservation District (LMCD) Board of Directors will expire January 31, 2023. Terms on the LMCD Board extend from February 1st through January 31st of the following year. The state enabling LMCD legislation calls for Board members to be appointed by their respective member cities for a three-year term, with no term limits. If necessary, a city does have the ability to recall its member anytime and appoint another member for the remainder of the term. Because of the uniqueness of Lake Minnetonka and the important application of the ordinances, it is beneficial for Directors to serve multiple years.

Through your partnership, we have processed a high number of projects and achieved many successes over the years. We hope that your appointed Director will consider serving another term. We appreciate the time, guidance, and dedication of Board Member representatives who can advocate for all stakeholders and help preserve and enhance the “Lake Minnetonka experience.”

**Appointments.** At this time, the cities with the January 2023 expiration terms are requested to reappoint or appoint new members to the Board of Directors. A list of the current City appointment terms is provided in the enclosed table. Please note that officer positions will be considered by the Board tentatively in February through a Nominating Committee process.

**Attendance & Participation.** This past year, the overall attendance of the Board Members was good as we transition from virtual meetings to in-person. The individual Board Member attendance records for the LMCD Regular meetings are provided in the following table. Members also contribute through their attendance at and participation in Special Meetings, Workgroups, Committees, special events, and projects outside the regular meeting schedule. The membership of Committees and Workgroups is also included in an enclosed table.

Please let me know your city's appointment for 2023 after your council meeting where approvals are made, typically in January. A copy of the official Council appointment is also required such as the resolution or meeting minutes. Appointments typically start February 1, 2023. I look forward to working with your city in the coming year on various lake initiatives. If you have questions, please contact me at (952) 745-0789 or [vschleuning@lmcd.org](mailto:vschleuning@lmcd.org).

## 2023 City Appointments of LMCD Board Members

October 26, 2022

Page 2

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### LMCD Board Member Appointments

Jan. 2023 – Term Ending (Appointments Needed)	Jan. 2024 Term Ending	Jan. 2025 – Term Ending
Rich Anderson, Orono (Current Treasurer)	Dan Baasen, Wayzata (Current Secretary)	Ben Brandt, Mound
Bill Cook, Greenwood	Gabriel Jabbour, Spring Park (Term ending 08/15/2024)	Dennis Klohs, Mtka. Beach
Ann Hoelscher, Victoria (Current Vice Chair)		Nicole Stone, Minnetonka
Mike Kirkwood, Minnetrista		
Mark Kroll, Excelsior		
Denny Newell, Woodland		
Debora Zorn, Shorewood		
Gregg Thomas, Tonka Bay (Current Chair)		
Jake Walesch, Deephaven		

2023 City Appointments of LMCD Board Members

October 26, 2022

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**LMCD Board Member Attendance October 2021 – September 2022**

<b>Member City</b>	<b>Board Member</b>	<b>Regular Board Meetings Attended</b>	<b>Total Board Meetings</b>	<b>Rate of Attendance</b>	<b>Additional Committee/Workgroup Participation</b>
Deephaven	Jake Walesch	13	18	72%	AIS Committee, Communications Committee, Nominating Committee (2021)
Excelsior	Mark Kroll	18	18	100%	Save the Lake Committee, Nominating Committee (2021)
Greenwood	Bill Cook	15	18	83%	Save the Lake Committee, AIS Committee, Finance Committee
Minnetonka	Nicole Stone	17	18	94%	Finance Committee, Nominating Committee (2021)
Minnetonka Beach	Dennis Klohs	16	18	89%	Communications Committee
Minnetrista	Mike Kirkwood	17	18	94%	Communications Committee
Mound	Ben Brandt	18	18	100%	AIS Committee
Orono	Rich Anderson (2021 Treasurer)	18	18	100%	Save the Lake Committee, Operations Committee, Finance Committee, AIS Committee
Shorewood	Deborah Zorn	13	18	72%	AIS Committee, Operations Committee, Nominating Committee (2021)
Spring Park	Gary Hughes	4	5	80%	Communications Committee, Operations Committee
Tonka Bay	Gregg Thomas (2021 Chair)	16	18	89%	Save the Lake Committee, Operations Committee
Victoria	Ann Hoelscher (2021 Vice Chair)	15	18	83%	Communications Committee, Operations Committee
Wayzata	Dan Baasen (2021 Secretary)	15	18	83%	Save the Lake Committee, Communications Committee
Woodland	Denny Newell	18	18	100%	Save the Lake Committee, AIS Committee, Finance Committee