



LAKE MINNETONKA CONSERVATION DISTRICT

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AGENDA – AMENDED(2)
LAKE MINNETONKA CONSERVATION DISTRICT
Wednesday, January 25, 2023
Wayzata City Hall
600 Rice Street, Wayzata, MN 55391

PUBLIC PARTICIPATION

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

WORK SESSION AGENDA

6:00 p.m.

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

1. No Work Session- Meeting Begins at Formal Meeting

FORMAL MEETING AGENDA

7:00 p.m.

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

- 1) CALL TO ORDER**
- 2) PLEDGE OF ALLEGIANCE**
- 3) ROLL CALL**
- 4) APPROVAL OF AGENDA**
- 5) CHAIR ANNOUNCEMENTS**
- 6) APPROVAL OF MINUTES (01/11/2023 LMCD Regular Board Meeting)**

7) APPROVAL OF CONSENT AGENDA

- A) Audit of Vouchers (01/16/2023 – 01/31/2023)
- B) Resolution Accepting Save the Lake Contributions (01/01/2023 – 01/19/2023)
- C) Relocated to Old Business**
- D) LMCD Executive Director Performance Evaluation
- E) LMCIT Liability Waiver Form

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) PRESENTATIONS

11) PUBLIC HEARING

N/A

12) OTHER BUSINESS

13) OLD BUSINESS

- A)** Discussion of new information of New Commercial Multiple Dock License, Dan Gustafson, Lake Minnetonka Real Estate II, LLC; PID 11-117-23-22-0013, Outlot B Dragonfly Hill, along Shoreline Drive, Orono, 55391, Browns Bay
- B) Discussion of Proposals and Authorization of Facilitator for Board Retreat
- C) Update Regarding Board Meetings and Committee Meetings Remote Access
- D) Update Regarding Document Management & Public Access

14) NEW BUSINESS

- A) Authorization to Enter Agreement for Website Maintenance Services
- B) Authorization to Enter Agreement for Computer and Network Technology Services
- C) Draft Updated Data Practices Policy for Public

15) TREASURER REPORT

16) EXECUTIVE DIRECTOR UPDATE

17) STANDING LMCD COMMITTEE UPDATE

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

18) ADJOURNMENT

Future Items for Review – Tentative

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

ITEM 6

LAKE MINNETONKA CONSERVATION DISTRICT BOARD OF DIRECTORS

6:00 P.M., January 11, 2023
Wayzata City Hall

WORK SESSION

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

Members Present: Rich Anderson, Orono; Ann Hoelscher, Victoria; Bill Cook, Greenwood; 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: Joseph Langel, LMCD Legal Counsel; Vickie Schleuning, Executive Director; Thomas Tully, Environmental Administrative Technician; and Maisyn Reardan, Administrative Coordinator.

Members Absent: Dan Baasen, Wayzata; and Ben Brandt, Mound.

Persons in Audience: Jim Brimeyer, Steve Tallen, Dan Gustafson, Kim Brown, William Deckle, David Feldsher, Jennifer Labadie, and Marc Nevinski.

Other persons in audience were present but did not sign in.

1. Update Regarding Status of Executive Director Recruitment

Brimeyer introduced himself and reviewed his proposed process for recruitment of the Executive Director position and potential facilitated Board discussion to further define the roles and responsibilities of the position. He also reviewed his recommended proposed schedule for the next months that he is with the LMCD as Interim Executive Director.

Anderson noted that typically committee meetings are not attended by the Executive Director.

Brimeyer commented that would be fine as well but noted that he would be willing to attend via Zoom when able.

Hoelscher stated that the issue with committee meetings is that they need to be noticed and there is some staff time involved in agendas and minutes. She agreed that it would be advantageous to pause committee meetings for a brief period.

Brimeyer continued to review the proposed timeline for the posting and search for the Executive Director. He stated that he would intend that the January 25th meeting would solidify what they would like to gain from the facilitated session to develop an outline for that session. He stated that he would then use that information to find a facilitator for that session which would occur in March.

Hoelscher asked for input on whether the Board would like to hold a facilitated discussion as mentioned.

Jabbour stated that he would be interested in having that meeting videotaped.

Cook stated that he would like the option to allow people to attend the meeting via Zoom.

Hoelscher stated that she would like to verify that with legal counsel.

Brimeyer stated that as long as the meeting is noticed as such, Zoom participation would be allowed.

Zorn asked if Brimeyer would be articulating his role in this process.

Brimeyer stated that he will not be the facilitator and money will need to be spent on that process. He stated that the following should be discussed: Board governance, proper behavior, and to guide development of the Executive Director position needs.

Zorn asked if the position would be posted prior to that time of the facilitated meeting.

Brimeyer confirmed that the position would have been posted for about a week or so prior to that facilitated meeting and the information gained at that meeting will help the search committee develop criteria to use to select semifinalists for the position.

Walesch asked why a work session would be needed to talk about what was just described. He confirmed consensus that the Board agrees with the items as proposed by Brimeyer.

Brimeyer stated that perhaps he develop a framework for that facilitated meeting and the Board could provide input.

Walesch agreed that Brimeyer could provide that summary and that could be the framework for the facilitated meeting.

Hoelscher stated that perhaps at the next meeting, Brimeyer could provide a summary of what is available for facilitation and potential costs and the Board could provide more direction.

Newell asked the number of applicants received during the last search for an Executive Director.

Brimeyer estimated about 25 or 30 candidates were received last time. He noted the salary range for the position and noted that every City Manager around the lake is making more than that.

Jabbour stated that he respects the experience of Brimeyer and recognized that the Board needs help. He asked if Brimeyer believes that the LMCD should hire a headhunter for the position.

Brimeyer replied that he does not have a yes or no answer. He stated that they could see what they receive for applicants and if that does not work out, they could go the path of a headhunter.

Jabbour stated that when this body did an RFP for an attorney, only one response was received. He stated that when he asked attorneys why they did not apply, the term, "dumpster fire" came up

repeatedly.

Brimeyer stated that he will look into the option of a headhunter as well.

Hoelscher asked for Board input on whether the Board would like to meet in February.

Klohs asked what Spring Park is paying for their Administrator.

Brimeyer replied that he started at \$90,000 per year.

Hoelscher asked for input on whether the meetings in February could be canceled. She suggested canceling the first meeting in February and if a meeting is necessary, it could be held on the 22nd.

Schleuning stated that she has a list of things that need to be addressed at the January 25th meeting but noted that there are no applications that would require a February meeting at this time. She stated that liquor licenses could be reviewed at the first meeting in March.

Anderson stated that the Treasurer would need to work with the auditor in February. He believed that the new members should be sworn in and Officers should be elected and proposed to skip the January 25th meeting and hold a meeting on February 8th.

Brimeyer did not agree. He believed the meeting on January 25th would be productive and meaningful.

Hoelscher agreed that the January 25th meeting would be necessary. She noted that the decision on February meetings would not necessarily need to be decided at this time.

Kroll stated that he would prefer to hold the second meeting if a February meeting is needed.

Walesch supported meeting only once in February.

Kroll confirmed that Anderson would agree with meeting on February 22nd.

Hoelscher confirmed the consensus of the Board to only hold one meeting in February on February 22nd. She asked for input on whether one or two meetings are needed in March.

Jabbour suggested that one meeting is identified to process application requests and the second of the meeting is held if there are general Board matters to discuss.

Hoelscher asked for inputs from the committees and whether they would be able to pause until March. It was confirmed that all committees, with the exception of the Nominations Committee, could pause until that time.

Walesch stated that the Board has discussed remote capabilities and it was mentioned that Jabbour has

offered to pay for the equipment and have it setup. He stated that he would love to hold a workshop to develop a resolution that would allow remote participation at the meetings. He noted that Brimeyer has also stated that he would be attending some meetings via Zoom. He proposed that this topic be discussed at the January 25th workshop.

Hoelscher stated that the issues have been identified in the handout provided by Walesch and questioned whether a workshop would be needed.

Walesch stated that Jabbour was willing to finance and setup the equipment and that was stopped by Hoelscher.

Hoelscher stated that they have since received legal input that remote participation would be allowed.

Jabbour commented that he had the equipment, and it was supposed to be setup two weeks ago but that was stopped. He noted that he provided input from his legal counsel but would not be willing to accept the responsibility until the LMCD legal counsel provides input.

Brimeyer asked what was done during the pandemic.

Hoelscher stated that the emergency declaration allowed remote participation.

Klohs stated that the email from Jabbour was forwarded to the LMCD legal counsel, and he provided input on what would need to be done.

Schleuning stated that a few months ago staff met with the School District and City of Wayzata related to technology improvements that will be made. She stated that the City and School District are not interested in hybrid meetings but provided a cost estimate of about \$10,000 for the hybrid technology.

Hoelscher stated that staff can then bring forward the technology needs to hold remote Board meetings. She noted that committee meetings can be held virtually as long as the criteria are met.

Jabbour stated that he has the equipment and provided details. He noted that he would be donating the equipment which would remain in the conference room in the LMCD office.

Hoelscher suggested that Jabbour work with staff to install the equipment in the LMCD conference room.

Newell thanked Jabbour for the donation as it will help to streamline committee meetings.

Hoelscher noted that it would also assist in increasing participation.

3. ADJOURNMENT

There being no further business, the work session was adjourned at 6:55 p.m.

FORMAL MEETING

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; 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: Joe Langel, LMCD Legal Counsel; Vickie Schleuning, Executive Director; and Thomas Tully, Environmental Administrative Technician, Maisyn Reardan, Administrative Coordinator.

Members absent: Dan Baasen, Wayzata; and Ben Brandt, Mound.

People in Audience: Jim Brimeyer, Steve Tallen, Dan Gustafson, William Deckle, Kim Brown, David Feldsher, Mark Nevinski.

Other persons in audience did not sign in.

4. APPROVAL OF AGENDA

Zorn stated that based on the Board decision at the December 14th meeting for a closed session to discuss the Executive Director review, evaluation, and discussion she would like to request to hold that closed session at the end of the meeting.

MOTION: Zorn moved, Anderson seconded to amend the agenda, making the change noted by Zorn above.

Further discussion: Kirkwood asked the intent of the closed session.

Zorn replied that the intent would be to evaluate the current Executive Director as she closes her tenure with the LMCD.

Kirkwood again asked the intent and what would be gained.

Zorn stated that this would be a forum to share thoughts and concerns that would help the LMCD as it moves forward with recruitment of the next Executive Director. She stated that they would gain input on what has been working well and what has not been working well.

Kirkwood stated that he would prefer to have the facilitated discussion in February.

Jabbour stated that he is surprised that everyone voted for that to happen, including Kirkwood.

Hoelscher stated that since that time some things have changed as they have engaged an Interim Executive Director, have brought on the new legal counsel, and have decided on a process to move forward in selecting a new Executive Director. She stated that because Schleuning will be leaving in two weeks, she did not believe providing feedback to Schleuning would be helpful and believed the better path forward would be to hold the facilitated discussion in February as the Board discussed at the workshop.

Anderson contended that if this is done now, this would provide a Board opinion when suggestions are sent in the future.

Klohs stated that in the workshop it was determined that a facilitator would be needed. He stated that it would seem that the Board does not need to talk about what has happened in the past, as that would not be healthy, and the Board needs to focus on moving forward.

Walesch commented that an evaluation of the Executive Director is done each year with feedback provided. He agreed that there are opinions on whether that is needed as the Executive Director is leaving, but that is completed each year and therefore it would not be odd to do that. He believed that the exercise would still be constructive.

Brimeyer commented that this would seem to be a waste of time and would not stay for it if the Board decided to hold one. He stated that the purpose of the evaluation is to guide future performance. He stated that what they need to talk about in the future is what they are looking for in a new Executive Director. He stated that if he were a member of the Board, he would vote no on this item.

Anderson commented that the Board would not need Brimeyer to stay for the closed session. He explained that in the closed session the Board would figure out what is good and bad and would send those thoughts to Brimeyer.

Hoelscher stated that would then not be an evaluation of the Executive Director but more of the process moving forward.

Jabbour commented that he made the motion in December which was unanimously approved. He explained that his intention for the closed session was to evaluate Schleuning and two other employees to understand the staffing needs. He commented that could be done publicly or in closed session. He stated that he came to the meeting with the understanding that this would happen, but it continues to be kicked down the road. He stated that the review is not on Schleuning but what he thinks the other employees learned the wrong way. He stated that this ship needs to get back on track and there needs to be leadership as that is lacking.

Hoelscher stated that the Board only evaluates the Executive Director, who then evaluates their staff.

Zorn commented that her motion for closed session was based on the motion at the December meeting.

Hoelscher noted that the process has changed since that time and the direction may change as well.

VOTE: Motion carried 7 – 4 (Cook, Kirkwood, Hoelscher, Klohs opposed).

Hoelscher stated that the Board can go into closed session under New Business.

MOTION: Cook moved, Walesch seconded to approve the agenda as amended.

VOTE: Motion carried unanimously.

5. CHAIR ANNOUNCEMENTS

Hoelscher commented that she has taken over as Acting Chair as Thomas is no longer on the Board. She welcomed the new legal counsel.

Langel introduced himself.

Hoelscher introduced Brimeyer, the Interim Executive Director.

6. APPROVAL OF MINUTES- 12/14/2022 LMCD Regular Board Meeting

Hoelscher stated that Evenson should be removed as a participant.

MOTION: Walesch moved, Zorn seconded to approve the 12/14/2022 LMCD Regular Board Meeting minutes with the noted change.

VOTE: Motion carried unanimously. (Cook abstained)

7. APPROVAL OF CONSENT AGENDA

Anderson referenced a payment to North Shore Marina in the payment of vouchers. He stated that he will not be accepting the payment until there is resolution of his dock licensing from 2018 through 2022 and requested that payment be removed.

Schleuning confirmed that payment can be removed, and the Consent Agenda can still be approved.

MOTION: Cook moved; Walesch seconded to approve the consent agenda with the noted change. Items so approved included: **7A)** Audit of Vouchers (12/16/2022 – 12/31/2022 and 1/1/2023 – 1/15/2023); **7B)** Resolution Accepting Save the Lake Contributions (12/16/2022 – 12/31/2022); **7C)** Denial of Variance for Adjusted Dock Use Area and Setbacks, 2000 Shadywood Road, Orono, MN 55391, Crystal Bay; and **7D)** Interim Director Jim Brimeyer Agreement.

VOTE: Motion carried unanimously.

8. RECOGNITIONS

Newell recognized those that have recently made contributions to Save the Lake.

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

There were no public comments.

10. PRESENTATIONS

A) Prosecution Services Update: Law Offices of Steve Tallen

Tallen introduced himself and reported that 2022 was a typical year with a few variations. He commented that it seems that the number of cases that he has had in his office have been down. He noted the decreasing trend of BUI cases because of the aggressive work the Water Patrol has done over the years. He stated that unlicensed charter boats has become a larger issue in recent years and noted that almost all of those cases have been resolved. He noted that with one or two exceptions, once resolved the problem does not reoccur with the same person. He stated that the vast majority of the people were not aware of the licensing requirements. He stated that there has been a huge decrease in underage drinking cases, which he attributed to the social host ordinance passed by the Board. He reviewed the revenue received via fine payment compared to the cost for his services. He commented that he has enjoyed working with Schleuning, who has helped to make his job easier.

Newell commented that a few years ago it was realized that the Water Patrol Officers are shared with Hennepin County and therefore those Officers could be pulled off the lake to assist in other cases. He stated that Save the Lake raised funds to secure two committed Officers on the lake. He stated that logic would tell him that with more Officers on the lake, there would be more interaction but noted the decrease in violations.

Tallen replied that the decreasing trend is historical and was not reflective of just the last two years. He recognized the difficulties in having a full staff at this time for police. He noted that about 15 years ago there was direction from the Board for the Water Patrol to not be as aggressive with tickets and to issue more warnings. He explained that if someone receives a ticket and pays that ticket, he does not see those. He noted that his office handles those violations that are contested.

Schleuning commented that citations are not the only duty of the Water Patrol. She provided details on emergency response and education. She noted that there has been a lot of education and contact to ensure people are safe and following the rules. She commented that proactive work and education has been paying off.

Jabbour commented that the Water Patrol did a great job controlling 4th of July and does a great job

partnering with the DNR Officers. He stated that some tickets are written under the DNR code.

Tallen explained that those tickets issued under DNR code are prosecuted by the County Attorney. He explained that if he processes a case, the fine revenue goes to the LMCD whereas the fine revenue gained through a DNR issued ticket handled by the County Attorney is split between the County and LMCD.

Jabbour commented that Sheriff's Office has the right to choose under which code a ticket is written. He stated that they often choose the easier code to prosecute under and that may not always be the LMCD code.

11. PUBLIC HEARING

- A) New Commercial Multiple Dock License, Dan Gustafson, Lake Minnetonka Real Estate II, LLC; PID 11-117-23-22-0013, Outlot B Dragonfly Hill, along Shoreline Drive, Orono, 55391, Browns Bay (Continued from August 23, 2022)

Tully presented a request for a new commercial multiple dock license at the subject property and provided background information on the request. The applicant proposed to construct a new commercial multiple dock facility on the site for use as a commercial marina, with boat slips available for rent by the general public. Nine boat storage units (BSU) are proposed. He reviewed the size of the proposed boat slips, setbacks, and boat density. He provided an aerial photograph of the property and displayed the proposed site plan. He explained that the originally proposed multiple dock facility calculation for structure and navigation would have exceeded the threshold and triggered a mandatory EAW. He stated that the plans were then changed to a configuration below that threshold. He noted that the Board may consider a discretionary EAW, given that this is a new multiple dock facility for this location. He reviewed the multiple dock criteria and described how the application would meet those requirements. He stated that no agency comments were received from the MCWD or MN DNR, but the City of Orono and Hennepin County provided feedback with concerns regard the proposed commercial multiple dock. He also reviewed the public comments received prior to the meeting which voiced concern with the request. He provided more details on the concerns raised by the City of Orono, Hennepin County, and residents. He stated that staff recommends approval of the request with the minimum conditions listed in the staff report and reviewed those conditions.

Anderson asked if a commercial multiple dock is always considered a marina.

Tully confirmed that is true by definition.

Anderson asked where it states in the Code that a discretionary EAW can be required.

Schleuning provided details on where that information is found under State Statute. She stated that this is a new facility that is close to the threshold, but it is under the mandatory threshold.

Anderson contended that is not true.

Newell referenced the provision that the applicant would need to prove riparian rights and asked if the LMCD reviewed the ownership of the shoreline. He asked if residential property along the lake, separated by a road, would preclude the riparian rights of the property owner to the shoreline on the other side of the road.

Hoelscher stated that a deed was included in the packet which showed the riparian rights were separated from the property rights but had been purchased by the applicant.

Jabbour used the example of a resident owning lakeshore with a boat density of 50:1 which would allow nine slips. He asked if the property owner could then rent those slips to any party.

Tully replied that would be allowed as long as it was considered commercial/business or marina.

Jabbour referenced a previous application considered and approved by the Board for Big Island and asked if those slips could be rented.

Schleuning stated that it was a residential dock and it does raise questions as to whether it could be a residential multiple dock or commercial multiple dock.

Jabbour referenced the comment from Orono that this would be commercial. He stated that nine boats would be nine boats.

Schleuning stated that the difference would be related to traffic as people would come to the property that would not typically come to the property. She also stated that a resident with nine boats, would most likely not be using all nine boats at once.

Klohs referenced the LMCD enabling legislation, which was previously amended relating to commercial marinas, and that only allows LMCD consideration for water issues while the cities control the issues on land. He stated that the land issues would no longer be of consideration to the LMCD. He stated that it is the understanding that the applicant does possess the riparian rights for this area. He stated that if approved, he would recommend a condition noting that this approval is not physically connected to the land, at or above the high-water mark.

Kroll agreed with the explanation of Klohs related to the law change and therefore wondered why time was spent looking at the responses from Orono and Hennepin County.

Klohs noted that is still a part of the public record.

Kroll stated that perhaps in the future the input from those entities is not obtained.

Klohs commented that there is a legal obligation to notify those entities.

Schleuning stated that sometimes there may be things outside the purview of the LMCD, but people still work together to resolve those potential issues.

Walesch commented that this application conforms to the LMCD Code in every manner. He stated that there is a communication from an attorney representing a few residents and asked if that has been reviewed by legal counsel.

Langel commented that he has seen the communication but has not spent hours reviewing all the legal arguments. He noted that much of this goes back to the limited authority of the LMCD in this case. He noted that many of the concerns address issues related to the land, whereas the LMCD only has control over the water.

Hoelscher invited the applicant to address the Board.

Dan Gustafson, applicant, stated that he appreciates the assistance of staff throughout this process and has a representative present to address any questions of the Board.

William Dickel, Attorney representing the applicant, stated that he is present to address any questions.

Hoelscher opened the public hearing at 8:12 p.m.

Kim Brown, 1300 Shoreline Drive, referenced the statement that the LMCD authority lies in the water. She asked what happens where the water meets the land.

Klohs replied that can be debated, which is why he suggests that another condition of approval that the dock does not connect to the land at or above the normal high-water mark. He stated that the dock could be shortened to not meet the land or could connect below the normal high-water mark. He stated that the issue of LMCD authority change that was made only applies to commercial marinas.

Brown stated that it would appear that the responsibility of the dock in the water would be of Gustafson, but the land responsibility would be of the City or Orono. She asked who the final decision maker would be if the LMCD approves this. She did not see how this would work and who would carry liability insurance if someone were injured on the City of Orono property. She commented that the homeowners in this area would be impacted by the additional boat traffic generated from this location. She asked if there would be an educated marina person employed at the dock facility. She asked if there would be restrooms and patrolling of the docks. She asked who would be responsible for issues that arise from this location.

Hoelscher confirmed with legal counsel that the Board should not be engaging in discussion with the public during the public hearing; only the comments from the public should be received.

David Feldsher, 1420 Shoreline Drive, commented that this issue began four or five years ago when he wanted a sailboat on the bay and applied for a permit to install a buoy. He stated that it was then determined that the City or Orono owns this strip of land between the lake and highway. He stated that he retained an attorney that looked into the matter and the riparian rights still existed but did not sell with the home when he purchased it and were retained by the owner of the property two before him. He stated that those people had

passed away and when the court made its decision, the riparian rights were then passed to the heirs of those previous property owners. He provided details on the process they followed with those heirs but noted that it did not move quick enough and were sold to Mr. Gustafson. He stated that these riparian rights originally lied with his property as residential riparian rights. He stated that because the City owns the shoreline, the consent of the City must be obtained for dock installation. He stated that if the applicant does not have the consent of the property owner, the application should be denied. He stated that there is a question as to whether this dock space would be commercial or residential. He noted that a multiple dock license with public access would seem to be commercial and it is his understanding that marinas are not allowed within this area as this is a residential district. He commented on the challenges that exist for this use in this area. He stated that if this were approved, he would be concerned that residential property owners could construct their own commercial marina or sell their riparian rights for such use.

No additional comments were offered, and the public hearing was closed at 8:23 p.m.

Jabbour commented that it is unfortunate that the audience gets the feeling that they are destitute and there is nothing that can be done. He reiterated that he believes the LMCD does not have authority over the land. He stated that the City has a lot of remedies for this proposal. He stated that the City Code defines docks as an accessory structure, similar to a garage and an accessory structure cannot exist without a principal structure. He stated that this request might meet the LMCD Code but agrees that this would be a dangerous place.

Anderson commented that there are requirements for marinas in Orono, but a fee is not paid for that license.

Hoelscher invited the applicant to address the comments made by the public.

Gustafson appreciated the position of the residents and offered to provide his contact information to work with them. He stated that he is unsure whether he would run the marina or whether that would be outsourced. He stated that relating to accessory structures and principal structures, that relates to land and the lake is its own lot separate from the land. He stated that every dock on the lake is a primary structure in his opinion.

Dickel commented that there is always concern for safety and they do value the environment of the lake. He stated that this would not be a commercial entity where many people would be coming and going. He noted that the deed for the home was determined to not include the riparian rights as those had been withheld from a previous owner and therefore the riparian rights were then purchased by Gustafson.

Anderson referenced the letter from the City of Orono, noting that he was asked to put this into the public record by a City of Orono Councilmember. He stated that as stated in the letter, the City of Orono is the owner of the parcel and does not consent to the proposed use of City owned land. He stated that the LMCD ordinance requires the consent of the owner to be considered as a complete application.

Hoelscher stated that she is not familiar with that ordinance and asked for guidance.

Langel commented that the LMCD Code does state that the consent of the owner has to be received. He stated that is defined in the Code as fee title owner. He stated that despite that definition there is the issue of

riparian rights which has been severed from the underlying fee. He stated that it is unclear under the Code as to whether that riparian rights holder would be considered as the owner. He provided details on case law and the history of LMCD actions to provide licenses to the riparian rights owner even when the fee owner objected, therefore an argument could be made that the applicant meets the definition of owner.

Anderson stated that even though the City, Hennepin County, and adjacent property owners object this, he does believe that this application meets the requirements of the LMCD. He stated that he intends to vote present and provided additional details noting that the applicant has secured bids for dock building and his son's company has provided a bid.

Hoelscher asked if present would be different than abstaining.

Langel stated that this type of organization typically does not use a present vote.

Anderson stated that he has reviewed a similar matter with the previous legal counsel and his abstention was counted as a nay, therefore he will be voting present to avoid that situation.

Zorn stated that Klohs mentioned the high-water mark and asked if the staff map shows that high water mark for this strip of riparian rights. She asked if that measurement was exact.

Tully displayed the survey.

Schleuning stated that approximately or generally is typically used because of the different changes such as topography and erosion. She stated that an ordinary high water (OHW) mark of 929.4 was identified on the survey. She commented that it is lower than the land because of the change in elevation.

Zorn asked if there would be a situation where the OHW would affect placement of the dock.

Schleuning commented that this is another example where the legislative split of authority between land and water does not work well. She stated that they have had these discussions with the applicant. She stated that while she does not agree with how this works, this is how it works under the legislative authority of the LMCD. She stated that they have spoken with the applicant about concerns for safety. She stated that the applicant and all parties need to get together to determine how this would work safely. She stated that the hands of the LMCD are tied as this request does meet the requirements of the Code. She asked the applicant how they would make this location safe.

Zorn recognized that the enabling authority shifted by the legislation changes, and this meets all requirements of the current Code. She commented that she does not feel that the LMCD Code has been updated to meet the enabling legislation changes. She stated that passing this in a silo without considering the other elements would not be the right choice. She stated that there needs to be acknowledgement that there is a parcel of land that would make a request safe. She stated that she would be interested in seeing the applicant pull together the interested parties to resolve these issues rather than pursuing a commercial enterprise solely for financial gain.

Schleuning stated that a few years ago the previous attorney brought forward potential Code changes to address the legislative changes and the item was pulled from the agenda. She stated that the case law and riparian rights provided by statute would not change.

Walesch stated that this is a strange case with a lot of circumstances that would not typically lead to this chain of events. He agreed with Zorn in that the Board should review the Code again. He recognized that there was a previous attempt, but it is hard to predict a set of circumstances such as this. He stated that this application was presented under the existing Code and must be considered under that Code. He stated that if a request conforms to the Code, the LMCD would not have a basis not to approve the request. He stated that he would be open to tabling this to allow further review, based on a very unusual set of circumstances.

Cook stated that they are starting to see people purchasing lines on the lake and turning them into dock opportunities and marina opportunities. He stated that this is not the first one of these and will not be the last. He stated that he does not like this concept, but it does meet the rules of the LMCD. He commented that he would be supportive of reviewing the Code to make a change that would prevent this from continuing to happen but would reluctantly support this application.

Kroll shared the opinions of Cook and Zorn but noted that the larger issue cannot be resolved tonight. He stated that the LMCD must consider the application under the existing rules. He noted that this is lawful, but awful and reluctantly would vote in favor because it does meet the requirements of the LMCD. He hoped that neighbors would be able to pursue their concerns with the City and County.

Kirkwood agreed with the previous speakers, noting that this application smells bad. He commented that with the danger factor of the highway, this would be a safety issue. He asked what would happen if this were tabled with desire to obtain further clarification on a State level. He asked if this could be denied based on the factor of safety.

Hoelscher asked for clarification on the reason for tabling.

Kirkwood replied that he would want to pursue undoing of the box that the LMCD has been put into where this could not be denied based on legitimate reasons.

Schleuning replied that the applicant has been responsive to timeframes and provided an indefinite extension request, which can expire after one year or could be withdrawn by the applicant. He stated that the legislature did not pass bills last year that had no objection and therefore she would not expect bills to move quickly. She noted there have been changes to the legislative body and waiting to see the outcome of the change moving forward.

Jabbour commented that the applicant could withdraw their unlimited extension which would trigger the 60-day review. He was bewildered on how the LMCD finds itself in such a terrible place. He stated that there are many things that require approval and collaboration from multiple entities. He stated that the City of Orono could deny the request. He stated that he will have to abstain as he purchased riparian rights from a

previous owner, and it could be interpreted that he would benefit from this decision.

Klohs stated that he did not believe that the audience should be misled to believe the LMCD could fix this issue in its Code as this is an issue of legislation. He stated that the Board is sympathetic to the concerns and shares those concerns, but the LMCD cannot fix this. He stated that it would have to be addressed at the State level.

Kirkwood asked if Klohs would be suggesting an amendment related to the OHW.

Klohs stated that he will not be dictating this but if a motion is made, it should clarify that the LMCD is not approving anything that attaches to the land, or at or above OHW. He stated that in review of the drawing there is a steep bank, and the applicant could easily come in under the OHW.

MOTION: Cook moved, Newell seconded to direct legal counsel to prepare Findings of Fact and Order approving the commercial multiple dock license application for the property located at PID: 11-117-23-22-0013, along Shoreline Drive in Orono for final approval at the January 25, 2023 Board meeting, with the recommended comments of staff and the additional condition that the LMCD would only approve the lake side activity of the OHW.

Further discussion: Klohs stated that the additional condition should state that the dock cannot connect to the land at or above the OHW.

Cook confirmed that is the language he proposes.

VOTE: Motion carried 7 - 2 opposed (Zorn and Stone) - 2 abstain (Anderson (present) and Jabbour).

12. OTHER BUSINESS

There was no other business.

13. OLD BUSINESS

A) Update Regarding Status of Executive Director Recruitment

Hoelscher reported that a workshop was held earlier this evening at which time Brimeyer was introduced to the Board.

Brimeyer stated that he will operate as Interim Executive Director for no more than five months.

Hoelscher stated that Brimeyer will look into facilitators and options for Board reflection that will help guide the process. She stated that information will be brought back to the Board at the next meeting.

14. NEW BUSINESS

A) Closed Session: Evaluation of Executive Director Performance

MOTION: Zorn moved; Anderson seconded to move to closed session pursuant to Minnesota Statute 13.D.05 to evaluate the performance of the Executive Director at 9:00 p.m.

VOTE: Motion carried unanimously.

The meeting returned to open session at 9:33 p.m.

15. TREASURER REPORT

Anderson reported that he has a meeting the following week with the auditor to ensure the process is moving forward.

Hoelscher asked that Brimeyer be notified of that meeting to determine if he would be interested in attending.

Schleuning confirmed that she would be attending.

16. EXECUTIVE DIRECTOR UPDATE

Due to limited time, Schleuning stated that she will provide her update via email.

17. STANDING LMCD COMMITTEE/WORKGROUP

Aquatic Invasive Species: No comments.

Communications: Hoelscher reported that the group met the previous day. She stated that an email was sent to the Board with a link to the video produced in collaboration with the LMCC. She confirmed the consensus of the Board to post the video on the LMCD website. She stated that the group will not meet again until March.

Finance: Anderson reported that the group has not met.

Nominating Committee: Zorn commented that the timeline has been shifted as there may be a change in the February meeting schedule, therefore the timeline from the committee will be adjusted by one week. The deadline for self-nomination will be the 20th. Recommendations to the Board for Officers will be made at the February 22nd meeting.

Operations: Zorn reported that this committee would be pausing with the other committees.

Save the Lake: Newell expressed thanks for the contributions received this year and looks forward to this next year. They look forward to discussions about sustained cash flow to support Water Patrol.

18. ADJOURNMENT

MOTION: Cook moved; Walesch seconded to adjourn the meeting at 9:38 p.m.

VOTE: Motion carried unanimously.

Ann Hoelscher, Acting Chair

Dan Baasen, Secretary

11:29 AM
01/19/23

Lake Minnetonka Conservation District
Check Detail
January 16 - 31, 2023

ITEM 7A

Date	Num	Name	Memo	Account	Class	Paid Amount
01/26/2023		US Bank		Alerus Checking		
				1087M10 · US Bank (Credit Card)	Admin.	-572.90
TOTAL						-572.90
01/26/2023	EFT-23-1	ADP Service Fee		Alerus Checking		
			Payroll 1/16/23 - 1/31/23	4180M10 · Professional Service...	Admin.	-89.62
TOTAL						-89.62
01/31/2023	EFT-23-2	ADP		Alerus Checking		
			Salaries - Admin	4020M10 · Salaries-002 - Admin	Admin.	-10,094.74
			P.E.R.A	2020 · Payroll Liabilities -	Admin.	1,413.22
			ER PERA	4022M10 · ER PERA - Admin	Admin.	-757.09
			ER/FICA Medicare - Admin	4021M10 · ER Share of Admin F...	Admin.	-772.26
			Long Term Disability	2020-LT · Payroll Liabilities - UN...	Admin.	84.96
TOTAL						-10,125.91
01/31/2023	EFT-23-3	P.E.R.A		Alerus Checking		
			Payroll 1/16/23 - 1/31/23	2020 · Payroll Liabilities -	Admin.	-1,413.22
TOTAL						-1,413.22
01/16/2023	EFT-23-4	WEX Health, Inc.		Alerus Checking		
			HSA Contribution January balance 2023 (Schleuning)	4380M10 · Employee Benefits - ...	Admin.	-8.33
			HSA Contribution January balance 2023 (Tully)	4380M10 · Employee Benefits - ...	Admin.	-8.33
			HSA Contribution January balance 2023 (Duncan)	4380M10 · Employee Benefits - ...	Admin.	-8.33
TOTAL						-24.99
01/25/2023	EFT-23-5	WEX Health, Inc. Service Fee		Alerus Checking		
			HSA Svc Fee January 2022 (Schleuning)	4380M10 · Employee Benefits - ...	Admin.	-2.75
			HSA Svc Fee January 2022 (Tully)	4380M10 · Employee Benefits - ...	Admin.	-2.75
			HSA Svc Fee January 2022 (Duncan)	4380M10 · Employee Benefits - ...	Admin.	-2.75
TOTAL						-8.25

11:29 AM
01/19/23

Lake Minnetonka Conservation District
Check Detail
January 16 - 31, 2023

Date	Num	Name	Memo	Account	Class	Paid Amount
01/26/2023	EFT-23-6	Health Partners		Alerus Checking		
			February Dental Insurance (Schleuning)	4380M10 · Employee Benefits - ...	Admin.	-60.91
			February Dental Insurance (Duncan)	4380M10 · Employee Benefits - ...	Admin.	-60.91
			February Dental Insurance (Tully)	4380M10 · Employee Benefits - ...	Admin.	-60.91
TOTAL						-182.73
01/26/2023	22282	Brandography		Alerus Checking		
12/31/2022	Inv.#5902		add Captcha to website to reduce spam	4070M10 · Webpage & Digital	Admin.	-290.00
TOTAL						-290.00
01/26/2023	22283	Chuck Struck		Alerus Checking		
01/11/2023	Inv.#INV0032		Board Meeting 1/11/23	4182M10 · Media (Cable/Internet...	Admin.	-160.00
TOTAL						-160.00
01/26/2023	22284	City of Mound		Alerus Checking		
01/26/2023	February 2023		Rent, February 2023	4320M10 · Office Rent - Admin.	Admin.	-1,733.48
TOTAL						-1,733.48
01/26/2023	22285	Goff Public		Alerus Checking		
12/31/2022	Inv.#18305		Public Relations, Printing & Mailing LMCD Newsletter	4183M10 · Prof/ Serv. - Commu...	Admin.	-13,285.77
TOTAL						-13,285.77
01/26/2023	22286	LMCC		Alerus Checking		
01/12/2023	Inv.#1521, 1...		Boat Generated Wakes Commercial	4182M10 · Media (Cable/Internet...	Admin.	-300.00
			VOD Services for Meeting 1/11/2023	4182M10 · Media (Cable/Internet...	Admin.	-200.00
TOTAL						-500.00
01/26/2023	22287	PLM Lake and Land Management Corp.	VOID:	Alerus Checking		
TOTAL						0.00
01/26/2023	22288	Tammy A. Duncan		Alerus Checking		

11:29 AM
01/19/23

Lake Minnetonka Conservation District
Check Detail
January 16 - 31, 2023

Date	Num	Name	Memo	Account	Class	Paid Amount
01/12/2023	Reimburse		Postage for documents to Dan for signature	4080 · Postage	Admin.	-31.30
TOTAL						-31.30
01/26/2023	22289	TimeSaver Off Site Secretarial, Inc.		Alerus Checking		
12/14/2022	Inv.#M27871		Board Minutes 12/12/22	4230M10 · Meeting Exp. - Admin.	Admin.	-317.88
TOTAL						-317.88
01/26/2023	22290	Abdo LLP		Alerus Checking		
01/26/2023	Inv.#466175		Audit Services Progress Bill	4040M10 · Auditing - Admin.	Admin.	-3,500.00
TOTAL						-3,500.00
01/26/2023	22291	James Brimeyer		Alerus Checking		
01/18/2023	12/19/22 - 1...		Interim Executive Director	4180M10 · Professional Service...	Admin.	-680.00
TOTAL						-680.00
01/26/2023	22292	PLM Lake and Land Management Corp.		Alerus Checking		
09/22/2022	Inv.#2001801		ProcellaCOR & Diquat Treatment - Smithtown Bay	4181M30 · Prof. Services	AIS	-2,920.27
TOTAL						-2,920.27

ITEM 7B



RESOLUTION 249

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

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

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

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

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

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

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

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

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

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

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

Adopted by the Board this 25th day of January 2023.

ATTEST:

Ann Hoelscher, Acting Chair

Dan Baasen, Secretary

DRAFT

Lake Minnetonka Conservation District
Transaction Detail By Account
January 1 - January 19, 2023
Resolution #249 Attachment 1 - Save the Lake Contribution

Date	Num	Name	Memo	Amount
3001M20 - Donations (General) - S/L				
01/18/2023	23900	Charlotte S Oliver	STL Donation (General)	50.00
01/18/2023	9949	Thomas Forsythe	STL Donation (General)	100.00
01/18/2023	16275	William Pye	STL Donation (General)	50.00
01/18/2023	19520	George Webster, III	STL Donation (General)	50.00
01/18/2023	0547644	Michael & Jacqueline Kavanagh	STL Donation (General)	500.00
01/18/2023	23039	Wayzata Bay Charters Inc.	STL Donation (General)	500.00
01/18/2023	1241	Gary & Susan Rappaport	STL Donation (General)	250.00
01/19/2023	10476	Lynn Walstedt	STL Donation (General)	15.00
01/19/2023	16212	Jack Weeks	STL Donation (General) In memory of Bill Weeks	200.00
01/19/2023	7383	Terrell R. Hanson	STL Donation (General) In memory of Bill Weeks	100.00
01/19/2023	1827	Larry D and Mary L Johnson	STL Donation (General) In memory of Bill Weeks	25.00
01/19/2023	7087	David & Carol Anderson	STL Donation (General) In memory of Bill Weeks	25.00
01/19/2023	PayPal	Evelyn Burau	Transfer from PayPal (40.00) In memory of Bill Weeks	38.35
01/19/2023	PayPal	Mary Simms	Transfer from PayPal (20.00)	18.93
01/19/2023	PayPal	Shawna Johnson	Transfer from PayPal (50.00) In memory of Bill Weeks	48.06
01/19/2023	PayPal	Melissa Poikonen	Transfer from PayPal (20.00)	18.93
01/19/2023	PayPal	Cynthia Boyum	Transfer from PayPal (25.00)	23.79
01/19/2023	PayPal	Tamala Greiber	Transfer from PayPal (25.00)	23.79
01/19/2023	PayPal	Judity Krohn	Transfer from PayPal (10.00)	9.22
Total 3001M20 - Donations (General) - S/L				2,046.07

ITEM 7D

SUMMARY OF EXECUTIVE DIRECTOR PERFORMANCE EVALUATION

The following is a summary of the conclusions from the performance evaluation of the LMCD Executive Director the LMCD Board of Directors (“Board”) conducted in closed session on January 11, 2023 pursuant to Minnesota Statutes, section 13D.05, subdivision 3(a).

The Board focused its review of the Executive Director using 2 questions: (1) What does the Executive Director do well? and (2) What could the Executor Director do better?

The Board discussed the areas where the Executive Directors meets or exceeds expectations and areas that can be approved upon. The Board recognized the importance of effective and concise written and verbal communications with the Board and others; the efficient and consistent processing of applications; the range of demands placed on the position; clearly identifying LMCD priorities and focusing on them; and presenting concise reports on applications. The acting Board Chair indicated she would communicate the Board’s review to the Executive Director.

Presented at the January 25, 2023 Board meeting.



LAKE MINNETONKA CONSERVATION DISTRICT

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

DATE: January 25, 2023 (Prepared January 20, 2023)

TO: LMCD Board of Directors

FROM: Maisyn Reardan, Administrative Coordinator

THROUGH: Vickie Schleuning, Executive Director

SUBJECT: LMCIT Liability Waiver Form

ACTION

Board approval to not waive the monetary limits on municipal tort liability established by Minnesota Statutes, Section 466.04.

BACKGROUND

League of Minnesota Cities Insurance Trust (LMCIT) members that obtain liability coverage from the LMCIT must decide whether to waive the statutory tort liability limits to the extent of the coverage purchased. The decision must be made before the effective date of the policy on May 1, 2023.

In the past, the Board has decided not to waive the protection of the statutory liability limits. The LMCIT liability coverage is \$2,000,000 and the State of Minnesota's tort liability is \$1,500,000. Staff recommends the Board select "Does Not Waive" the monetary limits on municipal tort liability. The following is a brief explanation of the options to waive or not waive.

Not Waive

If the Board elects to not waive the tort liability limits, an individual claimant would be able to recover no more than \$500,000 on any claim to which the statutory tort limits apply and a total of all claimants in a single occurrence would be able to recover no more than \$1,500,000 combined. The LMCD's 2022-2023 property and casualty premium was \$4,318 (based upon the Board not waiving the tort immunity limit).

Waive

With the additional \$500,000 of coverage being provided by the LMCIT, if the Board elects to waive the limits, a single claimant could potentially recover up to \$2,000,000. If the Board waives the tort limit, it is anticipated that the cost of the premium would increase.

CONSIDERATIONS

- Does the Board feel the tort liability amount provided by Minnesota State Law is sufficient in cases of negligence such as multiple harmed parties?
- Does the Board wish to undertake the added exposure and increased costs associated with waiving the monetary limits provided by State Law?

BUDGET

If the Board does not waive coverage, a similar premium is expected for 2023-2024 coverage. The property and casualty premium for 2022-2023 was \$4,318. This is budgeted for the Administrative account.

If the Board waives the tort limit, it is anticipated that the cost of the premium would increase.

STRATEGIC PRIORITIES

<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"/> Other
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ATTACHMENT

1. LMCIT Liability Coverage Waiver Form

LIABILITY COVERAGE – WAIVER FORM

Members who obtain liability coverage through the League of Minnesota Cities Insurance Trust (LMCIT) must complete and return this form to LMCIT before the member's effective date of coverage. Return completed form to your underwriter or email to psstech@lmc.org.

The decision to waive or not waive the statutory tort limits must be made annually by the member's governing body, in consultation with its attorney if necessary.

Members who obtain liability coverage from LMCIT must decide whether to waive the statutory tort liability limits to the extent of the coverage purchased. The decision has the following effects:

- *If the member does not waive the statutory tort limits, an individual claimant could recover no more than \$500,000 on any claim to which the statutory tort limits apply. The total all claimants could recover for a single occurrence to which the statutory tort limits apply would be limited to \$1,500,000. These statutory tort limits would apply regardless of whether the member purchases the optional LMCIT excess liability coverage.*
- *If the member waives the statutory tort limits and does not purchase excess liability coverage, a single claimant could recover up to \$2,000,000 for a single occurrence (under the waive option, the tort cap liability limits are only waived to the extent of the member's liability coverage limits, and the LMCIT per occurrence limit is \$2,000,000). The total all claimants could recover for a single occurrence to which the statutory tort limits apply would also be limited to \$2,000,000, regardless of the number of claimants.*
- *If the member waives the statutory tort limits and purchases excess liability coverage, a single claimant could potentially recover an amount up to the limit of the coverage purchased. The total all claimants could recover for a single occurrence to which the statutory tort limits apply would also be limited to the amount of coverage purchased, regardless of the number of claimants.*

Claims to which the statutory municipal tort limits do not apply are not affected by this decision.

LMCIT Member Name:

Check one:

- The member **DOES NOT WAIVE** the monetary limits on municipal tort liability established by [Minn. Stat. § 466.04](#).
- The member **WAIVES** the monetary limits on municipal tort liability established by [Minn. Stat. § 466.04](#), to the extent of the limits of the liability coverage obtained from LMCIT.

Date of member's governing body meeting: _____

Signature: _____ Position: _____



ITEM 13A

LAKE MINNETONKA CONSERVATION DISTRICT

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

DATE: January 25, 2023 (Prepared January 18, 2023)

TO: LMCD Board of Directors

FROM: Thomas Tully, Environmental Administrative Technician

CC: Vickie Schleuning, Executive Director

SUBJECT: New Commercial Multiple Dock License for Daniel G. Gustafson, Lake Minnetonka Real Estate II ("LMRE"), LLC, PID 11-117-23-22-0013, Outlot B, Dragonfly Hill, along Shoreline Drive in Orono, Browns Bay

ACTION

Board approval of Findings of Fact and Order for a new commercial multiple dock license application for Daniel G. Gustafson, Lake Minnetonka Real Estate II ("LMRE"), LLC, located at PID 11-117-23-22-0013, Outlot B, Dragonfly Hill, along Shoreline Drive in Orono, Browns Bay.

BACKGROUND

The LMCD held a public hearing on January 11, 2023 to consider the application of Daniel G. Gustafson, Lake Minnetonka Real Estate II LLC ("Applicant") for a new commercial multiple dock license for PID 11-117-23-22-0013, Outlot B, Dragonfly Hill, along Shoreline Drive in Orono, Browns Bay.

On January 11, 2023, after considerable discussion, the LMCD Board voted to have legal counsel and staff draft Findings of Fact and Order for approval of the new commercial multiple dock request with conditions. The Findings of Fact and Order is attached.

BUDGET

N/A

STRATEGIC PRIORITIES

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

1. Findings of Fact and Order
2. Proposed Site Plan
3. Board Memo of January 11, 2023, without attachments

Type: Commercial Multiple Dock License
Date: January 25, 2023
Applicant: Daniel G. Gustafson
Lake Minnetonka Real Estate II LLC
Site PID: 11-117-23-22-0013
Address: Outlot B, Dragonfly Hill, along
Shoreline Drive, Browns Bay,
Orono, MN 55331

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

IN RE:

Application of Daniel G. Gustafson, Lake
Minnetonka Real Estate II, LLC, for a
Commercial Multiple Dock License for
Property Located in the City of Orono

**FINDINGS OF FACT
AND ORDER**

The Lake Minnetonka Conservation District (“LMCD”) received an application from Daniel G. Gustafson, Lake Minnetonka Real Estate II, LLC (“Applicant”) for a commercial multiple dock license for the property (PID 11-117-23-22-0013), Outlot B Dragonfly Hill, along Shoreline Drive, described in EXHIBIT A (“Subject Property”). Fee title to the Subject Property is owned by the City of Orono. The Applicant provided information indicating ownership of all riparian rights. The Applicant requests a new commercial multiple dock license in order to store nine watercraft at the site. The LMCD Board of Directors (“Board”) held a public hearing, after due notice having been provided, on the requested commercial multiple dock license on January 11, 2023. The hearing was originally scheduled for August 24, 2022, but was continued to January 11, 2023, per request of the Applicant. Based on the proceedings and the record of this matter, the Board hereby makes the following Findings of Fact and Order:

FINDINGS OF FACT

- a. In 2019, the Legislature reduced the LMCD’s authority for land-based activities at commercial marinas. The proposed structure is across the street from a residential house and is north of an existing commercial multiple dock and is not anticipated to impact current adjacent dock structures. However, given that the proposed structure is adjacent to a heavily traveled County road and the property has no space for parking, safety and parking may be an issue with this location. But, after the 2019 legislative changes, such “land-based marina activities” are not subject to the LMCD’s authority.
- b. The Subject Property is located in the City of Orono, on Browns Bay, which is part of Lake Minnetonka (“Lake”) and includes approximately 428 feet of 929.4 feet OHW shoreline.

- c. The Applicant proposes to install nine boat storage units (“BSUs”) for rent to the public. Each of the nine BSUs would measure 18 feet wide by 48 feet long, with walkways six feet in width.
- d. Storage of five or more watercraft at a site requires a multiple dock license. Applicant proposes to install a seasonal or permanent dock and would be eligible for a deicing license per Section 10-3.03(a) of the LMCD Code of Ordinances (“Code”)
- e. Based on the approximately 428 feet of shoreline, the Subject Property’s BSU density is 1:50.
- f. The dock structure proposed by the Applicant is shown on the site plan attached hereto as Exhibit B (“Proposed Site Plan”), which is also the approved site plan.
- g. The proposed dock structure would extend approximately 90 feet into the Lake from the 929.4 OHW.
- h. The layout of the proposed dock structure is approximately 19,950 square feet for combined structures, boat storage, and navigation area, which is below the 20,000 square feet at which a mandatory environmental assessment worksheet (“EAW”) is required. The Board finds no reason to require a discretionary EAW in this case.
- i. Additional information regarding this matter is provided in the LMCD staff report related to this application dated January 11, 2023, and the presentation made thereon at the meeting (collectively, the “Staff Reports”). The Staff Reports are incorporated herein by reference, except that the approvals and conditions contained in this document shall be controlling to the extent there are any inconsistencies.
- j. An application for a commercial multiple dock is processed and acted on in accordance with Section 6-2.01 of the Code.
- k. The LCMD received no comments on the application from the Minnesota Department of Natural Resources (“MN DNR”) or the Minnehaha Creek Watershed District (“MCWD”).
- l. The City of Orono opposed the application and refused to consent, as fee owner, to the proposed commercial marina. The City stated that a commercial marina is not an allowed use under the current zoning; parking requirements cannot be met; the proposed use is too intense; no vegetation removal was approved on land; and the proposed use is a safety hazard.
- m. The Hennepin County Transportation Department opposes the application because of the lack of parking and likely traffic problems. The County indicated that it would not permit any construction in the County’s right-of-way or any stairway that crosses the right-of-way to the proposed dock. Further the County stated that half of the gravel parking area north of the site is County right-of-way, half of which is for limited parking and the other half is reserved for City of Orono emergency vehicles.

- n. David Feldshon and his wife Archelle Georgiou Feldshon, 1420 Shoreline Drive, Wayzata, objected to the application because of the lack of parking or sidewalk access and existing heavy traffic, which pose significant safety concerns. They further indicated that the riparian rights were intended for residential use. Their attorney further indicated that the City of Orono did not consent; the application is not consistent with City zoning; there is insufficient road access and parking; the proposed use is inconsistent with the Feldson's residential use across the road; and the Feldson's believe that they own part or all of the riparian rights.
- o. Al and Theresa Lampe, 1395 Orono Lane, Orono, opposed the application on safety grounds due to increased boat activity, the high traffic volume on the County road, and lack of parking.
- p. Bob and Keri Ganz, 1432 Shoreline Drive, Orono, opposed the application on safety grounds due to heavy traffic on the County road with its dangerously narrow shoulders.
- q. Kim Brown, 1300 Shoreline Drive, Orono, opposed the application because boat traffic is an issue, there are no bathrooms or attendant on site, there are parking concerns and safety hazards because of the County road.
- r. The proposed dock structure complies with the Code including Code Section 2-3.01 and 2-3.03 (regarding authorized dock use area), and otherwise does not require the issuance of any variances.
- s. As required by Code Section 6-2.01, the Board considered the applicable criteria in Code Section 6-2.01, Subd. 3 and determines the requested commercial multiple dock license is consistent with the criteria to the extent said criteria are relevant under Minn. Stat. § 103B.611, subd. 3(8). Specifically, the Board finds that the proposed structure:
 - i. Meets density requirements.
 - ii. Meets setback and length requirements.
 - iii. Will be structurally safe, if installed as required.
 - iv. Will generally comply with LMCD regulations.
 - v. Will not create an unsafe volume of traffic in the vicinity.
 - vi. Will be generally compatible with the maintenance of the Lake.
 - vii. Will not significantly affect Lake water quality.
 - viii. Will serve the general public.

ORDER

ON THE BASIS OF THE FOREGOING AND THE RECORD OF THIS MATTER, IT IS HEREBY ORDERED BY THE BOARD AS FOLLOWS:

1. Commercial Multiple Dock. The LMCD approves a commercial multiple dock license for a total of nine BSUs as shown on the Approved Site Plan attached hereto as Exhibit B, subject to compliance with all of the conditions set out in this Order.
2. Conditions. The commercial multiple dock approved in this Order is subject to, and is condition upon, compliance with all of the following:
 - a. Any future expansion of structure, space, or navigational area will require an EAW.
 - b. All watercraft storage must be contained within the boat slip structure and not extend beyond it.
 - c. The dock structure is approved to, but not above, the 929.4 feet OHW line. The dock shall not be physically connected to land above that point.
 - d. All watercraft stored overnight in any of the BSUs shall be owned and operated by members of the general public.
 - e. Adequate lighting and/or reflectorized material be provided at the end of the dock structure as approved by LMCD staff.
 - f. The construction is eligible for either a seasonal or permanent dock installation.
 - g. Any license would be contingent on the Applicant retaining the appropriate riparian rights to the site.
 - h. Use of the dock by the applicant and its agents, customers, guests and invitees shall not adversely affect the water and ecology of the Lake.
 - i. Failure of the Applicant to comply with any applicable regulations of the LMCD or other regulatory body, or with the conditions of this Order, may result in revocation of this license.
 - j. The dock structure shall be constructed in strict compliance with the Approved Site Plan (Exhibit B) and the Applicant shall maintain the dock in a good condition.
 - k. The Subject Property must be maintained and operated in compliance with all other provisions of this Code, and other applicable regulations, ordinances and state law.
 - l. This Order grants no vested rights to the use of the Lake. Use of the Lake shall at all times remain subject to regulation by the LMCD to ensure the public of reasonable and equitable access to the Lake.

- m. Utilization of the Lake pursuant to this Order constitutes, and shall be deemed, acceptance of, and agreement to, the terms and conditions of this Order without exception, qualification, or reservation.
- 3. Authorizations. The LMCD staff is hereby authorized and directed to issue the approved commercial multiple dock license for the Subject Property and to take such other actions as may be needed to ensure compliance with this Order and the requirements of the Code.

BY ORDER OF THE BOARD OF DIRECTORS of the Lake Minnetonka Conservation District this 25th day of January 2023.

Ann Hoelscher, Acting Chair

ATTEST:

Dan Baasen, Secretary

EXHIBIT A

Subject Property

Outlot B, Dragonfly Hill, according to the recorded plat thereof on file and of record in the office of the Hennepin County Recorder, State of Minnesota.

DRAFT

EXHIBIT B

Approved Site Plan

[attached hereto]

DRAFT



ITEM 13A ITEM 11A

LAKE MINNETONKA CONSERVATION DISTRICT

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

DATE: January 11, 2023 (Prepared January 4, 2023)

TO: LMCD Board of Directors

FROM: Thomas Tully, Environmental Administrative Technician

THROUGH: Vickie Schleuning, *Vickie Schleuning* Executive Director

SUBJECT: Multiple Dock License for Daniel G. Gustafson, Lake Minnetonka Real Estate II ("LMRE"), LLC, PID: 11-117-23-22-0013, Outlot B, Dragonfly Hill, along Shoreline Drive in Orono, Browns Bay

ACTION

Board consideration of the new commercial Multiple Dock License Application, and receive public input as part of the public hearing for the application. This site is located at PID: 11-117-23-22-0013, Outlot B, Dragonfly Hill, along Shoreline Drive in the City of Orono MN 55391, Browns Bay.

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 commercial multiple dock license application for the property located at PID: 11-117-23-22-0013, along Shoreline Drive in Orono for final approval at the January 25, 2023 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 commercial multiple dock license application for the property located at PID: 11-117-23-22-0013, along Shoreline Drive in Orono for final approval at the January 25, 2023 LMCD Board meeting based on...

Continue Hearing

I make a motion to continue the public hearing for the Daniel G. Gustafson, Lake Minnetonka Real Estate II, LLC, for a new Multiple Dock License to the January 25, 2023 Board meeting for further consideration

APPLICATION SUMMARY

The Lake Minnetonka Conservation District (LMCD) received a commercial multiple dock application from Dan Gustafson, Lake Minnetonka Real Estate II, LLC. The Applicant requested

a continuance of the public hearing that was originally scheduled for August 24, 2022. The legal notice and public notification were re-noticed. The proposed dock structure and storage is new for this site. The Applicant's property is located along Shoreline Drive, PID: 11-117-23-22-0013, in Orono MN 55391 with a legal description of Outlot B, Dragonfly Hill. The Applicant's site is currently an undeveloped outlet residing alongside Shoreline Dr. on Browns Bay.

The property is owned by the City of Orono, but LMRE indicates it legally owns the riparian rights on Lake Minnetonka along that shoreline property. The Applicant has submitted information and court documents in support of its position. Documents are attached.

Site Background

The applicant has submitted an application for a new commercial multiple dock license to develop a commercial multiple dock facility. The applicant proposes to construct a dock which would have a total of nine (9) BSUs. No protected species have been noted at this point. Parking is not proposed at this site due to the limited size of the land portion of the site. The survey provided by the applicant stated the approximate locations of underground features were marked using plans obtained from utility companies, however exact locations could not be accurately placed. Excavation may be necessary.

Applicant Proposal

Applicant's property has approximately 428 feet of 929.4 feet OHW shoreline on the eastern portion of the parcel residing along Browns Bay. The Applicant proposes a dock structure of approximately 222 feet in width and up to 100 feet in dock length. Nine (9) boat storage units (BSUs) are proposed. Each of the 9 BSUs would be 18 feet wide by 48 feet long, with walkways six (6) feet in width. The Applicant proposes 9 boat storage units (BSUs), with the majority of the boat slips available for rent by the general public with one slip for use by the owner.

Setbacks. Setbacks meet the double setback requirement of 30 feet with 30 feet on the northern side site line and 138 feet on the southern side site line.

Dock Length. The proposed dock length is up to 100 feet in length, the maximum for the requested commercial multiple dock facility.

Boat Density. The Applicant proposes 9 boat storage units (BSUs). The proposed facility would have a boat density of 1:50. The 1 boat per 50 feet of shoreline would allow 8.56 BSUs. By Code, this fractionalized number is rounded up to 9 BSUs.

EAW

The originally proposed multiple dock facility calculation for structure and navigation would have exceeded the EAW mandatory threshold of 20,000 square feet. Therefore, the Applicant submitted a new configuration approximately 19,950 square feet in structure and navigation, which is minimally below the mandatory threshold of 20,000 square feet. Depending on installation, poles or other structures may exceed the mandatory threshold. The applicant has been advised that installation of permanent dock pilings may result in a mandatory EAW if the

square footage is over the threshold. The Board may consider a discretionary EAW, given this is a new multiple dock facility in this location.

CONSIDERATIONS OF A COMMERCIAL MULTIPLE DOCK LICENSE

The following items should be considered when considering granting a commercial multiple dock license as referenced to the code section below:

6-2.01. Commercial Multiple Dock License. An application for a commercial multiple dock license shall be submitted, processed, and acted on in accordance with this Section.

Subd. 3. Review Criteria. When considering an application the Board shall consider, together with any other factors it determines are relevant, the following:

- (a) Whether the proposed structure is compatible with the LMCD watercraft density classification criteria in Article 2, Chapter 4;
 - *The Applicant's proposal meets density requirements (less dense than 1:50).*
- (b) Whether the proposed structure complies with the authorized dock use area requirements in Article 2, Chapter 3;
 - *The Applicant's proposal meets setback and length requirements.*
- (c) Whether the proposed structure will be structurally safe for use by the intended users;
 - *The Applicant is proposing and will be required to install and maintain a structurally safe facility.*
- (d) Whether the structure will comply with the regulations contained in this Code;
 - *The proposal generally appears to comply with regulations of the LMCD Code.*
- (e) Whether the proposed structure will create a volume of traffic on the Lake in the vicinity of the structure which will tend to be unsafe or which will cause an undue burden on traffic upon the Lake in the vicinity of the structure;
 - *LMCD staff do not regard this proposal as a significant increase to traffic on the lake in relation to the Code allowances.*
- (f) Whether the proposed structure will be compatible with the adjacent development;
 - *The proposed structure is across the street from a residential house and is north of an existing commercial multiple dock and not anticipated to impact current adjacent dock structures. However, given that the proposed structure is adjacent to a heavily traveled road and the property has no space for parking, safety and parking may be an issue with this location. After 2019 legislative changes to the statute governing the LMCD's jurisdiction, "land-based marina activities" are not subject to the LMCD's authority.*

- (g) Whether the proposed structure will be compatible with the maintenance of the natural beauty of the Lake;
 - *LMCD staff do not regard this proposal as an incompatible with the maintenance of the lake in relation to the Code allowances.*
- (h) Whether the proposed structure will affect the quality of the water of the Lake and the ecology of the Lake;
 - *It does not appear the proposal with significantly affect the water quality in relation to code allowances and other commercial multiple dock facilities.*
- (i) Whether the proposed structure, by reason of noise, fumes or other nuisance characteristics, will tend to be a source of nuisance or annoyance to persons in the vicinity of the structure;
 - *The proposed structure is located directly across the road from a residence. It does not appear the proposed lake use (structure or water storage) would negatively impact the area. See other comments regarding land-based activities.*
- (j) Whether adequate sanitary and parking facilities will be provided in connection with the proposed structure;
 - *The Applicant would need to address any activities or lack of facilities if negative impacts occur in or on the lake. See other comments regarding land-based activities.*
- (k) Whether the proposed structure will serve the general public as opposed to a limited segment of the public or a limited geographical area;
 - *The majority of the proposed BSUs at the commercial marina are available for the general public to rent. One BSU is proposed as private ownership.*
- (l) Whether the structure will obstruct or occupy too great an area of the public water in relationship to its utility to the general public; and
 - *The proposal generally meets dock use area Code allowances.*
- (m) If the site to which the application relates includes non-continuous shoreline, the Board shall also consider the conditions set out in Section 2-4.07, subdivision 4(a).
 - *N/A*

PUBLIC COMMENTS

In compliance with MN DNR General Permit 97-6098, the MN DNR, MCWD, and the City of Orono were provided information regarding the applications. Agency comments are provided below. General public comments received as of January 5, 2023 are summarized below. Any comments received after January 5, 2023 will be provided at the Board meeting for review.

- The City of Orono provided feedback with concerns for the proposed commercial multiple dock located at PID 11-117-23-22-0013 in Orono on August 18, 2022 as follows:

The City of Orono stated that The City of Orono is the owner of the parcel and does not consent to the proposed use of City owned land. In addition to this the City has following concerns based on City of Orono Regulations:

1. The parcel is zoned LR-1A, Lakeshore Residential District. This zoning district does not identify marinas as an allowed use. A marina would not be permitted according to City Code Sec 78-665.

2. Marinas are only permitted within the B-2, Lakeshore Business District. City Code 94-72 and 78-622. This parcel is not located within the B-2 district.

3. City Code Section 78-668 identifies requirements for off-street parking for marinas. Parking requirements are not being met with this application.

4. Performance and landscaping standards in City Code Section 78-670 and 78-671 outline requirements for site improvement and hours of operations for marinas. The City has concerns with the intense use of a commercial marina on the parcel.

5. No tree removal or intensive vegetation clearing is permitted within the 75 feet of the Ordinary High Water Level per City Code Section 78-1285. No vegetation alterations have been reviewed or permitted to facilitate access to the proposed dock space.

6. The proposed use would pose a hazard to the area and a safety risk regarding accessibility to the site along the County road with no parking or usable space on the property.

Based on the information provided The City of Orono does not support the proposed commercial multiple dock.

- The City of Orono provided additional feedback on January 4, 2023. The City of Orono stated that the City's position has not changed since our previous correspondence and the City of Orono continues to object to the request based on the reasons stated above.
- Hennepin County Public Works Transportation provided feedback regarding concerns for the proposed commercial multiple dock located at PID 11-117-23-22-0013 on August 17, 2022. Hennepin County stated that the County sees nothing but traffic problems for the dock area. It worries it will become an unofficial drop-off and pick up loading zone, and that there is not enough shoulder of road which would result in a traffic build up. It was also noted that the section of gravel parking area just north of the parcel is a Hennepin County Right of Way (ROW), half of which is marked for limited parking and the other half for use by the City of Orono emergency vehicles only. Hennepin County would not be supportive of this dock placement and would not permit any construction from the County's ROW or any stairway that crosses the ROW to the dock.
- One public comment voicing concern for the proposed commercial multiple dock was received on August 23, 2022 from David Feldshon and Archelle Georgiou Feldshon, who

are the homeowners at 1420 Shoreline Drive in Orono as follows:

The homeowners stated that their property is directly across Shoreline from the proposed dock. They wished to inform the LMCD of a few items:

1. The riparian rights forming the basis of the dock request originally belonged with our property and were intended for residential use.
2. The location in question has no parking or sidewalk access. Thus, the proposed boat slips pose significant safety concerns.
3. There is heavy traffic on Shoreline Drive making access to the proposed dock unsafe.
4. The strip of land between the waterline and Shoreline Drive is owned by the City of Orono. A dock would require approval of the City.

Therefore, they do not support the approval of the proposed commercial multiple dock

PUBLIC HEARING

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

The Applicant had requested a continuance of the public hearing that was originally scheduled for August 24, 2022. Due to the extended time since the original public notification, an additional hearing notice was published in the December 29, 2022 edition of the Sun Sailor (official LMCD newspaper) and December 31, 2022 edition of the Laker. Further, an additional public hearing notice was mailed to persons who reside upon or are owners of property within 350 feet of the Site on December 27, 2022. In addition, the Board packet was posted online and the agenda was posted on the LMCD bulletin board.

RECOMMENDATION

In consultation with LMCD legal counsel, LMCD staff are recommending approval of the new commercial multiple dock classification. After 2019 legislative changes to the statute governing the LMCD's jurisdiction, "land-based marina activities" are not subject to the LMCD's authority. While the legislation may not be in the best interest of the lake or all stakeholders, the LMCD cannot reasonably deny a request solely because the applicant may need to secure further approvals from other entities. In this case, the applicant may need to secure approvals from the City and/or County and can pursue such approval after receiving approval from the LMCD.

Based on information available at the time of this report, LMCD staff recommends the Board approve the request with the conditions listed below since the proposal generally meets the license review criteria. The recommendation may change based on information reviewed or presented as part of the public hearing process.

1. Not exceed 20,000 square feet per the mandatory EAW requirement, which may require further reduction of the structure depending on installation type. Any future expansion will require an EAW. This is recommended if the Board does not choose a discretionary

EAW.

2. All watercraft storage must be contained within the boat slip structure, not extend beyond the boat slip structure.
3. If a permanent dock is installed, appropriate lighting or reflectors at the ends of the dock towards the lake must be provided.
4. The areas of sanitation to prevent pollution of the lake and safe access to the lake such as parking must be addressed.
5. Emphasize the need to work with other agencies for applicable regulations such as zoning.
6. Any license would be contingent on the Applicant retaining riparian rights to the site.
7. Highlight the details of what is being approved.
8. Include standard license provisions.

BUDGET

N/A

STRATEGIC PRIORITIES

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

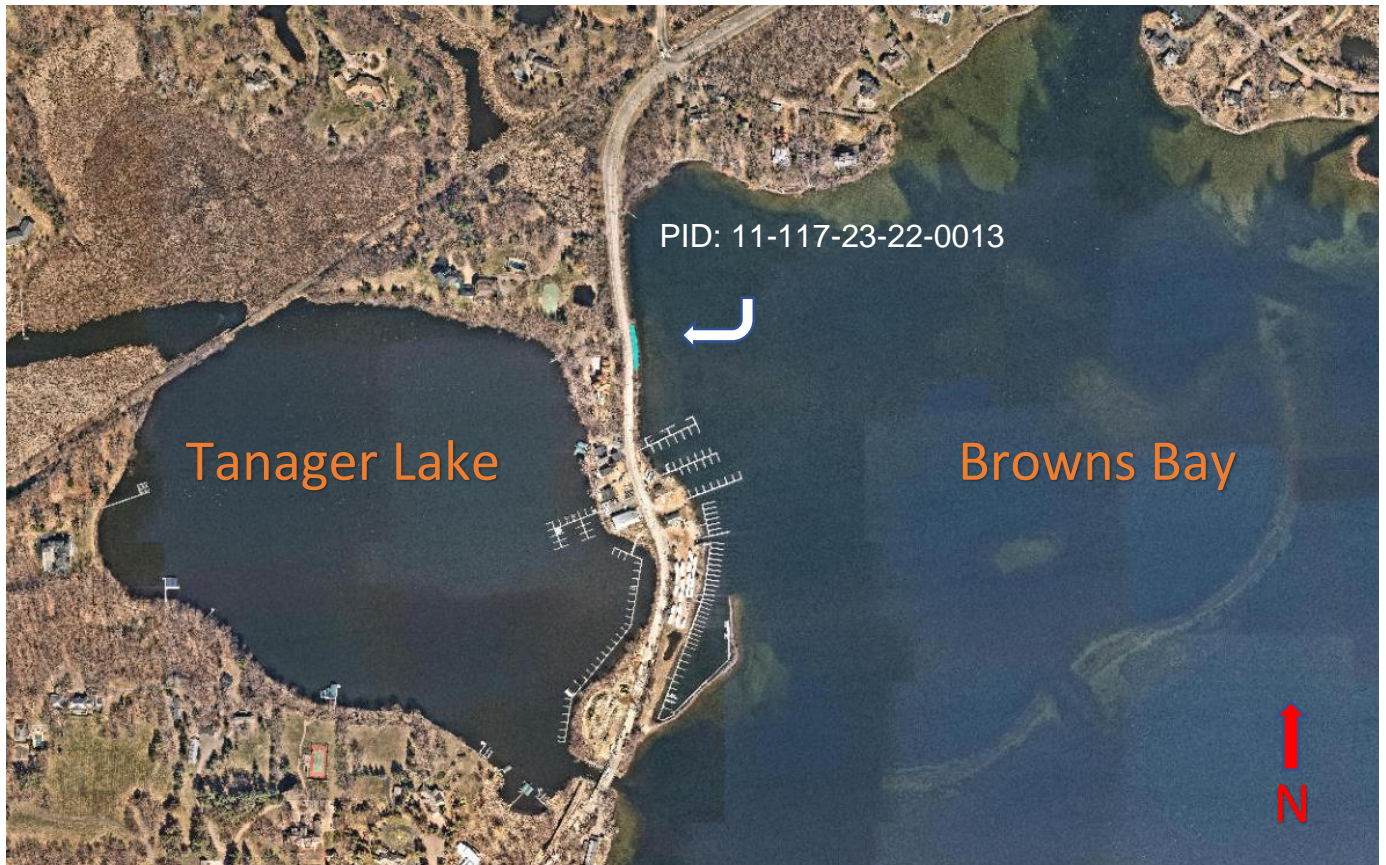
ATTACHMENTS

1. LMCD Code Excerpts
2. Aerial Imagery of Site
3. Proposed Site Plan
4. Multiple Dock License Application and Submittals
5. Applicant Time Limit Extension Request
6. Public Hearing Notice (Sun Sailor)
7. Public Hearing Notice Mailing
8. Public Comments

Multiple Dock Application : Commercial Marina

Property: PID: 11-117-23-22-0013, along shoreline Dr., Orono, MN 55364. Owner Dan Gustafson

For illustrative purposes only. Source: Hennepin County Interactive Property Map, 08/12/2022



Multiple Dock Application: Commercial Marina

Property: PID: 11-117-23-22-0013, along Shoreline Dr Orono, MN 55364. Owner Dan Gustafson

For illustrative purposes only. Source: Hennepin County Interactive Property Map, 08/12/2022





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**MULTIPLE DOCK
NEW LICENSE APPLICATION**
LAKE MINNETONKA CONSERVATION DISTRICT

For LMCD Use
Fee Amount: \$702.50 Check # 5626 Date Received: JUL 6 2022
By: _____

1. CONTACT INFORMATION

Applicant: Daniel G. Gustafson Applicant Title (Owner, Authorized Agent, etc.): Owner
Address: 1040 East Circle Drive, Wayzata MN 55391
Phone: 952-473-1000 Email: dan@wayzata.com
Owner of Site (if different from Applicant): Lake Minnetonka Real Estate II, LLC
Address: 235 Lake Street East, Wayzata MN 55391
Phone: 952-473-1000 Email: dan@wayzata.com

2. SITE INFORMATION

Site Name (Business) & Address/PID: TBD XX Shoreline Dr / 1111723220013

Facility Use Classification (Check all that apply)

- | | | |
|--|---|---|
| <input checked="" type="checkbox"/> a) Commercial Marina | <input type="checkbox"/> d) Transient | <input type="checkbox"/> g) Residential Multiple Dock |
| <input type="checkbox"/> b) Club | <input type="checkbox"/> e) Outlot Association | |
| <input type="checkbox"/> c) Municipal | <input type="checkbox"/> f) Residential Association | |

Facility Type

- | | | |
|---|--|---|
| <input type="checkbox"/> a) Qualified Commercial Marina | <input type="checkbox"/> b) Qualified Yacht Club | <input checked="" type="checkbox"/> d) Not Applicable |
| | <input type="checkbox"/> c) Qualified Sailing School | |

Site Shoreline Measurement of 929.4 ft OHW: 428 feet

Existing Boat Storage Unit Density: N/A Requested Boat Storage Unit Density: 1 per 50 = 9

Describe **type of dock construction** (material, permanent/pilings, floating, etc.) and attach to-scale drawing per site plan instructions: _____

Permanent pilings, likely from Niccum. An alternative would be the floating docks that North Shore Marina has installed at Maxwell Bay, and the could potentially be reinstalled every year.

Parking and zoning requirements: Check with the city staff in which the site is located.

Facilities & Services

- | | | |
|---------------------------|--|--|
| Restroom facilities | <input type="checkbox"/> Yes | If yes, number of indoor: _____ and/or outdoor portable: _____ |
| | <input checked="" type="checkbox"/> No | |
| Head pump-out facilities | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Fuel offered | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Fishing bait offered | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Boat Maintenance Services | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Public Launch Ramp | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

Site Square Footage (structures and maneuvering)

Total square footage of existing dock area and maneuvering space = $\frac{0}{19,800}$ sq. ft.

Total square footage of new or additional dock area and maneuvering space = _____ sq. ft.

Note: An EAW is mandatory when marina size reaches or surpasses 20,000 sq ft, and in 20,000 sq ft increments thereafter. A discretionary EAW may be required if potential for significant adverse environmental impacts could occur or where sensitive or protected aquatics may exist. Voluntary EAWs are supported.

Boat Storage Units (BSU) Computation

General Facility Applications: Lakeshore Frontage 428 feet divided by 50 = 9 BSU's potential under the 1 boat per 50-foot rule. If this number is less than the total BSU's applied for below, an application for a *Special Density License* is required per Code Section 2-4.05.

Qualified Facility Applications: Lakeshore Frontage _____ feet divided by 10 = _____ BSUs potential under the 1 boat per 10-foot rule.

Other code provisions regarding density may apply. _____ BSUs.

Number & Type of BSU's Requested

Number of BSUs in Each Type		Number of BSUs for Each USE	
Slips	9	Rent or lease	9
Slides		Service work	
Lifts		Company use	
Tie-ons		Private use	
Moorings		Transient use	
Other		Other	
TOTAL BSU's		TOTAL BSU's	

Watercraft Storage Units (WSU) Computation

Enter the number of BSU and WSU in each slip size category. Complete and **provide a slip size chart** as an attachment to this application. Note: This is only for fee calculations and does not entitle the applicant to install the number of BSUs or WSUs.

<u>BSU</u>	<u>SLIP SIZE CATEGORIES</u>	<u>WSU</u>
_____	BSU @ 1 WSU (each slip up to 20' long and /or up to 10' wide)	_____
_____	BSU @ 1.5 WSU (each slip more than 20' up to 24' long and/or up to 11' wide)	_____
_____	BSU @ 2 WSU (each slip more than 24' up to 32' long and/or up to 12' wide)	_____
_____	BSU @ 2.5 WSU (each slip more than 32' up to 40' long and/or up to 14' wide)	_____
9	BSU @ 3 WSU (each slip more than 40' up to 48' long and/or up to 16' wide)	27
_____	BSU @ 4 WSU (each slip more than 48' long and/or more than 16' wide)	_____
9	Total BSUs	Total WSUs 27

3. ATTACHMENTS

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

- | | |
|--|--|
| <input checked="" type="checkbox"/> Locator map, county plat map | N/A <input type="checkbox"/> Existing facility site plan |
| <input checked="" type="checkbox"/> Certified land survey, legal description | <input type="checkbox"/> Copies of any additional agency approvals related to project, e.g., shoreland restoration, dredging, etc. |
| <input checked="" type="checkbox"/> Slip size report (approved & proposed) | |
| <input checked="" type="checkbox"/> Proposed facility site plan to scale in accordance with site plan requirements | <input checked="" type="checkbox"/> Names and mailing addresses within 350 or 500 foot radius (See note) |

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 or 500 feet depending on the type of application. The applicant is required to obtain mailing labels from Hennepin County for property owners within the radius of the site. Labels are now available online by visiting <https://gis.hennepin.us/locatenotify/>. Set the buffer distance to 350 feet and print the "mail list," which includes both taxpayer and resident information. If the facility is located in Carver County, contact the LMCD office for assistance.

Visit www.LMCD.org for **requirements regarding application and site plan submittals**. 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.

4. FEES

Base Fee (Non-refundable)		<u>\$500.00</u>
Plus Number of Watercraft Storage Units (WSU)	<u>27</u> x \$7.50	<u>\$202.50</u>
Total Fee Enclosed		\$702.50

I certify that I have legal authority to make this application and that the information provided herein and any attachments hereto are true and correct statements to the best of my knowledge. Further, no changes have been or will be made without LMCD approval at this site and that a new license will be obtained from the LMCD before making any change. I understand that any license issued may be revoked for violation of the LMCD code. I agree to reimburse the LMCD for any legal, surveying, engineering, inspection, maintenance, or other expenses required that be incurred by the LMCD in excess of the original fee. I agree to the provisions of the license, if granted; and I consent to permitting officers and agents of the LMCD to investigate at all reasonable times and to determine compliance with all applicable regulations.

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

Applicant's Signature:

Name

Title

Date

Return to:

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

Klohs asked for additional input on parking, as he did not believe that the LMCD has the ability to control parking.

Gilchrist stated that there is no question that there is a coordination that needs to occur, but the reality is that while the two entities would like to work together, each has its separate approval process. He stated that if something approved by the LMCD is also contingent upon City approval, the LMCD would just need to be upfront about that.

Walesch stated that he received a question from another marina owner in regard to the codes being applied. He stated that the submittal was for a nonconforming commercial dock application and it has been questioned as to whether the application should have been for a qualified commercial marina and whether elements of the code are being "cherry picked" for application.

Gilchrist stated that his initial reaction would be that it would be up to the applicant whether to seek a qualified commercial marina status and this applicant did not make that request. He was not aware of anything that would require the applicant to do so, as this is a nonconforming structure. He stated that it would be helpful for staff for the Board to identify elements they feel may be "cherry picked". He noted that one reason staff suggested continuing the action tonight is to receive and consider all the public input and Board comments received tonight.

Walesch referenced the nonconforming criteria and asked if the applicant would need to meet all of those criteria or just some elements.

Gilchrist stated that the criteria need to be met with the understanding that there is some flexibility. He stated that there is internal flexibility based on the language, but a variance could also be issued assuming the Board finds practical difficulty.

Zorn stated that these are permanent docks and asked if variances granted would need to be reviewed again in the future.

Gilchrist replied that typically variances would run with the dock as long as it is not being changed.

Chair Thomas asked if a change in ownership would impact a variance that has been granted.

Gilchrist replied that if a new owner was taking over the dock system as is, the variance would remain. He explained that if the new owner wanted to reconfigure the dock system, then all elements would be considered.

Zorn stated that the task of the Board would then be to determine if the variance from the 1960s should continue.

Gilchrist recommended the Board start from a higher level to see if the request is acceptable and then drill down on the details. He noted that some elements may not require a variance and provided examples.

utilizing the public access that is located between the properties. He stated that Tonka Bay has stated that because changes to the application with LMCD were made, Tonka Bay is delaying action until the LMCD takes action as there is more involved with the LMCD request.

Klohs asked if Tonka Bay staff or Council have expressed concern with continuing the variance.

Mr. Wischmeyer stated that there has not been any concern expressed thus far, as the activity has been ongoing for many decades. He stated that they have counted the parking stalls and have created additional parking stalls by removing some of the old boats. He stated that they have been working to clean up trash and elements that have remained for many years. He stated that Mr. Shatsall and his wife own RSI Marine in Shakopee and therefore there would be an ability to store boats there in the winter if needed.

Klohs stated that to clarify if approved, the LMCD cannot regulate parking and therefore that should be addressed by Tonka Bay.

Mr. Wischmeyer referenced the envelope noting that the straight-line concept would provide additional capacity, but they attempted to stay within the available footprint as much as possible. He noted that they were going to shift to the east, but that was not desirable to the neighboring property owner and therefore that footprint was shifted to maintain the setbacks on the east. He stated that they are changing from two-foot walkways to proper four-foot walkways for safety and accessibility. He stated that the intent on angling the eastern docks is to avoid conflicts with the neighboring property owner. He referenced the west side, which would require a variance for some extensions into the water on the west. He noted that the furthest out point would be 14 or 15 feet into the fire lane. He stated that they would prefer a clean straight line rather than the meander. He stated that while they propose overnight slips on the western side that would be to provide flexibility throughout this process and with ice conditions. He noted that eventually the intention would be to use the western slips as transient slips but recognized that would require additional approvals in the future.

Chair Thomas asked how the proposed dock, extending over the side site lines, vary from what exists today.

Matt Cook replied that the difference is primarily in the south slips, closer to shore, noting that one of the first or second slips would stick out a few feet while it currently does not stick out at all. He noted that the gas dock slips to the north would also be different.

Chair Thomas stated that currently the marina has a variance to extend into the fire lane, while this would provide a slightly larger encroachment. He asked for details on the access and egress to the lake from the boat launch.

Mr. Wischmeyer stated that the boat launch is in the center and followed the path boats follow to get out on the lake. He stated that part of the redesign concept would make a straight shot out, which would provide a better ability to bring boats in and out.

Hoelscher noted that it is not directly related to the application, but asked if the redesign would allow the Minnehaha to be launched at the facility.

WILLIAM M. DICKEL
ATTORNEY AT LAW
201 LAKE STREET EAST
SUITE 205A
WAYZATA, MINNESOTA 55391-4124

DIRECT: 952-653-4201
MOBILE: 763-443-5941

SDICKEL@WAYZATALAW.COM

November 28, 2022

Ms. Vickie Schleuning
Executive Director
Lake Minnetonka Conservation District
5341 Maywood Road
Suite 200
Mound, MN 55364

Re: Multiple Dock New License Application

Dear Ms. Schleuning:

This letter accompanies an application for a Multiple Dock New License being submitted by Mr. Daniel Gustafson. The purpose of this letter is to assist Dan with his application by presenting support information, organized and appropriate for the LMCD processing.

Dan, as manager and owner of Lake Minnetonka Real Estate II, LLC ("LMRE"), is applying for a multiple dock permit for a marina located along County Road 15, Orono, Minnesota. The legal description for the shoreline property is: Outlot B, Dragonfly Hill, according to the recorded plat thereof on file and of record in the office of the Hennepin County Recorder.

LMRE legally owns the riparian rights on Lake Minnetonka along that shoreline property. The City of Orono hold title to the shoreline, but that title ownership is subject to LMRE's riparian rights.

1. RIPARIAN RIGHTS OWNERSHIP

City of Orono acquired title to the shoreline property by a quitclaim deed from David and Anne Duff. That deed expressly reserved the riparian rights associated with that land. The specific reservation states:

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Reserving to said Grantors riparian access and docking and boat buoy rights, and the right to install and maintain the same

A copy of that quitclaim deed is included with this letter; it is labeled "Petition Exhibit C" from a probate court matter.

Mr. Gustafson's application to LMCD is based on these well defined riparian rights. The history and transfer of those rights to LMRE follow.

In a lawsuit this reservation of riparian rights was repeated and cited by the court in its Order Granting Summary Judgment:

. . . the riparian rights held by the Duffs were never conveyed . . . *Johnson et al vs. City of Orono et al*, Fourth Judicial District, Hennepin County, Minnesota, Court File No. 27-CV-17-1030 (Dated May 10, 2018, at page 5. (A copy is readily available from the undersigned if desired)

However, by 2002 the last of the Duffs had passed away. In 2020 the Fourth Judicial District, Hennepin County, Probate Division addressed the Duffs' riparian rights. In Estate of Anne B. Duff, Deceased, Court File No. 27-PA-PR-20-1479, the Court issued a Decree of Descent. The court declared that "Title to the riparian rights described in this Decree of Descent . . . are assigned to and vested in" named descendants, "and Elizabeth C. Duff has been appointed as special administrator." A copy of that decree, dated April 7, 2021, recorded, accompanies this letter, and is marked "Decree Exhibit".

On April 12, 2021, special administrator Elizabeth C. Duff executed an assignment and transfer of all riparian rights to LMRE. A copy of that recorded assignment and transfer is included as "Assignment Exhibit".

Finally, LMRE is a limited liability company in good standing with the Minnesota Secretary of State. A copy of that status is included, marked as "LMRE Status Exhibit".

As shown by the items already mentioned, LMRE is a qualified entity with all legal entitlement to riparian rights for Lake Minnetonka waters on which this applicant requests docks licensing from LMCD.

2. LMCD HAS THE SOLE AUTHORITY TO, AND MAY LAWFULLY, GRANT THE LICENSE REQUESTED

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LMCD certainly understands its authority to regulate the waters of Lake Minnetonka. Minnesota Statutes “Chapters 103A, 103B, 103C, 103D, 103E, 103F, and 103G constitute the water law of this state and may be cited as the “Water Law.”” (Minn. Stat. §103A.001) Chapters 103b.601 through 103b.645 entitle Lake Minnetonka Conservation District to all regulation of Lake Minnetonka waters.

Although City of Orono may object to this application, granting a dock permit on Lake Minnetonka lies exclusively within the exclusive authorities of LMCD. Only LMCD has authority to regulate the construction, configuration, size, location, and maintenance of commercial marinas and their related facilities that affect activity below the ordinary high-water mark. The authority under this clause does not apply to land-based marina activities, including storage facilities, and must be consistent with the applicable state statutes, municipal building codes, and zoning ordinances where the marinas are located Minn.Stat. §103B.611, subd. 3(8) Minnesota Statute creating White Bear Lake Conservation District, which is substantially similar to statute creating LMCD, “represents an effort by the local municipalities to cede authority to the board to regulate all manner of activities affecting the lake” *City of Birchwood Village v. Simes*, 576 N.W.2d 458, 462 (Minn. App. 1998)

Presently the courts ‘ view is that the waters of Lake Minnetonka are not subject to regulation by a federal agency, and federal legislation such as the Clean Water Act Rules and Regulations. 33 U.S.C. 404 (1948 et seq.). Clearly Lake Minnetonka is navigational waters within the State of Minnesota, but is not now viewed as navigational waters within federal regulation. *Minnehaha Creek Watershed District, State of Minnesota, Lake Minnetonka Conservation District and State of Minnesota, Department of Natural Resources vs. U. S. Department of the Army, Corps of Engineers et al*, 597 F.2d 617 (8th Cir. 1979); citing:

Those rivers must be regarded as public navigable rivers in law which are navigable in fact. And they are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water. And they constitute navigable waters of the United States within the meaning of the Acts of Congress, in contradistinction from the navigable waters of the States, when the form in their ordinary condition by themselves, or by uniting with other waters, a continued highway over which commerce is or may be carried on with other States or foreign countries in the customary modes in which such commerce is conducted by water.
The Ball, 77 U.S. 557 (1870)

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The Minnesota State Department of Natural Resources also makes it clear that LMCD has exclusive jurisdiction to regulate the waters surfaces of Lake Minnetonka. “The DNR has granted the authority for their water surface use ordinances to that agency.” (Available email from Barbara Damchik-Dykes, Data Practices Compliance Official, Minnesota Department of Natural Resources, July 4, 2021)

3. THIS COMMERCIAL MARINA MULTIPLE DOCK APPLICATION MEETS ALL LMCD CODE OF ORDINANCES REQUIREMENTS

LMCD Code §2-1.01

“As part of regulating use of the Lake, the LMCD has identified the specific portion of the Lake adjacent to riparian properties that may be used to place structures, which is called the authorized dock use area.”

LMCD Code §2-3.01 Subd. 2

“Uses Within Dock Use Area. No person shall use any area of the Lake within any authorized dock use area for docks, moorings, watercraft storage, swimming floats, ski jump storage, or diving towers without the consent of the riparian owner.” Applicant is the sole owner of the riparian rights.

LMCD Code §3-2.01

“The commercial uses identified in this Section are eligible to apply for commercial licenses on the Lake. The following designations are based on the characteristics of the commercial use and are used to determine eligibility for certain commercial licenses These designations are not directly dependent on the zoning approvals issued for a property by the municipality in which the use is located. Each type of commercial use is identified below and may be referred to in this Code collectively as commercial uses

. . . .
(a) Commercial Marinas”.

LMCD Code §3-2.03

“Commercial marinas may seek the licenses identified in this Section and are subject to restrictions on the conversion of the use to a different use as provided in this Section. Subd. 1. License Eligibility. A commercial marina may apply for the following types of licenses:

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...
(b) Commercial multiple dock license”. LMCD Code §3-2.03

LMCD Code §3-3.01

“The commercial structures identified in this Section are allowed on the Lake with the issuance of a license (or permit) from the LMCD and compliance with all applicable provisions of this Code. In addition to these primary commercial structures, this Code also allows certain accessory commercial structures and uses as provided in Section 3-3.13. The specific types of commercial structures allowed by this Code, and which may be referred to collectively as commercial structures, are as follows:

...
(b) Commercial multiple docks”

LMCD Code §3-3.05

“Subd. 2. Licensing. The placement of a commercial multiple dock requires a commercial multiple dock license, the application for which shall be submitted and processed in accordance with Section 6-2.01.”

LMCD Code §6-2.01. Commercial Multiple Dock License.

“Subd. 2. Issuing Authority. The Board determines whether to issue a commercial multiple dock license after conducting a public hearing on the application. The license shall specify the authorized boat storage units allowed at the structure.”

“Subd. 3. Review Criteria. When considering an application the Board shall consider, together with any other factors it determines are relevant, the following:

(a) Whether the proposed structure is compatible with the LMCD watercraft density classification criteria in Article 2, Chapter 4;

[Reply: Applicant’s structure will be compatible.]

(b) Whether the proposed structure complies with the authorized dock use area requirements in Article 2, Chapter 3;

[Reply: Applicant’s structure will comply.]

(c) Whether the proposed structure will be structurally safe for use by the intended users;

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[Reply: Applicant's structure must be, and will be safe.]

(d) Whether the structure will comply with the regulations contained in this Code;

[Reply: Applicant's structure will comply with the Code.]

(e) Whether the proposed structure will create a volume of traffic on the Lake in the vicinity of the structure which will tend to be unsafe or which will cause an undue burden on traffic upon the Lake in the vicinity of the structure; (f) Whether the proposed structure will be compatible with the adjacent development; (g) Whether the proposed structure will be compatible with the maintenance of the natural beauty of the Lake;

[Reply: Applicant's structure will not create a volume of traffic.]

(h) Whether the proposed structure will affect the quality of the water of the Lake and the ecology of the Lake; Effective: June 10, 2022

[Reply: Applicant's structure will not affect the water quality.]

(i) Whether the proposed structure, by reason of noise, fumes or other nuisance characteristics, will tend to be a source of nuisance or annoyance to persons in the vicinity of the structure;

[Reply: Applicant's structure will not be a source of nuisance.]

(j) Whether adequate sanitary and parking facilities will be provided in connection with the proposed structure;

[Reply: LMCD does not regulated these items. Also, see below at ^{*}]]

(k) Whether the proposed structure will serve the general public as opposed to a limited segment of the public or a limited geographical area;

[Reply: Applicant's structure will serve the general public.]

(l) Whether the structure will obstruct or occupy too great an area of the public water in relationship to its utility to the general public; and

[Reply: Applicant's structure will not occupy too great an area of the

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public water.]

(m) If the site to which the application relates includes non-continuous shoreline, the Board shall also consider the conditions set out in Section 2-4.07, subdivision 4(a)."

[Reply: Not applicable.]

*

It is well established that exercise of one's riparian rights is not dependent, in any way, upon the nature or size of the upland property associated to the riparian estate.

The barest strip of upland, though wholly valueless and useless in itself, justifies the owner in the exercise and enjoyment of the privileges of riparian proprietorship to the fullest extent.

Hanford Et Al. v St. Paul & D. R. Co., 43 Minn. 104, 114, 44 N.W. 1144, 1146 (Minn. 1890); *Petraborg v. Zontelli*, 217 Minn. 536, 548, 15 N.W.2d 174, 181 (Minn. 1944)

"First, the Lake Minnetonka Conservation District has no control at this point over anything that happens on land... so parking, the roadway, that you'd have to take up with your cities or the county or the state." (LMCD Director Ann Hoelscher, Board of Directors Hearing, August 24, 2022)

And as is argued by City of Orono, regarding the exact area of Applicant's riparian rights:

Riparian rights are the rights to reasonably use the surface of waters abutting a parcel of real property. *Magnuson v. Cossette*. 707 N.W.2d 738, 744 (Minn. App. 2006) (citing *Johnson v. Seifert*. 257 Minn. 159, 168-69, 100 N.W.2d 689, 696-97 (1960)).

Defendant City Of Orono's Memorandum In Opposition To Plaintiffs' Motion For Summary Judgment, in Hennepin County District Court, Matter or *Johnson et al v. Orono et al*, Court File No. 27-CV-17-1030, dated September 29, 2017, page 8.

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4. APPLICANT'S LICENSE IS CONSISTENT WITH RIPARIAN RIGHTS IN MINNESOTA

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).

McLafferty, et al. v. St. Aubin, et al., and City of Shoreview, Intervenor, 500 N.W.2d 165, 168 (Minn. App. 1993)

Applicant thanks, and is grateful of the intense depth and breadth of the work conducted by the LMCD staff, and the LMCD Board of Directors in processing an application such as this.

Applicant requests that staff share its review report and recommendation at least two business days prior to application's scheduled hearing date.

Very truly,

William M. Dickel

em
enc.

4861621

JAN 23-84 1 6 2 1

\$ 000.0000

No delinquent taxes and transfer entered Certificate
of Real Estate Value () filed () not required
Certificate of Real Estate Value No. _____

19

VERNON T. KOPPE

DIRECTOR OF PROPERTY TAXATION
HENNEPIN COUNTY, MINNESOTA

JAN 20 1984

County Auditor

by

Deputy

NO FEE REQUIRED

OFFICE OF COUNTY CLERK
HENNEPIN COUNTY, MINNESOTA
CERTIFIED FILED AND FOR
RECORD ON

1984 JAN 23 PM 2:41

AS DOCUMENT # 4861621
CO. RECORDER

McKane

(reserved for recording data)

STATE DEED TAX DUE HEREON: \$ —

Date: DECEMBER 30, 19 83FOR VALUABLE CONSIDERATION, David J. Duff and Anne B. Duff, husband
and wife

(marital status)

, Grantor (s),

hereby convey (x) and quitclaim (x) to The City of Orono

, Grantee,

a Municipal Corporation under the laws of Minnesota
real property in Hennepin County, Minnesota, described as follows:Outlot B, Dragonfly Hill, according to the recorded
plat thereof on file and of record in the office of
the Hennepin County Recorder;Reserving to said Grantors riparian access and docking and boat buoy
rights, and the right to install and maintain the same;

(If more space is needed, continue on back)

together with all hereditaments and appurtenances belonging thereto.

Affix Deed Tax Stamp Here

David J. Duff

Anne B. Duff

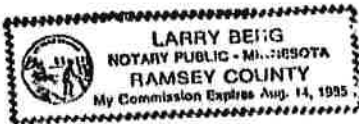
THIS
DEED IS PART OF
THIS INSTRUMENTThis grant is subject to the restriction that said property not be
used for boat launching purposes, and that said property not be
transferred by the Grantee without holding a public hearing to con-
sider such a transfer, and to the further restriction that no fishing
pier or other substantial improvement of a like kind be undertaken
without holding a public hearing to consider the matter.THIS
DEED IS
PART OF
THIS
INSTRUMENT

COUNTY OF HENNEPIN } ss.

The foregoing instrument was acknowledged before me this 30 day of DECEMBER, 19 83,
by David J. Duff and Anne B. Duff, husband and wife

, Grantor(s).

NOTARIAL STAMP OR SEAL (OR OTHER TITLE OR RANK)



THIS INSTRUMENT WAS DRAFTED BY (NAME AND ADDRESS):

Wright, West & Diessner
320 Manitoba Avenue
Wayzata, Minnesota 55391

SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT

Tax Statement for the real property described in this instrument should
be sent to (include name and address of Grantee):

Larry Berg
City of Orono
P. O. Box 66
Crystal Bay, MN 55323

TRANSFER ENTERED
DEPARTMENT OF PROPERTY TAXATION

JAN 19 1984

HENNEPIN COUNTY MINN.

BY Alexander DEPUTY

Transfer Entered

May 5, 2021 12:34 PM

Hennepin County, Minnesota
Mark Chapin
County Auditor and Treasurer



LAND TYPE Abstract (A)

DOC NUM 10957923

Certified, filed and/or recorded on
May 5, 2021 12:34 PM

Office of the County Recorder
Hennepin County, Minnesota
Martin McCormick, County Recorder
Mark Chapin, County Auditor and Treasurer

Deputy 55

Pkg ID 2232266E

Document Recording Fee	\$46.00
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Document Total	\$46.00
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PID(s)

11-117-23-22-0013

This cover sheet is now a permanent part of the recorded document.

Decree Exhibit

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
PROBATE COURT DIVISION

Estate of

Court File No.: 27-PA-PR-20-1479

Anne B. Duff,
Deceased

DECREE OF DESCENT

The Petition for Appointment of Special Administrator and Determination of Descent, signed by Elizabeth C. Duff, came before this Court by Zoom Video Conferencing on March 10, 2021. Petitioner was present, and was represented by William Dickel, Esq.

The matter was referred for hearing to the undersigned District Court Referee, who now reports to the Court making the following recommended Findings of Fact and Order:

FINDINGS OF FACT

1. The Court has jurisdiction and venue in this County is proper.
2. The Petition is complete.
3. Any notice required by Minnesota law has been given.
4. The Petitioner has declared or affirmed that the representations contained in the Petition are true and complete to the best of the Petitioner's knowledge or belief.
5. The Petitioner is an interested person as defined by Minnesota law.
6. The Decedent died on March 14, 1992 in Minneapolis, Hennepin County, Minnesota. More than three years have elapsed since the death of the Decedent and the time limit for appointment proceedings has expired.

7. Decedent's last will and testament was probated in 1992 by this Court; that case number is 27-P1-92-568. The Court records indicate administration in this estate was not completed; the matter was reviewed and closed by the court some time before the year 2000. The fourth digit of the actual year of closing cannot be read on the court records screen, but the year begins with 199.

8. Decedent's then surviving spouse, David J. Duff, was appointed personal representative in Court Case No. 27-P1-92-568. Decedent's spouse David J. Duff died on 7/05/2015; for him no probate was commenced in this state, although three demands for notice of such probate were filed in Probate Documents Case No. 27-15-2371.

9. At the time of Decedent's death she held reserved riparian rights in real property located in Hennepin County, Minnesota, described as:

Outlot B, Dragonfly Hill, according to the recorded plat thereof
on file and of record in the office of the Hennepin County Recorder;

hereinafter referred to as "The Property".

10. The petition herein is for determination of descent with respect to said reserved riparian rights in The Property.

11. Decedent took title to The Property by a warranty deed dated July 25, 1972, recorded as Hennepin County document No. 3964275. Decedent is identified in said deed as a married person, but as the sole grantee.

12. When Decedent took title, The Property was described as:

That part of Government Lot 1 in Section 11, Township 117 North, Range 23 West of the 5th Principal Meridian, described as follows: Beginning at a point 585.84 feet Southeasterly measured along a line which bears South 10 degrees East from the Meander Corner at the Northeast corner of Government Lot 1 in said Section 11; thence South 67 degrees 48 Minutes West 192.97 feet more or less to the shore of Mud Lake (so called); thence Northerly and Westerly along the shore of said lake to its intersection with a line drawn South at right angles to the North line of said Section 11, from a point therein distant 373.35 feet West of aforesaid Meander Corner at the Northeast corner of said Government Lot 1 in said Section; thence North along said right-angle line to a point 40 feet South of the North line of said Section 11; thence East parallel with the North line of said

Section and distant 40 feet South therefrom to the shore of Lake Minnetonka; thence Southerly along the shore of said lake to its intersection with a line which bears North 67 degrees 48 minutes East from the point of beginning; thence South 67 degrees 48 minutes West 14.3 feet more or less to the point of beginning.

13. In 1983 The Property in part of platting was renamed as:

**Outlot B, Dragonfly Hill, according to the recorded plat thereof
on file and of record in the office of the Hennepin County Recorder;**

14. By a quitclaim deed dated December 30, 1983, recorded as document No. 4861621, title to The Property so renamed was conveyed to City of Orono, but:

**“Reserving to said Grantors riparian access and docking and
boat buoy rights, and the right to install and maintain the same”**

15. There is no record or other indication that Decedent ever conveyed her riparian rights in The Property to her spouse. According, Decedent's spouse executed Decedent's quitclaim deed only as consenting spouse.

16. Decedent died leaving four children and her now deceased spouse. Decedent's children, named and declared as heirs and devisees in Decedent's 1992 probate proceeding, are:

Andrew Scott Duff, dob 12/19/57;

David Gale Duff, dob 7/31/56;

Elizabeth Carpenter Duff, dob 5/15/60; and

Nicholas Jones Duff, dob 5/4/64.

17. Decedent's son and heir David Gale Duff died in Las Vegas, Clark County, Nevada on September 30, 2002, single and leaving no known descendants. Therefore, the intestate succession heirs of David Gale Duff are his three surviving siblings, pursuant to Minnesota Statutes 524.2-103.

18. Decedent's will does not identify or otherwise refer to her retained riparian rights in The Property. Accordingly, Decedent's retained riparian rights in The Property are part of Decedent's residue.

19. Decedent's will provides in Article Five §5.2:

I give my residuary estate in equal shares to those of my children who survive me, and, by right of representation, to the issue of any of my children who do not survive me but who leave issue surviving me

20. Pursuant to the provisions of Decedent's will, Andrew Scott Duff, Elizabeth Carpenter Duff, and Nicholas Jones Duff, as Decedent's surviving children, are named beneficiaries entitled to receive, in equal shares, all right and interest in said retained riparian rights of The Property.

21. A Clearance for Medical Assistance issued by Hennepin County, stating "That the Department DOES NOT have a claim against the Estate for Medical Assistance or for General Assistance Medical Care paid on behalf of the deceased" has been filed in this matter.

IT IS ORDERED AND DECREED:

1. The Petition is granted and Elizabeth C. Duff has been appointed as special administrator.
2. Title to the riparian rights described in this Decree of Descent, subject to any prior disposition, are assigned to and vested in the following named persons in equal shares:

To Decedent's surviving children in equal shares: Andrew Scott Duff, Elizabeth Carpenter Duff, and Nicholas Jones Duff.

Order Recommended By:

George Borer

Borer, George
Apr 7 2021 3:09 PM

Referee of District Court

BY THE COURT:

Phil Carruthers

Carruthers, Phil
Apr 7 2021 3:21 PM

Judge of District Court

STATE OF MINNESOTA, COUNTY OF HENNEPIN
Certified to be a true and correct copy of the original
document(s) consisting of four pages
on file and of record in my office.

APR 28 2021

Estate of Anne B. Duff

Dist. Ct. Administrator
Court File No.: 27-PA-PR-20-1479
By *Stephan M...* Deputy

Decree of Descent



LAND TYPE Abstract (A)

DOC NUM 10957925

Certified, filed and/or recorded on
May 5, 2021 12:34 PM

Office of the County Recorder
Hennepin County, Minnesota
Martin McCormick, County Recorder
Mark Chapin, County Auditor and Treasurer

Deputy 55

Pkg ID 2232266E

Document Recording Fee	\$46.00
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Document Total	\$46.00
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This cover sheet is now a permanent part of the recorded document.

Assignment Exhibit

**ASSIGNMENT AND TRANSFER OF
ALL RIPARIAN RIGHTS**

WHEREAS certain Riparian Land located in Hennepin County, State of Minnesota, and legally described as:

**Outlot B, Dragonfly Hill, according to the recorded plat thereof
on file and of record in the office of the Hennepin County Recorder;
PID 11-117-23-22-0013
Abstract**

("The Property") is owned in fee simple by City of Orono;

WHEREAS, City of Orono took title to The Property by a quitclaim deed dated December 30, 1983, recorded as document No. 4861621;

WHEREAS, said quitclaim deed dated December 30, 1983, recorded as document No. 4861621 expressly reserved for grantor all riparian rights with the language:

**"Reserving to said Grantors riparian access and docking and
boat buoy rights, and the right to install and maintain the same"**

WHEREAS, said grantor was Anne B. Duff, who thereafter died on March 14, 1992;

WHEREAS, in the matter Estate of Anne B. Duff, State of Minnesota, County of Hennepin, Fourth District Court Probate Division, Court File number 27-PA-PR-20-1479, Elizabeth C. Duff was appointed as Special Administrator, for which Letters of Special Administration were issued on March 15, 2021;

WHEREAS, in said Probate Court matter a Decree of Decedent was issued on April 7, 2021; and

WHEREAS, on behalf of the Estate of Anne B. Duff, and under her authorities under Letters of Special Administration, Elizabeth C. Duff now agrees to sell, transfer and assign all said reserved riparian rights in The Property;

NOW, THEREFORE:

1. Under Letters of Special Administration issued to Elizabeth C. Duff, the Estate of Anne B. Duff hereby sells, transfers, and assigns all riparian rights in and associated with Outlot B, Dragonfly Hill, according to the recorded plat thereof on file and of record in the office of the Hennepin County Recorder, PID 11-117-23-22-0013, to Lake Minnetonka Real Estate II, LLC, and Minnesota limited liability company with it principal office located at 201 Lake Street E/, Wayzata, MN 55391, Grantee.
2. In consideration for said sale, transfer and assignment of said riparian rights, Lake Minnetonka Real Estate II, LLC, Grantee herewith pay out to the Estate of Anne B.

Duff, Grantor, One and no/100 (\$1.00) Dollar, and other additional sums, the receipt and sufficiency of which Grantor hereby acknowledges.

Dated: 4/12/21

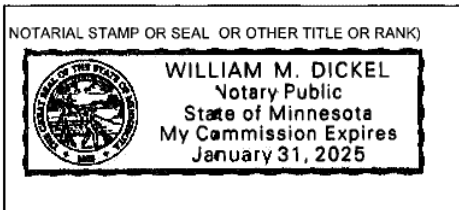
Estate of Anne B. Duff
Grantor

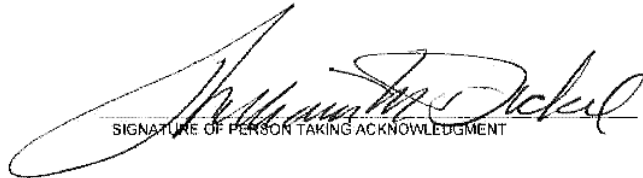


Elizabeth C. Duff, Special Administrator

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this 12th day of April, 2021, by Elizabeth C. Duff, Special Administrator for the Estate of Anne B. Duff, Grantor.




SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT

THIS INSTRUMENT WAS DRAFTED BY:

William M. Dickel, Esq.
201 Lake St. E. Ste. 205A
Wayzata, MN 55391

Business Record Details »

Minnesota Business Name

Lake Minnetonka Real Estate II, LLC

Business Type

Limited Liability Company (Domestic)

MN Statute

322C

File Number

1141987800027

Home Jurisdiction

Minnesota

Filing Date

2/13/2020

Status

Active / In Good Standing

Renewal Due Date

12/31/2023

Registered Office Address

201 East Lake Street
Wayzata, MN 55391
USA

Registered Agent(s)

(Optional) Currently No Agent

Principal Executive Office Address

235 Lake Street East
Wayzata, MN 55391
USA

Manager

Daniel Gustafson
235 Lake Street East
Wayzata, MN 55391
USA

Filing History

Filing History

Select the item(s) you would like to order:

<input type="checkbox"/>	Filing Date	Filing	Effective Date
<input type="checkbox"/>	2/13/2020	Original Filing - Limited Liability Company (Domestic) (Business Name: Lake Minnetonka Real Estate II,	

LLC)



2/2/2022

Administrative Termination - Limited Liability
Company (Domestic)



2/16/2022

Annual Reinstatement - Limited Liability Company
(Domestic)

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LAKE MINNETONKA CONSERVATION DISTRICT

APPLICANT REQUEST FOR TIME LIMIT EXTENSION

Applicant Name	<i>Name as it appears on the application:</i> Daniel G. Gustafson
Business/Site Address	<i>Business Name (if applicable) and site address of request:</i> 11-117-23-22-0013, along Shoreline Drive
Application	<i>Describe the application to which this request applies:</i> New Multiple Dock Application
Scope of Request	<i>This request will include all requests or matters related to the Application unless expressly excluded from this request by listing them here:</i> All requests
Requested Extended Deadline	<i>List the date of the extended time limit for action on this Application (or state "Indefinite"):</i> I request a delay/continuance of the public hearing scheduled for August 24, 2022, and am providing an indefinite time extension.
Reason for Requested Extension	<i>Provide a general description of the reason(s) for this request:</i> To allow processing the application and time to obtain any follow up information.

Applicant hereby requests the Lake Minnetonka Conservation District ("LMCD") extend the applicable deadline imposed pursuant to Minnesota Statutes, sections 15.99 ("Act"), or such other law as may apply, for reviewing and taking action on the above listed Application to the date listed above as the Requested Extended Deadline. If the Requested Extended Deadline is identified as indefinite, the Applicant is required to notify the LMCD in writing when its Application is ready for further processing. If no such written notice is provided within 12 months from the date of this request, the Application will automatically be deemed denied. This request is made voluntarily on behalf of all persons or entities which may be considered an Applicant and with the understanding that it waives the Applicant's right to final action on the Application by the deadline imposed by the Act and any previously requested extensions. It is further understood the Applicant may not cancel, waive, or withdraw this extension request.

Applicant understands and agrees the deadline imposed under the Act is suspended until at least the Requested Extended Deadline listed above. Upon that date, or upon written notice to proceed if the extension is indefinite, the LMCD Board will have the until the remaining period provided under the Act, including any remaining extension period, to make a decision on the Application. This request does not limit the LMCD's authority to extend the deadline under the Act for up to an additional 60 days if that authority has not already been exercised with respect to this particular Application. This request for an extension does not prevent the LMCD Board from acting on the Application before the Requested Extended Deadline.

Date: 08/21/22

APPLICANT:

 *Daniel Gustafson*

Signature(s)

Daniel G. Gustafson

Print Name(s)

**LAKE MINNETONKA
CONSERVATION DISTRICT
PUBLIC HEARING NOTICE**

7:00 PM, January 11, 2023
Wayzata City Hall
600 Rice Street,
Wayzata, MN 55364

Dan Gustafson,
Lake Minnetonka
Real Estate II, LLC
PID: 11-117-23-22-0013,
Orono MN 55391
Browns Bay, Lake Minnetonka

The Lake Minnetonka Conservation District (LMCD) will hold a public hearing to consider a new commercial multiple dock license application from Dan Gustafson, Lake Minnetonka Real Estate II, LLC. The Applicant had requested a continuance of the public hearing that was originally scheduled for August 24, 2022. The Applicant is proposing to install a multiple dock facility with 9 boat storage units for use as overnight storage. The proposed dock structure and storage is new for this site. The property is located along Shoreline Drive, PID: 11-117-23-22-0013, in Orono MN 55391 with a legal description of Outlot B, Dragonfly Hill. All interested persons will be given an opportunity to comment.

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. 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
December 29, 2022
1282361

**LAKE MINNETONKA
CONSERVATION DISTRICT
PUBLIC HEARING NOTICE**

7:00 PM, January 11, 2023
Wayzata City Hall
600 Rice Street,
Wayzata, MN 55364

Dan Gustafson,
Lake Minnetonka
Real Estate II, LLC
PID: 11-117-23-22-0013,
Orono MN 55391
Browns Bay, Lake Minnetonka

The Lake Minnetonka Conservation District (LMCD) will hold a public hearing to consider a new commercial multiple dock license application from Dan Gustafson, Lake Minnetonka Real Estate II, LLC. The Applicant had requested a continuance of the public hearing that was originally scheduled for August 24, 2022. The Applicant is proposing to install a multiple dock facility with 9 boat storage units for use as overnight storage. The proposed dock structure and storage is new for this site. The property is located along Shoreline Drive, PID: 11-117-23-22-0013, in Orono MN 55391 with a legal description of Outlot B, Dragonfly Hill. All interested persons will be given an opportunity to comment.

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Published in the
Laker Pioneer
December 31, 2022
1282365



LAKE MINNETONKA CONSERVATION DISTRICT

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

DATE: December 27, 2022
TO: Property Owner or Resident
FROM: Thomas Tully, Environmental Administrative Technician
CC: Vickie Schleuning, Executive Director
SUBJECT: Public Hearing Notice

You are receiving this notice since Hennepin County property records indicate you own or reside upon property within 350 feet of an undeveloped site being considered for a new commercial multiple dock license for rent to the general public. The Lake Minnetonka Conservation District (LMCD) will hold a public hearing to consider the application. The property is located along Shoreline Drive, PID: 11-117-23-22-0013, in Orono MN 55391 with a legal description of Outlot B, Dragonfly Hill, on Browns Bay. The application is from Daniel G. Gustafson, Lake Minnetonka Real Estate II, LLC.

A notice was previously sent for a public hearing that was originally scheduled for August 24, 2022. The Applicant had requested a continuance of the public hearing which is now scheduled for January 11, 2022. The Applicant is proposing to install a multiple dock facility with 9 boat storage units for use as overnight storage. The proposed dock structure and storage is new for this site. Parking is not proposed at the site. 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, January 11, 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 using the "Contact Us" form at lmcd.org.

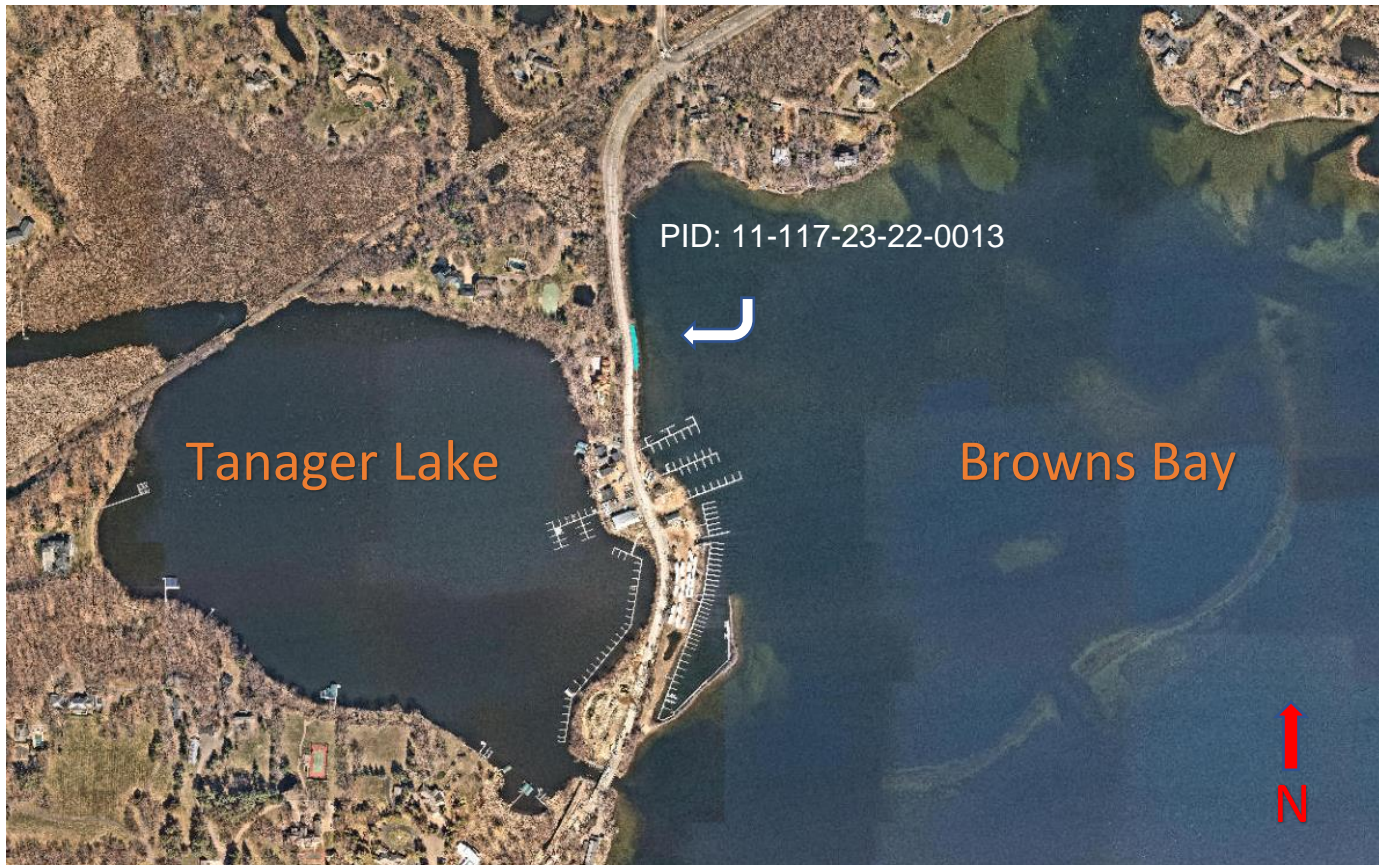
Those desiring to participate in the hearing may also email the Environmental Administrative Technician at tully@lmcd.org for information. The meeting place is Wayzata City Hall, 600 Rice Street, Wayzata, MN 55391. Information about meeting logistics will be available on the LMCD website, www.lmcd.org.

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

Multiple Dock Application : Commercial Marina

Property: PID: 11-117-23-22-0013, along shoreline Dr., Orono, MN 55364. Owner Dan Gustafson

For illustrative purposes only. Source: Hennepin County Interactive Property Map, 08/12/2022



Multiple Dock Application: Commercial Marina

Property: PID: 11-117-23-22-0013, along Shoreline Dr Orono, MN 55364. Owner Dan Gustafson

For illustrative purposes only. Source: Hennepin County Interactive Property Map, 08/12/2022





CITY OF ORONO

Street Address:
2750 Kelley Parkway
Orono, MN 55356

Mailing Address:
P.O. Box 66
Crystal Bay, MN 55323

Telephone (952) 249-4600
Fax (952) 249-4616
www.ci.orono.mn.us

August 18, 2022

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

VIA EMAIL
vschleuning@lmcd.org

Re: MNDNR Permit Application #97-6098 -Multiple Dock License, Commercial Marina, PID: 11-117-23-22-0013

City Staff has reviewed a proposed plan for a commercial marina, PID 11-117-23-22-0013 sent by the LMCD via email on August 12, 2022. The applicant, Daniel G. Gustafson, has proposed 9 boat slips on a narrow parcel abutting County Road 15 (Shoreline Drive) for a multiple dock license for a commercial marina. The City is the current owner of the subject parcel.

The City of Orono is the owner of the parcel and does not consent to the proposed use of City owned land. The LMCD's ordinance requires the consent of the owner to be considered a complete application per Ordinance 6-1.03 including Subd.5.

In addition to the lack of consent, the City has the following concerns based on the City's regulations:

1. The parcel is zoned LR-1A, Lakeshore Residential District. This zoning district does not identify marinas as an allowed use. A marina would not be permitted according to City Code Sec 78-665.
2. Marinas are only permitted within the B-2, Lakeshore Business District. City Code 94-72 and 78-622. This parcel is not located within the B-2 district.
3. City Code Section 78-668 identifies requirements for off-street parking for marinas. Parking requirements are not being met with this application.
4. Performance and landscaping standards in City Code Section 78-670 and 78-671 outline requirements for site improvement and hours of operations for marinas. The City has concerns with the intense use of a commercial marina on the parcel.
5. No tree removal or intensive vegetation clearing is permitted within the 75 feet of the Ordinary High Water Level per City Code Section 78-1285. No vegetation alterations have been reviewed or permitted to facilitate access to the proposed dock space.
6. The proposed use would pose a hazard to the area and a safety risk regarding accessibility to the site along the County road with no parking or usable space on the property.

Based on the information provided in the public hearing notice, the city does not support the proposed application. The application should be denied as incomplete. Please feel free to contact me at 952.249.4602 or by email at loakden@ci.orono.mn.us if you have any questions on the above comments.

Sincerely,

CITY OF ORONO

Laura Oakden
Community Development Director



CITY OF ORONO

Street Address:
2750 Kelley Parkway
Orono, MN 55356

Mailing Address:
P.O. Box 66
Crystal Bay, MN 55323

Telephone (952) 249-4600
Fax (952) 249-4616
www.ci.orono.mn.us

January 4, 2023

Lake Minnetonka Conservation District
Attn: Thomas Tully
55341 Maywood Rd Suite 200
Mound, MN 55364

VIA EMAIL
Ttully@lmcd.org

Re: PID:11-117-23-22-0013, Public Hearing Notice
Multi Dock Facility

The City of Orono submitted a letter for this application dated August 18, 2022 objecting to the application. Our position has not changed since our previous correspondence and the City of Orono continues to object to the request based on the reasons stated in the letter. The letter is attached for your convenience.

Please feel free to contact me at 952.249.4602 or by email at loakden@ci.orono.mn.us if you have any questions on the above requirements.

Sincerely,
CITY OF ORONO

Laura Oakden
Community Development Director



CITY OF ORONO

Street Address:
2750 Kelley Parkway
Orono, MN 55356

Mailing Address:
P.O. Box 66
Crystal Bay, MN 55323

Telephone (952) 249-4600
Fax (952) 249-4616
www.ci.orono.mn.us

August 18, 2022

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

VIA EMAIL
vschleuning@lmcd.org

Re: MNDNR Permit Application #97-6098 -Multiple Dock License, Commercial Marina, PID: 11-117-23-22-0013

City Staff has reviewed a proposed plan for a commercial marina, PID 11-117-23-22-0013 sent by the LMCD via email on August 12, 2022. The applicant, Daniel G. Gustafson, has proposed 9 boat slips on a narrow parcel abutting County Road 15 (Shoreline Drive) for a multiple dock license for a commercial marina. The City is the current owner of the subject parcel.

The City of Orono is the owner of the parcel and does not consent to the proposed use of City owned land. The LMCD's ordinance requires the consent of the owner to be considered a complete application per Ordinance 6-1.03 including Subd.5.

In addition to the lack of consent, the City has the following concerns based on the City's regulations:

1. The parcel is zoned LR-1A, Lakeshore Residential District. This zoning district does not identify marinas as an allowed use. A marina would not be permitted according to City Code Sec 78-665.
2. Marinas are only permitted within the B-2, Lakeshore Business District. City Code 94-72 and 78-622. This parcel is not located within the B-2 district.
3. City Code Section 78-668 identifies requirements for off-street parking for marinas. Parking requirements are not being met with this application.
4. Performance and landscaping standards in City Code Section 78-670 and 78-671 outline requirements for site improvement and hours of operations for marinas. The City has concerns with the intense use of a commercial marina on the parcel.
5. No tree removal or intensive vegetation clearing is permitted within the 75 feet of the Ordinary High Water Level per City Code Section 78-1285. No vegetation alterations have been reviewed or permitted to facilitate access to the proposed dock space.
6. The proposed use would pose a hazard to the area and a safety risk regarding accessibility to the site along the County road with no parking or usable space on the property.

Based on the information provided in the public hearing notice, the city does not support the proposed application. The application should be denied as incomplete. Please feel free to contact me at 952.249.4602 or by email at loakden@ci.orono.mn.us if you have any questions on the above comments.

Sincerely,

CITY OF ORONO

Laura Oakden
Community Development Director

From: Michael D Olmstead [REDACTED]
Sent: Wednesday, August 17, 2022 1:10 PM
To: Vickie Schleuning <vschleuning@lmcd.org>
Cc: Thomas Tully <ttully@lmcd.org>
Subject: RE: [External] Commercial Dock Application

Good Afternoon Vicki,

Thanks for sending this over. I see nothing but traffic problems for this dock area. While this section of Shoreline Drive is signed as "no parking", I see it becoming a unofficial drop-off and pick-up loading zone. The section has a 5' shoulder which can be used a pedestrian walkway, but it is a 35mph winding road. In addition, the shoulder is not wide enough for a vehicle and with a ~8' drop from the road to the lake, vehicles would stop in the drive lane causing oncoming traffic to veer around to avoid stopped vehicles and any oncoming traffic. The gravel parking area you mentioned is Hennepin County ROW and is half marked for limited parking and the other half no parking and for the use of City of Orono emergency vehicles.

Hennepin County would not be supportive of this dock placement and would not permit any construction from the county's ROW or any stairway that crosses the ROW to the dock.

Let me know if you have any questions or if you need further comment from Hennepin County. I could add this to an upcoming meeting of our Safety-Operations Committee, but they would be echoing my first thoughts.

Mike Olmstead
Permits Supervisor
Hennepin County Public Works
Transportation Operations
[REDACTED]

Speak with honesty/Think with Sincerity/Act with Integrity

Webpage: <https://www.hennepin.us/business/licenses-permits/road-permits>



From: David Feldshon _____

Sent: Tuesday, August 23, 2022 9:38 PM

To: LMCD <lmcd@lmcd.org>

Subject: Outlot B Dragonfly Hill issue at upcoming meeting August 24, 2022

My wife, Archelle Georgiou Feldshon and I are the homeowners at 1420 Shoreline Drive in Orono.

This property is directly across Shoreline from the proposed dock.

We wish to inform the LMCD of a few items:

- 1) The riparian rights forming the basis of the dock request originally belonged with our property and were intended for residential use.
- 3) The location in question has no parking or sidewalk access. Thus, the proposed boat slips pose significant safety concerns.
- 5) There is heavy traffic on Shoreline Drive making access to the proposed dock unsafe.
- 4) The strip of land between the waterline and Shoreline Drive is owned by the City of Orono. A dock would require approval of the City.

Thank you for your consideration

Samuel David Feldshon

Archelle Georgiou Feldshon

--

David Feldshon

Thomas Tully

From: Al and Theresa Lampe <atlampe@earthlink.net>
Sent: Wednesday, January 11, 2023 3:08 PM
To: Thomas Tully
Cc: Al Lampe; Al And Theresa Lampe
Subject: Commercial Multiple Dock License PID: 11-117-23-22-0013

Caution: External (atlampe@earthlink.net)

First-Time Sender [Details](#)

[Report This Email](#) [FAQ](#) [GoDaddy Advanced Email Security](#), Powered by INKY

> Dear Mr. Tully,

>

> We are the property owners of 1395 Orono Lane, Orono, MN. We received notification of the public hearing for the proposal of a new commercial multiple dock license close to this property. We are not able to attend the meeting scheduled for tonight (January 11th) but wanted to convey our concern to you about this project. Our concerns regarding a project like this center mostly around safety. This area already has quite a bit of boat traffic due to the marinas located on Brown's Bay and adding additional docks will only increase boat activity. In addition to traffic in the water in this area, Highway 15 which runs along this proposed site is an extremely busy highway with multiple businesses and various curves in its layout. Drivers will be tempted to take their eyes off the road to view what's parked at these docks and what activity is going on - causing increased risk for accidents. While parking at this site is not proposed, there is a small area off the highway which from time to time has a few cars parked on it - how would those boat owners utilizing those docks be prohibited from using this parking area and creating additional traffic risks?

>

> In addition to safety, preservation of nature and the natural landscape are of utmost importance and installation of additional commercial docks in this area do not seem to be consistent with this priority.

>

> Thank you for your time and consideration,

>

> Al and Theresa Lampe



Thomas Tully

From: Simpson, Marc <marc.simpson@stinson.com>
Sent: Tuesday, January 10, 2023 11:21 AM
To: Thomas Tully
Subject: Application for Multiple Dock License, Commercial Marina, PID No.: 11-117-23-22-0013

Caution: External (marc.simpson@stinson.com)

First-Time Sender [Details](#)

[Report This Email](#) [FAQ](#) [GoDaddy Advanced Email Security](#), Powered by INKY

Dear Mr. Tully:

We represent David Feldshon and Archelle Georgiou, the owners of a residential home located at 1420 Shoreline Drive, Wayzata, MN. Our clients oppose the application submitted by Daniel Gustafson for a license for a commercial marina to be located directly across the road from their home. Please enter these comments in the public record, and ask the LMCD Board and its legal counsel to consider them in connection with the public hearing scheduled for this matter on Wednesday, January 11, 2023, at 7:00pm. Also, please acknowledge receipt of this email.

First, we have reviewed the materials submitted to the LMCD by the City of Orono, and agree with the City that consent of the owner of the proposed marina property is necessary for any approval. The LMCD Code provides that "an application submitted by someone other than the owner of the property must have the consent of the owner to be considered a complete application." LMCD Code, Section 6-1.03, subdivision 5. Since the City does not consent to the application that is reason enough for denying the application.

Second, we see in the meeting packet that LMCD staff has pointed out that under certain changes to the LMCD's statutory authority adopted by the Minnesota Legislature in 2019, that the LMCD cannot regulate "land-based marina activities." But that same statutory language makes clear that the LMCD must also make sure that any marina is compatible with the City's zoning ordinance. The Statute provides the LMCD with the power "to regulate the construction, configuration, size, location, and maintenance of commercial marinas and their related facilities that affect activity below the ordinary high-water mark. The authority under this clause does not apply to land-based marina activities, including storage facilities, and must be consistent with the applicable state statutes, municipal building codes, and zoning ordinances where the marinas are located;" See Minnesota Statutes, Section 103B.611, subdivision 3(a)(8). In this case, the City has already informed the LMCD that the proposed commercial marina is located in the LR-1A, Lakeshore Residential District, and that the

proposed marina is not as an allowed use. In addition, the City informed the LMCD that marinas are only permitted within the B-2, Lakeshore Business District, and that this parcel is not located within the B-2 district. Therefore, pursuant to the Statutory grant of powers to the LMCD the application must be denied because it is not consistent with the City of Orono's zoning ordinance.

Third, while the LMCD arguably does not have authority to regulate "land-based marina activities," insuring that a marina has adequate access and parking facilities are not "marina activities" such as boat storage, fueling, supplies, maintenance or other activities associated with sending boats out onto the lake. Instead, public road access and parking are common sense land use requirements for public safety, and are not "marina" activities.

Fourth, the LMCD Ordinance requires the Board to consider "whether the proposed structure will be compatible with the adjacent development." LMCD Ordinances, Section 6-2.01, subdivision 3(f). Clearly, a commercial marina with its expected traffic, and drop offs and pickups, and its visual and noise impacts, will not be compatible with my clients' residential use.

Finally, we see from the meeting packet that LMCD staff is recommending that "any license would be contingent on the Applicant retaining riparian rights to the site." My clients believe that they own part or all of the riparian rights to the site, and that applicant will be unable to meet this requirement. At a minimum, my clients request notice and the opportunity to be heard in the future should the applicant present evidence that it has obtained riparian rights to the site.

Please contact me with any questions. Thank you.

Marc D. Simpson

Partner

STINSON LLP

50 South Sixth Street, Suite 2600

Minneapolis, MN 55402

Direct: 612.335.1504 \ Mobile: 612.963.7202 \ [Bio](#)

Assistant: MPL.LSSTeam5@stinson.com \ 612.335.1814

STINSON.COM

This communication (including any attachments) is from a law firm and may contain confidential and/or privileged information. If it has been sent to you in error, please contact the sender for instructions concerning return or destruction, and do not use or disclose the contents to others.

AMENDED: APPLICANT SUBMITTED 01/23/2023

LAKE MINNETONKA CONSERVATION DISTRICT

In Re: Application of Michael D. Revier

The applicant in this case is Michael D. Revier. Mr. Revier seeks a variance to adjust his dock use area to allow construction of a dock and storage of boats at the subject property which is located at 2691 Ethel Avenue in the city of Orono. The property is located on Carmans Bay.

This case also involves several adjacent and nearby properties. From the north, the first of these properties is located at 2684 Casco Point Road and is owned by Mr. and Mrs. David Runkle (the "Runkle Site"). The next property is owned by Mr. Michael Revier, the applicant in this case (the "Revier Site"). The next property to the south is owned by Mr. C. Gordon Amundson, 2697 Ethel Avenue (the "Amundson Site"). To the south of the Amundson Site, is a parcel owned by Mr. R. Kauffmann at 2696 Ethel Avenue (the "Kauffmann Site").

The Revier Site has approximately 26 feet of shoreline at the ordinary high water level. The hardship asserted by the applicant for the variance requested is that the extended lot lines of the Revier Site converge as they enter the lake and do not allow a dock use area of a reasonable size or shape for the storage of watercraft. The board finds that this fact does constitute a hardship within the meaning of LMCD code section 1.07.

The owner of the Revier Site has a deeded right to construct a dock and store boats on the Amundson Site which has 15 feet of shoreline. The Amundson Site, by itself, is not sufficiently large to allow reasonable construction of a dock or boat storage. The board also finds that this constitutes a hardship within the meaning of LMCD code section 1.07.

If the Revier and Amundson Sites are considered together, the combined site would have 41 feet of shoreline. However, because of the converging lot lines, there is not sufficient room for reasonable dockage and boat storage even if the two parcels

are combined; and the board finds that a hardship exists within the meaning of code 1.07 even if the two sites are considered as one.

The owners of the Revier and Amundson Sites have agreed to combine their dock use areas and use their combined shoreline for a single common dock facility of sufficient size to allow each to store one watercraft.

The board finds that the use proposed by the applicant and the owner of the Amundson Site is reasonable. Given 41 feet of shoreline, it is reasonable to expect to be able to store two boats along a straight dock, 40 feet in length, as proposed by the applicant.

The board finds that it would be unreasonable to require conformance to the ordinance given the converging lot lines which create a dock use area which is not sufficiently large, even by combining the two parcels, for reasonable dockage or boat storage.

The difficulty of conforming to the ordinance is due to circumstances which are unique to the property. It is not created by a desire of the applicant, but rather results from the combination of the facts that the dock use area is defined under the LMCD code by reference to setbacks from lot lines extended into the lake and that the lot line extensions in this case converge as they enter the lake, resulting in a dock use area which is unreasonably small for 41 feet of shoreline.

The owner of the Runkle property has objected to the granting of a variance on the ground, among others, that the hardship is created by the applicant. Mr. Runkle asserts that the applicant acquired his property after the LMCD code was in effect and therefore the hardship is self created. The board finds that the hardship is not self created in any sense that would preclude the board from granting a variance in this case, as more fully explained in the attached memorandum which is hereby made a part of this order.

The board finds that the variances granted do not alter the essential character of the locality. The proposed dock is in a residential area, and the nature and size of the proposed facility will not be out of scale with other residential dock and boat storage along the shoreline. The Runkle and Kauffmann Sites each have approximately 100 feet of shoreline. Therefore, adding storage for two boats at the combined Revier and Amundson Sites will not create unreasonable congestion in the area.

Mr. Runkle asserts that a variance may not be granted to Mr. Revier which allows him to install a dock or store boats on the Runkle side of the extended line between the Runkle and Revier Sites. This question is more fully addressed in the attached memorandum. For the reasons explained in the memorandum, the board makes no finding as to the respective real property interests of the owners of the Runkle and Revier Sites.

Mr. Runkle stated that he would agree to a dock plan which would not involve crossing the extended lot line between the Runkle and the Revier Sites. He argues that there is no hardship which justifies a variance adjusting this lot line because a dock has been in place in the past which did not extend over the extended lot line. It appears to be true that a dock has been constructed in the past at the Revier or Amundson Site which did not extend beyond the extended lot line between the Runkle and Revier Sites. However, this dock was not in compliance with the requirements of the LMCD code and extended substantially into the dock use area of the Kauffmann Site.

Likewise, Mr. Runkle urges the board to adopt a plan agreed upon by Mr. Revier and Mr. Runkle in an attempt to resolve this issue through mediation. That agreement, however, also avoided crossing Mr. Runkle's extended lot line at the expense of the Kauffmann Site, and Mr. Kauffmann apparently declined to approve the proposed settlement.

The board finds that the proposals offered by Mr. Runkle would be unfair to the owner of the Kauffmann Site and that the variance hereinafter granted and ordered is a more reasonable, fair, and equitable allocation of dock rights to the parties involved.

Finally, the board finds that the variances granted by this order do not adversely affect the purposes of the LMCD code of ordinances, the public health, safety, and welfare, or reasonable access to or use of the lake by the public or other riparian owners.

ON THE BASIS OF THE FOREGOING, IT IS ORDERED that the dock use areas be determined by reference to lot lines adjusted from the point at which the lot lines reach elevation 929.4 feet NGVD as follows: the lot line between the Runkle and Revier Sites is adjusted 25 degrees to the north; and the lot line between the Amundson and Kauffmann Sites is adjusted 25 degrees to the south. The variance hereby ordered is subject to the following conditions:

1. Nothing in this order is intended to encourage or require the owner of the Revier or Amundson Sites to construct a dock over the extended lot line between the Revier and the Runkle Sites.
2. Nothing in this order is intended to be an adjudication of the respective real property rights associated with the Revier or the Runkle Sites or to confer upon the applicant any rights which violate real property rights of the owners of the Runkle Site, in excess of the authority of the LMCD.
3. This order shall not be effective until the applicant has recorded a copy of this order with Hennepin County against the title to both the Revier and the Amundson Sites, together with any such other documents as may be necessary to effect its recording, as approved by legal counsel to the district.
4. The variance granted hereby shall authorize construction of only one straight dock at the combined shoreline of the Revier and Amundson Site, and no dock may be constructed at either parcel pursuant to this variance without the consent of the owners of both parcels.
5. No more than two boats may be stored at the docks at the combined Revier and Amundson Sites, neither of which boats may have a beam in excess of 8 and 1/2 feet.

6. The length of the dock constructed at the Revier and Amundson Sites shall not exceed 40 feet measured from elevation 929.4 feet NGVD.
7. No canopies shall be constructed at the dock located at the Revier and Amundson Sites.
8. The dock located at the Revier and Amundson Sites shall maintain a setback on each side of at least 5 feet from the adjusted lot line.

The variance authorized and ordered herein shall grant to vested right to the use of Lake Minnetonka. Such use shall remain at all times subject to regulation by the district to assure the public of reasonable and equitable access to the lake.

By order of the Lake Minnetonka Conservation District Board of Directors,
this 26th day of January, 1994.


Eugene R. Strommen, Executive Director

LAKE MINNETONKA CONSERVATION DISTRICT

In Re: Application of Michael Revier

MEMORANDUM

In the above referenced case, the owner of the property adjacent to the applicant's parcel to the north, Mr. David Runkle, objected to the granting of the variance for a number of reasons. The board has chosen to address two of these issues in this memorandum. The first of these arguments raised by Mr. Runkle is that the applicant does not have the legal right to construct the docks over the extended lot line between the Revier and the Runkle properties on land which is under water below the ordinary high water mark.

Although land between the ordinary high water mark (OHWM) and the ordinary low water mark (OLWM) may be privately owned, the board is not aware that the OLWM has ever been determined for Lake Minnetonka. Without such a determination, it would not be possible to evaluate the merits of Mr. Runkle's claim because the land below the OLWM is owned by the state of Minnesota and cannot be privately owned. Moreover, between the OHWM and OLWM, the use of private property is subject to reasonable regulation by public authority. Whether allocating lake access among riparian owners may constitute such reasonable regulation has not been determined. In any case, the board must decline to decide the case on the basis of this claim for both legal and practical reasons. Legally, the board has no authority to adjudicate adverse claims to real property. Because the board has no legal authority, it would make little sense as a practical matter for the board to attempt to decide the issue on the basis of its opinion about real property interests of the parties. Any decision made on the basis of the board's findings on real property interests would properly be subject to challenge by either of the parties, and the board would be placed in the position of attempting to defend private real property rights of one citizen against the adverse claims of another.

Such questions are better left to courts of competent jurisdiction in a legal action involving the interested parties should either party feel that it is appropriate or necessary to have their respective rights adjudicated.

An additional claim of Mr. Runkle which warrants separate comment in this memorandum is his assertion that the applicant cannot qualify for a variance because he acquired the property after the LMCD code provisions were in place. He argues, therefore, that the hardship is self-created. There is some precedent which is supportive of this position in land use law. However, there is also a good deal of precedent to the contrary. Under the LMCD code, the board is allocating among riparian owners dockage rights over the public waters. It is not regulating the use of private property under the authority of Minnesota Statutes, § 462.357, subd. 6 which applies to the granting of land use variances by cities. In many cases, the hardships or practical difficulties which are the basis for granting variances under LMCD Code Section 1.07 are simply the result of the fact that the LMCD has chosen, as a matter of convenience, to use as a starting point for allocating dock rights among riparian owners, an imaginary line created by extending the side property line into the lake on a straight line from the point at which it meets the OHWM. Over the years this has proven to work reasonably well in most cases. The obvious advantage of this convention is that the lot lines can be readily determined by survey. The determination of an authorized dock use area would be much more difficult if the board had decided to use some other convention such as a line perpendicular to the shoreline or a line extending to the center of the bay. However, the strict application of the code does not always result in a fair or reasonable allocation of dock rights or allow riparian owners reasonable access to the lake. Therefore, the board has found it appropriate to adjust dockage rights in such cases through the granting of "variances" from the provisions of the code.

If there are hardships or practical difficulties relating to the dockage rights of a given parcel of riparian property and a variance is appropriate under the code, the board does not feel that it is appropriate to refuse to grant reasonable dockage rights to that same parcel merely on the ground that the ownership of the property has changed hands. In other words, if granting a variance is appropriate under the facts of any given case on the day before a transfer of title, it will generally be appropriate on the day after title is transferred as well. The board has not declined to grant variances in the past on the ground that a transfer of title creates an improper "self-created" hardship, and it does not find that it is appropriate to do so in this case.

AMENDED: APPLICANT SUBMITTED 01/23/2023



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FEATURED

Marina owners, Lake Minnetonka Conservation District butt heads over legislation

Bill that lessens LMCD's authority on land in limbo

Sabina Bedale May 6, 2019 Updated May 6, 2019



f v e o n

A bill authored by Sen. Dave Osmek (R-Mound) would modify the authority of the Lake Minnetonka Conservation District, lessening its powers on land.

The conservation district, overseen by a board of appointees from each of the 14 cities on Lake Minnetonka, was established in 1967 by the state to regulate use of the lake.

If the bill passes, the conservation district would no longer have control over commercial marinas and their land-based boat storage facilities.

"It removes the LMCD from decisions on land, which are reserved for cities and other government entities," Osmek said. "I do not support the erosion of the ability for cities to manage their land masses."

Officials from the conservation district beg to differ, saying in a statement that the bill is "designed for special business interest" by allowing marinas to store and launch more boats than is currently allowed under its licensing standards.

Currently, marinas on Lake Minnetonka are allowed one boat per 10 feet of shoreline, including boats stored off of the lake, but even more if they "dry stack" boats on top of each other.

Opponents

"We won't have as good control on making sure the lake is clean, safe and a good natural resource," said Vickie Schleuning, executive director of the conservation district. "This is exactly the scenario the Legislature sought to prevent in establishing the LMCD."

passed, there could be more boat traffic, crowding, collisions, pollution, litter, habitat disruption, nuisances to property owners and differing regulations in the 14 lakeside cities instead of a cohesive approach, according to a statement from the conservation district.

"At best, this could result in cities having to deal with it in 14 different ways and inconsistent manner, or at worst, it allows no management whatsoever of this situation," said Gregg Thomas of Tonka Bay, chair of the conservation district's board of directors. "We realize anybody with a boat can drive in and launch their boat on Lake Minnetonka, but we do try and manage it by having restrictions for both riparian owners and marina owners."

Members of the conservation district and city officials were notified of the bill via email March 22, prior to its introduction March 25. One weekend was not enough time to properly review the legislation or gather input from all stakeholders, they said.

"I don't think the bill was supposed to see the light of day. No one was supposed to know about this. That's what rubbed me the wrong way. There was zero dialogue," said Adam Jennings, a member of the Tonka Bay City Council. "This bill requires input from all of the residents on the lake who will be affected, not just those who stand to benefit from it financially. There are scores of individuals that pay a premium to live on the lake and should have a say in protecting their investment."

The cities of Wayzata and Minnetonka Beach have both formally opposed the bill and supported the conservation district in official statements.

Supporters

Supporters of the bill include marina owners, Orono Mayor Dennis Walsh, the Lake Minnetonka Association and former Shorewood mayor Woody Love. They hope to end the conservation district's authority at the ordinary high water mark—an elevation that marks the boundaries of bodies of water for regulatory purposes—which is 829.4 feet on Lake Minnetonka.

"Any attempt to reach above that mark will be impinging on the authority of the city," Walsh said.

According to Gabriel Jabbour, owner of Tonka Bay Marina, the bill should be passed to "limit the creep effect that the LMCD has had in the last many years," stating that the agency should not have control over what happens on land because it is "not really their area of expertise" and it should be the responsibility of the city governments.

Boat density on Lake Minnetonka would not become an issue if the bill passed, according to Spring Park Mayor Jerry Rockvam, who also owns Rockvam Boat Yards in Spring Park.

"Since the enabling act occurred, over 40% of the marinas that were there at that time have gone out of business and there's fewer marinas left with any land mass that could address this, so [the LMCD's] argument on control of density is

E-editions

Plymouth-Wayzata Sun Sailor

Jan 10, 2025

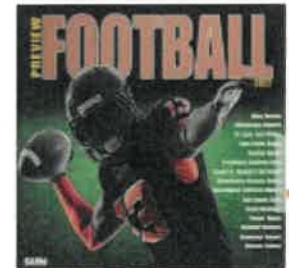
St Louis Park-Hopkins Sun Sailor

Jan 10, 2025

Excelsior/Minnetonka/Eden Prairie Sun Sailor

Jan 10, 2025

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The last boat density study performed by the conservation district was in 2004.

Supporters also say passing the bill would help reduce redundant regulations, conflicting rules and confusion that results from more than 20 agencies involved in the lake's management.

What's next?

The proposal, incorporated into the Senate Omnibus Environment and Natural Resources Bill (Senate File 2314), passed the Senate. However, it was not included in its companion bill, the House Omnibus Environment and Natural Resources Finance Bill (House File 2209).

The bills are now in conference committee, an appointed group of both Senate and House members who reconcile differences between versions of bills and determine what will be included in the final versions.

This legislative session must end by Monday, May 20.

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f t e b s i

Tags

Lake Minnetonka Conservation District Sen. David Dornan Lake Minnetonka Victor Edmuring Ethics Debbie DeBruin Jerry DeBruin Adam Jennings
Caitlin Walsh Craig Thomsen Senate File 2014 House File 2014 Omnibus Environment and Natural Resources Bill

sbadola

Sabina Badola

I am a reporter for the Sun Sailor, covering Minnetonka, Escabeior, Shorewood, Tonka Bay, Deephaven, Greenwood, Woodland and the Hopkins School District.

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AMENDED: APPLICANT SUBMITTED 01/24/2023

LAKE MINNETONKA CONSERVATION DISTRICT

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

AGENDA
WORK SESSION AND FORMAL MEETING
LAKE MINNETONKA CONSERVATION DISTRICT
Wednesday, August 11, 2021

Join Zoom Meeting

<https://us02web.zoom.us/j/86344102200?pwd=dXAzKy9DWUxoajN0THNLUCtmbVM1dz09>

Dial by your location

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Meeting ID: 863 4410 2200

Passcode: 772230

Pursuant to a statement issued by the presiding officer under Minnesota Statutes, section 13D.021, the meeting will be conducted remotely using electronic means. The LMCD's usual meeting room will not be open to the public or the Directors. The LMCD will be using Zoom platform to conduct the meeting remotely. More details about how to use Zoom is available on the website at www.lmcd.org.

PUBLIC PARTICIPATION

Those desiring to participate in the meeting should complete the online form by 2:00 p.m. prior to the meeting. If you are invited to speak at the *Public Comments* Section or *Agenda* Item: 1) Indicate your desire to be heard by "raising hand" through Zoom, 2) Direct comments to Chair Gregg Thomas, 3) Be concise and courteous. The Chair may choose to reorder the agenda for a specific agenda item if it would benefit the needs of those in attendance. People who are disruptive will be expelled from the meeting. If you have questions, please email the Executive Director at vschleuning@lmcd.org.

WORK SESSION AGENDA

6:00 p.m.

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

1. Strategic Plan Update Discussion

FORMAL MEETING AGENDA
7:00 p.m.

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

- 1) CALL TO ORDER**
- 2) PLEDGE OF ALLEGIANCE**
- 3) ROLL CALL**
- 4) APPROVAL OF AGENDA**
- 5) CHAIR ANNOUNCEMENTS**, Chair Gregg Thomas
- 6) APPROVAL OF MINUTES** (07/28/2021 LMCD Regular Board Meeting)
- 7) APPROVAL OF CONSENT AGENDA**
 - A) Audit of Vouchers (08/01/2021 – 08/15/2021)
 - B) Approval of Application for New Multiple Dock Application for Qualified Commercial Marina, The Yacht Club, 4165 Shoreline Drive, (PID 18-117-23-44-0022) Spring Park, MN 55384
- 8) CONTRIBUTION RECOGNITION**
 - A) Resolution Accepting Save the Lake Contributions (07/22/2021-08/04/2021)
- 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) PRESENTATIONS**
- 11) PUBLIC HEARING**
- 12) OTHER BUSINESS**
- 13) OLD BUSINESS**

15) NEW BUSINESS

16) TREASURER REPORT

17) EXECUTIVE DIRECTOR UPDATE

18) STANDING LMCD COMMITTEE UPDATE

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

19) ADJOURNMENT

Future Items for Review – Tentative

- Lake Use Vision and Policy Discussion Continuing Series
 - Deicing Eligibility Expansion Review



S ITEM 1

LMCD Strategic Plan 2021-22 (DRAFT August 6, 2021: Strategic Plan and Business Plan)

Strategic Priority	Desired Outcome	Key Outcome Indicator (KOI)	Strategic Initiatives 2021/2022
I. FINANCE	<div>1. Capacity to deliver core functions</div> <div>2. Execution of strategic plan priorities</div> <div>3. Maintaining a strong financial foundation</div>	<div>A. Quarterly reports</div> <div>B. Major fund reserves year-end balances</div>	<div>a. Explore investment fund options</div> <div>b. Finalize and maintain a Capital Equipment Plan</div> <div>c. Create new funding sources analysis</div> <div>d. Review LMCD fee structure</div> <div>e. Assess legal fees and use of attorney</div> <div>f. Fund reserves of 30% to 50% (target 35% and distribute excess over 5 years)</div>
II. COMMUNICATIONS	<div>1. Board and staff follow communication protocols</div> <div>2. Partners & stakeholders find value in relationship</div> <div>3. Increased understanding of purpose, rules & regulations</div>	<div>A. Stakeholder & partner feedback</div> <div>B. Positive vs negative representation of LMCD in outside media coverage</div> <div>C. Amount of information communicated to stakeholders via websites, articles.</div>	<div>a. Identify and utilize most effective outlets to convey public information about safety, rules and best practices</div> <div>b. Continue to develop relationships with and regularly update cities, legislators, agencies and others regarding LMCD initiatives</div> <div>c. Continue to refine feedback mechanisms for stakeholder and partner initiatives</div> <div>d. Communications Committee to set priorities and initiatives and develop recommendation to Board for annual budget</div>
III. OPERATIONS, GOVERNANCE & REGULATION	<div>1. Effective Board and Committee meetings</div> <div>2. Well-trained Board and staff</div> <div>3. Effective and respectful Board and staff relations</div> <div>4. Board meeting civility</div> <div>5. Reduction of staff time processing applications</div>	<div>A. Number of meetings</div> <div>B. Meeting length</div> <div>C. Decision processing</div> <div>D. Training records</div>	<div><u>COMMITTEE Role</u></div> <div>a. Develop Succession Plan for LMCD Executive Leadership</div> <div>b. Develop training plan for Board regarding standards, process, etc.</div> <div>c. Continue annual Board self-evaluation process</div> <div>d. Review opportunities for continue officer and board member engagement in LMCD initiatives and committees</div> <div><u>STAFF Role</u></div> <div>e. Update prioritized annual calendar/work plan</div> <div>f. Maintain an effective reporting system</div> <div>g. Continue to assess staffing/capacity needs (complaints, data requests, etc.)</div> <div>h. Update Board Members Handbook</div> <div>i. Continue to create and update instructions sheets for new applications (website, handouts, etc.)</div> <div>j. Implement secure licensee portals for renewal applications depending on staff time and budget</div> <div>k. Update wake, high water and quiet water area policies</div> <div>l. Analyze competing lake uses, impacts and lake management options (ex. Watercraft types, density, etc.)</div> <div>m. Update Plan for reviewing dock applications</div>
IV. LAKE PROTECTION/ ECOLOGY & AIS	<div>1. Ensure a plan for addressing Aquatic Invasive Species</div>		<div>a. Close out master plan and roll into a board approved adopted AIS Strategy</div> <div>b. Initiate process to develop a lake-wide health strategy plan</div> <div>c. Explore grants/other funding opportunities</div> <div>d. Finance \$80,000 funded from reserves for 2022</div> <div>e. Identify and support new Lake Improvement Districts (LIDs) and Lake Vegetation Master Plans (LMVP)</div> <div>f. Plan to communicate goals of support of LID's and LVMP's</div>
V. SAVE THE LAKE	<div>1. Ensure public safety on Lake Minnetonka</div> <div>2. Execution of strategic plan priorities</div> <div>2. Maintaining a strong financial foundation</div>	<div>A. Semi-annual donor letter</div> <div>B. Quarterly reports & updates</div> <div>C. Special events</div> <div>D. Financial results</div>	<div>a. Fund Hennepin County Sheriff Office Water Patrol Officers as requested and validated</div> <div>b. Develop and improved fundraising strategy and protocol</div> <div>c. Provide for expanded boater education through online curriculum</div>

ITEM 6

LAKE MINNETONKA CONSERVATION DISTRICT BOARD OF DIRECTORS

6:30 P.M., July 28, 2021
Wayzata City Hall

WORK SESSION

6:30 p.m. to 7:00 p.m.

Members Present: Gregg Thomas, Tonka Bay; Rich Anderson, Orono; Ann Hoelscher, Victoria; Bill Cook, Greenwood; Dan Baasen, Wayzata; Gary Hughes, 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 Matt Cook, Environmental Administrative Technician.

Members Absent: Ben Brandt, Mound

Persons in Audience:

Julia Coleman, Leslie Dennis, Eric Evenson, Henry Graef, Ben Henry, Gabriel Jabbour, Sen. Susanne Johnson, Luke Kujawa, and Jay Soule.

The following usernames were present but the person(s) did not identify themselves: Barbara's iPad, iPhone 2.

1. Rental Watercraft Businesses Review - Continued

Schleuning stated that she attempted to broaden this discussion as there appears to be an increase, or desire, for commercial activities on the lake. She stated that they have received requests to relax regulations to allow more commercial activities but have also received reports of concern. She provided some examples such as unlawful charter operations, watercraft rental businesses, and rental slips at private properties. She clarified that the reported concerns have not been about licensed multiple dock facilities. She stated that she would like input from the Board for their opinion on what the vision is for Lake Minnetonka in the future regarding commercial activities as well as input from stakeholders. She noted that the broad discussion could include various options and consequences for review.

Thomas noted that one written comment was received from Jerry Rockvam regarding concerns about rented docks at private properties and read that statement aloud to the Board. He opened the discussion to the Board.

Walesch stated that he is not in favor of doing anything that encourages or enables additional commercial activity. He noted that he spoke with many existing lakeshore owners and out of at least 20 people, zero of them wanted more businesses or private charters on the lake. He believed that additional charters would bring about some businesses that do not follow the rules and cause safety issues. He stated that the lake is great and should be conserved for enjoyment rather than opening it up for full commercial activity. He stated that the lake is busier than ever in the last two years and is getting very crowded with every available slip on the lake rented. He stated that he would prefer not to encourage more activity on

the lake.

Thomas asked if it should be made clear in ordinance that the activities are not allowed and if that activity is desired a license would be needed.

Baasen asked if there is anything in Code which states that someone cannot just start a business on the lake.

Schleuning stated that there are some sections of Code that apply to different types of business such as charter activities and commercial sales on the lake. She explained that there is nothing that prohibits a business from offering watercraft rentals.

Hoelscher stated that Lake Minnetonka is unique as it is a public lake and a residential lake with many commercial enterprises occurring around the lake. She stated that perhaps commercial activity is restricted to commercial docks or marinas which would keep that activity to commercial areas.

Thomas noted that Wayzata submitted a letter to the LMCD expressing concern that unlicensed charters are using their City docks.

Baasen confirmed that the unlicensed business shows that dock location as their pickup and home location. He noted that he has seen photos of plastic gas tanks on the dock. He stated that to expect the Water Patrol to be the only enforcer would be hard. He suggested that the LMCD Code be distributed to the cities for their police departments to use for enforcement. He did not think this could be done in a nice, soft way and that there should be a hard line drawn with a team of enforcement to help get this issue back in line. He stated that currently there are those that follow the standards and those that are not following the standards are uncertified businesses.

Thomas commented that he believed the ordinance is clear in regard to licensing of charter boats.

Schleuning confirmed that to be true.

Thomas commented that the unlicensed charter boats would be in clear violation of the ordinance and the Water Patrol is attempting to address that.

Schleuning confirmed that the Water Patrol is following their plan in terms of enforcement.

Thomas stated that so where the ordinance is not as prohibitive would be in regard to watercraft rental and perhaps private rental businesses.

Schleuning confirmed that there is no licensing requirement for those activities.

Gabriel Jabbour stated that he submitted a letter to the Board today. He felt that when an activity is illegal and those people are part of his marina, he would be an accessory and therefore feels that there should be recourse for those license holders. He stated that he took photographs today when he was in Excelsior. He stated that there are a lot of business around the lake and remembers the previous

discussions as a member of the Board. He stated that the lake is a residential community with sprinkling of commercial activities. He stated the importance of identifying the priorities for the lake. He stated that the Health Department did not want food preparation and sales on the lake and had concerns about time frame for delivery. He had concerns about the reputation of cruises if problems occur

Thomas stated that based on the few comments that he has received, he would think it would be appropriate to ask staff to draft a resolution or ordinance that would appropriately restrict unlicensed watercraft rental businesses or inappropriate rental slips at private properties.

Schleuning commented that the main point is to step back and look more holistically before drafting something. She suggested gathering more stakeholder input before this comes back to the Board.

Thomas agreed and noted that this could be carried over for additional discussion at a future workshop.

Schleuning commented that realistically she did not believe anything would be done for this season.

Baasen stated that he believes the Board should start somewhere and therefore does not want to see this pushed down the road. He suggested that the Board follow through and have staff look at what the ordinance says and what possible changes would be necessary in order to provide additional strength to the ordinance.

Anderson read a statement from the Hennepin County Water Patrol website, and it was confirmed to be true. He noted that there should be no grey area in terms of enforcement.

Schleuning stated that enforcement is being taken such as citations, but it has not stopped the behavior and it can be difficult to track down the person that runs the business.

Anderson stated that if someone is caught more than once there should be prosecution that prohibits activity on the lake for three years.

Schleuning confirmed that is possible under a licensing program. She stated that there are citations being issued.

Thomas confirmed that this could come back in two weeks with the staff proposal for the ordinance and then continued discussion can occur with stakeholder input in the future.

Walesch referenced the license that was mentioned. He asked if additional enforcement would be available if the person had a license.

Schleuning confirmed that if the business were licensed, the license could be pulled in terms of enforcement. She noted that the businesses would need to meet all the requirements for licensing.

Thomas noted that additional boats could be licensed as charters but they most likely would not be able to find docking space.

2. ADJOURNMENT

There being no further business, the worksession was adjourned at 7:03 p.m.

REGULAR MEETING

1. CALL TO ORDER

Chair Thomas called the meeting to order at 7:05 p.m.

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

Members present: Gregg Thomas, Tonka Bay; Rich Anderson, Orono; Ann Hoelscher, Victoria; Bill Cook, Greenwood; Dan Baasen, Wayzata; Ben Brandt, Mound; Gary Hughes, Spring Park; Michael Kirkwood, Minnetrista; Dennis Klohs, Minnetonka Beach; Mark Kroll, Excelsior; Denny Newell, Woodland; Nicole Stone, Minnetonka; and Jake Walesch, Deephaven. Also present: Troy Gilchrist, LMCD Legal Counsel; Vickie Schleuning, Executive Director; and Matt Cook, Environmental Administrative Technician.

Members absent: Deborah Zorn, Shorewood.

Persons in Audience:

Dennis Caslavka, Julia Coleman, Leslie Dennis, Eric Evenson, Henry Graef, Ben Henry, Gabriel Jabbour, Sen. Susanne Johnson, Luke Kujawa, and Jay Soule.

The following usernames were present but the person(s) did not identify themselves: Barbara's iPad, iPhone 2, and Me.

4. APPROVAL OF AGENDA

The agenda was approved as submitted.

5. CHAIR ANNOUNCEMENTS

Chair Thomas commented that the first meeting in August will return to an in-person meeting at the Wayzata City Hall.

6. APPROVAL OF MINUTES- 07/14/2021 LMCD Regular Board Meeting

Anderson noted on page 16, it should state, "...~~Klein~~ Cline..."

MOTION: Kirkwood moved, Thomas seconded to approve the 07/14/2021 LMCD Regular Board Meeting minutes as amended.

VOTE: A roll call vote was performed:

Anderson	aye
Baasen	aye
Brandt	aye
Cook	aye
Hoelscher	aye
Hughes	aye
Kirkwood	aye
Klohs	aye
Kroll	aye
Newell	aye
Stone	aye
Thomas	aye
Walesch	aye
Zorn	absent

Motion carried unanimously.

7. APPROVAL OF CONSENT AGENDA

MOTION: Baasen moved, Stone seconded to approve the consent agenda as presented. Items so approved included: **7A)** Audit of Vouchers (07/16/2021 – 07/31/2021); and **7B)** A/V Producer Agreement.

VOTE: A roll call vote was performed:

Anderson	aye
Baasen	aye
Brandt	aye
Cook	aye
Hoelscher	aye
Hughes	aye
Kirkwood	aye
Klohs	aye
Kroll	aye
Newell	aye
Stone	aye
Thomas	aye
Walesch	aye
Zorn	absent

Motion carried unanimously.

8. DONOR RECOGNITION

A) Resolution Accepting Save the Lake Contributions (06/25/2021 – 07/20/2021)

Baasen provided background information on Save the Lake. He noted that following COVID-19 there has been increased demand and traffic on the lake and therefore efforts must be increased to promote safety on the lake. He noted that they will be recognizing those that contribute to Save the Lake throughout the year, as those contributions help to promote safety on the lake. He recognized four contributions received. He stated that it is enjoyable to see the partnership with the general population to help protect the lake.

MOTION: Thomas moved, Kroll seconded to adopt the resolution accepting Save the Lake Contributions (06/25/2021 – 07/20/2021).

Further discussion: Newell stated that Anderson has done a great job of organizing the marina operators to participate in this and has the ability to use his network of contacts to solicit additional donations for safety. He stated that he is a retired man in a small community and needs the LMCD/Save the Lake to brand this campaign. He did not believe that the message is clear that the intent is focused on safety and support of the Water Patrol. He believed that with better branding it would assist in soliciting additional donors.

VOTE: A roll call vote was performed:

Anderson	aye
Baasen	aye
Brandt	aye
Cook	aye
Hoelscher	aye
Hughes	aye
Kirkwood	aye
Klohs	aye
Kroll	aye
Newell	aye
Stone	aye
Thomas	aye
Walesch	aye
Zorn	aye

Motion carried unanimously.

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

Jay Soule, 5201 Piper Road, stated that he is a representative of AI and Alma's. He stated that in the work session he heard the comment that the LMCD is recognizing that there is an increased desire for commercial activity, that there are requests to relax regulations related to these types of regulations, and that it is chaotic right now. He expressed concerns that the ordinances be enforced for charters and people breaking the law. He stated there is state law for watercraft for hire, noting that a permit would be required to carry passengers for hire. He stated that if someone wanted to take more than six people for a boat ride for payment, they would need to have the permit and follow the regulations. He noted that the fishing operations tend to follow the rules and take less than six people, but is concerned with boats taking more than six guests at a time .

The Board could enlist the help of the State that has an enforcement division that is capable of enforcing this issue. He stated that he would really like to see some action and was frustrated with the statement that nothing could be done this summer. He stated that they have asked for assistance on this matter in the spring each year at the annual meeting they are required to attend. He stated that these people have websites and advertise capacity for 15 people. He stated that this activity is illegal and did not believe the Board should wait to take action. He asked that the Board support staff to provide support to the entities that can regulate these activities. He stated that he more than welcomes anyone that would like to get into this business of being a boat for hire, as it is a privilege to help people have access to the water. He asked the LMCD to protect the integrity of its licensing through enforcement. He thanked the recent efforts from the Water Patrol and Hennepin County Sheriff to make progress on this issue.

Anderson stated that he also noticed the fact that it is later in the season and not much could be done and was frustrated with that statement as he believes enforcement should be done now.

Schleuning clarified that LMCD is enforcing the existing regulations and the statement about not making progress this season was related to creating new regulations. She stated that there is a plan and Water Patrol has been active in enforcement and the State has been involved. She noted that cities have also been cooperating with enforcement efforts.

Anderson asked whether the rentals are being enforced as voraciously as charters.

Schleuning stated that in terms of rentals there are items that can monitor and enforce, such as inspections and safety equipment.

Thomas commented that there is no one on the Board that believes that the current ordinance related to charter boats should not be enforced.

Jabbour commented that the Board is doing a great job at meetings but what happens between meetings is more important. He did not believe the Board is aware of what happens between meetings. He stated that he is on the water 12 hours a day, and this is a five-year problem and some people perceive that they can do what they want on the lake, and it will take years for the LMCD to enforce. He stated that he engaged enforcement with an unlicensed charter that was docked at his marina, as he does not want to be an accessory to a bad situation. He stated that he has spoken with Police Chiefs about the issues as problems on water lead to problems on land. He stated that he feels it takes time for the Board/LMCD to get anything done. He commented that he is the hardest working person on the lake.

Luke Kujawa, Your Boat Club, stated that he appreciates the comments related to rental boats and the change in the industry. He stated that he is a small business owner and appreciates entrepreneurship and new businesses, but it must be a level playing field. He recognized the price for commercial marinas and commercial boat slips, the value of public docks and resources on a public lake, and the regulations that must be met. He stated that the fact that anyone can use a public dock and compete with these legal charters is unfair and unsafe. He stated that he appreciates competition and startup businesses, but it should be a level playing field with everyone meeting the same requirements.

10. PRESENTATIONS

A) Senator Julia Coleman

Hoelscher introduced Senator Julia Coleman provided background information on her experience, the cities she represents, and her committee assignments.

Senator Coleman stated that she does not serve on the Environmental Committee but provided an update on that group's recent activity.

Thomas appreciated the input of Senator Coleman and recognized her time restrictions for tonight. He noted that the LMCD has not yet established boating operator registration but noted that perhaps that could be added for a future topic.

Senator Coleman commented that policy positions and opinions on certain bills and issues from the LMCD would be helpful for her. She stated that she would love to meet again as they get closer to the next session.

Hoelscher stated that she would place that on a future Communications Committee agenda and will follow up with Senator Coleman. She thanked her for her time.

11. PUBLIC HEARING

A) Continued Public Hearing for Application for New Multiple Dock Application for Qualified Commercial Marina, The Yacht Club, 4165 Shoreline Drive, (PID 18-117-23-44-0022) Spring Park, MN 55384

M. Cook presented a request from The Yacht Club for a new multiple dock license with classification as a qualified commercial marina. He noted that this application was reviewed by the Board in June and provided a brief overview of the request including background information, an updated survey that was completed, the existing site plan, and proposed site plan. He stated that generally the application meets the requirements of the LMCD Code. He noted that the multiple dock criteria and qualified commercial use criteria reviews were included in the memorandum to the Board. He reviewed the comments received from public agencies. **He stated that staff recommends approval with the conditions noted within the memorandum.**

Hughes commented that the attachment listed as attachment two is very good at detailing comments from the City. **He commented that the City is against this request.** He noted that the facility does not lend itself to use by handicap people. He stated that the City does not believe that this fits the commercial marina criteria.

Thomas noted the comments that the LMCD cannot reasonably deny the request. He noted that the City has its own zoning requirements that it can enforce.

Gilchrist commented that an applicant has several permits that are required to operate as proposed and the LMCD license is just one of those components. He stated **that the LMCD can only look at the factors under its authority and the City would have to make its own determination.**

Hughes commented that this would fit under the classification of a club facility but would not fit under the commercial facility.

Thomas recognized that the City attorney may interpret the Code in one manner while the LMCD attorney interprets that Code differently. He stated that based upon the presentation he does not see a reason the Board should deny the request, but again noted that the City could choose to deny the request on its own merit.

Newell stated that in the 18 months that he has been on the Board there have been a number of dock requests that have been reviewed. He stated that in the interest of streamlining meeting procedures, he believes that much of these reviews could be done administratively and would not require action by the Board. He stated that he is older and it is harder and harder to get into his boat. He noted that accessibility to the lake is time dependent and it would be ridiculous to try to make every activity accessible to all peoples.

Thomas noted that the LMCD follows this process because it is a public body, and the public has to have the opportunity to provide comments.

Thomas opened the public hearing. No comments were offered, and the public hearing was closed.

Anderson asked if the City has a problem with the classification and asked if it would be appropriate to use the qualified commercial yacht club status as that would allow the proposal to be approved and the City would most likely approve as well.

Thomas stated that there is no request to extend the dock to 200 feet.

Anderson commented that one of the main reasons to obtain a qualified classification is the ability to go out to 200 feet.

Leslie Dennis, 2967 Casco Point Road in Wayzata, stated that she has been operating the marina since 1997. She stated that her father and his partners constructed the building and ran the business previously. She commented that many items included in the original permit have become obsolete, such as providing a public telephone. She stated that she probably would have never submitted the request but when she was approached by a potential buyer, they wanted the permit cleaned up. She stated that approval was gained at that time with no issue from the LMCD or City. She stated that the buyer asked for a substantial decrease in the price and therefore the sale did not go forward. She stated that she now has no plans to sell but believed it would still be a good idea to clean up the permit language. She stated that she has no desire to increase the dock size or change anything and simply wanted to clean up the almost 30-year-old permit.

Thomas stated that the Board should act on the application before them, and the City will need to take its own separate action.

Kirkwood asked if the Board is voting on the current dock configuration and if the applicant were to propose changes to that configuration it would need to come back to the Board.

Thomas confirmed that changes would need to come back to the Board.

Anderson stated that the clarification between qualified commercial marina and qualified yacht club would

help to clean up the permit. He stated that the City has noted its opinion and has no issue with the qualified yacht club classification. He believed that the Board should vote for the classification of qualified yacht club, as that could be supported by the City.

Gilchrist commented that the applicant is not asking for that license and therefore the Board could not choose that option tonight. He stated that the Board has to act on the application before it, a classification of qualified commercial marina license. He stated that the only opinion he forwarded on this matter is that the LMCD cannot deny a license solely because a City states that the application may not pass its zoning criteria.

Walesch stated that he supported the request at the last meeting and still finds it to be reasonable.

MOTION: Walesch moved, Kroll seconded to direct LMCD legal counsel to prepare Findings of Fact and Order approving the multiple dock license applications from The Yacht Club LLP for the property located at 4165 Shoreline Drive in Spring Park for final action at the August 11, 2021 LMCD Board meeting.

VOTE: A roll call vote was performed:

Anderson	nay
Baasen	aye
Brandt	aye
Cook	aye
Hoelscher	aye
Hughes	nay
Kirkwood	aye
Klohs	aye
Kroll	aye
Newell	aye
Stone	aye
Thomas	aye
Walesch	aye
Zorn	aye

Motion carried.

Klohs commented that everyone should remember that Spring Park was one of the major sponsors of the legislative changes that separated water and land uses that used to overlap with the LMCD. He stated that anything City related such as parking, handicap access, and etc. does not fall under the authority of the LMCD.

12. OTHER BUSINESS

There was no other business.

13. OLD BUSINESS

A) Options for Deliveries on the Lake

Thomas noted that four options were detailed in the memorandum from Gilchrist along with three potential resolutions the Board could take action on. He asked for input from the Board.

Gilchrist stated that there has been a lot of back and forth on the issues of sales and deliveries. He stated that the last discussion did not reach full consensus and in order to help facilitate closure on the issue he developed the options included in the memorandum which should cover the spectrum of options.

Hoelscher stated that perhaps doing nothing at this point is an option and the Board instead tackle this in a bigger picture manner as part of the vision for commercial activity on the lake. She stated that she does not like option two. She stated that in her opinion the Board should either wait and add this to the list of commercial activity discussion or choose option one.

Thomas asked why the Board would wait.

Hoelscher stated that during the workshop discussion it was mentioned that the Board should think in a big picture manner as to the commercial activity on the lake as a whole. She noted that allowing deliveries would expand commercial activity on the lake.

Walesch stated that he would choose to do nothing, and staff would continue to advise the public that deliveries are prohibited on the lake. He was unsure that anyone on the Board is interested in aggressive enforcement on this issue and would rather focus on illegal charter activity. He stated that things will happen no matter what the Board decides, and the existing ordinance seems to work well. He noted that there do not seem to be a large number of complaints related to deliveries and he does not want the LMCD to spend a lot of time and energy discussing details of what would be allowed, when the activity would be allowed, how payment could be provided, etc. He did not believe there was a dire need of deliveries on the lake from what he has heard from other property owners.

Thomas asked why exhibit C would not then be adopted under that scenario to clarify the existing ordinance.

Walesch stated that he would not have a problem with that.

Kirkwood agreed that the comments of Walesch seem to support exhibit C and he could support that.

Newell also agreed. He stated that sales are prohibited and believed that deliveries would self-regulate. He stated that if deliveries are cold upon delivery, people would not use the service. He believed that delivery on the lake is flawed but noted that he would not want to stand in the way of it.

Cook agreed that he likes the option of doing nothing. He believed that exhibit c is written in a manner where there would be unintended consequences from partial lists. He believed there is a danger in stating what cannot be done as it would imply that something not on the list could be done. He stated that he believes that this is a solution looking for a problem.

Anderson stated that initially he agreed that exhibit C would be the easiest route to follow. He referenced the minutes from the previous meeting which mentions that the ordinance does not prohibit deliveries. He stated that there are service folks that provide delivery service, such as boat part deliveries. He stated that the delivery part has to be interpreted. He stated that if LMCD staff has interpreted the ordinance language incorrectly, he believes that exhibit A would help to clarify that deliveries are not illegal while sales are.

Klohs commented that at some point someone will be running a business that may be successful and if the LMCD attempts to shut down that business it could bring potential litigation to the LMCD. He asked for opinion of legal counsel.

Gilchrist commented that it would be hard to imagine that there would be liability from such action. He stated that he would make sense to bring clarity to this issue. He stated that in 2016 the clear consensus was that sales on the lake should not be allowed. He noted that the Board did not act on the options to clarify the position on deliveries and since that time staff has continued to state that deliveries are not allowed as they are part of the sale. He stated that it is the job of the Board to clarify the position. He stated that if the Board believes that deliveries are fine, one of those options should be selected to make the job of staff easier when responding to requests.

Klohs stated that the Board should vote on a public statement or ordinance change as to whether deliveries are allowed or prohibited.

Thomas stated that the Board was previously concerned with a floating ice cream truck which would lead to a gathering of boats and the second was the delivery aspect. He noted that people can currently call ahead to order from a restaurant on the lake and pickup their order at the dock at a specified time.

Schleuning commented that this is not a new interpretation as deliveries have historically been considered as part of a sale.

Thomas agreed that the staff has interpreted the ordinance exactly as directed previously by the Board.

Eric Evenson, LMA, stated that the LMA agrees with the interpretation that deliveries should not be allowed on the lake as deliveries are part of a sale. He stated that LMA would agree with option three.

Thomas asked what the problem would be with someone deliveries a boat part or servicing a boat at its dock. He asked if that would be precluded under option three.

Gilchrist commented that he would not think that would be precluded as it talks about sales from a watercraft or vehicle on the lake. He noted that the example provided before was someone bringing a boat part and handing it to someone on shore or at the dock. He stated that activity would not be prohibited under option three and would be the same as someone pulling up to a restaurant dock to receive their food order.

Kirkwood stated that the attempt is to control pure delivery intent that would increase traffic on the lake and not someone delivering a boat part to a private or commercial property.

MOTION: Anderson moved, Kirkwood seconded to adopt exhibit C.

VOTE: A roll call vote was performed:

Anderson	aye
Baasen	aye
Brandt	aye
Cook	aye
Hoelscher	nay
Hughes	aye
Kirkwood	aye
Klohs	aye
Kroll	aye
Newell	aye
Stone	aye
Thomas	aye
Walesch	abstain
Zorn	aye

Motion carried.

Thomas asked if a public hearing would be suggested for this item.

Gilchrist noted that the ordinance was already adopted and was not changed, therefore a public hearing is not required.

14. NEW BUSINESS

There was no new business.

15. TREASURER REPORT

Anderson provided an overview on the recent financial information, comparing those figures to the budgeted amounts and year to date data.

16. EXECUTIVE DIRECTOR UPDATE

Schleuning provided the following information:

- Stop the Spread of spiny waterflea dishcloths have been received. LMCD is working with MAISRC and others on a prevention campaign.
- A media release was distributed in relation to illegal charter boat operations.
- University of Minnesota model used to predict infestations originally placed Lake Minnetonka at a 33 percent risk of introduction and infestation of starry stonewort. Leech Lake had a lower risk rate, but Starry stonewort AIS have been confirmed in that waterbody. It will be interesting to see the impact to risk model once the model is updated.

- Staff continues to receive calls and complaints and is attempting to respond to everyone in a timely manner, and very much appreciates the patience.

17. STANDING LMCD COMMITTEE/WORKGROUP

Aquatic Invasive Species: Brandt reported that he was unable to organize a meeting in July but has a meeting scheduled for the following week and will provide an update at the next meeting. He thanked staff for the towels noting that it is exciting to see the campaign against spiny water flea. He asked if there is local coordination the LMCD would be involved in related to the Starry Trek.

Schleuning confirmed that the LMCD has participated in the past and will participate again this year. She stated that the LMCD is hosting the Starry Trek at Excelsior Commons and registration is currently open for those that want to participate.

Brandt commented that he is working to get his team of scuba divers involved. He noted that a member of his team identified the infestation in Leech Lake.

Thomas stated that he and Kirkwood participated together in the event last year and enjoyed themselves.

Brandt commented that he is excited for the future and hopefully strong partnerships to stop the spread of AIS.

Communications: Hoelscher thanked Senator Coleman for joining them earlier tonight. She stated that the LMCD has now spoken with almost all elected State officials and representatives in order to establish lines of communication. She stated that Senator Coleman made a good point about the LMCD creating policy statements and noted that she will add that to the committee agenda. She stated that the Committee met the previous week but did not have a quorum and therefore did not take action. The group will meet again on August 19th.

Thomas commented that one year ago Hoelscher suggested that it would be nice to get to know the legislators better and the committee has taken that concept and made it a reality. He expressed appreciation.

Anderson asked for clarification on the website line item on the budget and whether that aligns with communications.

Hoelscher stated that Anderson should check with staff related to the website. She believed it was fine to leave the item as is at this time.

Finance: Anderson provided an update on the equipment that has been purchased for the LMCD boat.

Operations: Schleuning reported that Zorn is going to receive the final information from Save the Lake, and she will look over the draft with plans to bring the draft Strategic Plan to an August workshop.

Save the Lake: Baasen reported that the group meets again in August. He stated that Schleuning released

the summer solicitation letter for Save the Lake, and he thanked Soule, Jabbour, Anderson, Schleuning and a few others that contributed to the language in order to more directly appeal towards lake safety. He stated that sponsorship levels are also included in the letter.

18. ADJOURNMENT

MOTION: Walesch moved, Baasen seconded to adjourn the meeting at 9:04 p.m.

VOTE: A roll call vote was performed:

Anderson	aye
Baasen	aye
Brandt	aye
Cook	aye
Hoelscher	aye
Hughes	aye
Kirkwood	aye
Klohs	aye
Kroll	aye
Newell	aye
Stone	aye
Thomas	aye
Walesch	aye
Zorn	absent

Motion carried unanimously.

Gregg Thomas, Chair

Dan Baasen, Secretary

2:38 PM

08/03/21

Lake Minnetonka Conservation District
Check Detail
August 1 - 15, 2021

ITEM 7A

Date	Num	Name	Memo	Account	Class	Paid Amount
08/01/2021	EFT-21-96	SelectAccount Group Service Center		Alerus Checking		
			HSA Employer Contribution for August 2021 - Vickie Schleuning	4380M10 · Employee Benefits - Admin.	Admin.	-116.67
			HSA Employer Contribution for August 2021 - Matt Cook	4380M10 · Employee Benefits - Admin.	Admin.	-116.67
			HSA Employer Contribution for August 2021 - Tammy Duncan	4380M10 · Employee Benefits - Admin.	Admin.	-116.67
TOTAL						-350.01
08/13/2021	EFT-21-97	ADP Service Fee		Alerus Checking		
			Payroll 8/1/21 - 8/15/21	4180M10 · Professional Services - Admin.	Admin.	-80.53
TOTAL						-80.53
08/13/2021	EFT-21-98	Unum Life Insurance		Alerus Checking		
			Long Term Disability - August	2020-LT · Payroll Liabilities - UNUM	Admin.	-170.07
TOTAL						-170.07
08/13/2021	EFT-21-99	ADP		Alerus Checking		
			Salaries - Admin	4020M10 · Salaries-002 - Admin	Admin.	-8,134.08
			P.E.R.A.	2020 · Payroll Liabilities -	Admin.	1,132.82
			ER PERA	4022M10 · ER PERA - Admin	Admin.	-606.87
			ER/FICA Medicare - Admin	4021M10 · ER Share of Admin FICA/Medicare	Admin.	-510.35
			Long Term Disability	2020-LT · Payroll Liabilities - UNUM	Admin.	85.03
			Matt Cook Health Ins Reimb for Sarah Coverage	4380M10 · Employee Benefits - Admin.	Admin.	1,420.69
TOTAL						-6,612.76
08/13/2021	EFT-21-100	P.E.R.A		Alerus Checking		
			Payroll 8/1/21 - 8/15/21	2020 · Payroll Liabilities -	Admin.	-1,132.82
TOTAL						-1,132.82
08/13/2021	21997	AIS Advanced Imaging Solutions		Alerus Checking		
08/13/2021	Inv.#449194257		Copier Contract 7/20/21 - 8/20/21	4140M10 · Office Equipment R&M - Admin.	Admin.	-270.52
TOTAL						-270.52
08/13/2021	21998	City of Wayzata		Alerus Checking		
08/13/2021	Strmnt 8/1/21		2021 Agreement for Meeting Room - prorated for Aug - Dec	4230M10 · Meeting Exp. - Admin.	Admin.	-1,519.00
TOTAL						-1,519.00

2:38 PM

08/03/21

Lake Minnetonka Conservation District
Check Detail
 August 1 - 15, 2021

Date	Num	Name	Memo	Account	Class	Paid Amount
08/13/2021	21999	Innovative Office Solutions LLC		Alerus Checking		
08/13/2021	Inv.#IN3428003		Copy Paper and Supplies	4220M10 · Office Supplies -Admin.	Admin.	-136.38
TOTAL						-136.38
08/13/2021	22000	LMCC		Alerus Checking		
08/13/2021	Inv.#1435		VOD Services for Meeting 7/28/21	4182M10 · Media (Cable/Internet) - Admin.	Admin.	-100.00
TOTAL						-100.00
08/13/2021	22001	Minnesota Trophies & Gifts		Alerus Checking		
08/13/2021	Inv.#43907		Name Plate for Rich Anderson, Treasurer	4230M10 · Meeting Exp. - Admin.	Admin.	-16.50
TOTAL						-16.50
08/13/2021	22002	NCPERS Group Life Insurance		Alerus Checking		
08/13/2021	August 2021		Life Insurance, August 2021	4380M10 · Employee Benefits - Admin.	Admin.	-48.00
TOTAL						-48.00
08/13/2021	22003	Tallen & Baertschi		Alerus Checking		
08/13/2021	July 2021		July Prosecution Cost	4640M10 · Prosecution Legal Fees - Admin.	Admin.	-3,817.86
TOTAL						-3,817.86

**LAKE MINNETONKA CONSERVATION DISTRICT**

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

DATE: August 11, 2021 (Prepared August 11, 2021)

TO: LMCD Board of Directors

FROM: Matthew Cook, Environmental Administrative Technician

THROUGH: Vickie Schleuning, Executive Director

SUBJECT: The Yacht Club LLP Multiple Dock License, 4165 Shoreline Drive in Spring Park

ACTION

Board approval of Findings of Fact and Order for a new multiple dock license for The Yacht Club, 4165 Shoreline Drive, in the City of Spring Park on Spring Park Bay.

BACKGROUND

The LMCD continued a public hearing from June 23, 2021 and held a public hearing on July 28, 2021 to consider the application of The Yacht Club LLP ("Applicant") for a new multiple dock license for the site at 4165 Shoreline Drive in Spring Park.

On July 28, 2021, the LMCD Board voted to have legal counsel and staff draft Findings of Fact and Order for approval of the license request with conditions. The draft Findings of Fact and Order document is attached, as well as the memos and presentations from the previous hearings, without attachments.

BUDGET

N/A

STRATEGIC PRIORITIES

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

1. Draft Findings of Fact and Order
2. Proposed Site Plan
3. July 28, 2021 Presentation
4. July 28, 2021 Public Hearing Memo (without attachments)
5. June 23, 2021 Public Hearing Memo (without attachments)

ITEM 7B ATTACHMENT 1

Type: Commercial Multiple Dock
License/Qualified Commercial
Marina

Date: August 11, 2021

PID(s): 18-117-23-44-0022

Address: 4165 Shoreline Drive
Spring Park, MN 55384

LAKE MINNETONKA CONSERVATION DISTRICT HENNEPIN COUNTY, MINNESOTA

IN RE:

Application of The Yacht Club, LLC, for a
Commercial Multiple Dock License as a
Qualified Commercial Marina for the
Property located at 4165 Shoreline Drive in
the City of Spring Park.

FINDINGS OF FACT AND ORDER

The Lake Minnetonka Conservation District (“LMCD”) received an application from Leslie Oare of The Yacht Club, LLC (“Applicant”) for a Commercial Multiple Dock License for its property at 4165 Shoreline Drive, Spring Park, MN 55384 (“Subject Property”). The Subject Property is currently licensed as a Club facility and the Applicant is seeking to be licensed as a Qualified Commercial Marina to allow it to rent slips to the general public. The Applicant seeks a Commercial Multiple Dock license for the existing dock structure under its new classification. The Board provided the Applicant and the general public an opportunity to be heard at the public hearing held on July 28, 2021, and now, based on its proceedings and the record of this matter, hereby makes the following Findings of Fact and Order:

FINDINGS OF FACT

- a. The Subject Property is located in the City of Spring Park, on Spring Park Bay, which is part of Lake Minnetonka (“Lake”).
- b. The Subject Property has been licensed as a Club Facility and operated as a yacht club.
- c. The Applicant is seeking to operate it as a Qualified Commercial Marina to allow it to rent slips to the general public. The Applicant is seeking a Commercial Multiple Dock license for the existing dock structure. The dock structure is seasonal (not permanent) and the Applicant is not proposing to make any structural changes to it.
- d. A proposed buyer of the Subject Property previously applied for the same approvals, which the LMCD Board of Directors (“Board”) considered at its April 14, 2021 meeting and, after conducting a hearing on the same, voted to direct the preparation of an order approving the request. However, the buyer withdrew the request before the April 28, 2021 meeting at which the Board was to formally act to approve the application.

- e. The Subject Property has approximately 333 feet of 929.4 NGVD shoreline and, with the proposed continuance of 32 boat storage units (“BSUs”), the site has a density of 1:10.4. The Subject Property was previously issued a Special Density license, but the conversion to a Qualified Commercial Marina eliminates the need to continue the license.
- f. The dock structure complies with setback requirements.
- g. The Applicant is not proposing to change the existing dock length of approximately 119 feet. A Qualified Commercial Marina may extend a dock up to 200 feet, but this Order limits the length of the dock to 119 feet, which is consistent with how the dock has been installed in previous years. The dock may only be extended if the Applicant seeks, and the Board approves, a new Commercial Multiple Dock license. Furthermore, a proposed extension of the dock beyond 119 feet would require the Board to consider the additional criteria set out in Section 6-2.01, Subd. 4 of the LMCD Code of Ordinances (“Code”) and other pertinent standards.
- h. The Applicant also stated that the proposal does not include installation of a fuel sales facility.
- i. Under Section 3-1.09 of the Code, the conversion from a Club use to a Qualified Commercial Marina use requires the issuance of a new license.
- j. As a Qualified Commercial Marina, the Applicant is eligible under Section 3-2.07, Subd. 1(b) of the Code to seek a Commercial Multiple Dock License in accordance with the procedures set out in Section 6-2.01 of the Code.
- k. The Applicant submitted a site plan, which is attached hereto as Exhibit A and is incorporated herein (“Site Plan”).
- l. The Applicant is not proposing any transient slips for the dock.
- m. Because the dock structure installation has been the same for years, and because the difference in square footage between the previous approved layout and the existing layout appears to be approximately 66.5 square feet, there is no need to consider the need for an EAW.
- n. The only agency comment received by LMCD was from the City of Spring Park (“City”). The City recommended that the Applicant’s request be denied based on its belief that a change in dock license will introduce a different user group to the Subject Property and a change of site operations to a commercial operation will have a negative impact on the tenants and operations of an adjoining office building and residential apartment complex. The City was also concerned that the new license designation would allow for expansion in the future. **The City also raised concerns regarding whether the business, with the change in designation, would comply with the City’s zoning regulations.** The LMCD notes that a Club Facility and a Qualified Commercial Marina are both classified as commercial operations under the Code. **Also, the 2019 amendment to Minnesota Statutes, section 103B.611,**

subdivision 3a (8) expressly prohibits the Board from considering land-based marina activities and so the Board cannot consider the City's zoning regulations. Issuance of this Order does not speak to whether the marina is compliant with the City's zoning regulations. The Applicant is responsible for obtaining any other permits or permissions that may be required and for complying with all applicable regulations.

- o. The LMCD received no comments from neighboring property owners or the public.
- p. The Board appreciates the input from the City, but finds there is nothing about the proposed use of the dock that would cause it to generate any more noise than any other commercial dock on the Lake and Hennepin County Sheriff's Office occupies the adjoining property. The City did not raise any objections when the exact same application was submitted by potential buyer in April. The LMCD notes that a Club Facility and a Qualified Commercial Marina are both classified as commercial operations under the Code. Also, the 2019 amendment to Minnesota Statutes, section 103B.611, subdivision 3a (8) expressly prohibits the Board from considering land-based marina activities and so the Board cannot consider the City's zoning regulations. Issuance of this Order does not speak to whether the marina is compliant with the City's zoning regulations. The Applicant is responsible for obtaining any other permits or permissions that may be required and for complying with all applicable regulations.
- q. Additional information regarding this matter is provided in the LMCD staff report related to this application dated July 28, 2021 and the presentation made thereon at the meeting (collectively, the "Staff Reports"). The Staff Reports are incorporated herein by reference, except that the approvals and conditions contained in this document shall be controlling to the extent there are any inconsistencies.
- r. The Board has considered the review criteria in Section 6-2.01, Subd. 3 and finds the existing dock structure continues to satisfy those criteria.
- s. The Board held a hearing on the Applicant's request on July 28, 2021. After hearing from the applicant and the public, and discussing the application, the Board adopted a motion to direct staff to prepare findings and an order approving the request for review and action at its August 11, 2021 meeting.

ORDER

ON THE BASIS OF THE FOREGOING AND THE RECORD OF THIS MATTER, IT IS HEREBY ORDERED BY THE BOARD AS FOLLOWS:

1. Approvals. The following approvals are hereby issued for the Subject Property for the 2021 boating season, subject to the conditions identified herein:
 - (a) Change in Use. Allow the change of use of the Subject Property from a Club use to a Qualified Commercial Marina use.

- (b) Commercial Multiple Dock License. Issue a Commercial Multiple Dock license for 32 BSUs for overnight storage, with no transient slips, as shown on the Site Plan (Exhibit A).
2. Conditions. The approvals granted in this Order are subject to, and conditioned upon, compliance with the following:
- (a) The Applicant will provide access to the toilet and sanitation facilities disposal on the site for persons using the Commercial Multiple Dock facility.
 - (b) The Commercial Multiple Dock license issued herein is unique to the Applicant. Upon transfer of ownership of the Subject Property to another individual or entity, such individual or entity will be required to apply for a new license and any other approvals from the Board that may be required.
 - (c) Failure of the Applicant to comply with any relevant regulation of the LMCD or other regulatory body may result in revocation of these approvals.
 - (d) Length overall of the watercraft stored at the subject facility shall be no longer than four feet beyond the boat storage unit. Length overall is defined as the horizontal measurement for the foremost to the outmost points of the watercraft including all equipment and attachments in their normal operating position.
 - (e) Dock lighting must be sufficient and meet applicable codes be approved by LMCD staff.
 - (f) Dock structures shall remain and be maintained in strict compliance with the Site Plan (Exhibit A) as approved.
 - (g) The Subject Property must be maintained and operated in compliance with all other provisions of this Code including, but not limited to, noise standards, zoning requirements, and other applicable regulations, ordinances and state law.
 - (h) The subject facility is not approved for a port of call, watercraft for hire may not berth at the subject facility, and rental watercraft businesses may not operate out of the subject facility.
 - (i) Canopies as defined by LMCD Code are not permitted at the subject facility. Fabric coverings that do not meet the definition of a canopy are permitted.
3. Authorizations. The LMCD staff is hereby authorized and directed to issue the approved Commercial Multiple Dock License for the Subject Property and to take such other actions as may be needed to ensure compliance with this Order and the requirements of the Code.
4. Single Order. This order replaces the previous Multiple Dock License issued for the Club use and the previous Special Density license, both of which are hereby repealed.

BY ORDER OF THE BOARD OF DIRECTORS of the Lake Minnetonka Conservation
District this 11th day of August 2021.

Gregg Thomas, Chair

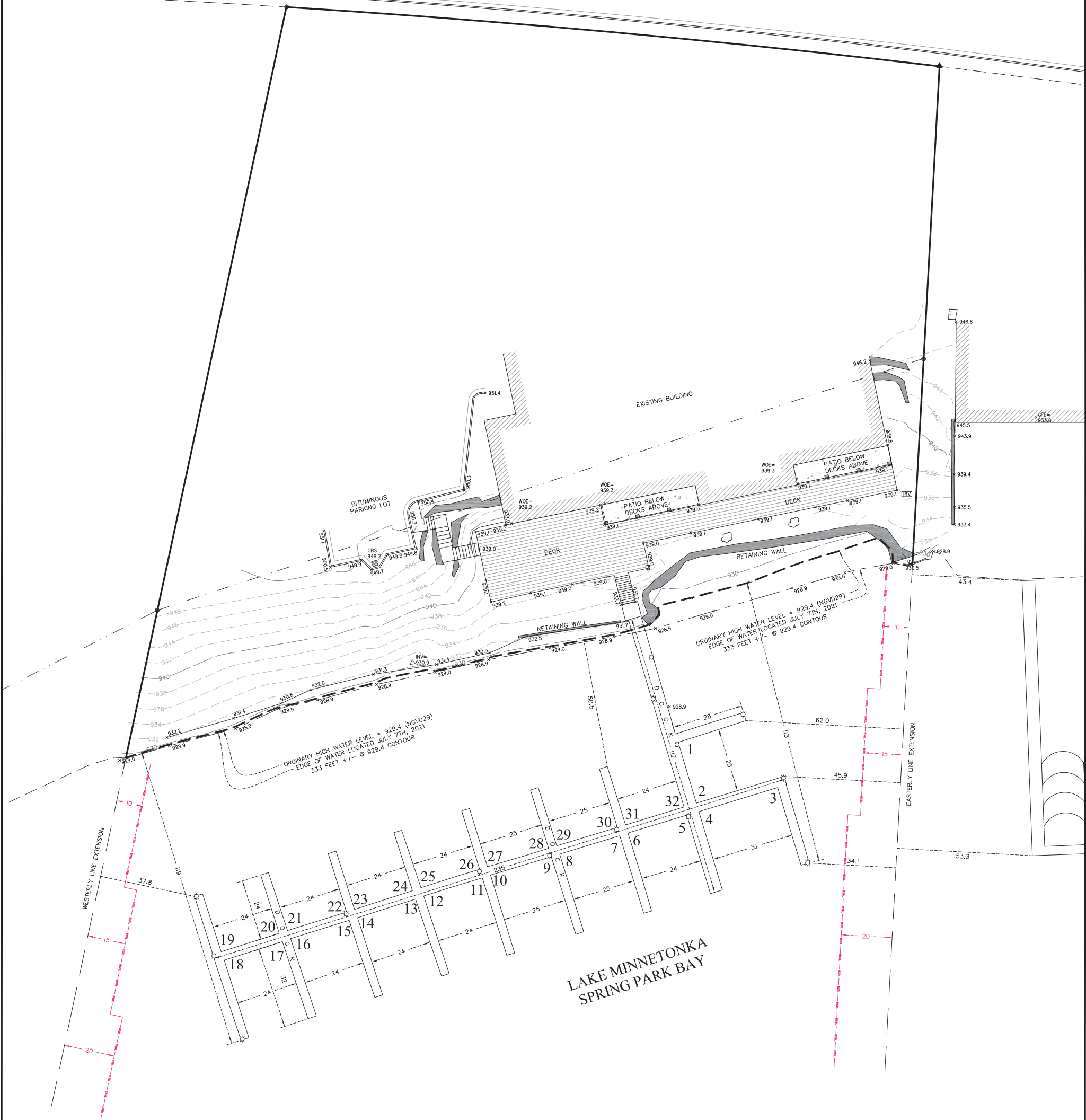
ATTEST: _____
Dan Baasen, Secretary

EXHIBIT A

Site Plan

[attached hereto]

SHORELINE DRIVE



DESCRIPTION OF PROPERTY SURVEYED

Tract D, REGISTERED LAND SURVEY NO. 1106, Hennepin County, Minnesota

STANDARD NOTES

- 1) **Site Address:** 4165 Shoreline Drive, Spring Park, Minnesota 55384
- 2) A title opinion was not furnished to the surveyor as part of this survey. Only easements per the recorded plat are shown unless otherwise denoted herein.
- 3) **Benchmark:** Elevations are based on MN/DOT Geodetic Station Name: JOHNSON MN053 which has an elevation of: 938.909 feet (NGVD29).

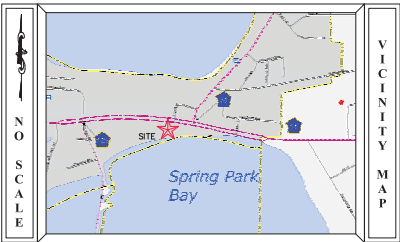
I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Dated this 8th day of July, 2021.

Daniel L. Schmidt
Daniel L. Schmidt, PLS
schmidt@sathre.com
Minnesota License No. 26147



Bearings are based on the Hennepin County
Coordinate System (NAD 83 - 1986 adj.)



SURVEY LEGEND

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

FIELD CREW	NO.	BY	DATE	REVISION
DM AK				
DRAWN				
EMW				
CHECKED				
DLS				
DATE				
7-1-21				

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(952) 476-6000

TWP:117-RGE.23-SEC.18
Hennepin County

SPRING PARK, MINNESOTA

DOCK EXHIBIT

PREPARED FOR:
DENNIS INVESTMENTS

FILE NO.
19333-001

1
1



ITEM 7B ATTACHMENT 3

To preserve and enhance the "Lake Minnetonka experience"

THE YACHT CLUB, 4165 SHORELINE DRIVE SPRING PARK BAY, SPRING PARK MULTIPLE DOCK APPLICATION PUBLIC HEARING

Lake Minnetonka Conservation District

Board Meeting

July 28, 2021

Presented by: Matthew Cook, Environmental Administrative Technician

OVERVIEW

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

BOARD ACTION

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

BACKGROUND

- Approximately 333 feet of shoreline
- 32 BSUs (existing and proposed)
- One parcel (PID 18-117-23-44-0022)
- Seasonally-installed structure
- Applicant requesting change of site classification from “Club” to “Qualified Commercial Marina”
- Currently holds Special Density License to reach 1:10 density; would not be necessary if approved as QCM

4165 SHORELINE DRIVE, SPRING PARK



4165 SHORELINE DRIVE, SPRING PARK



4165 SHORELINE DRIVE, SPRING PARK

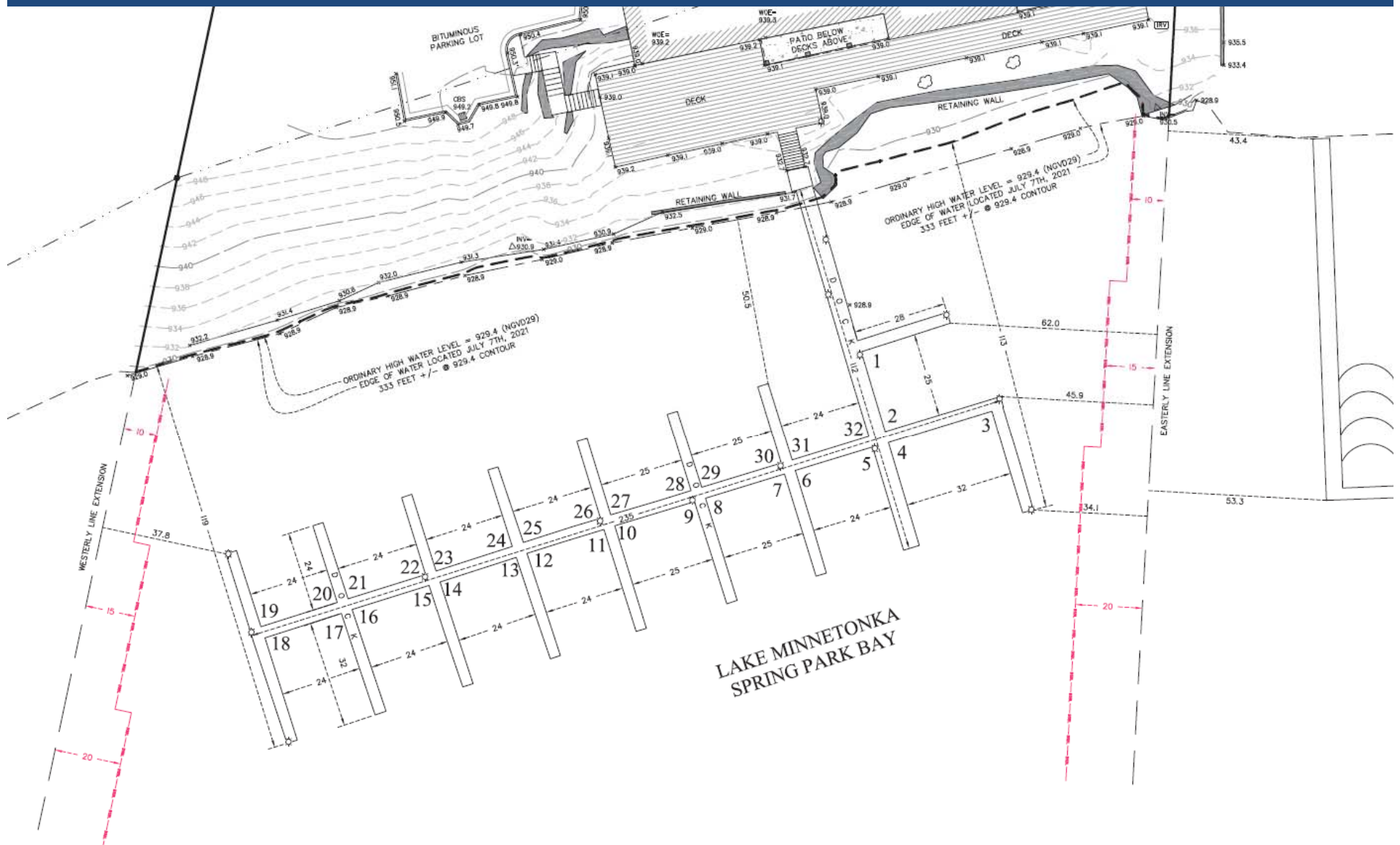
TAKEN FROM GOOGLE MAPS TO SHOW ADJACENT DOCKS



July 28, 2021



SITE PLAN EXCERPT



SITE REVIEW

- Applicant's proposal generally meets code requirements
 - Density of 1:10.4
 - 32 watercraft, 333 feet of shoreline
 - LMCD Code allows QCMs a density of 10 feet per BSU
 - Setbacks
 - Code minimum:
 - 20 feet from west side
 - 20 feet from east side
 - Equal to slip length (~35 feet) from east side-opening slip
 - Proposed:
 - 37.8 feet from west side
 - 34.1 feet from east side
 - 45.9 feet from east side-opening slip
 - Length
 - LMCD Code allows QCMs to go up to 200 feet from shore
 - Applicant proposes existing dock length of up to 119 feet

MULTIPLE DOCK CRITERIA (SEE MEMO)

- Multiple Dock Criteria:
 - LMCD Code Section 6-2.01, Subd. 3 (see Item 9A, attachment 4)
- a) Whether the proposed structure is compatible with the LMCD watercraft density classification criteria in Article 2, Chapter 4;
 - *Per 2-4.07, Subd. 1: “Up to one restricted watercraft may be moored or docked at a qualified commercial use on any site for each 10 feet of continuous shoreline in existence on May 3, 1978. (Fractions over ½ rounded up).” Proposed dock system includes 32 BSUs on 333 feet of shoreline (1:10.4 density).*
- b) Whether the proposed structure complies with the authorized dock use area requirements in Article 2, Chapter 3;
 - *Meets setback requirements.*
 - *Meets maximum length requirements.*

MULTIPLE DOCK CRITERIA (CONT)

- c) Whether the proposed structure will be structurally safe for use by the intended users;
 - *Same as previously approved structure.*
- d) Whether the structure will comply with the regulations contained in this Code;
 - *Same as existing structure; virtually the same as previously approved structure.*
- e) Whether the proposed structure will create a volume of traffic on the Lake in the vicinity of the structure which will tend to be unsafe or which will cause an undue burden on traffic upon the Lake in the vicinity of the structure;
 - *Same as previously approved structure.*
- f) Whether the proposed structure will be compatible with the adjacent development;
 - *Same as existing structure; virtually the same as previously approved structure.*
- g) Whether the proposed structure will be compatible with the maintenance of the natural beauty of the Lake;
 - *Same as existing structure; virtually the same as previously approved structure.*

MULTIPLE DOCK CRITERIA (CONT)

- h) Whether the proposed structure will affect the quality of the water of the Lake and the ecology of the Lake;
 - *Same as previously approved structure.*
- i) Whether the proposed structure, by reason of noise, fumes or other nuisance characteristics, will tend to be a source of nuisance or annoyance to persons in the vicinity of the structure;
 - *Same as previously approved structure.*
- j) Whether adequate sanitary and parking facilities will be provided in connection with the proposed structure;
 - *Sanitary and parking facilities same as previously approved structure.*
- k) Whether the proposed structure will serve the general public as opposed to a limited segment of the public or a limited geographical area;
 - *Slips will be available for rent to the general public.*
- l) Whether the structure will obstruct or occupy too great an area of the public water in relationship to its utility to the general public; and
 - *Same as existing structure; virtually the same as previously approved structure.*
- m) If the site to which the application relates includes non-continuous shoreline, the Board shall also consider the conditions set out in Section 2-4.07, subdivision 4(a).
 - *N/A*

QUALIFIED COMMERCIAL USE CRITERIA

Subd. 4. Qualified Commercial Uses. If a qualified commercial use proposes to increase the number of boat storage units beyond what it is otherwise allowed, or to extend any portion of the structure further into the Lake than 100 feet, the Board shall consider the following additional limitations when reviewing the request:

- a) No license will be granted for a facility with an existing variance unless a new variance for the proposed facility is granted by the Board;
 - *No variance existing; no variance proposed or necessary.*
- b) No license will be granted for a proposed facility that overlaps the dock use area of another site;
 - *Does not overlap DUA of another site.*
- c) No license will be granted for a proposed facility that will require removal of emergent native vegetation; and
 - *No (aquatic) vegetation removal proposed.*
- d) No license will be granted for a proposed facility that interferes with general public navigation, or impairs access to use of the dock use area of another site or a commercial mooring area.
 - *Virtually the same as previously approved structure, and matches how the structure has been installed for years; no evident detrimental impacts.*

PUBLIC / REVIEW AGENCY COMMENTS

▪ **Agency Review of Application / Comments**

- No comments received from the MN DNR.
- MCWD have no comments other than noting that shoreline stabilization, floodplain alteration, or other earthmoving work – if proposed – would require further review by the MCWD. The MCWD noted such work does not appear to be proposed.
- On July 20, 2021, staff from City of Spring Park sent comments approved by Council at the July 19, 2021 Spring Park City Council meeting. City comments attached to Item 9A (attachment 2)

Public Comments

- No comments received by LMCD staff as of noon on July 28, 2021

STAFF RECOMMENDATIONS

- Staff Recommendation based on information available prior to public hearing.
- Staff recommend **approval** with the following conditions:
 - Standard license conditions are applied, including maintenance standards, lighting, bathroom facilities, etc.
 - Emphasize the order to meet all applicable regulations such as zoning.
 - Highlight the details of what is being approved.

STAFF RECOMMENDATIONS

- LMCD cannot reasonably deny a request solely because the applicant may need to secure further approvals from other entities. The applicant may need to secure a zoning approval from the City.
- The basis of the applicant's QCM classification request is to remove the requirement of making slip holders be members of the associated yacht club.
- LMCD staff do not view the proposed classification change as a meaningful departure from the site's operation in previous years.

PUBLIC HEARING

- **Public Hearing**
 - Continued from the June 23, 2021 LMCD Board Meeting
 - Posted in newspaper on June 10, 2021 (Sun Sailor) and June 12, 2021 (Laker Pioneer)
 - Owners of properties within 350 feet notified, 10-day notice sent June 9, 2021
 - Posted online
- **Opportunity for interested individuals to present their views to Board for consideration**
- **Only items under the LMCD Code and Board authority may be considered as part of any Approve or Deny decision**



To preserve and enhance the "Lake Minnetonka experience"

QUESTIONS?



ITEM 7B ATTACHMENT 4

LAKE MINNETONKA CONSERVATION DISTRICT

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

DATE: July 28, 2021 (Prepared July 23, 2021)

TO: LMCD Board of Directors

FROM: Matthew Cook, Environmental Administrative Technician

THROUGH: Vickie Schleuning, Executive Director

SUBJECT: Multiple Dock License Request for 4165 Shoreline Drive in Spring Park

ACTION

Board consideration of a request for a new multiple dock license request from The Yacht Club, LLP for a site located at 4165 Shoreline Drive in Spring Park, MN 55384, with shoreline on Spring Park Bay, and board consideration of public input as part of the public hearing process.

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 multiple dock license applications from The Yacht Club LLP for the property located at 4165 Shoreline Drive in Spring Park for final action at the August 11, 2021 LMCD Board meeting <subject to the following conditions>...

Continuation

I make a motion to continue the public hearing for the multiple dock license applications from The Yacht Club LLP for the property located at 4165 Shoreline Drive in Spring Park at the August 11, 2021 LMCD Board meeting in order to...

Denial

I make a motion to direct LMCD legal counsel to prepare Findings of Fact and Order denying the multiple dock license applications from The Yacht Club LLP for the property located at 4165 Shoreline Drive in Spring Park for final action at the August 11, 2021 LMCD Board meeting based on...

APPLICATION SUMMARY

At the June 23, 2021 LMCD Board meeting, the Board continued the hearing for the application to the July 28, 2021 LMCD Board meeting to allow the applicant the time to have a site survey completed to represent the docks as installed in 2021. LMCD staff received the updated site plan on July 8, 2021. These specifications are listed on the reverse of this page. The facility appears to meet Code requirements for a Qualified Commercial Marina (QCM).

The Yacht Club Multiple Dock License Request
4165 Shoreline Drive in Spring Park
LMCD Board Meeting | July 28, 2021

1. 32 BSUs proposed. No change proposed from current license with a boat density of 1:10.4 and 333 feet of shoreline.
2. Rental of slips to the general public. Currently, slip renters need to be members of a yacht club, though the applicant proposes to remove this requirement since many customers do not want a membership requirement.
3. Maximum dock length of 119 feet from OHW. Previous approval was for maximum length of 100 feet. The current and proposed layout appears to have been installed similarly past years based on publicly available aerial imagery.
4. Western setback of 37.8 feet. Minimum of 20 feet required.
5. Eastern setback of 34.1 feet. Minimum of 20 feet required.
6. Eastern setback from side-opening slip(s) of 45.9 feet. Minimum of slip length (34-35 feet) required.

For a more in-depth Code analysis, please refer to the attached memo from the June 23, 2021 LMCD Board meeting packet regarding the application.

As part of the routine application review process, on June 9, 2021, LMCD staff sent a 10-day request for review document to the agencies and City of Spring Park to solicit comments regarding the application.

On June 22, 2021, the Mayor of Spring Park contacted LMCD staff stating that a Qualified Commercial Marina may not be compatible with City Zoning for the site. As a result of city's review, on July 19, 2021 the Spring Park City Council voted to approve formal comments for the application. The comments were forwarded to LMCD staff July 20, 2021 and are attached for your review.

RECOMMENDATION

In consultation with LMCD legal counsel, LMCD staff are recommending approval of the classification change to a Qualified Commercial Marina. After legislative changes to the statute governing the LMCD's scope in 2019, "land-based marina activities" are not subject to the LMCD authority. Therefore, the LMCD cannot reasonably deny a request solely because the applicant may need to secure further approvals from other entities. In this case, the applicant may need to secure a zoning approval from the City and can pursue such an approval after receiving approval from the LMCD.

Furthermore, the current "Club" classification for the site and the potential future "Qualified Commercial Marina" classification for the site are both considered commercial classifications. The applicant is not requesting a gas dock, nor are they requesting extension of the dock facility to 200 feet from shore or other features typical of marinas with services. The basis of the QCM classification request is to remove the requirement of making slip holders be members of the associated yacht club and remove some provisions that are outdated amenities in the existing Order for the site – for example, provision of a public phone in a time when cell phones are ubiquitous or the gin pole. LMCD staff do not view the proposed classification change as a meaningful departure from the site's operation in previous years. Over the years, there appears to be a decrease in the facilities that cater to sailboats.

The Yacht Club Multiple Dock License Request
4165 Shoreline Drive in Spring Park
LMCD Board Meeting | July 28, 2021

Based on information available at the time of this report, LMCD staff recommends the Board approve the request with the conditions listed below. The recommendation may change based on information reviewed or presented as part of the public hearing process.

1. Standard license conditions are applied, including maintenance standards, lighting, bathroom facilities, etc.
2. Emphasize the order to meet all applicable regulations such as zoning.
3. Highlight the details of what is being approved.

BUDGET _____

N/A

STRATEGIC PRIORITIES _____

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

ATTACHMENTS _____

1. Updated Site Plan
2. Comments from City of Spring Park
3. June 23, 2021 Public Hearing Memo
4. LMCD Code Excerpts
5. Location Map
6. Site Plans
7. Aerial Overlay
8. Multiple Dock License Application
9. Public Hearing Notice (Sun Sailor & Laker Pioneer)
10. Public Hearing Notice Mailing



ITEM 7B ATTACHMENT 5

LAKE MINNETONKA CONSERVATION DISTRICT

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

DATE: June 23, 2021 (Prepared June 18, 2021)

TO: LMCD Board of Directors

FROM: Matthew Cook, Environmental Administrative Technician

THROUGH: Vickie Schleuning, Executive Director

SUBJECT: Multiple Dock License Request for 4165 Shoreline Drive in Spring Park

ACTION

Board consideration of request for a new multiple dock license request from The Yacht Club, LLP for a site located at 4165 Shoreline Drive in Spring Park, MN 55384, with shoreline on Spring Park Bay, and board consideration of public input as part of the public hearing process.

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 multiple dock license applications from The Yacht Club LLP for the property located at 4165 Shoreline Drive in Spring Park for final action at the July 14, 2021 LMCD Board meeting <subject to the following conditions>...

Continuation

I make a motion to continue the public hearing for the multiple dock license applications from The Yacht Club LLP for the property located at 4165 Shoreline Drive in Spring Park at the July 14 <or other date>, 2021 LMCD Board meeting in order to...

Denial

I make a motion to direct LMCD legal counsel to prepare Findings of Fact and Order denying the multiple dock license applications from The Yacht Club LLP for the property located at 4165 Shoreline Drive in Spring Park for final action at the July 14, 2021 LMCD Board meeting based on...

APPLICATION SUMMARY

Below are the general specifications for the site based on file review and staff inspection June 15, 2021. These specifications would meet the Code requirements for a QCM, but represent some discrepancies from the proposal.

1. Density of 1:10. Shoreline is 320 feet and 32 BSUs proposed. No change.
2. Dock length of 112-125 feet from OHW.
 - a. Proposal is for re-approval of approved layout (maximum 100 feet in length).
3. Side Setbacks: A minimum of 28 feet from the west side. A minimum of 32 feet on the

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east side from the side opening slip and a minimum of 20 (Code minimum) to 50 (current approval) feet on the east side from the longest extent (southeast corner) of the dock.

- a. Proposal is for re-approval of approved layout (west setback of 28 feet; east setback of 50 feet)

BACKGROUND

The applicant, The Yacht Club LLP (“Applicant”) submitted applications for a new multiple dock license at 4165 Shoreline Drive in Spring Park, MN 55384, with shoreline on Spring Park Bay. The Applicant’s property has approximately 320 feet of OHW (929.4-foot elevation contour) shoreline.

The applicant currently holds a commercial multiple dock license and special density license for the site. The site has a density of 1:10. The applicant’s site is currently licensed as a Commercial Club facility. The applicant proposes to operate the site as a Qualified Commercial Marina (QCM), with slips open to the general public for rent. If approved as a QCM, the applicant would not need a special density license.

A similar application for this property was previously submitted, but was withdrawn because the purchase agreement was rescinded. The current owner wishes to continue the proposed license change in order to better reflect the operation and current boating needs.

The current approval is for a dock structure of a maximum length of 100 feet. After inspection on June 15, 2021, LMCD staff determined the dock was installed for the 2021 boating season at a maximum length of 112 feet from the OHW as measured along the main walkway. Additionally, the OHW on the east end of the site appears to curve northward, away from the lake, when compared to the representation of the OHW on the previously-approved site plan dated 1988. Measurement may vary over time due to possible changes in survey methods, changes to shoreline, installation deviation, or other reasons.

It would appear that the dock, including the extra 12 feet observed this year, extends roughly between 112 and 125 feet from the OHW on the east side of the site. QCMs may have a dock use area of up to 200 feet in length if approved by the Board. The lengths described above represent the consistent installation for years prior (based on aerial imagery).

CODE REVIEW

Staff commentary is in italics underneath each relevant Code criterion.

LMCD Code Section 6-2.01. Commercial Multiple Dock License.

Subd. 3. Review Criteria. When considering an application the Board shall consider, together with any other factors it determines are relevant, the following:

- a) Whether the proposed structure is compatible with the LMCD watercraft density classification criteria in Article 2, Chapter 4;
 - *Per 2-4.07, Subd. 1: “Up to one restricted watercraft may be moored or docked at a qualified commercial use on any site for each 10 feet of continuous shoreline in existence on May 3, 1978. (Fractions over ½ rounded up).” Proposed dock system includes 32 BSUs on 320 feet of shoreline (1:10 density).*

- b) Whether the proposed structure complies with the authorized dock use area requirements in Article 2, Chapter 3;
 - *See above.*
- c) Whether the proposed structure will be structurally safe for use by the intended users;
 - *Same as previously approved structure.*
- d) Whether the structure will comply with the regulations contained in this Code;
 - *Same as previously approved structure.*
- e) Whether the proposed structure will create a volume of traffic on the Lake in the vicinity of the structure which will tend to be unsafe or which will cause an undue burden on traffic upon the Lake in the vicinity of the structure;
 - *Same as previously approved structure.*
- f) Whether the proposed structure will be compatible with the adjacent development;
 - *Same as previously approved structure.*
- g) Whether the proposed structure will be compatible with the maintenance of the natural beauty of the Lake;
 - *Same as previously approved structure.*
- h) Whether the proposed structure will affect the quality of the water of the Lake and the ecology of the Lake;
 - *Same as previously approved structure.*
- i) Whether the proposed structure, by reason of noise, fumes or other nuisance characteristics, will tend to be a source of nuisance or annoyance to persons in the vicinity of the structure;
 - *Same as previously approved structure.*
- j) Whether adequate sanitary and parking facilities will be provided in connection with the proposed structure;
 - *Sanitary and parking facilities same as previously approved structure.*
- k) Whether the proposed structure will serve the general public as opposed to a limited segment of the public or a limited geographical area;
 - *Slips will be available for rent to the general public.*
- l) Whether the structure will obstruct or occupy too great an area of the public water in relationship to its utility to the general public; and
 - *Same as previously approved structure.*
- m) If the site to which the application relates includes non-continuous shoreline, the Board shall also consider the conditions set out in Section 2-4.07, subdivision 4(a).
 - *N/A*

Subd. 4. Qualified Commercial Uses. If a qualified commercial use proposes to increase the number of boat storage units beyond what it is otherwise allowed, or to extend any portion of the structure further into the Lake than 100 feet, the Board shall consider the following additional limitations when reviewing the request:

- a) No license will be granted for a facility with an existing variance unless a new variance for the proposed facility is granted by the Board;
 - *No variance existing; no variance proposed or necessary.*
- b) No license will be granted for a proposed facility that overlaps the dock use area of another site;
 - *Does not overlap DUA of another site.*

- c) No license will be granted for a proposed facility that will require removal of emergent native vegetation; and
 - *No (aquatic) vegetation removal proposed.*
- d) No license will be granted for a proposed facility that interferes with general public navigation, or impairs access to use of the dock use area of another site or a commercial mooring area.
 - *Virtually the same as previously approved structure, and matches how the structure has been installed for years; no evident detrimental impacts.*

PUBLIC COMMENTS

In compliance with MN DNR General Permit 97-6098, the MN DNR, MCWD, and the City of Spring Park were provided information regarding the applications on June 9, 2021. City and agency comments were due by June 18, 2021. Comments received as of noon on June 18, 2021 are summarized below. Any comments received after noon on June 18, 2021 will be provided at the Board meeting for review.

- MCWD have no comments other than noting that shoreline stabilization, floodplain alteration, or other earthmoving work – if proposed – would require further review by the MCWD. The MCWD noted such work does not appear to be proposed.
- No other agency comments were received.

No comments from the general public were received before noon on June 18, 2021. Written public comments received after noon on June 18, 2021 will be shared at the June 23, 2021 Board meeting, if any are submitted.

PUBLIC HEARING

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

A hearing notice was published in the June 10, 2021 edition of the Sun Sailor (official LMCD newspaper) and the June 12, 2021 edition of the Laker Pioneer. On June 9, 2021, 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

Based on information available at the time of this report, LMCD staff recommends the Board select one of two options described below. The recommendation may change based on information reviewed or presented as part of the public hearing process.

OPTION 1 – Continue hearing for consideration of potential approval of existing structure

1. The applicant must provide a to-scale drawing of the dock layout as installed in 2021 indicating the actual dimensions including 929.4-ft elevation contour / OHW, setbacks, dock length, dock structure, and slip dimensions.

The Yacht Club Multiple Dock License Request
4165 Shoreline Drive in Spring Park
LMCD Board Meeting | June 23, 2021

2. Continue public hearing to a future meeting to review adjusted site plan.

OPTION 2 – Approval of QCM classification and current approved layout

1. Maximum length of 100 feet
2. Minimum western setback of 28 feet
3. Minimum eastern setback of 50 feet
4. Standard license conditions are applied.

BUDGET _____
N/A

STRATEGIC PRIORITIES _____

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

ATTACHMENTS _____

1. LMCD Code Excerpts
2. Location Map
3. Site Plans
4. Aerial Overlay
5. Multiple Dock License Application
6. Public Hearing Notice (Sun Sailor & Laker Pioneer)
7. Public Hearing Notice Mailing

ITEM 8A



RESOLUTION 223

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

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

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

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

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

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

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

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

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

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

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

Adopted by the Board this 11th day of August, 2021.

ATTEST:

Gregg Thomas, Chair

Dan Baasen, Secretary

DRAFT

Lake Minnetonka Conservation District
Transaction Detail By Account
 July 22 through August 4, 2021

Resolution #223 Attachment 1 - Save the Lake Contributions

Date	Num	Name	Memo	Amount
Contributions				
3001M20 - Donations (General) - S/L				
08/03/2021	6104	Bob & Kathy Gillum	STL Donation (General)	50.00
08/03/2021	5379	Richard Ragatz	STL Donation (General)	150.00
08/03/2021	13202	Peter Mitchelson	STL Donation (General)	150.00
08/03/2021	4124	Michael Johander	STL Donation (General)	1,000.00
08/03/2021	8533	James Kaufman	STL Donation (General)	200.00
08/03/2021	PayPal	Richard and Beverly Mast	Transfer from PayPal (\$100.00)	96.80
08/03/2021	PayPal	Darryl C. Landstrom	Transfer from PayPal (\$100.00)	96.80
08/03/2021	PayPal	Carol Suggs	Transfer from PayPal (\$50.00)	48.25
08/04/2021	520	Dean Akins	STL Donation (General)	500.00
08/04/2021	4348	George W. Sayer	STL Donation (General)	25.00
08/04/2021	12025	Ralph Hatch	STL Donation (General)	50.00
08/04/2021	126	David Goode	STL Donation (General)	25.00
08/04/2021	13475	Donald Leavenworth	STL Donation (General)	100.00
08/04/2021	VV249	Opt out of Recognition	STL Donation (General)	250.00
08/04/2021	31949	John & Nancy Berg	STL Donation (General)	100.00
08/04/2021	9572	Gerhard Lano	STL Donation (General)	100.00
08/04/2021	16312	Opt out of Recognition	STL Donation (General)	50.00
Total 3001M20 - Donations (General) - S/L				2,991.85
3008M20 - Donations (2022 W Patrol Fund)				
07/28/2021	20940	River Valley Power and Sport, Inc.	STL Donation (2022 Water Patrol Fund)	2,500.00
07/28/2021	002005	Marine Max (via Tonka Bay Marina)	STL Donation (2022 Water Patrol Fund)	2,500.00
07/28/2021	001416	RLA Family Limited Partnership (Rich Anderson)	STL Donation (2022 Water Patrol Fund)	2,500.00
Total 3008M20 - Donations (2022 W Patrol Fund)				7,500.00
Total				10,491.85

AMENDED: STINSON SUBMITTED 01/24/2023

C.V. filed _____ C.V. not req. ___X___

No delinquent taxes

Transfer Entered

Jan 23, 2023 2:39 PM

Hennepin County, Minnesota
Daniel Rogan
County Auditor and Treasurer



LAND TYPE Abstract (A)

DOC NUM 11177334

Certified, filed and/or recorded on
Jan 23, 2023 2:39 PM

Office of the County Recorder
Hennepin County, Minnesota
Amber Bougie, County Recorder
Daniel Rogan, County Auditor and Treasurer

Deputy 138

Pkg ID 2532361E

Conservation Fee	\$5.00
Document Recording Fee	\$46.00
Environmental Response Fund (SDT .0001)	\$0.05
State Deed Tax (.0033 rate)	\$1.65
Document Total	\$52.70

PID(s)

11-117-23-22-0013, 11-117-23-22-0015

Top 3 inches reserved for recording data)

QUIT CLAIM DEED

Individual(s) to Individual(s)

eCRV number: _____

DEED TAX DUE: **\$1.70**

DATE: 3/25, 2019

FOR VALUABLE CONSIDERATION, **Andrew S. Duff, as an heir of David J. Duff and Anne B. Duff ("Grantor")**, hereby conveys and quitclaims to **S. David Feldshon and Archelle Georgiou Feldshon, husband and wife ("Grantee")**, as

(Check only one box.) ☐ tenants in common, (If more than one Grantee is named above and either no box is checked or both boxes are checked, this conveyance is made to the named Grantees as tenants in common.)
☒ joint tenants,

real property in **Hennepin** County, Minnesota, legally described as follows:

Legal Description attached hereto as Exhibit A.

Consideration is less than ~~\$500.00~~.
3,000.00.

Check here if all or part of the described real property is Registered (Torrens) ☐

together with all hereditaments and appurtenances belonging thereto.

Check applicable box:

- ☒ The Seller certifies that the Seller does not know of any wells on the described real property.
- ☐ A well disclosure certificate accompanies this document or has been electronically filed. (If electronically filed, insert WDC number: [...].)
- ☐ I am familiar with the property described in this instrument and I certify that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.

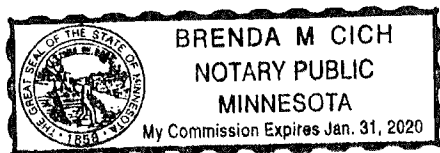
Grantor



Andrew S. Duff

State of Minnesota, County of AnokaThis instrument was acknowledged before me on Mar 25, 2019, by Andrew S. Duff.

(Stamp)

Brenda M Cich
(signature of notarial officer)Title (and Rank): SecretaryMy commission expires: 1/31/20
(month/day/year)

THIS INSTRUMENT WAS DRAFTED BY:
Chestnut Cambronne PA (SBB)
17 Washington Avenue North, Suite 300
Minneapolis, MN 55401

TAX STATEMENTS FOR THE REAL PROPERTY DESCRIBED IN THIS
INSTRUMENT SHOULD BE SENT TO:
S. David Feldshon and Archelle Georgiou Feldshon
1420 Shoreline Drive
Wayzata, MN 55391

EXHIBIT A
(Legal Description)

That part of Lot 2, lying Northwesterly of the Southerly 37.03 feet thereof, Block 1, Dragonfly Hill, according to the recorded plat thereof, Hennepin County, Minnesota;

AND

Riparian access and docking and boat buoy rights, and the right to install and maintain the same, in, to and on Outlot B, Dragonfly Hill, Hennepin County, Minnesota.



AMENDED: CITY SUBMITTED 01/24/2023 CITY OF ORONO

Street Address:
2750 Kelley Parkway
Orono, MN 55356

Mailing Address:
P.O. Box 66
Crystal Bay, MN 55323

Telephone (952) 249-4600
Fax (952) 249-4616
www.ci.orono.mn.us

January 24, 2023

RE: LMCD agenda Item 7.C. Approval of New Commercial Multiple Dock License, Dan Gustafson, Lake Minnetonka Real Estate II, LLC; PID 11-117-23-22-0013, Outlot B Dragonfly Hill, along Shoreline Drive, Orono, 55391, Browns Bay

Dear LMCD Board of Directors,

The City of Orono requests Item 7C of the January 25th Agenda be removed from consent to be discussed during the regular session. City Attorney Soren Mattick will be present to provide the City of Orono's concerns / position on this item. Mr. Mattick has also submitted a request to speak on this item via the request to speak application on the LMCD website.

Based on the potential impact to the City of Orono and potential precedence that might be set we feel it is imperative that our representative be given the opportunity to speak before a final vote is taken by the board.

Sincerely,

Adam T. Edwards, P.E.
City Administrator / City Engineer
City of Orono
aedwards@ci.orono.mn.us



AMENDED: LMA SUBMITTED 01/25/2023

January 24, 2023

Board of Directors
Lake Minnetonka Conservation District
5341 Maywood Road, Suite 200
Mound, Minnesota 55364

Re.: New Commercial Multiple Dock License for Daniel G. Gustafson, Lake Minnetonka Real Estate II ("LMRE"), LLC, PID 11-117-23-22-0013, Outlot B, Dragonfly Hill, along Shoreline Drive in Orono, Browns Bay

Dear Acting Chair Hoelscher and Board Members:

Please read this letter in to the official record of your January 25, 2023 Board meeting and workshop.

The Lake Minnetonka Association supports the City of Orono, Hennepin County Highway Department, and others in opposition to this permit. While we understand the public hearing on this matter is closed, we believe the proposed Findings of Fact raise concerns that should be addressed and errors which should be corrected.

The LMCD states in their "FINDINGS OF FACT:"

"a. ...However, given that the proposed structure is adjacent to a heavily traveled County road and the property has no space for parking, safety and parking may be an issue with this location. But, after the 2019 legislative changes, such "land-based marina activities" are not subject to the LMCD's authority."

The LMCD acknowledges the proposed commercial marina dock poses safety concerns related to highway traffic. While the LMCD may not have land use authority, it readily admits approval of this permit may create a safety issue. This appears to be in violation of Public Nuisance Law. We believe that your careless response to public safety is a violation of state statute and exposes the LMCD Board, staff, and taxpayers to unnecessary litigation and costs.

Furthermore, the "Findings of Fact" are in error by stating *"land-based marina activities" are not subject to the LMCD's authority.* There are in fact permitting codes and rules associated with on-land structures by the LMCD, for example:

"3-1.03. General Standards. Subd. 1. License Required. No commercial use may locate, construct, install, or maintain a commercial structure on the shoreline of the Lake, or in the waters of the Lake, without first obtaining a license from the LMCD in accordance with Article 6."

Nevertheless, while the 2019 legislature wisely defined the limits of the LMCD's land use authority over commercial marinas, it did not preclude the LMCD from coordinating or cooperating with other units of government before issuing a permit. The staff write up, board discussion as reflected in the minutes, and this "Finding of Fact" seem to indicate the approval of the proposed permit is being used to express anger over the 2019 legislative changes, rather than to legitimately protect the public's health, safety, and welfare. This is a disservice to the applicant, the residents, and lake community as a whole.

"c. The Applicant proposes to install nine boat storage units ("BSUs") for rent to the public. Each of the nine BSUs would measure 18 feet wide by 48 feet long, with walkways six feet in width.

d. Storage of five or more watercraft at a site requires a multiple dock license. Applicant proposes to install a seasonal or permanent dock and would be eligible for a deicing license per Section 10-3.03(a) of the LMCD Code of Ordinances ("Code")

f. The dock structure proposed by the Applicant is shown on the site plan attached hereto as Exhibit B ("Proposed Site Plan"), which is also the approved site plan.

g. The proposed dock structure would extend approximately 90 feet into the Lake from the 929.4 OHW.

h. The layout of the proposed dock structure is approximately 19,950 square feet for combined structures, boat storage, and navigation area, which is below the 20,000 square feet at which a mandatory environmental assessment worksheet ("EAW") is required. The Board finds no reason to require a discretionary EAW in this case."

While the permit application, staff, and board members refer to the "proposed dock structure" as a "commercial marina", the "Findings of Fact" does not use this terminology. Is this a commercial marina or not? The 2019 legislative change applied only to commercial marinas. Further, it requires consistency with the applicable state statutes, municipal building codes, and zoning ordinances where the marinas are located." It should be noted in the "Findings of Fact" whether or not the proposed dock structure is a commercial marina, and that the proposed dock structure is not consistent with the local zoning ordinance."

"i. The City of Orono opposed the application and refused to consent, as fee owner, to the proposed commercial marina. The City stated that a commercial marina is not an allowed use under the current zoning; parking requirements cannot be met; the proposed use is too intense; no vegetation removal was approved on land; and the proposed use is a safety hazard."

See above comments relating to public safety and zoning.

Also, it appears there is no debate the city of Orono is the owner of the property. The LMCD rules state, "An application submitted by someone other than the owner of the property must have the consent of the owner to be considered a complete application."

LMCD rules further require, "A showing that all requisite permits, licenses, and approvals from the local municipality have been obtained and that the requirements of any other governmental authority have

been met.” If neither or these requirements apply, it should be stated in the “Finding of Fact.” But, if these requirements are required, the “Finding of Fact” should reflect the application is not complete.

“m. The Hennepin County Transportation Department opposes the application because of the lack of parking and likely traffic problems. The County indicated that it would not permit any construction in the County’s right-of-way or any stairway that crosses the right-of-way to the proposed dock. Further the County stated that half of the gravel parking area north of the site is County right-of-way, half of which is for limited parking and the other half is reserved for City of Orono emergency vehicles. 3 490925 VSLMCD Lake Minnetonka Real Estate II LLC.”

See comments above related to public safety.

“n. David Feldshon and his wife Archelle Georgiou Feldshon, 1420 Shoreline Drive, Wayzata, objected to the application because of the lack of parking or sidewalk access and existing heavy traffic, which pose significant safety concerns. They further indicated that the riparian rights were intended for residential use.

Their attorney further indicated that the City of Orono did not consent; the application is not consistent with City zoning; there is insufficient road access and parking; the proposed use is inconsistent with the Feldson’s residential use across the road; and the Feldson’s believe that they own part or all of the riparian rights.”

Has the LMCD determined if the Feldson’s claim to the riparian right to the shoreline is valid or not? Approving these Findings of Fact, will be a defacto finding that the Feldson’s have no claim to the property and may “cloud” their deed if they do have riparian rights. Again, the Finding of Fact, should clearly state if the LMCD agrees or not with the Feldson’s claim. If there is any doubt, the LMCD will not suffer any harm in taking the time to determine ownership.

Accurate Findings of Fact will protect the LMCD and its communities from potential lawsuits and unnecessary costs. The applicant and Board are well aware of the controversial nature of this permit and neither should be surprised the permitting process may take a little longer than anticipated. Further investigations to the concerns expressed by the City, County, and lake residents should be addressed, and the Finding of Fact be amended as recommended.

Sincerely,

Tom Frahm

Tom Frahm, President

On behalf of the Board of the Lake Minnetonka Association

Finance & Commerce, Inc.

222 South 9th St Suite 900
Minneapolis, MN 55402
1 (612) 333-4244

AMENDED of 1
APPLICANT
SUBMITTED
01/25/2023

COPY FOR YOUR RECORDS ONLY, NOT AN INVOICE OR AFFIDAVIT OF PUBLICATION

Skip Dickel
William M Dickel
201 Lake St E Ste 205A
Wayzata, MN 55391-1774

Please Read Carefully

Finance & Commerce, Inc. is not responsible for errors or omissions after the First Run Date. If any errors, contact 1 (612) 333-4244. Attorneys placing legal advertisements are responsible for payment of same.

PO #	27-PA-PR-20-1479
Order #	11959349
Placement	Finance and Commerce (MN) Probate
Schedule	2/5/2021 - 2/12/2021
# of Times	2 inserts
Base Charge*	101.00
Add'l Charges/Disc*	0.00
Payment Amount	0.00
TOTAL:	101.00
(Not an Invoice)	

ORDER KEYWORDS:

DUFF, ANNE B

Anchor Rate:	\$50.50
Subsequent Rate:	\$50.50

Court File No. 27-PA-PR-20-1479

NOTICE AND ORDER FOR HEARING ON PETITION FOR FORMAL APPOINTMENT OF SPECIAL ADMINISTRATOR AND DETERMINATION OF DESCENT

STATE OF MINNESOTA
COUNTY OF HENNEPIN
DISTRICT COURT
PROBATE/MENTAL HEALTH
DIVISION
FOURTH JUDICIAL DISTRICT

In re the Estate of: ANNE B. DUFF,
Decedent

IT IS ORDERED AND NOTICE IS GIVEN that due to the COVID-19 pandemic and pursuant to Minnesota Supreme Court Order ADM20-8001 a hearing will be heard remotely on **March 10, 2021 at 10:00 a.m.** by this Court on a Petition brought under Minnesota Statutes §542.3-108, for formal appointment of Elizabeth C. Duff, address is 2670 Kelley Parkway, #209, Long Lake, MN 55356, as Special Administrator; and for determination of descent of reserved interest in riparian rights, still in the name of Decedent Anne B. Duff, with respect to certain real property located in Hennepin County, State of Minnesota, described as: Outlot B, Dragonfly Hill, according to the recorded plat thereof on file and of record in the office of the Hennepin County Recorder; according to provisions contained in Decedent's Last Will executed on September 24, 1974.

Any objections to the petition must be filed with the Court prior to the hearing. If proper and if no objections are filed, a Special Administrator will be appointed with full power to administer Decedent's Estate, including to sell riparian rights in real property, and to do all necessary acts for the Estate.

The court will notify Attorney William M. Dickel with further information regarding remotely attending this hearing at least two business days prior. If you wish to appear at the hearing, please contact the court by phone at (612) 348-6000 so that arrangements can be made for you to appear.

If you object to the relief sought, you must file a written objection with the court by 4:30 p.m. on March 9, 2021. Due to the pandemic, in person objections are not currently being accepted. Written objections not filed by the ordered date and time will not be considered. Written objections may be filed with the required filing fee

one of three ways: 1) Mailed to Hennepin County District Court - Probate/Mental Health Division, 300 South Sixth Street - C4 Govt. Ctr., Minneapolis, MN 55487-0340; **or** 2) Electronically filed using the electronic filing system; **or** 3) Placed in the on-site drop box designated for court filings.

IT IS FURTHER ORDERED that notice shall be given by: 1) publication once a week for two consecutive weeks in a legal newspaper in Hennepin County, the last publication of which is to be at least ten (10) days before the deadline for objections; **and** 2) mailing via U.S. Postal Service a copy of this Notice and Order postmarked at least fourteen (14) days prior to the deadline for objections to all interested persons as defined in Minnesota Statutes § 524.1-401 and persons who have filed a demand for notice pursuant to Minnesota Statutes § 524.3-204. Any charitable beneficiary may request notice of the probate proceeding be given to the attorney general pursuant to Minnesota Statutes § 501B.41, subdivision 5.

NOTICE IS ALSO GIVEN that (subject to Minnesota Statutes § 524.3-801) all creditors having claims against the Estate are required to present the claims to the Personal Representative or to the court within four months after the date of this Notice or the claims will be barred.

Dated: February 3, 2021

BY THE COURT:

The Honorable
PHILIP C CARRUTHERS
Judge of District Court, Probate Division
Attorney for Petitioner
William M. Dickel #22603
201 Lake Street E. Suite 205A
Wayzata, MN 55391
952-653-4201
(February 5, 12, 2021) 11959349

***Changes to this order may result in pricing changes.**

AMENDED: APPLICANT SUBMITTED 01/25/2023

WILLIAM M. DICKEL
ATTORNEY AT LAW
201 LAKE STREET EAST
SUITE 205A
WAYZATA, MINNESOTA 55391-4124

DIRECT: 952-653-4201
MOBILE: 763-443-5941

SDICKEL@WAYZATALAW.COM

January 25, 2023

Ms. Vickie Schleuning
Executive Director
Lake Minnetonka Conservation District
5341 Maywood Road
Suite 200
Mound, MN 55364

Re: Multiple Dock New License Application

Dear Ms. Schleuning:

This letter replies to an apparent submission by or on behalf of David and Archelle Georgioun Feldshon. Their submission is a purported quitclaim deed signed and dated March 25, 2019, and recorded this past Monday, January 23, 2023.

The Feldshon submission is executed by Andrew S. Duff, acting "as an heir of David J. Duff and Anne B. Duff". At issue is an attempt to convey riparian rights in Outlot B, Dragonfly Hill, Hennepin County, Minnesota. However, Andrew S. Duff at no time ever had ownership or authorization to make such a conveyance.

Hennepin County District Court determined in 2018 that the subject riparian rights were withheld by David and Anne Duff when they conveyed title to Outlot B to City of Orono. A copy of the court order granting summary judgment against Feldshons. (Exhibit pages #1-12) In 2018 riparian rights still were in the name of David J. Duff and Anne Duff, even though both then were deceased.

The riparian rights held in the names of David J. Duff and Anne Duff remained that way until a special administration action was brought in probate court in 2020. By right of surviving spouse, Anne Duff's estate held the subject riparian rights. Probate court issued a decree of descent, filed on April 7, 2021. (Exhibit pages #13-16) The court also issued special letters of administration to Elizabeth C. Duff, which letters were recorded on the title record on March 15, 2021. (Exhibit pages #17-21)

January 25, 2023

Ms. Vickie Schleuning
Executive Director, LMCD
Page 2

In exercise of her special administration authority, Elizabeth C. Duff executed an assignment of "Riparian Land located in Hennepin County, State of Minnesota, and legally described as:

**Outlot B, Dragonfly Hill, according to the recorded plat thereof
on file and of record in the office of the Hennepin County Recorder;**

PID 11-117-23-22-0013

Abstract"

to Dan Gustafson and Elisha Gustafson. A copy of the recorded assignment is attached. (Exhibit pages #22-24)

Any such claim of riparian rights in Outlot B by Feldshons is without merit or legal interest.

Very truly,

William M. Dickel

em
enc.

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Matthew C. Johnson; Susanne Johnson;
S. David Feldshon; and Archelle Georgiou
Feldshon,

Court File No. 27-CV-17-1030
The Honorable Bridget A. Sullivan
Case Type: Civil Other

Plaintiffs,

**Order Granting Summary
Judgment in Favor of The City of
Orono**

v.

The City of Orono; Mortgage Electronic
Registration Systems, Inc., a Delaware corporation;
TruStone Financial FCU, a Minnesota corporation;
Wells Fargo Bank, N.A. a national bank; Hennepin
County, Minnesota; the State of Minnesota; Joyce
L. Born, as Trustee of the Lauren E. Born Revocable
Trust under written Agreement dated June 3, 1997,
as amended; Dean Edward Born, as Trustee of the
Lauren E. Born Revocable Trust under written Agreement
dated June 3, 1997, as amended; Jackie Ann Calderon, as
Trustee of the Lauren E. Born Revocable Trust under written
Agreement dated June 3, 1997, as amended; and all other
persons unknown claiming any right, title estate, interest
or lien in the real estate described in the complaint herein,

Defendants.

The above-captioned matter came before the undersigned Judge of District Court on October 10, 2017 upon cross-motions for summary judgment by Plaintiffs and Defendant The City of Orono. Francis J. Rondoni, Esq., and Jennifer J. Crancer, Esq., appeared on behalf of Plaintiffs. Soren M. Mattick, Esq., appeared on behalf of the City of Orono. There was no appearance by or on behalf of any of the other parties.

On January 8, 2018, the Court issued an Order for Submissions requesting further briefing on two designated issues. The parties provided further briefing, and in

accordance with the timeline set forth in the Order of Submissions, the parties filed their second round of letter briefs on February 9, 2018, at which time the matter was submitted.

I. Background

This quiet title action involves three parcels of property located in the City of Orono. The first parcel is legally described as:

Outlot B, Dragonfly Hill, Hennepin County, Minnesota

The Court will refer to this property as Outlot B. The second parcel is legally described as:

That part of Lot 2, lying Northwesterly of the Southerly 37.03 feet thereof, Block 1, Dragonfly Hill, according to the recorded plat thereof, Hennepin County, Minnesota

The Court will refer to this property as the Feldshon Property. The third parcel is legally described as:

A strip of land in Government Lot 1, Section 11, Township 117, North, Range 23, West of the Fifth Principal Meridian, said strip of land having a uniform width of 60.00 feet and bounded on the east by the shore of Lake Minnetonka and on the West by the shore of Mud or Round Lake (so called). The Northerly line of which said 60 foot strip of land is described as follows: Beginning at a point 585.84 feet Southeasterly measured along a line which bears South 10 degrees East from the meander corner of the NE corner of Government Lot 1, Section 11, thence North 67 degrees 48 minutes East, 14.3 feet more or less to the shore of Lake Minnetonka; thence South 67 degrees 48 minutes West 207.27 feet more or less to the shore of Mud or Round Lake (so called); the Southerly boundary of said 60 foot strip being a line parallel with and 60 feet southerly from and measured at right angle to the northerly line of above described, excepting from said described strip the public highway crossing said tract, according to the United States Government Survey (property across the road not included in the contract)

ALSO, the Southeasterly 37.03 feet of Lot 2, Block 1, Dragonfly Hill, according to the recorded plat thereof, Hennepin County, Minnesota

The Court will refer to this property as the Johnson Property.

a. Chain of Title for Outlot B

In 1983, David and Anne Duff owned both Outlot B and the Feldshon Property. Outlot B and the Feldshon Property are separated by a road. Outlot B has shoreline on Lake Minnetonka, while the Feldshon Property has shoreline on Mud Lake (aka Tanager Lake). On December 30, 1983, the Duffs conveyed Outlot B to the City of Orono ("the City") by Quit Claim Deed. The Quit Claim Deed reserves "to said Grantors riparian access and docking and boat buoy rights, and the right to install and maintain the same." The City remains the fee owner of Outlot B.

b. Chain of Title for the Feldshon Property

On July 31, 1987, the Duffs conveyed the Feldshon Property to David and Barabra Halper by Warranty Deed. The Warranty Deed conveyed "all hereditaments and appurtenances belonging thereto," but the Warranty Deed did not specifically refer to any riparian rights. On September 25, 1996, the Halpers conveyed the Feldshon Property to Steven and Amanda Sill by Warranty Deed. On November 1, 1999, the Sills conveyed the Feldshon Property to Dennis and Diane Killian by Warranty Deed. On August 31, 2001, the Killians conveyed the Feldshon Property to David and Archelle Feldshon, the Plaintiffs in this action. None of the Warranty Deeds specifically refer to any riparian rights in Outlot B.

c. Chain of Title for the Johnson Property

On July 14, 1969, Leonard and Rita Babinski conveyed the Johnson Property to Lauren and Joyce Born by Warranty Deed. On October 6, 1983, the Borns, as joint

tenants, conveyed the Johnson Property to themselves, as tenants in common, by Quit Claim Deed.

On December 12, 1988, the Orono City Council passed “A Resolution Approving a Metes and Bounds Subdivision of a Lot Line Rearrangement for Lauren Born and David Halper, File No. 1349” (“Resolution”). The Resolution increased the size of the Johnson Property by moving northward the property line separating the Johnson Property from the Feldshon Property.

On May 3, 2012, via a quit claim deed from the neighboring property owners, the Johnson Property was expanded to include the “[t]he Southeasterly 37.03 feet of Lot 2, Block 1, Dragonfly Hill, according to the recorded plat thereof, Hennepin County, Minnesota.” On May 6, 2015, Matthew and Susanne Johnson acquired the Johnson Property via Trustee’s Deed.¹

d. Lake Access

As previously noted, Outlot B has shoreline on Lake Minnetonka. The Feldshon Property and the Johnson Property do not have shoreline on Lake Minnetonka,² but they have shoreline on smaller adjoining lake (known as Mud Lake or Tanager Lake). Boats on Tanager Lake evidently have access to Lake Minnetonka via a connecting channel.

¹ The Court has not recited all the conveyances involving the trust because those conveyances have no bearing on the issues before the Court and merely tend to drown out the relevant conveyances.

² Neither of the properties has shoreline on Lake Minnetonka based on their current legal description. The Court is adding this clarification since the Johnsons are suggesting that the legal description of their property is somehow in error.

e. This Action

In this action, the Feldshons and the Johnsons seek a declaration that they have “riparian access and docking and boat buoy rights, and the right to install and maintain the same” in Outlot B. They claim those riparian rights as successors to the Duffs, who expressly reserved those rights when conveying Outlot B in 1983. The Feldshons are successors to the Duffs because they own most of the property owned by the Duffs after the Duffs conveyed Outlot B to the City in 1983 and retained the property across the road. The Johnsons are successors to the Duffs because the resolution passed by the City in 1988 adjusted the property line such that the Johnsons owned a portion of property still owned by the Duffs after the 1983 conveyance of Outlot B. In the alternative, the Feldshons and the Johnsons claim riparian rights in Outlot B via adverse possession.

II. Analysis

For the reasons set forth below, the riparian rights held by the Duffs were never conveyed to the Feldshons or the Johnsons, and Plaintiffs do not have a viable claim for acquiring those rights via adverse possession.

a. The riparian rights reserved to the Duffs were never conveyed to the Feldshons or the Johnsons.

When the Duffs conveyed Outlot B to the City in 1983, they expressly reserved the riparian rights in Outlot B while continuing to own the lot across the road.³ The lot across the road does not have any of the shoreline giving rise to the riparian rights in Outlot B. When the Duffs later conveyed the lot across the road to the Halpers in 1987, they did not expressly convey their riparian rights in Outlot B. Instead, the Warranty

³ That lot now forms the Feldshon Property and part of the Johnson Property.

Deed merely conveys the lot across the road “together with all hereditaments and appurtenances belonging thereto.”⁴

Given the reference to “hereditaments and appurtenances” in the Warranty Deed and the lack of any express reference to riparian rights, the Court issued an Order for Submissions directing the parties to file letter briefs “addressing and citing any case law on the issue of whether ‘hereditaments and appurtenances’ is generally deemed to include riparian rights.” With the benefit of that further briefing, the Court now concludes that riparian rights are an “appurtenance” of the property with the shoreline giving rise to the riparian rights (i.e., the shoreland), but they are not an “appurtenance” of property that does not have shoreline giving rise to the riparian rights. Accordingly, in this case, while the riparian rights in Outlot B were or possibly are an appurtenance of Outlot B, they are not an appurtenance of the property conveyed from the Duffs to the Halpers in 1987 and later conveyed to the Feldshons.

This interpretation of “appurtenances” is compelled by case law within Minnesota and elsewhere because that case law routinely and exclusively refers to riparian rights as being “appurtenant” to shoreline property. *See, e.g., Hanford v. St. Paul & D.R. Co.*, 44 N.W. 1144, 1145 (Minn. 1890) (recognizing that riparian rights may be alienated from shoreline property under Minnesota law while noting that those rights are “properly incident or appurtenant to the riparian lands”). While riparian rights are alienable under Minnesota law and therefore may not remain appurtenant to the shoreland,⁵ those riparian rights, once alienated, do not become an appurtenance of

⁴ More precisely, the Warranty Deed conveyed “Lot 2, Block 1, Dragonfly Hill together with all hereditaments and appurtenances belonging thereto.”

⁵ *See, e.g., Gilbert v. Eldridge*, 49 N.W. 679, 681 (Minn. 1891) (“We have heretofore decided that riparian rights of this nature, although originally incident or appurtenant to the shore-land, do not

some other property.⁶ Treating the riparian rights, once alienated from the shoreline property, as the appurtenance of some other property would be inconsistent with the seminal case recognizing the alienability of riparian rights and its underlying tenet that those rights are not transferrable solely to people who own properties abutting the shoreline property.⁷

Since the riparian rights are not an appurtenance of any property other than Outlot B, those rights were not conveyed by the 1987 conveyance of “all hereditaments and appurtenances belonging” to the lot across the road. Apart from the reference to “hereditaments and appurtenances,” Plaintiffs have not cited any other contractual language that would have conceivably conveyed the riparian rights in Outlot B from the Duffs to the Halpers and eventually to Plaintiffs. Given the absence of any other contractual language, there is no ambiguity. *See Brookfield Trade Ctr., Inc. v. County of Ramsey*, 584 N.W.2d 390, 394 (Minn. 1998) (“A contract is ambiguous if its language is reasonably susceptible to more than one interpretation.”) (emphasis added).

This interpretation of the 1987 Warranty Deed is consistent with the principle that riparian rights may be silently or implicitly conveyed only if the property being expressly conveyed is the property with the shoreline giving rise to the riparian rights (i.e., the shoreland). This principle has been applied in other jurisdictions. *See Hydro Res. Corp. v. Gray*, 173 P.3d 749, 756 (N.M. 2007) (“The quitclaim deed from Inspiration

necessarily remain so; that they are property rights subject to the control of the owner; that they may be transferred by him, and remain in existence, and be enjoyed by his grantees, although having no interest in the estate to which such rights were originally incident.”).

⁶ Plaintiffs have not cited and the Court has been unable to locate any case law referring to riparian rights as being the appurtenance of a property that does not have the foundational shoreline.

⁷ *See Hanford*, 44 N.W. at 1147 (“If such separation is possible, it matters not whether the means of access and opportunities for enjoyment be through the next estate abutting upon the shore, or the next, or by means of a public highway leading to or past the premises in question, or by the navigable water, or in any other manner.”).

to Hydro does not explicitly convey distinct water rights. Only appurtenant water rights will be conveyed with land when the conveyance is silent on water rights.”); *Walz v. Bennett*, 95 Conn. 537, 111 A. 834, 836 (Conn. 1920) (“A conveyance by an owner of the whole or portions of a tract of upland bordering upon such a river would presumptively carry with the piece conveyed the riparian rights attached thereto.”); *Bonifay v. Garner*, 445 So. 2d 597, 601 (Fla. Dist. Ct. App. 1984) (noting that a “conveyance of property bordering on navigable waters implicitly conveys riparian rights”).

There are two public policy considerations weighing against an interpretation of real property conveyances as silently conveying riparian rights in some real property other than the property being conveyed. First, the implicit conveyance of riparian rights is problematic from a recording standpoint. The New Jersey Supreme Court touched on this problem in *Panetta v. Equity One, Inc.*, 920 A.2d 638, 646 (N.J. 2007). In that case, the Court distinguished riparian grants from riparian rights and explained:

A riparian right not expressly mentioned in a deed can be appurtenant, but a riparian grant cannot. A contrary conclusion would allow a party to claim an ownership interest in a stranger's riparian lands as “appurtenant” to his own and would place in jeopardy the stability of titles to real property throughout the State.

Id. at 647. While the distinction between riparian grants and riparian rights in that case was premised on New Jersey law, the distinction is informative here as a means of distinguishing riparian rights that have been alienated from the shoreline property (i.e., riparian grants) from riparian rights that are appurtenant to and remain with the shoreline property. A person reviewing property records would have reason to know that the latter (riparian rights) are implicitly conveyed but would have no reason to

know that the former (riparian grants) are implicitly conveyed. The law governing implied easements – an analogous property right – requires the easement to be “apparent” and thus illustrates the importance of people having notice of implied interests that may burden a property.⁸ See *Lake George Park, L.L.C. v. IBM Mid Am. Employees Fed. Credit Union*, 576 N.W.2d 463, 465 (Minn. Ct. App. 1998) (discussing the elements of an implied easement).

Second, this case specifically illustrates another difficulty in alienating riparian rights from the shoreline property and implicitly attaching them to an abutting property. In this case, both the Feldshons and the Johnsons are claiming riparian rights based on the Duffs’ reservation of the same and the Plaintiffs’ subsequent ownership of portions of the property that the Duffs owned at the time they reserved the riparian rights in Outlot B. Plaintiffs are thus claiming that *two* property owners now have docking rights in Outlot B because the lot owned by the *one* person reserving those rights has effectively been subdivided. If the lot across the road were subdivided into 12 lots, would the Duffs’ successors in interest have the right to dock 12 boats off of Outlot B? The potential mischief of subdivision illustrates that riparian rights, once alienated from the shoreland, should be treated as belonging to the person who was granted those property rights and not necessarily to the property owned by the person who was granted them. Moreover, this approach of treating the riparian rights as belonging to the person and not the property accords with the language of the Quit

⁸ The Court recognizes that these general concerns regarding notice may not apply in this particular instance since the City was party to the conveyance whereby the Duffs reserved riparian rights in Outlot B.

Claim Deed whereby the Duffs conveyed Outlot B to the City but reserved the specified riparian rights “to said Grantors.”

b. Plaintiffs do not have a viable claim for acquiring riparian rights in Outlot B via adverse possession because Outlot B is public property.

Plaintiffs claim, in the alternative, that they have acquired riparian rights in Outlot B via adverse possession. The City argues that the adverse possession claim fails as a matter of law because, under Minn. Stat. § 541.01, public property cannot be taken by adverse possession. *See Fischer v. City of Sauk Rapids*, 325 N.W.2d 816, 819 (Minn. 1982) (“Simply put, the rule is that one cannot acquire adverse title against the sovereign under our statutory scheme.”). In response, Plaintiffs argue that the riparian rights are not public property because the City conveyed them to the Duffs.

Even if the riparian rights have not reverted to the City or otherwise been reunited with Outlot B, the adverse possession claim is barred by the rule against acquiring public property by adverse possession. Since the alienability of riparian rights was once a tenuous proposition, it is questionable whether riparian rights may be acquired via adverse possession without also acquiring the shoreland via adverse possession.⁹ *See White v. Pines Cmty. Improvement Ass’n, Inc.*, 939 A.2d 165, 168 n. 2 (Md. 2008) (“A question thus exists as to whether riparian rights can even be lost under the theory of adverse possession or prescription. We note that there are conflicting cases in other jurisdictions.”).

⁹ The court’s decision in *Schmidt v. Marschel*, 2 N.W.2d 121 (Minn. 1942) does not necessarily mean that riparian rights, standing alone, may be acquired by adverse possession because (1) the party claiming adverse possession in that case owned shoreland abutting the relicted land and (2) relicted land is related to but not synonymous with riparian rights.

Regardless of whether riparian rights standing alone may sometimes be acquired by adverse possession, the Court construes the rule against acquiring public property via adverse possession as barring the acquisition of riparian rights via adverse possession where the shoreland is public property. A contrary conclusion would undermine the legislative intent underlying Minn. Stat. § 541.01 in light of the principle that “[r]iparian rights are subordinate to the rights of the public and subject to reasonable control and regulation by the state.” *State v. Kuluvar*, 123 N.W.2d 699, 706 (Minn. 1963). Here, it is undisputed that the shoreland (i.e., Outlot B) is public property. Accordingly, under Minn. Stat. § 541.01, riparian rights in Outlot B cannot be acquired by adverse possession.

c. The Johnson Property

In moving for summary judgment, the Johnsons argue that the legal description of their property should be revised to exclude the language – which has been part of every prior conveyance made part of the record – stating “property across road not included in contract.” The Johnsons maintain that this language is inconsistent with the more general legal description referring to the property as being bound by Lake Minnetonka. The Court agrees with the City that the legal description clearly and unambiguously excludes “property across the road” and that this language should be given effect.

III. Conclusion

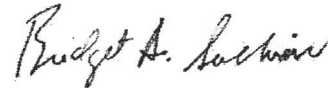
For the reasons set forth above, the Duffs never conveyed their riparian rights in Outlot B to the Feldshons or the Johnsons, and those riparian rights cannot be acquired

by adverse possession because the shoreland is public property. In accordance with that ruling, the Court hereby issues the following order:

1. Plaintiffs' motion for summary judgment is denied.
2. The City's motion for summary judgment is granted.
3. Plaintiffs Matthew C. Johnson and Susanne Johnson do not have any right, title or interest to riparian rights to the property legally described as Outlot B, Dragonfly Hill, according to the plat thereof on file and of record in the office of the Hennepin County Recorder. Plaintiffs do not have riparian rights in Outlot B, Dragonfly Hill, Hennepin County, Minnesota.
4. Plaintiffs David Feldshon and Archelle Feldshon do not have any right, title or interest to riparian rights to the property legally described as Outlot B, Dragonfly Hill, according to the plat thereof on file and of record in the office of the Hennepin County Recorder. Plaintiffs do not have riparian rights in Outlot B, Dragonfly Hill, Hennepin County, Minnesota.

Let judgment be entered accordingly.

By the Court:



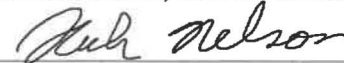
Dated: May 10, 2018

Bridget A. Sullivan
Judge of District Court

Filed in Fourth Judicial District Court
1:35 pm, May 14, 2018
Hennepin County Civil, MN

JUDGMENT

I Hereby Certify that the above Order
Constitutes the Entry of Judgment of the Court
Sarah Lindahl-Pfieffer, Court Administrator

By 
May 14, 2018

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
PROBATE COURT DIVISION

Estate of

Court File No.: 27-PA-PR-20-1479

Anne B. Duff,
Deceased

DECREE OF DESCENT

The Petition for Appointment of Special Administrator and Determination of Descent, signed by Elizabeth C. Duff, came before this Court by Zoom Video Conferencing on March 10, 2021. Petitioner was present, and was represented by William Dickel, Esq.

The matter was referred for hearing to the undersigned District Court Referee, who now reports to the Court making the following recommended Findings of Fact and Order:

FINDINGS OF FACT

1. The Court has jurisdiction and venue in this County is proper.
2. The Petition is complete.
3. Any notice required by Minnesota law has been given.
4. The Petitioner has declared or affirmed that the representations contained in the Petition are true and complete to the best of the Petitioner's knowledge or belief.
5. The Petitioner is an interested person as defined by Minnesota law.
6. The Decedent died on March 14, 1992 in Minneapolis, Hennepin County, Minnesota. More than three years have elapsed since the death of the Decedent and the time limit for appointment proceedings has expired.

7. Decedent's last will and testament was probated in 1992 by this Court; that case number is 27-P1-92-568. The Court records indicate administration in this estate was not completed; the matter was reviewed and closed by the court some time before the year 2000. The fourth digit of the actual year of closing cannot be read on the court records screen, but the year begins with 199.

8. Decedent's then surviving spouse, David J. Duff, was appointed personal representative in Court Case No. 27-P1-92-568. Decedent's spouse David J. Duff died on 7/05/2015; for him no probate was commenced in this state, although three demands for notice of such probate were filed in Probate Documents Case No. 27-15-2371.

9. At the time of Decedent's death she held reserved riparian rights in real property located in Hennepin County, Minnesota, described as:

Outlot B, Dragonfly Hill, according to the recorded plat thereof
on file and of record in the office of the Hennepin County Recorder;

hereinafter referred to as "The Property".

10. The petition herein is for determination of descent with respect to said reserved riparian rights in The Property.

11. Decedent took title to The Property by a warranty deed dated July 25, 1972, recorded as Hennepin County document No. 3964275. Decedent is identified in said deed as a married person, but as the sole grantee.

12. When Decedent took title, The Property was described as:

That part of Government Lot 1 in Section 11, Township 117 North, Range 23 West of the 5th Principal Meridian, described as follows: Beginning at a point 585.84 feet Southeasterly measured along a line which bears South 10 degrees East from the Meander Corner at the Northeast corner of Government Lot 1 in said Section 11; thence South 67 degrees 48 Minutes West 192.97 feet more or less to the shore of Mud Lake (so called); thence Northerly and Westerly along the shore of said lake to its intersection with a line drawn South at right angles to the North line of said Section 11, from a point therein distant 373.35 feet West of aforesaid Meander Corner at the Northeast corner of said Government Lot 1 in said Section; thence North along said right-angle line to a point 40 feet South of the North line of said Section 11; thence East parallel with the North line of said

Section and distant 40 feet South therefrom to the shore of Lake Minnetonka; thence Southerly along the shore of said lake to its intersection with a line which bears North 67 degrees 48 minutes East from the point of beginning; thence South 67 degrees 48 minutes West 14.3 feet more or less to the point of beginning.

13. In 1983 The Property in part of platting was renamed as:

**Outlot B, Dragonfly Hill, according to the recorded plat thereof
on file and of record in the office of the Hennepin County Recorder;**

14. By a quitclaim deed dated December 30, 1983, recorded as document No. 4861621, title to The Property so renamed was conveyed to City of Orono, but:

**“Reserving to said Grantors riparian access and docking and
boat buoy rights, and the right to install and maintain the same”**

15. There is no record or other indication that Decedent ever conveyed her riparian rights in The Property to her spouse. According, Decedent’s spouse executed Decedent’s quitclaim deed only as consenting spouse.

16. Decedent died leaving four children and her now deceased spouse. Decedent’s children, named and declared as heirs and devisees in Decedent’s 1992 probate proceeding, are:

Andrew Scott Duff, dob 12/19/57;
David Gale Duff, dob 7/31/56;
Elizabeth Carpenter Duff, dob 5/15/60; and
Nicholas Jones Duff, dob 5/4/64.

17. Decedent’s son and heir David Gale Duff died in Las Vegas, Clark County, Nevada on September 30, 2002, single and leaving no known descendants. Therefore, the intestate succession heirs of David Gale Duff are his three surviving siblings, pursuant to Minnesota Statutes 524.2-103.

18. Decedent’s will does not identify or otherwise refer to her retained riparian rights in The Property. Accordingly, Decedent’s retained riparian rights in The Property are part of Decedent’s residue.

19. Decedent's will provides in Article Five §5.2:

I give my residuary estate in equal shares to those of my children who survive me, and, by right of representation, to the issue of any of my children who do not survive me but who leave issue surviving me

20. Pursuant to the provisions of Decedent's will, Andrew Scott Duff, Elizabeth Carpenter Duff, and Nicholas Jones Duff, as Decedent's surviving children, are named beneficiaries entitled to receive, in equal shares, all right and interest in said retained riparian rights of The Property.

21. A Clearance for Medical Assistance issued by Hennepin County, stating "That the Department DOES NOT have a claim against the Estate for Medical Assistance or for General Assistance Medical Care paid on behalf of the deceased" has been filed in this matter.

IT IS ORDERED AND DECREED:

1. The Petition Is granted and Elizabeth C. Duff has been appointed as special administrator.

2. Title to the riparian rights described in this Decree of Descent, subject to any prior disposition, are assigned to and vested in the following named persons in equal shares:

To Decedent's surviving children in equal shares: Andrew Scott Duff, Elizabeth Carpenter Duff, and Nicholas Jones Duff.

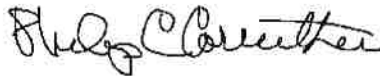
Order Recommended By:



BSA: GOWJO
Apr 7 2021 3:09 PM

Referee of District Court

BY THE COURT:



Carrothers, Phil
Apr 7 2021 3:23 PM

Judge of District Court



LAND TYPE Abstract (A)

DOC NUM 10957924

Certified, filed and/or recorded on
May 5, 2021 12:34 PM

Office of the County Recorder
Hennepin County, Minnesota
Martin McCormick, County Recorder
Mark Chapin, County Auditor and Treasurer

Deputy 55

Pkg ID 2232266E

Document Recording Fee

\$46.00

Document Total

\$46.00



LAND TYPE Abstract (A)

DOC NUM 10957925

Certified, filed and/or recorded on
May 5, 2021 12:34 PM

Office of the County Recorder
Hennepin County, Minnesota
Martin McCormick, County Recorder
Mark Chapin, County Auditor and Treasurer

Deputy 55

Pkg ID 2232266E

Document Recording Fee

\$46.00

Document Total

\$46.00

**ASSIGNMENT AND TRANSFER OF
ALL RIPARIAN RIGHTS**

WHEREAS certain Riparian Land located in Hennepin County, State of Minnesota, and legally described as:

**Outlot B, Dragonfly Hill, according to the recorded plat thereof
on file and of record in the office of the Hennepin County Recorder;
PID 11-117-23-22-0013
Abstract**

("The Property") is owned in fee simple by City of Orono;

WHEREAS, City of Orono took title to The Property by a quitclaim deed dated December 30, 1983, recorded as document No. 4861621;

WHEREAS, said quitclaim deed dated December 30, 1983, recorded as document No. 4861621 expressly reserved for grantor all riparian rights with the language:

**"Reserving to said Grantors riparian access and docking and
boat buoy rights, and the right to install and maintain the same"**

WHEREAS, said grantor was Anne B. Duff, who thereafter died on March 14, 1992;

WHEREAS, in the matter Estate of Anne B. Duff, State of Minnesota, County of Hennepin, Fourth District Court Probate Division, Court File number 27-PA-PR-20-1479, Elizabeth C. Duff was appointed as Special Administrator, for which Letters of Special Administration were issued on March 15, 2021;

WHEREAS, in said Probate Court matter a Decree of Decendent was issued on April 7, 2021; and

WHEREAS, on behalf of the Estate of Anne B. Duff, and under her authorities under Letters of Special Administration, Elizabeth C. Duff now agrees to sell, transfer and assign all said reserved riparian rights in The Property;

NOW, THEREFORE:

1. Under Letters of Special Administration issued to Elizabeth C. Duff, the Estate of Anne B. Duff hereby sells, transfers, and assigns all riparian rights in and associated with Outlot B, Dragonfly Hill, according to the recorded plat thereof on file and of record in the office of the Hennepin County Recorder, PID 11-117-23-22-0013, to Lake Minnetonka Real Estate II, LLC, and Minnesota limited liability company with it principal office located at 201 Lake Street E/, Wayzata, MN 55391, Grantee.
2. In consideration for said sale, transfer and assignment of said riparian rights, Lake Minnetonka Real Estate II, LLC, Grantee herewith pay out to the Estate of Anne B.

STATE OF MINNESOTA
COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT
DISTRICT COURT
PROBATE DIVISION

Court File No. 27-PA-PR-20-1479

Estate of

LETTERS OF SPECIAL ADMINISTRATION

Anne B. Duff,

Decedent.

1. The Decedent died on March 14, 1992.
2. **Elizabeth C. Duff** has been appointed Special Administrator of Decedent's Estate and is now qualified to act as Special Administrator of the Estate and has authority to administer the Estate according to law with the following restrictions: the Special Administrator shall have all powers of a personal representative under Minnesota Law, but shall not exercise the power to make any distribution of the estate to the devisees of the Estate until a Medical Assistance Clearance Certificate is filed and a Decree of Descent is issued by the court.
3. The authority of the Special Administrator shall terminate on September 15, 2021, unless extended or sooner terminated by a subsequent Order of this court.

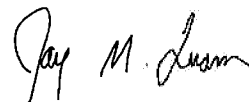
Recommended by:



Borer, George
Mar 15 2021 10:04 AM

Referee of District Court

BY THE COURT:



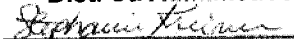
Quam, Jay M.
Mar 15 2021 10:13 AM

Judge of District Court

State of Minnesota, County of Hennepin
Certified to be a true and correct copy of the
original on file and of record in my office. I
further certify said letters are in full force and
effect.

APR 28 2021

Dist. Ct. Administrator

By  Deputy

Duff, Grantor, One and no/100 (\$1.00) Dollar, and other additional sums, the receipt and sufficiency of which Grantor hereby acknowledges.

Dated: 4/12/21

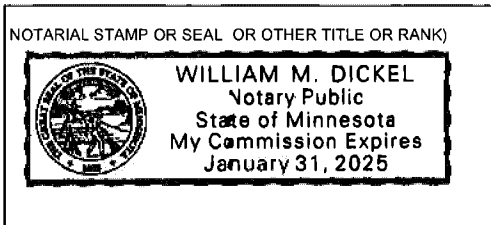
Estate of Anne B. Duff
Grantor

Elizabeth C. Duff

Elizabeth C. Duff, Special Administrator

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this 12th day of April, 2021, by Elizabeth C. Duff, Special Administrator for the Estate of Anne B. Duff, Grantor.



William M. Dickel
SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT

THIS INSTRUMENT WAS DRAFTED BY:

William M. Dickel, Esq.
201 Lake St. E. Ste. 205A
Wayzata, MN 55391



LAND TYPE Abstract (A)

DOC NUM 10957925

Certified, filed and/or recorded on
May 5, 2021 12:34 PM

Office of the County Recorder
Hennepin County, Minnesota
Martin McCormick, County Recorder
Mark Chapin, County Auditor and Treasurer

Deputy 55

Pkg ID 2232266E

Document Recording Fee

\$46.00

Document Total

\$46.00

**ASSIGNMENT AND TRANSFER OF
ALL RIPARIAN RIGHTS**

WHEREAS certain Riparian Land located in Hennepin County, State of Minnesota, and legally described as:

**Outlot B, Dragonfly Hill, according to the recorded plat thereof
on file and of record in the office of the Hennepin County Recorder;
PID 11-117-23-22-0013
Abstract**

("The Property") is owned in fee simple by City of Orono;

WHEREAS, City of Orono took title to The Property by a quitclaim deed dated December 30, 1983, recorded as document No. 4861621;

WHEREAS, said quitclaim deed dated December 30, 1983, recorded as document No. 4861621 expressly reserved for grantor all riparian rights with the language:

**"Reserving to said Grantors riparian access and docking and
boat buoy rights, and the right to install and maintain the same"**

WHEREAS, said grantor was Anne B. Duff, who thereafter died on March 14, 1992;

WHEREAS, in the matter Estate of Anne B. Duff, State of Minnesota, County of Hennepin, Fourth District Court Probate Division, Court File number 27-PA-PR-20-1479, Elizabeth C. Duff was appointed as Special Administrator, for which Letters of Special Administration were issued on March 15, 2021;

WHEREAS, in said Probate Court matter a Decree of Decendent was issued on April 7, 2021; and

WHEREAS, on behalf of the Estate of Anne B. Duff, and under her authorities under Letters of Special Administration, Elizabeth C. Duff now agrees to sell, transfer and assign all said reserved riparian rights in The Property;

NOW, THEREFORE:

1. Under Letters of Special Administration issued to Elizabeth C. Duff, the Estate of Anne B. Duff hereby sells, transfers, and assigns all riparian rights in and associated with Outlot B, Dragonfly Hill, according to the recorded plat thereof on file and of record in the office of the Hennepin County Recorder, PID 11-117-23-22-0013, to Lake Minnetonka Real Estate II, LLC, and Minnesota limited liability company with it principal office located at 201 Lake Street E/, Wayzata, MN 55391, Grantee.
2. In consideration for said sale, transfer and assignment of said riparian rights, Lake Minnetonka Real Estate II, LLC, Grantee herewith pay out to the Estate of Anne B.

Duff, Grantor, One and no/100 (\$1.00) Dollar, and other additional sums, the receipt and sufficiency of which Grantor hereby acknowledges.

Dated: 4/12/21

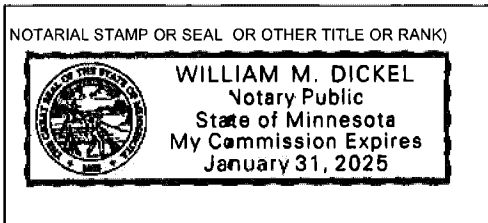
Estate of Anne B. Duff
Grantor

Elizabeth C. Duff

Elizabeth C. Duff, Special Administrator

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this 12th day of April, 2021, by Elizabeth C. Duff, Special Administrator for the Estate of Anne B. Duff, Grantor.



William M. Dickel
SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT

THIS INSTRUMENT WAS DRAFTED BY:

William M. Dickel, Esq.
201 Lake St. E. Ste. 205A
Wayzata, MN 55391



ITEM 13B

LAKE MINNETONKA CONSERVATION DISTRICT

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

DATE: January 25, 2023 (Prepared January 20, 2023)

TO: LMCD Board of Directors

FROM: Jim Brimeyer, Interim Director

SUBJECT: Board Retreat Discussion

ACTION

Board discussion of a proposal for a Board Retreat and to authorize staff to negotiate an agreement with the preferred vendor for facilitation.

BACKGROUND

After the brief discussion at the last board meeting, a list of five consultants was developed that have done the type of work the LMCD board is requesting. The list included names known to the Interim, the Director and some board members.

The list includes:

- Huelife
- Spano Advisory Group
- Lanterna Consulting
- Skip Rock Consulting
- Consult HLT

Consult HLT advised they are busy through April and could not make the suggested March dates. They did recommend another firm, which was also not available until sometime in the summer.

We expect to hear from the other firms by the deadline of Monday, Jan 23rd.

Below is the email that was sent out on January 15th.

I am Jim Brimeyer and have recently accepted the position of Interim Executive Director of the Lake Minnetonka Conservation District – LMCD.

The current Director is retiring at the end of January, 2023. The board intends to begin the process of selecting a new Director beginning in March, 2023 and anticipates someone being in that position by mid-summer, 2023.

Discussion and Authorization of Proposals for Board Retreat
LMCD Board Meeting
January 25, 2023

With some changes in the organization (new members, election of officers and a new Director), the board anticipates opportunities and has committed to a board retreat during the March timeframe.

The purpose of this message is to solicit your interest in facilitating a session (or sessions) with the board to develop a “high performance team.”

Please review the attached RFQ and respond to this email by Monday, January 23rd.

Thank you,

Jim

The RFQ (Request for Qualifications) is attached. I plan to have a spreadsheet available at the board meeting and would ask for a motion to negotiate with the preferred vendor.

BUDGET

To Be Determined.

STRATEGIC PRIORITIES

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

1. Request for Qualifications Board Retreat Proposal

LAKE MINNETONKA CONSERVATION DISTRICT – BOARD RETREAT

REQUEST FOR QUALIFICATIONS (RFQ)

January 16, 2023

BACKGROUND

The residents of the Lake Minnetonka area are currently well served by a committed board and would be better served by a Board as they develop into a high performance team.

There is a leadership change (several new board members, election of officers and the selection of an Executive Director) in the LMCD organization and the board anticipates opportunities with the changes.

Roles and responsibilities among the board and staff should be supported by an understanding of the model that best suits the LMCD organization.

Efforts to adhere to some norms will serve to develop trust amongst the team.

The model of creating a high performing Board should be adaptable by the group and should be revisited annually to ensure that the practice of service and high performance is embedded in the culture of the LMCD organization.

SCOPE OF SERVICES

The Board of the LMCD is soliciting proposals to develop a “high performance team” using the Carver Governance model as a benchmark, from the book – Boards That Make a Difference by John Carver. (The Flaws of Governance and the New Governance Model are of particular interest)

Phase I - Gather information from board members and staff to assess the current situation.

Phase II – Facilitate a board retreat – virtual/onsite, or a combination

Criteria for selecting a facilitator:

Experience facilitating with boards (14 members of LMCD)

Approach to the process;

Preferred dates for retreat _____;

(March 8th and 22nd are options before and after a regular Board meeting).

Fee range _____

Submit proposal to Jim Brimeyer by Monday, January 23rd.

Board discussion on January 25th, with a decision to negotiate with a preferred provider.




LAKE MINNETONKA CONSERVATION DISTRICT

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

DATE: January 25, 2023 (Prepared January 18, 2023)

TO: LMCD Board of Directors

FROM: Thomas Tully, Environmental Administrative Technician 

CC: Vickie Schleuning, Executive Director

SUBJECT: Update regarding Board Meetings and Committee Meeting Remote Access.

ACTION

Update regarding feasibility of remote meetings for LMCD Board Meetings at Wayzata City Hall Council Chambers and Committee Meetings at the LMCD Conference room.

BACKGROUND

Some board members have expressed the desire to allow hybrid meetings to accommodate their schedules. Remote meetings were allowed during the COVID pandemic through temporary regulations in place during the Governor's Declaration of a Peacetime Emergency.

Staff and legal counsel have reviewed Minnesota State requirements and options including capability, impacts, time frame, cost, and compliance with state law. Part of the review has been included meetings with city of Wayzata staff, with the meeting last week with city staff, Board Directors Kirkwood and Newell. At the time of completing this board memo, a couple of items are still being clarified for the Board Meeting remote option, which we hope to have available for the January 25, 2023 Board Meeting.

The software and hardware currently available allows up to four (4) separate inputs to be used on one screen. An example of this would be Zoom, Council Chambers, Presentation, and Current Speaker all on one screen. One of the challenges that exists is the number of board members. More information is being gathered on the capabilities to adjust proportions of each of the inputs. Initial estimated cost is \$10,000, of which LMCD would be responsible for the entirety of that sum. The other agencies have chosen to continue in-person meetings, partly due to cost and extra staff time. If the technology will integrate with the broadcast system and meet the state requirements, the installation of the new hardware and software would not occur for at least four to six months. Additionally, the City of Wayzata will be updating the Council Chambers with some new Audio Visual equipment and various Community Room updates.

Director Jabbour has offered to donate new equipment for the LMCD Conference room to accommodate remote access capabilities during Committee Meetings.

Whether a Board Meeting or Committee Meeting, the state law and requirements are the same. A copy of the MN Statute is attached for review and discussion.

CONSIDERATIONS

- Does the hardware and software meet Minnesota State law.
- Does the allowance of hybrid meetings meet the objective of the board.
- Is the cost benefit acceptable.
- Are there other options available (Seasonal appointments by city's).
- What is the impact to staff workload.

BUDGET

If feasible, the estimated cost is \$10,000 for technology for hybrid Board Meetings at Wayzata City Hall. Board would need to accept the donation for the LMCD conference room.

STRATEGIC PRIORITIES

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

1. MN Statute 13D.02

13D.02 OTHER ENTITY MEETINGS BY INTERACTIVE TECHNOLOGY.

Subdivision 1. **Conditions.** (a) A meeting governed by section 13D.01, subdivisions 1, 2, 4, and 5, and this section may be conducted by interactive technology so long as:

(1) all members of the body participating in the meeting, wherever their physical location, can hear and see one another and can hear and see all discussion and testimony presented at any location at which at least one member is present;

(2) members of the public present at the regular meeting location of the body can hear and see all discussion and testimony and all votes of members of the body;

(3) at least one member of the body is physically present at the regular meeting location;

(4) all votes are conducted by roll call so each member's vote on each issue can be identified and recorded; and

(5) each location at which a member of the body is present is open and accessible to the public.

(b) A meeting satisfies the requirements of paragraph (a), although a member of the public body participates from a location that is not open or accessible to the public, if the member has not participated more than three times in a calendar year from a location that is not open or accessible to the public, and:

(1) the member is serving in the military and is at a required drill, deployed, or on active duty; or

(2) the member has been advised by a health care professional against being in a public place for personal or family medical reasons. This clause only applies when a state of emergency has been declared under section 12.31, and expires 60 days after the removal of the state of emergency.

Subd. 1a. **Meeting exception.** This section applies to meetings of entities described in section 13D.01, subdivision 1, except meetings of:

(1) a state agency, board, commission, or department, and a statewide public pension plan defined in section 356A.01, subdivision 24; and

(2) a committee, subcommittee, board, department, or commission of an entity listed in clause (1).

Subd. 2. **Members are present for quorum; participation.** Each member of a body participating in a meeting by interactive technology is considered present at the meeting for purposes of determining a quorum and participating in all proceedings.

Subd. 3. **Monitoring from remote site.** If interactive technology is used to conduct a meeting, to the extent practical, a public body shall allow a person to monitor the meeting electronically from a remote location.

Subd. 4. **Notice of regular and all member locations.** If interactive technology is used to conduct a regular, special, or emergency meeting, the public body shall provide notice of the regular meeting location and notice of any location where a member of the public body will be participating in the meeting by interactive technology, except for the locations of members participating pursuant to subdivision 1, paragraph (b). The timing and method of providing notice must be as described in section 13D.04.

Subd. 5. MS 2020 [Repealed by amendment, 2021 c 14 s 5]

Subd. 6. **Record.** The minutes for a meeting conducted under this section must reflect the names of any members appearing by interactive technology and state the reason or reasons for the appearance by interactive technology.

History: 1957 c 773 s 1; 1967 c 462 s 1; 1973 c 123 art 5 s 7; 1973 c 654 s 15; 1973 c 680 s 1,3; 1975 c 271 s 6; 1981 c 174 s 1; 1983 c 137 s 1; 1983 c 274 s 18; 1984 c 462 s 27; 1987 c 313 s 1; 1990 c 550 s 2,3; 1991 c 292 art 8 s 12; 1991 c 319 s 22; 1994 c 618 art 1 s 39; 1997 c 154 s 2; 1Sp2011 c 11 art 2 s 1; 2019 c 33 s 1-3; 2020 c 74 art 1 s 1; 2021 c 14 s 5



ITEM 14A

LAKE MINNETONKA CONSERVATION DISTRICT

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

DATE: January 25, 2023 (Prepared January 19, 2023)

TO: LMCD Board of Directors

FROM: Vickie Schleuning, Executive Director

SUBJECT: Authorization of Agreement for Website Maintenance Services

ACTION

Board authorization for staff to enter into an agreement with Brandography to provide backend maintenance of the website.

BACKGROUND

The LMCD staff has been performing the backend maintenance of the website for security and application updates and some minor fixes. Due to workload, the intent was to eventually contract with a company to provide routine maintenance services, design updates, and any necessary troubleshooting. With the upcoming vacancy in staff, contracting these services is recommended. Content updates would still be performed by LMCD staff.

RECOMMENDATIONS

The recommended company is Brandography, who is adept in website creation and management. A copy of the agreement is attached.

BUDGET

The cost of website maintenance is \$350 a month or \$3,500 per year if paid upfront. Any website updates as needed would be an additional \$160 per hour.

STRATEGIC PRIORITIES

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

1. Website Maintenance Agreement



PROJECT PROPOSAL

DIGITAL SERVICES

Prepared for Lake Minnetonka Conservation District

January 2023

WEBSITE OPTIONS

■ GUARDOGRAPHY

Brandography offers a proactive monthly maintenance plan known as “Guardography.” This plan consists of a real human making WordPress version and extension updates, initial audit of custom work, applying needed patches, and performing applicable site backups.

Monthly maintenance and version updates are the biggest preventative measure against site hacks and UX errors. Guardography keeps your site loading fast and looking good on modern browsers.

PLEASE NOTE: *Guardography covers up to 3 hours a month of technical updates. Should additional hours be required, they will be billed hourly.*

■ AS NEEDED WEBSITE UPDATES

Lake Minnetonka Conservation District has sporadic updates to their website that they may need help with.

These updates may include design changes, navigation updates, text / image swaps, and more.

Brandography will help LMCD with these updates as requested. As they are not consistent, Brandography will help on an hourly basis at \$160 / hour.



SCOPE OF WORK

INVESTMENT SUMMARY

SERVICE	PRICE	NOTES
Guardography (Website Maintenance)	\$350 / month	Or \$3,500 / year if paid upfront
As Needed Website Updates	\$160 / hour	As needed



TERMS AND NOTES

BILLING

ONE-TIME WORK: paid half upfront and half upon completion.

ONGOING WORK: paid in full monthly five days before next cycle begins.

ASSUMPTIONS:

- Client will actively participate in development and contribution of key informational material.
- Any changes in scope or significant deviations that exceed 10% of project cost will require a standard change management process.
- Any purchased images or materials are considered additional expense and will be charged at cost and added to this scope of work but will only be purchased upon pre-approval by the client.
- Deviation from timeline due to lack of client participation or non-receipt of needed information or collateral may require a change order to this scope of work.

Notes: Content created for client, by Brandography and associates, including text copy, graphic elements, video, third party account logins, and associated campaigns, will become the property of the client upon final payment within the agreement. All existing IP ownership will remain with the original owner and will not be transferred per this agreement. The client will provide content as needed (copy, photography, video). In the event that a third party software or license is needed, the expense will be the responsibility of the client, and the client will be notified before purchases that add to the cost of this project. The client may be encouraged to create several social media, mapping, and review sites. The creation of these sites will be the responsibility of the client. The client will be responsible for stock photography expenses if it chooses to use stock photography for any service.

**Please sign below and send a signed copy of this proposal to jason@brandography.com.
A signed proposal is required for work to commence. This proposal is valid for 30 days.**

Client Signature

Date

Brandography Signature

Date



TERMS AND NOTES

ADDITIONAL PERIPHERAL TASKS AS NEEDED

Additional out of scope peripheral tasks may arise that need to be addressed in order to keep a digital marketing project progressing. Examples of these tasks could include, but are not limited to, securing and regaining access to accounts, sourcing to fill design resource gaps, out of scope client requests, coordination with the client's IT team regarding portal integrations, unknown 3rd party tool integrations, email block, firewall settings, white listing issues, additional necessary plugins, needed SMTP installations, etc.

In respect of your time and to maximize time and cost efficiency, we request this prior approval for our team of experts to address, resolve, and execute on associated tasks necessary to complete your project for an additional investment up to (but not to exceed) 10% of project cost. This eliminates the need for unnecessary and time-consuming back and forth communications and obtaining individual approvals that delay project completion. (Please note that alternatively, all time dedicated for these communications to receive approvals for any peripheral services needed will be billed at our hourly rate.)

I approve the additional investment up to (but not to exceed) 10% of project cost to cover time required for out of scope peripheral tasks and related communications as needed:

Client Signature

Date





ITEM 14B

LAKE MINNETONKA CONSERVATION DISTRICT

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

DATE: January 25, 2023 (Prepared January 20, 2023)

TO: LMCD Board of Directors

FROM: Vickie Schleuning, Executive Director

SUBJECT: Authorization of Agreement for Computer and Network Technology Services

ACTION

Board authorization for staff to enter into an agreement with My Computer Hero to provide computer and network technology maintenance services.

BACKGROUND

The LMCD staff has been performing the primary maintenance, security requirements, and minor fixes for the computers and network. Due to workload, the intent was to eventually contract with a company to provide routine maintenance services and troubleshooting. With the upcoming vacancy in staff, contracting these services is recommended. Many agencies either hire IT staff or contract services. Recent insurance requirements for cybersecurity include monthly updates, in addition to the more thorough network maintenance.

BUDGET

The cost of more advanced services is \$930 per month with a 1-year contract. In addition to maintenance services, it would include specific programs and advanced cybersecurity measures. An alternative service level would include four hours of maintenance work at \$480 per month with a one-year contract. For each service level, any troubleshooting services needed would be an additional \$120 per hour. A system assessment could be performed to determine what other services may be beneficial. Other company estimates reached up to \$2,100 per month.

STRATEGIC PRIORITIES

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

ATTACHMENT

1. My Computer Hero Agreement

5435 180th LN NW
Ramsey, MN 55303
www.yourcomputerhero.com
763-229-4467



Lake Minnetonka Conservation District
5341 Maywood Road
Mound, MN 55364

Estimate #	1302
Estimate Date	01-19-23
Total	\$930.00

Item	Description	Unit Cost	Quantity	Line Total
Essential Plus Service Plan	Essential Plus Service Plan - per computer/per month (regular pricing for hourly work), includes: Ninja, Webroot Endpoint Protection, Threatlocker, Teamviewer, Splashtop, MFA, DarkWeb monitoring, Ringfencing, Anti-Ransomware, Password Vault, patch management and more	\$75.00	6.0	\$450.00
Block Hours - project work (w/1 year contract in place)	Block Hours - project work (w/1 year contract in place)	\$120.00	4.0	\$480.00

THIS IS AN ESTIMATE

Disclaimer

These are default ticket receipt terms, you can find them at /templates/ticket

Subtotal	\$930.00
Tax	\$0.00
Estimate Total	\$930.00

Signed: _____

Date: _____



ITEM 14C

LAKE MINNETONKA CONSERVATION DISTRICT

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

DATE: January 25, 2023 (Prepared January 20, 2023)

TO: LMCD Board of Directors

FROM: Vickie Schleuning, Executive Director

SUBJECT: Draft Updated Data Practices Policy for Public

ACTION

Board review and discussion regarding a draft of an updated data practices policy for the public for Lake Minnetonka Conservation District (LMCD).

BACKGROUND

The Lake Minnetonka Conservation District (LMCD) including its Office and Board Members, is subject to state laws regarding data practices requests. The Government Data Practices Act (Minnesota Statutes, Chapter 13) presumes that all government data are public unless a state or federal law says the data are not public. Government data means all recorded information a government entity has, including paper, email, flash drives, CDs, DVDs, photographs, etc.

Data requests must be responded to in an appropriate manner, whether or not the requests are reasonable or burdensome. Staff has been working with the state and legal counsel regarding recent requests and updating our data practices policy. It is recommended that the organization's current Data Practices Request policy is updated to better address current and future data requests. Updating the LMCD Data Practices Policy for the Public will be helpful in clarifying requirements and in the processing of requests. A draft of the amended language will be provided to the Board prior to the January 25, 2023 meeting, and reviewed at the Board meeting.

CONSIDERATIONS

- Does the policy meet state requirements?
- Will the policy benefit the organization in addressing data practices requests.

BUDGET

A considerable amount of staff time and resources have been spent processing data requests, which has negatively impacted the response to other stakeholders and staff workload.

STRATEGIC PRIORITIES

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

1. Draft Data Practices Policy- to be provided.