



LAKE MINNETONKA CONSERVATION DISTRICT

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

AGENDA - AMENDED
LAKE MINNETONKA CONSERVATION DISTRICT
Wednesday, January 11, 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. Update Regarding Status of Executive Director Recruitment

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 (12/14/2022 LMCD Regular Board Meeting)**

7) APPROVAL OF CONSENT AGENDA

- A) Audit of Vouchers (12/16/2022 – 12/31/2022 and 1/01/2023 – 1/15/2023)
- B) Resolution Accepting Save the Lake Contributions (12/01/2022 – 12/31/2022)
- C) Denial of Variance for Adjusted Dock Use Area and Setbacks, 2000 Shadywood Road, Orono, MN 55391, Crystal Bay
- D) Interim Director Jim Brimeyer Agreement

8) RECOGNITIONS

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

10) PRESENTATIONS

- A) Prosecution Services Update: Law Offices of Steve Tallen

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 24, 2022)

12) OTHER BUSINESS

13) OLD BUSINESS

- A) Update Regarding Status of Executive Director Recruitment

14) NEW BUSINESS

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

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



ITEM WS 1

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 6, 2023)

TO: LMCD Board of Directors

FROM: Vickie Schleuning, *Vickie Schleuning* Executive Director, on behalf of Acting Chair Ann Hoelscher

SUBJECT: Update Status of Interim Director Recruitment

ACTION

Receive and review an update regarding the recruitment of a temporary Interim Director for the LMCD while a recruitment is underway for the Executive Director position.

BACKGROUND

On December 14, 2022, the LMCD Board authorized Vice Chair Hoelscher to negotiate the agreement with Jim Brimeyer as temporary Interim Director for the LMCD until a replacement Executive Director is hired.

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. Employee Agreement with Jim Brimeyer

EMPLOYEE AGREEMENT

THIS AGREEMENT is made and entered into this 9th day of January, 2022 between the Lake Minnetonka Conservation District (the LMCD) and James Brimeyer (Brimeyer)

BACKGROUND FACTS

- A. The LMCD wishes to employ the services of Brimeyer as Interim Executive Director (Director) of the LMCD
- B. The LMCD and Brimeyer desire to provide for certain procedures and requirements regarding the employment of Brimeyer by the LMCD.
- C. Brimeyer wishes to accept employment as Director of the LMCD under the terms and conditions of this agreement.

TERMS OF AGREEMENT

In consideration of the facts mentioned above and the mutual promises set out below, the parties agree as follows:

1. Duties: LMCD agrees to employ Brimeyer as the Director of the LMCD to perform all duties as specified by law and ordinance and perform such other proper duties as assigned by the LMCD.
2. COMPENSATION. The LMCD shall pay to Brimeyer \$80.00 per hour for each hour of administrative services provided to the LMCD that requires the presence of Brimeyer at the LMCD offices. The LMCD shall pay \$40.00 per hour for each hour that Brimeyer provides services to the LMCD from any location other than the LMCD offices. A remote network (VPN, or similar) will be established and paid by the LMCD for purposes of this arrangement. Brimeyer shall provide the LMCD with written documentation of all time spent for the provision of services to the LMCD and shall provide monthly invoices to the LMCD which shall include a statement of the services provided, rate, amount of time, and location from which the services were provided. Partial hours shall be compensated on a proportional basis.
3. WORK SCHEDULE AND LOCATION. Brimeyer will maintain an office with all necessary equipment and supplies. In addition, the LMCD will provide office space at the LMCD offices for those times when Brimeyer determines that it is necessary for services to be provided from the LMCD offices. It is anticipated by the parties that Brimeyer will provide an average of 20-25 hours per week of administrative services to the LMCD and that Brimeyer will be on site at the LMCD for some portion of the day approximately two/three (2-3) days (minimum half day increments) per week; however, the number of days per week that services will be provided to the LMCD is flexible and will be determined by Brimeyer from time to time based on the LMCD's administrative needs and Brimeyer's availability. Brimeyer will provide a proposed bi-weekly schedule of days and hours that Brimeyer is available to provide services to the LMCD for review and approval by the LMCD in advance for each month during the Term of this Agreement. Brimeyer will also make services available to the LMCD by telephone, email communications and electronic meetings and conferences on an as needed basis. The foregoing notwithstanding, the parties understand and agree that Brimeyer has other clients for which he provides services and that the LMCD has no right to Brimeyer's exclusive services.

4. Terms and Conditions: Brimeyer will serve at the will of the LMCD and may be terminated with or without cause at any time, provided the LMCD provides 15 working days notice.

If Brimeyer decides to terminate employment, Brimeyer will provide the LMCD a minimum of 15 working days' notice of his intent to terminate.

5. Business Expenses: The LMCD will reimburse Brimeyer for all reasonable employment related expenses including, but not limited to meals, mileage for his vehicle use to and from work and for business meetings, etc..
6. Indemnification: In addition to that which is required under state and local law, the LMCD shall defend, save harmless and indemnify Brimeyer against any tort, other than any intentional torts, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Brimeyer duties as Director. The LMCD will compromise and settle any such claims or suit and pay the amount of any settlement of judgment thereon.
7. Bonding: The LMCD shall bear the full cost of any fidelity or other bonds required of Brimeyer under law or ordinance.
8. Binding Effect: This agreement shall be binding on the LMCD and Brimeyer and the successor's assigns, and heirs of each respectively.

This agreement is now being executed by the parties as of the date stated at the beginning of this agreement.

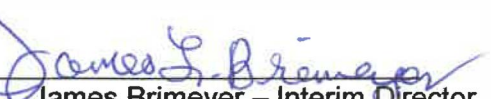
Lake Minnetonka Conservation District

By 
Acting Board Chair

ATTEST:


Board Secretary

**Addendum attached

By 
James Brimeyer – Interim Director

COPY

****Addendum**

Schedule effective Jan 4-Feb 3, 2023

Jan 4 – 10 Check in with LMCD staff, Board Chair and Executive Committee

Jan 4-5 Observe preparation of Board agenda and meeting materials

Jan 11 – Attend Board meeting

Jan 12 – Feb 3 - Check in with interested Board members and staff

Jan 16 – 27 – Check in with local elected and appointed officials

Schedule effective Feb 5 – March 3rd

Feb 5 – March 3 – Out of the country

Check in via Zoom or Go To Meetings with staff twice per week

Check in with Chair and Exec Committee once per week

Attend via Zoom/Go To on Feb 8

Suggested schedule March 6th and going forward, subject to change and modification, as needed.

Monday PM

Wednesday AM

Thursday AM

Always available via email, text and phone

skyehilljim@gmail.com

612-760-6626

ITEM 6

LAKE MINNETONKA CONSERVATION DISTRICT BOARD OF DIRECTORS

7:00 P.M., December 14, 2022
Wayzata City Hall

WORK SESSION

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

Members Present: Gregg Thomas, Tonka Bay; Rich Anderson, Orono; Ann Hoelscher, Victoria; Bill Cook, Greenwood; Ben Brandt, Mound; Gabriel Jabbour, Spring Park; Michael Kirkwood, Minnetrista; Dennis Klohs, Minnetonka Beach; Mark Kroll, Excelsior; Denny Newell, Woodland; Nicole Stone, Minnetonka; Jake Walesch, Deephaven; and, Deborah Zorn, Shorewood. Also present: Vickie Schleuning, Executive Director; and, Thomas Tully, Environmental Administrative Technician.

Members Absent: Dan Baasen, Wayzata.

Persons in Audience: Shawn Wischmeier, Kelly Wischmeier, Eric Evenson, Mike Mischke, Sheri Wallace, Bart Halling, James Gilbert, Adam Sienkowski, Phil Bowman, Tim Hayden, Deb Hayden, Erin Wombacher, Renee Keller.

1. Discussion Regarding Potential Low Water Conditions Spring 2023

Schleuning stated that staff has received calls from property owners and vendors as to whether the Board will be discussing potential low water in the spring. She provided additional information on the topic and the impacts that could have to residents and dock installers. She commented that the low water could change drastically by spring, dependent on weather.

Jabbour stated that a fact sheet could be provided to make it easier to determine the path they should follow. He stated that the Board should be familiar with the Code to make it easy for the group to make a decision. He commented that he believes half the time of staff is wasted and should be spent more productively in order to ensure the Board has sufficient time to review applications, rather than staff dragging its feet and bringing something to the Board when a decision must be made or the 60-day review period will expire.

Thomas commented on a previous situation where low water could have been declared but by that point it would have been moot. He stated that with this discussion, the Board could be prepared to issue low water in the spring should that be necessary.

Jabbour commented that would be perpetuating bad habits. He stated that if people are not aware of the Code, they should not be on the Board.

Klohs stated that he thought there should have been a meeting when they went below the low water declaration mark. He stated that those responsibilities were ignored when low water was not declared in the past. He asked if an accurate water level could be read when the lake is frozen.

Schleuning stated that the purpose of the discussion tonight is to bring up this topic ahead of time as there would be impacts and time needed to get supplies if the low water remains. She stated that often Work Sessions, even at city levels, are used to educate the Board, provide updates regarding customer feedback the office receives, and have healthy discussions to appropriately address issues.

Kroll asked if there are any statistics on the water level that increases from snow.

Schleuning stated that would vary a lot, dependent on the weather and snowfall.

Thomas stated that the purpose of the discussion tonight was to provide this background information and ensure that any policy changes necessary could be made and if low water declaration is needed in the spring, that could be done quickly and efficiently.

Anderson reviewed water levels from previous years. He stated that he has ordered more dock for the spring in the case the water levels remain low.

Klohs stated that the lake is low now and that should be put on the website to remind people that more dock sections may be necessary in the spring. He stated that would place the decisions in the hands of the homeowners.

Thomas stated that he would not want to advise anyone to purchase more dock sections.

Jabbour commented that a profound factor of the lake is the watershed that flows south into the lake. He noted that the most impactful rain for the lake comes in April and May.

Klohs stated that if the Board follows the ordinance as written, low water should be declared at this time.

Thomas suggested that the Board place the ordinance on the website and explain what could happen if low water were declared in the spring.

2. Update Regarding Status of Executive Director Recruitment

Thomas commented that the Officers met December 7th to discuss the Executive Director position and potential paths for recruitment.

Hoelscher stated that the Board was provided with the documents that were used six years ago when Schleuning was hired. She noted that there was an interim director that the Board worked with that helped to develop the documents and job description. She stated that the Officers agreed that an Executive Director is needed and discussed posting the position as time is of the essence, knowing that the job description and posting can be amended.

Newell commented that this is an important position, and he would like to slow the process down to

ensure that a good decision is made and a good candidate can be found that will stay with the LMCD for a long time.

Walesch asked for an update on the interim.

Hoelscher stated that six years ago there was an immediate need for an Executive Director, therefore an interim was hired that remained in place for five months to help the Board through that process. She stated that she reached out to that same person, and he may be available part-time but has other commitments as well. She stated that he is open to discussing the potential of helping the Board through that transition.

Walesch stated that he would like to see more Board discussion about the position before it is posted, using the interim to fill that gap. He stated that he would like one, or multiple, closed session meetings in order to discuss staffing. He stated that ideally, they would have an interim person in place before Schleuning departs. He commented that it will be important to have Board level discussions about various employment issues that are much more appropriate in a closed session where everyone could speak freely.

Stone stated that she would like to find a replacement that will last and be a good fit. She stated that she would find input helpful on Schleuning on where her time is spent and what is most important in her role.

Kirkwood commented that he would be fine following the process in place but would be concerned as to whether there is enough time to allow them to follow the proper process to cast the largest net of candidates. He stated that he would be okay with extending the timeline in order to get a stronger candidate.

Jabbour commented that he does not like or respect the way they have been conducting themselves and bringing in a new person into this situation would give them whiplash. He believed that the Board needs to get on the same page and focused in order to move forward effectively. He stated that direction is necessary in order to provide proper direction to the Executive Director. He commented on some of the things the LMCD did in the past that it no longer does, and therefore there needs to be common ground on the path forward and the direction staff should be working. He stated that he is unsure a civil attorney is needed to attend at each meeting. He believed the Board should wait on the Executive Director and put in the time to develop a more up to date job description.

Zorn commented that she supports hiring an interim Executive Director as soon as possible. She stated that if that person could come on Board in the beginning of January, that would allow 30 days before Schleuning leaves. She stated that the last job description was developed six or seven years ago and the direction of the LMCD has changed since that time in certain duties, therefore the job description should be updated as well. She agreed that input from Schleuning would be helpful on where her time is spent. She stated that having an interim would allow the Board to spend the time working on the job description and finding a good fit. She stated that she would be willing to serve, assisting with the search. She thanked Schleuning for her work and noted that she will be missed.

Kroll stated that he is intrigued by Jabbour's comments and agrees that the LMCD needs to review its direction and focus. He recognized the time that takes. He stated that in his mind, an Executive Director would be similar to a City Manager. He believed that advertising for a City Manager would allow them to begin to solicit for the position. He believed that searching for a candidate could occur at the same time the Board reviews its mission for the future.

Hoelscher agreed that this is a great opportunity to reflect on the organization and improve. She stated that the organization has an obligation to move forward and obtain an Executive Director. She commented that a broad job description allows them to review a broad range of candidates. She stated that a good leader can help the Board go through this visioning process. She noted that can be part of the interview process, asking how the person could help guide the Board through the process. She recognized that this could take months but believed it should start now.

Anderson commented that a time study of staff has been desired for years but has not been completed. He stated that information would be helpful and agreed that closed session discussion on employment would be helpful. He stated that he would support the use of an interim position while the Board works out these details. He commented on the ways he could assist with the finance matters and how the consultant can assist with communications. He commented that the City Manager concept is interesting. He stated that in the past he has suggested a Dock Committee, that would be similar to a Planning Commission, that would review applications and could work out some of the items ahead of time which could then be placed on the Consent Agenda for the Board.

Klohs stated that things are not the same as they were six years ago. He stated that one full-time staff person has been eliminated since that time and a lot has been accomplished since that time. He stated that he supports the recommendation of Jabbour. He stated that the first discussion could be comparing the existing job description to what Schleuning spends her time working on most in order to update that document.

Thomas stated that he has the utmost respect for the staff in the office and the work they do. He commented that he does not want to go too long without an Executive Director as that could burn out the remaining staff members.

The worksession was adjourned at 6:57 p.m.

FORMAL BOARD MEETING

7:00 p.m.

1. CALL TO ORDER

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

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

Members present: Gregg Thomas, Tonka Bay; Rich Anderson, Orono; Ann Hoelscher, Victoria; Bill Cook, Greenwood; Ben Brandt, Mound; 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: Vickie Schleuning, Executive Director; Thomas Tully, Environmental Administrative Technician; and Maisyn Reardan, Administrative Coordinator

Members absent: Dan Baasen, Wayzata.

Persons In Audience: Shawn Wischmeier, Kelly Wischmeier, Eric Evenson, Mike Mischke, Sheri Wallace, Bart Halling, James Gilbert, Adam Sienkowski, Phil Bowman, Tim Hayden, Deb Hayden, Erin Wombacher, Renee Keller.

4. APPROVAL OF AGENDA

MOTION: Stone moved; Kirkwood seconded to approve the agenda as submitted.

VOTE: Motion carried unanimously.

5. CHAIR ANNOUNCEMENTS

Chair Thomas commented that this will be his last meeting and noted that he has enjoyed his time on the Board and working with the other members. He commented that all 14 members of the Board want what is best for the lake, although they may have different ideas on how to achieve that. He asked that the Board continue to treat each other with the respect they all deserve, even though their opinions may differ.

6. APPROVAL OF MINUTES-

10/26/2022 LMCD Regular Board Meeting
11/09/2022 LMCD Regular Board Meeting

MOTION: Kroll moved; Zorn seconded to approve the 10/26/2022 LMCD Regular Board Meeting minutes as submitted.

VOTE: Ayes (12), Abstained (1) (Walesch). Motion carried.

MOTION: Kroll moved; Stone seconded to approve the 11/09/2022 LMCD Regular Board Meeting minutes as submitted.

VOTE: Motion carried unanimously.

7. APPROVAL OF CONSENT AGENDA

MOTION: Walesch moved; Stone seconded to approve the consent agenda as presented. Items so approved included: **7A)** Audit of Vouchers (11/16/2022 – 11/30/2022); **7B)** Resolution Accepting Save the Lake Contributions (11/02/2022 – 12/05/2022); **7C)** Approval of New Residential Multiple Dock License, 540 Big Island, Orono; Lower Lake South; **7D)** 2023 LMCD Board Meetings/Contracts/Agreement for Professional Services: LMCC Video on Demand Services; Timesaver Off-Site Secretarial, Inc., Meeting Minutes; City of Wayzata Community Room and Video Studio; Charles Struck, Producer; and **7E)** 2023 LMCD Appointment for Legal Services, Auditor, Bank Depository, Official Newspaper.

VOTE: Motion carried unanimously.

8. RECOGNITIONS

Thomas recognized those that have recently donated to Save the Lake.

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

Dennis Nelson, 135 Mound Ave in Tonka Bay, commented about his experience as a variance applicant. He noted that the process began in July, and he has at that time if he and his neighbors could come to an agreement to eliminate the property line between them and avoid the variance process but was encouraged by LMCD staff to follow the variance process. He stated that the process went reasonably smooth until the findings of fact and order. He stated that he responded to the draft to correct erroneous facts and contingents. He noted that staff did not take his comments into consideration, and he was unable to speak with LMCD legal counsel. He stated that because he did not have enough time to prepare or hire legal counsel to debate LMCD legal counsel at the Board meeting, he decided to stop trying to change anything and instead watch what happened. He stated that the findings of fact and order were approved as part of the Consent Agenda without any discussion. He commented that he believes there are various errors within the final document and several that make him look bad. He reviewed some of the information he believed to be incorrect and the issue he has with the condition that he must concede that Tonka Bay has superior riparian rights to him. He stated that there is no information to say the City wanted that language included. He acknowledged that he would be willing to work with the City in the future, if needed, but does not believe one party has superior rights over the other. He thought that there might be a conflict of interest in that the City and LMCD are both represented by the same legal firm. He was concerned that there was not discussion about the conflict of interest during his variance process and was unsure what could be done to resolve the inaccuracies in the findings of fact and variance. He stated that if nothing could be done, he would like that variance annulled as he believes the conditions imposed are not the law and is not proportional to the simple confirmation that his dock reasonably shares riparian rights with the fire lane.

Thomas commented that the findings of fact and order were approved by the Board. He stated that the Board cannot change the language within those documents. He stated that the resident could request another variance if desired.

Anderson stated he hoped that the resident would have been given an opportunity to speak when the item was presented on the Consent Agenda. He did not believe that this would have to go through the variance process as the neighbors could have come to an agreement. He recommended that the resident annul the variance and not even come in because there is permission from a neighbor.

Thomas noted that is the opinion of one Board member.

Jabbour commented that he agrees with Anderson.

10. PRESENTATIONS

A) Update Regarding Carp Assessment (Harrison, West Arm, Jennings)

Brandt commented that this was the carp proposal from the Harrison Bay Association, noting that the LMCD supported funding of 35 percent for the project and a representative is present to provide an update on the findings.

Sheri Wallace, 2135 Overland Lane, stated that she is the Chair of the Harrison Bay Association and is present to share some of the findings from the assessment. She stated that for the past year their association has attempted to find the factors that are impacting the bay. She stated that they researched carp and explained the impacts that carp have on the lake. She noted that their association has created a water quality working group to help address the issue. She reviewed the results of the carp population survey initiative that was completed in September, noting that the three bays are severely overpopulated with carp. She advised of the benefit to water quality as a result of carp removal from a lake. She stated that this winter the association is focused on raising funds that would allow completion of a feasibility study that would allow them to develop a firm plan and would also allow them to apply for grant funds. She reviewed the carp project plan timeline through 2024. She asked for assistance in development of a coalition to address carp management across the lake, approval of a 2024 carp bow fishing tournament, and assistance in completion of the grant proposal to BWSR for the Clean Water Legacy Partners Grant.

Brandt stated that when the AIS Committee reviewed the original ask for the study, there was discussion of the long-term management and whether that would be financially feasible or manageable. He applauded the efforts of the association and was happy to see the results of the study. He stated that he would personally love to be involved in continued funding and effort but was unsure of the likely positive outcome.

Wallace commented that the hope would be to lower the population under the recommended threshold. She explained that the feasibility study would help to provide those answers. She recognized that the association could not solve the issue lake wide.

Brandt asked if there was any insight from the study as to the time and effort that would be necessary to reach that goal in reduction.

Wallace commented that it would depend upon the method they used for carp removal. She believed that the

coalition would be valuable in determining next steps and the overall lake.

Walesch asked the cost of the feasibility study.

Wallace replied that they have estimated \$68,000.

Walesch commented that as a member of the AIS Committee, the association is doing exactly what they wanted residents to do in taking the lead and spending time to develop a plan. He commented that this has provided a lot of new information and believed that the appropriate process would be for the AIS Committee to review the proposal. He commented that he would support the bow hunting tournament.

Wallace stated that they would love to have a workshop with the committee. She requested assistance from Schleuning in reviewing the grant prior to her departure.

Thomas noted that Hennepin County Water Patrol controls the approval of special events, such as a bow hunting tournament. He noted that the LMCD will be short staffed as the Executive Director will be leaving and therefore is unsure that the organization could assist with the grant writing.

Newell stated that perhaps Eric Evenson at the LMA would be able to assist with the grant writing.

Thomas appreciated the update.

11. PUBLIC HEARING

A) Variance for Adjusted Dock Use Area and Setbacks, 2000 Shadywood Road, Orono, MN 55391, Crystal Bay

Tully presented a variance request for adjusted dock use area and setbacks at 2000 Shadywood Road in Orono. He provided background information and noted that the application was submitted due to the converging lot lines and nonconformance with standard regulations for setbacks and length revealed during the change of ownership. He summarized the proposal from the applicant and displayed the proposed site plan. He reviewed the variance standards that must be considered when reviewing a request. He reviewed the comments received from the City of Orono, Orono Police Chief, and Hennepin County Sheriff's Office Water Patrol Lieutenant. He also provided comments received from the property owner at 1998 Shadywood Road as well as residents at 1966, 1972, 1978, and 1990 Shadywood Road. He stated that based on the information available prior to the public hearing, staff is recommending denial of the variance and reviewed the supporting reasoning as identified within the staff report.

Adam Sienkowski, attorney representing the applicant, stated that the applicant is seeking a variance to exercise his riparian rights on his property. He commented that there are practical difficulties in the length of shoreline and converging lot lines. He stated that the applicant purchased his property in February 2021 and attempted to install a dock in the same location it had been in from the previous owner but was informed that the dock was nonconforming, and the neighbors were not going to provide consent for the dock to be located

in the prior location. He stated that the staff report noted that the proposed dock is larger than what has existed but noted that this is the same dock configuration in the same location prior to the sale of the property to the applicant. He stated that as proposed on the site plan, the dock would project by about seven or eight feet into the neighboring dock use area. He stated that the city does not seem to have a problem with a seasonal dock as there are no plans for proposed use of the alley in the summer. He commented the rigid application of codes does not always work, which is why the Board is allowed to consider variances. He commented that it is obvious that this property cannot support a reasonable dock and therefore encroachment into the neighboring lot would be required. He noted that they are only proposing one boat slip when most neighboring docks have two slips. He stated that they are requesting permanent riparian rights. He referenced the staff report statement that the applicant did not provide consent from the city or neighboring property owner but noted that those consents would be temporary. He stated that the applicant attempted to work with the neighbors to the north and south as well as the city, but those attempts were unsuccessful. He stated that the applicant does have a temporary arrangement with the Kellers but noted that is temporary and the property owners need permanent dock rights for the property. He requested that the Board approve the variance as submitted.

Thomas opened the public hearing at 8:05 p.m.

Renee Keller, 1998 Shadywood Road, stated that when she received the variance request that was the first, they had heard. She noted that they have a friendly relationship with the applicant and have shared the dock. She stated that they purchased their home in July 2021 and their real estate agent was aware that the applicant's dock was nonconforming and made the applicant aware of that issue prior to the sale of their home. She stated that when they purchased the home, they did not have a dock and the applicant did not have a boat, so they shared the applicant's dock the last two summers. She noted that as proposed this dock would encroach onto their property and would prevent them from installing their own dock. She stated that they are completely willing to work with the applicant but would prefer to do that outside of this formal Board meeting. She asked that the Board deny this request. She stated that the dock sharing agreement that they have with the applicant is renewed each year and she would not want to change that process.

No additional comments were offered, and the public hearing was closed at 8:08 p.m.

Gabriel Jabbour commented that there are converging lot lines around the whole lake and some properties do not have enough for a dock. He stated that variances have been given in some instances, but this would not be one of them. He stated that if you consider the three property owners, this dock would make it extremely difficult for everyone to have rights. He stated that this dock is beyond the size of what should be allowed in this instance. He noted that as discussed previously, property owners can work together to eliminate lot lines as they have done in this instance previously but recognized that is temporary. He commented that this dock is overambitious and is too much for this combination of lots. He stated that the Water Patrol often uses the alley to rescue snowmobiles and accidents in the channel, therefore it is imperative that alley be protected. He stated that he does not find it appropriate to approve this variance. He stated that whatever dock existed in the past is irrelevant because the neighbors agreed in the past. He stated that if a dock protruded into a neighboring lot, that approval could be taken back by the neighboring property owner at any time.

MOTION: Jabbour moved, Zorn seconded to direct LMCD legal counsel or staff to prepare Findings of Fact and Order denying the variance application from Arie Tendler, on behalf of the listed owner Cambria Company, LLC for the property located at 2000 Shadywood Road in Orono for final consideration at the January 11, 2022 LMCD Board meeting.

VOTE: Motion carried unanimously.

12. OTHER BUSINESS

There was no other business.

13. OLD BUSINESS

A) 2023 Employee Compensation Adjustment – Additional Review

Anderson commented that the Finance Committee reviewed this item as the request exceeded the budgeted amount by two percent. He stated that the Committee agrees with the five percent increase.

MOTION: Anderson moved; Stone seconded to approve the annual base wage adjustments for employees in 2023 at a rate of five percent.

VOTE: Motion carried unanimously.

B) Recommendation and Appointment of Civil Attorney

Thomas commented that the civil attorney resigned, therefore the LMCD put a request for that service. He noted that one submission was received, and that firm was interviewed by a work group. He stated that the group found Mr. Langel very well qualified and a good fit. He stated that there was discussion as to whether his attendance would be needed at each Board meeting, or just as needed.

MOTION: Thomas moved, Klohs seconded to approve entering into an agreement between the Lake Minnetonka Conservation District, a Minnesota political subdivision and the law firm Ratwik, Roszak & Maloney, P.A. for civil attorney legal services effective December 19, 2022 and for 2023 with Joseph J. Langel of that firm serving as primary legal counsel.

Further discussion: Klohs agreed that this was a great candidate.

Kirkwood stated that he would question the availability as the candidate works with other cities five days a week, most located further north.

Thomas commented that the candidate stated that he would be available if the Board wanted him to attend each meeting. He stated that they discussed possibly having the candidate attend each meeting in the beginning to get to know the group and then it could be determined if he would need to attend.

Klohs noted that the candidate does not attend every meeting of the cities he represents.

Anderson stated that the town of Ramsey and Lino Lakes have him show up once per month. He stated that the candidate also represents many communities virtually.

Thomas noted that the candidate would have a backup in the case he would not be able to attend.

Anderson stated that perhaps there could be a worksession where the other members of the Board could get to know him.

Kroll commented that would be great.

VOTE: Motion carried unanimously.

C) Update Regarding Status of Executive Director Recruitment

Thomas commented that the Board discussed this topic in work session tonight. He noted that further discussion could occur, or someone could propose a motion.

Jabbour stated that he would like more information provided about the worksession. He stated that it is important that the Board figure out what the organization does, both right and wrong, and where the existing staff fit into the staffing model to determine their needs. He stated that he would prefer to have a closed session meeting to continue that discussion.

MOTION: Jabbour moved, Walesch seconded to not post the position until the Board can have further discussion in closed session about staffing and to develop a job description.

Further discussion: Anderson asked if there could be pursuit of an interim director.

Jabbour agreed.

Hoelscher asked if they could pursue an interim director and that be the only step at this time. She noted that the next steps could occur after that time and could be discussed in workshop.

Zorn suggested that process begin with the closed session.

Jabbour stated that Hoelscher's idea would change his intention. He stated that the closed session would allow honest discussion of the Board and would then allow them to move forward.

Walesch stated that the motion is to hold a closed session, assuming that they are able to do so, and then the Board would be able to proceed with hiring an interim director.

Jabbour stated that the intent of the closed session would be to discuss the job performance of the existing staff.

Kroll questioned if this motion would even be needed. He stated that if the Board does not take the action to move forward with posting the position, then no action would be taken.

Jabbour called the question on the motion on the table.

Zorn noted that she would like to focus on recruitment of the interim director immediately and then hold a closed session in January.

Thomas noted that the motion did not include an order to follow, so Zorn would be correct.

VOTE: Motion carried unanimously.

Hoelscher asked if she would have authority to contact a candidate or asked if the Board would like to conduct a search.

Jabbour stated that if the Board could gain the previous candidate, they would be very lucky.

Hoelscher asked for authority to negotiate a contract with Jim Brimeyer.

MOTION: Walesch moved, Jabbour seconded to provide authority to Ann Hoelscher to negotiate an interim LMCD Director contract on behalf of the LMCD Board.

Further discussion: Zorn asked that the candidate be flexible on the timeframe.

Hoelscher noted the previously approved rate.

VOTE: Motion carried unanimously.

14. NEW BUSINESS

A) LMCD Board Self-Evaluation Information

Thomas stated that each year the Board is asked to evaluate its performance. He noted the process that has been used in the past and explained how that was simplified the previous year.

Schleunig stated that SurveyMonkey was used for the past few years. She noted that a link could be provided to the Board and those results would be compiled and presented at a future meeting.

Thomas stated that link would be coming and encouraged the Board to fully participate.

15. TREASURER REPORT

Anderson stated that in reading the bylaws he discovered that the Treasurer is to provide a monthly P&L, which has been completed quarterly. He stated that he will be working to correct that. He asked if the audit preparation typically occurs in February.

Schleuning stated that staff has already begun preparing for that process which typically occurs in February.

Anderson asked for authority to meet with the auditor and staff in preparation for the audit.

16. EXECUTIVE DIRECTOR UPDATE

Schleuning provided the following information:

- Staff has received questions about ice depth, noting that there are still areas of open water and thin ice
- Deicing operations are starting
- Multiple dock, watercraft for hire and other license renewals are being sent out
- The new solicitation flyer for Save the Lake has been posted on the website
- More information to come on a potential rain barrel program

17. STANDING LMCD COMMITTEE/WORKGROUP

Aquatic Invasive Species: Brandt stated that they would attempt to hold a meeting before the end of the year to recap their activities from 2022 and also follow up with the Harrison Bay Association.

Communications: Hoelscher stated that the group met the previous day. She thanked Kirkwood and Schleuning for working with LMCC to develop an educational video about the 300 foot no wake zone. She thanked Thomas for his leadership and service on the Board, noting that he has been an asset to the Board.

Finance: Anderson reported that the group met the previous week to discuss the salary adjustments.

Operations: Zorn stated that minutes were provided from the October meeting and draft minutes are available from the November meeting. She stated that the Nominating Committee has solidified a process and will be providing the deadlines to the Board in January in order to provide a recommendation of Officers in February.

Jabbour stated that he would like to see the Nominating Committee changed to be a work group. He commented on the difficulties in Board Members being allowed to take part in the interview for the attorney. He stated that he made a commitment to serve of the Board with the understanding that he would have to fly in to attend the twice monthly meetings. He stated that he volunteered to assist in setting up equipment that would allow him to participate in the committee meetings virtually but commented on his frustration in getting that setup.

Hoelscher stated that it was her thought that the new attorney review the request and if approved, that could

be setup. She commented that she thought they were waiting for approval from the legal counsel, which was just hired tonight.

Jabbour commented that he is only in town for this meeting and two more days. He commented that he is offering to pay for and setup the equipment and it does not have to be used until approved by the attorney.

Anderson commented that sounds simple.

Hoelscher stated that it is a great idea and believes that everyone would support that but noted that she is not in charge of the space at the Mound City Hall where Jabbour would like to install the equipment.

Anderson commented that he would anticipate that be setup in the conference room.

Hoelscher stated that Jabbour suggested changing the committee structure and perhaps that be discussed in the conversations about the new Executive Director. She suggested that take place in January.

Schleunig stated that she must have misunderstood the request because she only found out about this idea before tonight's meeting. She stated that she likes the idea but believes further consideration and consult from legal counsel and permission to install would be needed.

Thomas stated that the one question would be related to whether remote participation could be done while still meeting the open meeting law while the second would be related to the committee structure.

Walesch commented that with the AIS Committee it would be more productive if they would be able to communicate more via telephone and email, even just about setting up a time for meetings. He commented that it can be a monumental task to set something up for a meeting and therefore it does not occur as frequently as desired. He stated that perhaps that be one of the first tasks for the attorney to review whether changing to work groups would make things easier.

Brandt stated that if Jabbour is willing to install the equipment that would be necessary, that seems like a no brainer.

Jabbour commented that they will abide the law.

Klohs stated that perhaps Hoelscher could speak with the attorney on that topic.

Jabbour commented that there is a way that things need to be done in order to comply, and they would follow those steps.

Save the Lake: Newell commented that the group has not recently met. He stated that a member made an interesting comment that he will try to bring forward at the next committee meeting. He noted that since the Save the Lake committee has taken on the funding for the Water Patrol, their budget needs have changed, and the typical solicitations may not meet the long-term financial needs. He recognized the generous

contributions that marina owners have made but noted that long-term funding will need to be discussed going forward.

Thomas thanked everyone and noted that he has enjoyed working with them.

18. ADJOURNMENT

MOTION: Kroll moved; Walesch seconded to adjourn the meeting at 8:51 p.m.

VOTE: Motion carried unanimously.

Ann Hoelscher, Acting Chair

Dan Baasen, Secretary

3:57 PM
01/05/23

Lake Minnetonka Conservation District
Check Detail
December 16 - 31, 2022

ITEM 7A

Date	Num	Name	Memo	Account	Class	Paid Amount
12/16/2022	EFT-22-133	FRANCOTYP-POSTALIA, INC.		Alerus Checking		
			Save the Lake Solicitation (444 pieces)	4080 · Postage	STL	-253.08
			Postage Admin	4080 · Postage	Admin.	-146.92
TOTAL						-400.00
12/30/2022	EFT-22-134	ADP		Alerus Checking		
			Salaries - Admin	4020M10 · Salaries-002 - Admin	Admin.	-14,723.82
			P.E.R.A	2020 · Payroll Liabilities -	Admin.	2,055.38
			ER PERA	4022M10 · ER PERA - Admin	Admin.	-1,101.10
			ER/FICA Medicare - Admin	4021M10 · ER Share of Admin F...	Admin.	-1,123.16
			Long Term Disability	2020-LT · Payroll Liabilities - UN...	Admin.	84.96
TOTAL						-14,807.74
12/30/2022	EFT-22-135	ADP Service Fee		Alerus Checking		
			Payroll 12/16/22 - 12/31/22	4180M10 · Professional Service...	Admin.	-89.62
TOTAL						-89.62
12/30/2022	EFT-22-136	P.E.R.A		Alerus Checking		
			Payroll 12/16/22 - 12/31/22	2020 · Payroll Liabilities -	Admin.	-2,055.38
TOTAL						-2,055.38
12/30/2022	EFT-22-137	Medica		Alerus Checking		
			Health Insurance, December 2022 (Vickie Schleuning)	4380M10 · Employee Benefits - ...	Admin.	-721.50
			Health Insurance, December 2022 (Tammy Duncan)	4380M10 · Employee Benefits - ...	Admin.	-721.50
			Health Insurance, December 2022 (Thomas Tully)	4380M10 · Employee Benefits - ...	Admin.	-721.50
TOTAL						-2,164.50
12/30/2022	EFT-22-138	WEX Health, Inc. Service Fee		Alerus Checking		
			HSA Svc Fee December 2022 (Schleuning)	4380M10 · Employee Benefits - ...	Admin.	-2.75
			HSA Svc Fee December 2022 (Tully)	4380M10 · Employee Benefits - ...	Admin.	-2.75
			HSA Svc Fee December 2022 (Duncan)	4380M10 · Employee Benefits - ...	Admin.	-2.75
TOTAL						-8.25

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Lake Minnetonka Conservation District
Check Detail
December 16 - 31, 2022

Date	Num	Name	Memo	Account	Class	Paid Amount
12/29/2022	22265	Chuck Struck	VOID:	Alerus Checking		
TOTAL						0.00
12/29/2022	22266	City of Mound		Alerus Checking		
12/29/2022	INV. 000025...		Rent, January 2023	4320M10 · Office Rent - Admin.	Admin.	-1,733.48
TOTAL						-1,733.48
12/29/2022	22267	City of Wayzata		Alerus Checking		
12/29/2022	INV. 363823		2023 Agreement for Meeting Room and Cable Studio	4230M10 · Meeting Exp. - Admin.	Admin.	-3,026.00
TOTAL						-3,026.00
12/29/2022	22268	Innovative Office Solutions LLC		Alerus Checking		
12/14/2022	Inv. 4034118		Office Supplies	4220M10 · Office Supplies -Adm...	Admin.	-278.04
TOTAL						-278.04
12/29/2022	22269	Kennedy & Graven		Alerus Checking		
12/13/2022	October/Nov...		Legal Fees October - November 2022	4620M10 · Civil Legal Fees - Ad...	Admin.	-3,385.50
TOTAL						-3,385.50
12/29/2022	22270	LMCC		Alerus Checking		
12/15/2022	Inv. 1523		VOD Services for Meeting 12/14/2022	4182M10 · Media (Cable/Internet...	Admin.	-100.00
TOTAL						-100.00
12/29/2022	22271	Thomas Tully	VOID:	Alerus Checking		
TOTAL						0.00
12/29/2022	22272	West Metro Truck Repair		Alerus Checking		
12/13/2022	INV. 101232		Truck and Boat Storage 11/21/22 - 4/30/23	4160M10 · Watercraft/Vehicle M...	Admin.	-900.00

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Lake Minnetonka Conservation District
Check Detail
December 16 - 31, 2022

Date	Num	Name	Memo	Account	Class	Paid Amount
TOTAL						-900.00
12/29/2022	22273	Chuck Struck		Alerus Checking		
12/19/2022	Inv.#INV0031		Board Meeting 12/14/22	4182M10 · Media (Cable/Internet...	Admin.	-105.00
TOTAL						-105.00
12/29/2022	22274	Thomas Tully		Alerus Checking		
12/14/2022	Mileage 9/1...		Mileage 9/14/22 - 12/14/22	4400M10 · Mileage/Exp's - Admin.	Admin.	-67.50
TOTAL						-67.50
12/31/2022	22275	ECM Publishers, Inc.		Alerus Checking		
12/31/2022	Inv.#927027...		Laker Pioneer - PH Gustafson	4110M10 · Public Info Legal Fee...	Admin.	-49.50
			Sun Sailor - PH Gustafson	4110M10 · Public Info Legal Fee...	Admin.	-76.80
TOTAL						-126.30
12/31/2022	22276	North Shore Marina (Browns Bay)		Alerus Checking		
09/29/2022	Refund		Refund of New MDL Application	3110M10 · Multiple/Perm. Dock ...	Admin.	-2,423.75
TOTAL						-2,423.75
12/31/2022	22277	Steven M. Tallen Attorney At Law		Alerus Checking		
12/31/2022	December 2...		Prosecution Cost December 2022	4640M10 · Prosecution Legal Fe...	Admin.	-2,839.72
TOTAL						-2,839.72
12/31/2022	22278	Vickie Schleuning		Alerus Checking		
12/31/2022	Mileage 2022		Mileage 1/1/22 - 1/31/22	4230M10 · Meeting Exp. - Admin.	Admin.	-194.81
TOTAL						-194.81

3:58 PM
01/05/23

Lake Minnetonka Conservation District
Check Detail
January 1 - 15, 2023

ITEM 7A

Date	Num	Name	Memo	Account	Class	Paid Amount
01/12/2023	EFT-22-139	ADP Service Fee		Alerus Checking		
			Payroll 1/1/23 - 1/15/23	4180M10 · Professional Service...	Admin.	-89.62
TOTAL						-89.62
01/12/2023	EFT-22-140	ADP		Alerus Checking		
			Salaries - Admin	4020M10 · Salaries-002 - Admin	Admin.	-10,243.00
			P.E.R.A	2020 · Payroll Liabilities -	Admin.	1,428.08
			ER PERA	4022M10 · ER PERA - Admin	Admin.	-765.05
			ER/FICA Medicare - Admin	4021M10 · ER Share of Admin F...	Admin.	-780.37
			Long Term Disability	2020-LT · Payroll Liabilities - UN...	Admin.	84.96
TOTAL						-10,275.38
01/12/2023	EFT-22-141	WEX Health, Inc.		Alerus Checking		
			HSA Contribution January 2023 (Schleuning)	4380M10 · Employee Benefits - ...	Admin.	-116.67
			HSA Contribution January 2023 (Tully)	4380M10 · Employee Benefits - ...	Admin.	-116.67
			HSA Contribution January 2023 (Duncan)	4380M10 · Employee Benefits - ...	Admin.	-116.67
TOTAL						-350.01
01/12/2023	EFT-22-142	P.E.R.A		Alerus Checking		
			Payroll 1/1/23 - 1/15/23	2020 · Payroll Liabilities -	Admin.	-1,428.08
TOTAL						-1,428.08
01/12/2023	EFT-22-143	Unum Life Insurance		Alerus Checking		
			Long Term Disability - January 2023	2020-LT · Payroll Liabilities - UN...	Admin.	-169.92
TOTAL						-169.92
01/02/2023	EFT-22-144	Medica		Alerus Checking		
			Health Insurance, January 2023 (Vickie Schleuning)	4380M10 · Employee Benefits - ...	Admin.	-757.58
			Health Insurance, January 2023 (Tammy Duncan)	4380M10 · Employee Benefits - ...	Admin.	-757.58
			Health Insurance, January 2023 (Thomas Tully)	4380M10 · Employee Benefits - ...	Admin.	-757.58
TOTAL						-2,272.74

3:58 PM
01/05/23

Lake Minnetonka Conservation District
Check Detail
January 1 - 15, 2023

Date	Num	Name	Memo	Account	Class	Paid Amount
01/12/2023	22279	AIS Advanced Imaging Solutions		Alerus Checking		
01/12/2023	Inv.#490523...		Copier Contract 12/20/22 - 12-20/23	4140M10 · Office Equipment R&...	Admin.	-459.51
TOTAL						-459.51
01/12/2023	22280	NCPERS Group Life Insurance		Alerus Checking		
01/12/2023	January 2023		Life Insurance, January 2023	4380M10 · Employee Benefits - ...	Admin.	-48.00
TOTAL						-48.00



RESOLUTION 248

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 January 2023.

ATTEST:

Ann Hoelscher, Acting Chair

Dan Baasen, Secretary

5:05 PM

01/06/23

Accrual Basis

Lake Minnetonka Conservation District
Transaction Detail By Account
December 2022

ITEM 7B Attachment

Type	Date	Num	Name	Memo	Class	Amount	Balance
Contributions							
3001M20 · Donations (General) - S/L							
Deposit	12/12/2022	20127	Thomas W. Krenn	STL Donation (General)	STL	75.00	75.00
Deposit	12/12/2022	12863378	William Zander Memik Family Fund	STL Donations (General)	STL	25,000.00	25,075.00
Deposit	12/12/2022	2470	Woodhouse Family Foundation	STL Donation (General)	STL	1,000.00	26,075.00
Deposit	12/12/2022	0154757	Annette and Kenneth Kaiser	STL Donation (General)	STL	250.00	26,325.00
Deposit	12/13/2022	PayPal	John Ryden	Transfer from PayPal (\$50.00)	STL	48.06	26,373.06
Deposit	12/13/2022	PayPal	David Henderson	Transfer from PayPal (\$250.00)	STL	242.28	26,615.34
Deposit	12/19/2022	17405	Donald & Deborah Bierbaum	STL Donation (General)	STL	250.00	26,865.34
Deposit	12/19/2022	14226	Leslie and Judy Heinen	STL Donation (General)	STL	200.00	27,065.34
Deposit	12/19/2022	14833	Edward N. Dayton	STL Donation (General)	STL	250.00	27,315.34
Deposit	12/19/2022	17145	James Wymann	STL Donation (General)	STL	250.00	27,565.34
Deposit	12/19/2022	17330	Lawrence D. Elsen Rev Trust	STL Donation (General)	STL	50.00	27,615.34
Deposit	12/19/2022	32351	John & Nancy Berg	STL Donation (General)	STL	100.00	27,715.34
Deposit	12/19/2022	8775	Steve Tallen	STL Donation (General)	STL	250.00	27,965.34
Deposit	12/28/2022	14136	Daniel & Kathleen Walsh	STL Donation (General)	STL	80.00	28,045.34
Deposit	12/28/2022	21508	Theodore J Holsten	STL Donation (General)	STL	25.00	28,070.34
Deposit	12/28/2022	2257	Judith Starkey (OPT OUT)	STL Donation (General)	STL	25.00	28,095.34
Deposit	12/28/2022	25564	Stanley Goldberg	STL Donation (General)	STL	100.00	28,195.34
Deposit	12/28/2022	3342	Big Island, Inc.	STL Donation (General)	STL	250.00	28,445.34
Deposit	12/28/2022	11317	John P. Bohn (OPT OUT)	STL Donation (General)	STL	25.00	28,470.34
Deposit	12/28/2022	9633	Jeff and Evie Engler	STL Donation (General)	STL	100.00	28,570.34
Deposit	12/28/2022	13884	Leanna Erickson	STL Donation (General)	STL	50.00	28,620.34
Deposit	12/28/2022	156	David Goode	STL Donation (General)	STL	25.00	28,645.34
Deposit	12/28/2022	8296	Berle A. Richman	STL Donation (General)	STL	10.00	28,655.34
Deposit	12/28/2022	1079	James & Judith Brass	STL Donation (General)	STL	50.00	28,705.34
Deposit	12/28/2022	1173	Michael J. Blum	STL Donation (General)	STL	500.00	29,205.34
Deposit	12/28/2022	14069	Lynn G. Truesdell	STL Donation (General)	STL	100.00	29,305.34
Deposit	12/28/2022	21512	Lyle and Gretchen Shaw	STL Donation (General)	STL	250.00	29,555.34
Deposit	12/30/2022	983	Dean and Doris Akins	STL Donation (General)	STL	500.00	30,055.34
Deposit	12/30/2022	2014	Roger Rovick	STL Donation (General)	STL	250.00	30,305.34
Deposit	12/30/2022	8976	Darryl C. Landstrom	STL Donation (General)	STL	250.00	30,555.34
Deposit	12/30/2022	2606	William & Karan Peters	STL Donation (General)	STL	50.00	30,605.34
Deposit	12/30/2022	13552	Fredrick Herfurth	STL Donation (General)	STL	100.00	30,705.34
Deposit	12/30/2022	13575	Peter & Judy Mitchelson	STL Donation (General)	STL	200.00	30,905.34
Deposit	12/30/2022	14493	Donald & Laurice Beeler	STL Donation (General)	STL	100.00	31,005.34
Deposit	12/30/2022	455974	Irving Properties, Inc.	STL Donation (General)	STL	100.00	31,105.34
Deposit	12/30/2022	19122	John M Bailey	STL Donation (General)	STL	250.00	31,355.34
Deposit	12/30/2022	13521	Lea Rae Reese	STL Donation (General)	STL	50.00	31,405.34
Deposit	12/30/2022	1891	Glenn A. Gurtcheff	STL Donation (General)	STL	50.00	31,455.34
Deposit	12/30/2022	8477	Clifford L. Otten	STL Donation (General)	STL	500.00	31,955.34
Deposit	12/30/2022	4152	Mark J. Feinberg	STL Donation (General)	STL	50.00	32,005.34
Deposit	12/30/2022	1283	Andrew M. Marine	STL Donation (General)	STL	100.00	32,105.34
Deposit	12/30/2022	166	Richard Ragatz	STL Donation (General)	STL	100.00	32,205.34
Deposit	12/30/2022	17286	David Maass	STL Donation (General)	STL	100.00	32,305.34
Deposit	12/30/2022	PayPal	Stephanie & Gregg Larsen	Transfer from PayPal (250.00)	STL	242.28	32,547.62
Deposit	12/30/2022	PayPal	Robert Van Tassel	Transfer from PayPal (200.00)	STL	193.73	32,741.35
Deposit	12/30/2022	PayPal	Jacy Rockman	Transfer from PayPal (50.00)	STL	48.06	32,789.41
Deposit	12/30/2022	PayPal	Richard and Judith Spiegel	Transfer from PayPal (50.00)	STL	48.06	32,837.47

5:05 PM

01/06/23

Accrual Basis

Lake Minnetonka Conservation District

Transaction Detail By Account

December 2022

Type	Date	Num	Name	Memo	Class	Amount	Balance
Deposit	12/30/2022	PayPal	William Cook	Transfer from PayPal (200.00)	STL	193.73	33,031.20
Deposit	12/30/2022	PayPal	Edwin Freeman	Transfer from PayPal (50.00)	STL	48.06	33,079.26
Deposit	12/30/2022	PayPal	Ben Brandt	Transfer from PayPal (250.00)	STL	242.28	33,321.54
Deposit	12/30/2022	PayPal	Peter Lee	Transfer from PayPal (100.00)	STL	96.62	33,418.16
Deposit	12/30/2022	17529	Fred Meyer (OPT OUT)	STL Donation (General)	STL	250.00	33,668.16
Deposit	12/31/2022	11153	Lewis Cradit	STL Donation (General)	STL	50.00	33,718.16
Deposit	12/31/2022	31195	Dan and Ann Baasen	STL Donation (General)	STL	300.00	34,018.16
Deposit	12/31/2022	14106	Lynn and Carol Truesdell	STL Donation (General)	STL	250.00	34,268.16
Deposit	12/31/2022	3345	Bob and Judy Alexander (OPT OUT)	STL Donation (General)	STL	25.00	34,293.16
Deposit	12/31/2022	5931	Pamela G. Boxonie	STL Donation (General)	STL	50.00	34,343.16
Deposit	12/31/2022	9110	Thomas Warner	STL Donation (General)	STL	50.00	34,393.16
Deposit	12/31/2022	2541	Frank and Frances Wilkinson	STL Donation (General)	STL	100.00	34,493.16
Deposit	12/31/2022	1246	Jeffrey and Wynne Trowbridge	STL Donation (General)	STL	100.00	34,593.16
Deposit	12/31/2022	4967	Barbara and Neil Goodwin	STL Donation (General)	STL	50.00	34,643.16
Deposit	12/31/2022	1417	James T. Nystom Foundation	STL Donation (General)	STL	1,500.00	36,143.16
Deposit	12/31/2022	8934	James F Glover	STL Donation (General)	STL	100.00	36,243.16
Deposit	12/31/2022	1015	Maplewoods Improvement Assoc.,...	STL Donation (General)	STL	1,000.00	37,243.16
Deposit	12/31/2022	PayPal	Lesley Dorfner	Transfer from PayPal (50.00)	STL	48.06	37,291.22
Deposit	12/31/2022	PayPal	Rick and Sharon Williamson	Transfer from PayPal (50.00)	STL	48.06	37,339.28
Deposit	12/31/2022	16479	Gregory and Lorraine Scott	STL Donation (General)	STL	25.00	37,364.28
Total 3001M20 - Donations (General) - S/L						37,364.28	37,364.28
Total Contributions						37,364.28	37,364.28
TOTAL						37,364.28	37,364.28



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, 2022)

TO: LMCD Board of Directors

FROM: Thomas Tully, Administrative Environmental Technician

THROUGH: Vickie Schleuning, *Vickie Schleuning* Executive Director

SUBJECT: Denial of Variance for Adjusted Dock Use Area, Side Setback, Dock Length for 2000 Shadywood Road, Orono

ACTION

Board approval of Findings of Fact and Order for denial of the variance application from Arie Tendler, on behalf of the listed owner Cambria Company LLC, for the property located at 2000 Shadywood Road, city of Orono, Crystal Bay.

BACKGROUND

The LMCD held a public hearing on December 14, 2022 to consider the variance application of Arie Tendler, on behalf of the listed owner Cambria Company LLC, ("Applicant") for the property located at 2000 Shadywood Road, Orono, Crystal Bay. The Applicant requested a variance for a single multiple dock to adjust the dock use area, length and side setbacks for 2000 Shadywood Road in Orono ("Site").

On December 14, 2022, the LMCD Board voted to have legal counsel and staff draft Findings of Fact and Order for denial of the requests. The draft Findings of Fact and Order document is attached, as well as the memo and presentation from the previous hearing.

BUDGET

N/A

STRATEGIC PRIORITIES

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

1. Draft Findings of Fact and Order
2. Proposed Site Plan
3. December 14, 2022 Presentation
4. December 14, 2022 Public Hearing Memo (without attachments)

Type: Denial – Single Residential
Dock Variance
Date: January 11, 2022
Applicant: Arie Tendler, on behalf of
listed owner Cambria Company
LLC (Hennepin County
Records)
PID: 17-117-23-31-0001
Address: 2000 Shadywood Road
Orono, MN 55391
Taxpayer: Cambria Company LLC
805 Enterprise Dr E, Ste H
Belle Plaine, MN 56011

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

IN RE:

Application of Arie Tendler, on behalf of the
listed owner Cambria Company LLC, for the
property located at 2000 Shadywood Road in
the City of Orono

**FINDINGS OF FACT
AND ORDER**

The Lake Minnetonka Conservation District (“LMCD”) received an application from Arie Tendler, on behalf of the listed owner Cambria Company LLC, (“Applicant”) for a variance for the property located at 2000 Shadywood Road, Orono, MN 55384 (“Subject Property”).

On December 14, 2022, pursuant to due notice, the Lake Minnetonka Conservation District (“LMCD”) Board of Directors (the “Board”) held a public hearing at the Wayzata City Hall in the City of Wayzata, Minnesota on the application submitted by the Applicant for a variance from LMCD Code of Ordinances (“LMCD Code”) for an adjusted dock use area, side setbacks and dock length.

The Board provided the Applicant (represented by Adam Sienkowski, James H. Gilbert Law Group, PLLC) and the general public an opportunity to be heard at the public hearing and now, based on its proceedings and the record of this matter, hereby makes the following Findings of Fact and Order:

FINDINGS OF FACT

1. The Subject Property is located in the City of Orono, on Crystal Bay, which is part of Lake Minnetonka (“Lake”).

2. The Applicant's parcel has approximately 36.4 feet of 929.4 feet OHW shoreline with converging lot lines.
3. The Applicant proposes to install a dock structure with one Boat Storage Unit (BSU) with a size of 12.1 feet wide by 32.6 feet in length, with a walkway of 4.1 feet wide. The proposed dock length is 64.1 feet. A canopy is proposed.
4. The Applicant's current dock does not meet the standard LMCD Code requirements.
5. Based on the submitted site plan proposed site plan attached hereto as Exhibit A, the Applicant proposes to use the shoreline and dock use area of a City alley dedicated by plat ("Alley") and a resident's property to the north of the Alley, 1998 Shadywood Road, ("1998 Property") for placement of their dock and watercraft storage (collectively, the "Requests").
6. The Applicant is requesting to encroach completely in front of the Alley site and approximately 16 feet (15.99 feet) beyond the extended side site line into 1998 Property, not including any setback provisions.
7. The Alley has approximately 13.5 feet of 929.4 feet OHW shoreline. The 1998 Property has approximately 52 feet of shoreline.
8. At the public hearing, the Applicant's representative Adam Sienkowski, James H. Gilbert Law Group, PLLC, reviewed the request with the Board and their position for the variance and stated the dock crossed in front of the Alley shoreline and extended approximately 8 feet into the 1998 Property.
9. At the public hearing and through email, public comments in opposition were received from the property owners of 1998 Property opposed the variance request. The property owners stated that they had originally purchased the property in 2020 with plans to install their own dock. At the time of purchase, the dock installed at 2000 Shadywood Road was already encroaching into the City alley and the dock use area of 1998 Shadywood Road. A temporary agreement was reached between the two properties which allowed the shared use of the dock installed at 2000 Shadywood Road. The shared dock concept worked well as a temporary measure; however, the property owners strongly oppose a variance to allow the continued encroachment into their dock use area.
10. Agency public comments with concerns were received by email from the City of Orono regarding the use of the Alley from the Community Development Director, Orono Police Chief, Hennepin County Water Patrol. The Alley is a dedicated lake access point based on the City's Comprehensive Plan. This space is used for drainage purposes and it is marked on land with posts to maintain accessibility. It is also used for emergency access. They recommend reviewing placement of proposed non-permanent dock such as shifting the dock as far southward along the lakeshore to decrease the encroachment into the city alley space. The City strongly objected to any permanent dock structure in the proposed location. The City would not object if the location of the non-permanent dock met the above comment regarding location and less encroachment.

11. Nine public comments in opposition were also received through email from the property owners and residents of nearby properties voicing opposition to the variance request with concerns that the variance unreasonably impacts the 1998 Property and City Alley, with no impact to the neighbor to the south. Further, it was expressed that the Applicant should seek a more reasonable solution with agreement with the neighbors for the dock such as shifting the dock to the south.
12. The LMCD received no comment on the Requests from the MCWD or MN DNR.
13. Under Section 2-3.03, Subd. 2, (d)(2) LMCD Code of Ordinances (“Code”), properties with a shoreline of less than 40 feet and in existence on or before February 2, 1970 may extend the dock structure and storage out to four (4) feet of water depth or a maximum of 60 feet into the lake (LMCD). The Applicant did not provide any water depths for review.
14. The Code allows for a reduced setback of 5 feet for dock structures and watercraft storage for a property with under 50 feet of shoreline and in existence on February 2, 1970 (Section 2-3.03, Subd. 3(c)). For shorelines 50 feet to 100 feet, LMCD Code requires setbacks of 10 feet for the first 50 feet of dock structure as it extends into the lake, and setbacks of 15 feet for structure 50-100 feet extending into the lake (LMCD Code Section 2-3.03, Subd. 3(a)). The Applicant’s shoreline is 36.4 feet, but the Applicant is proposing to use approximately 60 feet of shoreline between the three sites, which would no longer qualify for “reduced” setback. The Applicant is also proposing the use of a canopy on the site, LMCD Code requires a minimum 20-foot setback for canopies (LMCD Code Section 2-3.03, Subd. 3(d)).
15. Under Code, Section 2-3.05, Subd. 3, adjoining owners of non-commercial sites may agree by mutual consent to adjust side setback distances and dock use areas. Absent such consent, the Applicant must seek a variance and show the proposed use of the Lake is reasonable and does not unduly interfere with the use of the Lake by the neighboring riparian owners. The Applicant did not provide the LMCD with any documentation that the City or the owner on the other side of the Alley consents to the Applicant’s proposed use of their authorized dock use area. As the Board is aware, recent proposals in which an owner proposed to cross or use a portion of a city’s fire lane were specifically consented to by the affected city.
16. Section 6-5.01 of the Code allows the granting of a variance if the Board determines practical difficulties exists and that granting the variance with whatever conditions it deems are necessary does not adversely affect the purposes of the Code, the public health, safety, and welfare, and reasonable access to or use of the Lake by the public or riparian owners.
17. The term “practical difficulties” is defined in Code, Section 1-3.01, Subd. 76 as meaning “one or more unique conditions of a property that prevent the property owner from using the Lake in a reasonable manner permitted by the Code and that serve as a basis for the property owner to request a variance from the strict application of the provisions of the Code. Practical difficulties only exist with respect to a particular property if the conditions preventing the proposed reasonable use of the property are unique to the property, were not created by the property owner, and are not based solely on economic considerations.”

18. The Board is mindful that converging lots lines have often served as a basis to grant a variance to help ensure a riparian owner has reasonable access to navigable waters of the Lake. However, a balance must be struck so that granting a variance to one owner does not unreasonably interfere with the use of the Lake by another riparian owner. Each case is unique and requires the Board to consider the facts surrounding the particular site so it can apply its regulations in fair and equitable way that achieves the purposes of the LMCD Code while not unreasonably interfering with the riparian rights of any owner.
19. The Applicant proposes a dock that extends entirely across the authorized dock use area of the City's Alley and into the authorized dock use area of 1998 Property, the neighbor on the other side of the Alley. Such a configuration would effectively preclude any reasonable use of the City's riparian rights and would impact the area of the Lake available for use by the neighbor to the north during the boating season.
20. A different configuration and location for a dock at the Site would provide the Applicant reasonable access to and use of the Lake while reducing the scope of the required variances and the extent of interference with the riparian rights of the neighboring owners.
21. Additional information regarding the Requests is provided in the LMCD staff report dated December 14, 2022 and the presentation made thereon at the meeting (collectively, the "Staff Reports"). The Staff Reports are incorporated herein by reference.
22. The LMCD staff recommended denial of the Requests based on a number of reasons set out in the Staff Report. The Board adopts those reasons by reference.
23. The Applicant has not demonstrated meeting the general criteria on which to support the proposed dock configuration and location. Granting the variance would adversely affect the purpose of the Code and effectively preclude any reasonable use of the City's riparian rights and would impact the area of the Lake available for use by the 1998 Property neighbor to the north of the Alley during the boating season.

ORDER

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

1. Denial. The Applicant's request for a variance for a single residential property to allow the installation of a dock as shown on the Site Plan attached hereto as Exhibit A is hereby denied.

2. Authorization. The LMCD staff is authorized and directed to provide a copy of this Order to the Applicant.

BY ORDER OF THE BOARD OF DIRECTORS of the Lake Minnetonka Conservation District this 11th day of January 2023.

Ann Hoelscher, Acting Chair

ATTEST:

Dan Baasen, Secretary

EXHIBIT A
Proposed Site Plan

[attached hereto]

DRAFT



To preserve and enhance the "Lake Minnetonka experience"

2000 SHADYWOOD ROAD CRYSTAL BAY, ORONO VARIANCE APPLICATION PUBLIC HEARING

Lake Minnetonka Conservation District

Board Meeting

December 14, 2022

Presented by: Thomas Tully, Environmental Administrative Technician
Vickie Schleuning, Executive Director

OVERVIEW

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

BOARD ACTION

- Consideration of Variance
- Options
 - **Approve**
 - I make a motion to direct LMCD legal counsel or staff to prepare Findings of Fact and Order approving the variance application from Arie Tendler, on behalf of the listed owner Cambria Company LLC, for the property located at 2000 Shadywood Rd in Orono for final approval at the January 11, 2022, LMCD Board meeting <subject to the following conditions>...
 - **Deny**
 - I make a motion to direct LMCD legal counsel or staff to prepare Findings of Fact and Order denying the variance application from Arie Tendler, on behalf of the listed owner Cambria Company LLC for the property located at 2000 Shadywood Rd in Orono for a final vote at the January 11, 2022, LMCD Board meeting based on...

2000 SHADYWOOD ROAD, ORONO



BACKGROUND

- The Applicant, Arie Tendler, submitted a variance application on behalf of listed property owner Cambria Company LLC.
- The Applicant's parcel has approximately 36.4 feet of 929.4 feet OHW shoreline located on Crystal Bay.
- Parcel located next to a City of Orono alley with approximately 13.5 feet of 929.4 feet OHW shoreline.
- The variance application was submitted due to the converging lot lines and nonconformance with standard regulations for setbacks and length revealed during the change of ownership.

APPLICANT PROPOSAL SUMMARY

- The Applicant proposes to install a dock structure with one Boat Storage Unit (BSU) with a size of 12.1 feet wide by 32.6 feet in length, with a walkway of 4.1 feet wide.
- The proposed dock length is 64.1 feet.
- A canopy is proposed.
- The Applicant proposes to use the shoreline and dock use area of a City alley dedicated by plat ("Alley") and part of a resident's property dock use area to the north of the Alley for placement of the Applicant's dock and watercraft storage.
- The Applicant's current dock does not meet the standard LMCD Code requirements for setback or length.

Proposed Facility Site Plan - 2000 Shadywood

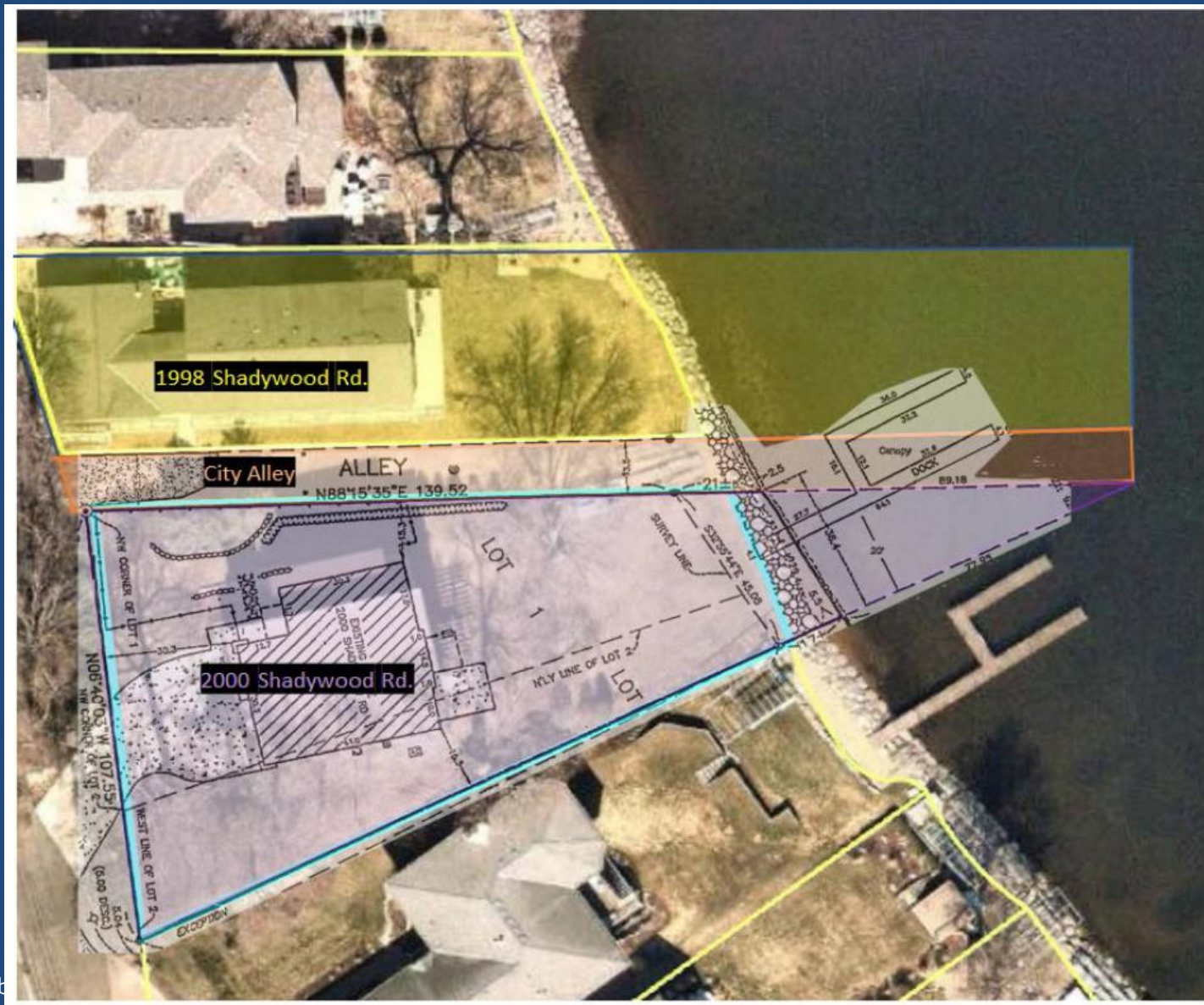


PROPOSED SITE PLAN EXCERPT

wood or in the Alley during 2022



PROPOSED SITE PLAN WITH OVERLAY



VARIANCE STANDARDS

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

PUBLIC / REVIEW AGENCY COMMENTS

- **Agency Review of Application / Comments (General Permit)**
 - No comments received from MCWD or MN DNR
 - City of Orono provided feedback with concerns regarding proposed variance
- **Public**
 - Public comments received from property owners/residents at 1998 Shadywood Road in Orono voicing concern for loss of riparian rights
 - Public Comments received by neighboring residents also voicing concerns for loss of riparian rights
- **Summary of comments follows and provided to Board**

PUBLIC / REVIEW AGENCY COMMENTS CONT...

▪ **City of Orono Response**

- City staff, Orono Police Chief, and Hennepin County Sheriff's Office Water Patrol Lieutenant.
- Alley is a dedicated lake access point based on the City's Comprehensive Plan. This space is used for drainage purposes and it is marked on land with posts to maintain accessibility.
- Recommend reviewing placement of proposed non-permanent dock, the non-permanent dock should shift as far southward along the lakeshore to decrease the encroachment into the city alley space.
- City would strongly object to any permanent dock structure in the proposed location.
- Would not object if the location of the non-permanent dock met the above comment regarding location and less encroachment.

PUBLIC / REVIEW AGENCY COMMENTS CONT...

- **Property Owner/Residents at 1998 Shadywood Road**
 - Originally purchased the property in 2020 with plans to install their own dock.
 - At the time of purchase the dock installed at 2000 Shadywood Road was already encroaching into the City alley and the dock use area of 1998 Shadywood Road.
 - Temporary agreement was reached between the two properties which allowed the shared use of the dock installed at 2000 Shadywood Road.
 - The property owners strongly oppose a variance to allow the continued encroachment into their dock use area.

PUBLIC / REVIEW AGENCY COMMENTS CONT...

- **Property Owners/Residents at 1966, 1972, and 1978 Shadywood Road**
 - Current variance request being made by the owners of 2000 Shadywood Road unreasonably impacts the Keller's while the neighbor to the south does not appear impacted at all.
 - That solution should first be pursued between the owner making the request and the neighbors adjoining to the north and south to determine if a better solution exists compared to the proposed variance being requested.
 - Believe a more reasonable solution would seem to seek a variance in which the dock location be moved south in so far that any impact would be equally shared by adjoining neighbors rather than solely adversely impacting one over the other.
 - If agreement cannot be met, the current variance request should be denied.

PUBLIC / REVIEW AGENCY COMMENTS CONT...

- **Property Owner/Residents at 1990 Shadywood**
 - We wanted to write an email expressing our opposition to the proposed variance for 2000 Shadywood Road.
 - Allowing for this variance will encroach on the property line of our neighbors at 1998 Shadywood and the city alleyway adjacent to our neighborhood.
 - Current variance request being made by the owners of 2000 Shadywood Road unreasonably impacts the Keller's while the neighbor to the south does not appear impacted at all.

RECOMMENDATION (CONTINGENT PUBLIC HEARING COMMENTS)

Based on the information available prior to the public hearing, staff is recommending denial of the variance based on the following. If the Board chooses to approve the variance, these items should be considered.

1. The Applicant's proposal significantly interferes with the riparian use of the Alley by blocking the entire area within the City's extended side site lines.
2. The Applicant's proposal significantly reduces the riparian use of the Lake at 1998 Shadywood Road by reducing the authorized dock use area with a shoreline of approximately 52 feet to 36 feet. This doesn't include the reduction of 20 feet to accommodate side setbacks for a dock that extends out to a maximum of 50 feet, the required 30 feet for a dock that extends out to 60 feet in length. Functionally, this allows the site a width of approximately 16 feet to place a dock, watercraft storage, and other structures, lesser for a longer dock/storage.

RECOMMENDATION CONT...

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

3. The Applicant's proposal does not provide any options to minimize the impacts of violations. For example, the proposed dock is larger than previous docks as illustrated by historical aerials.
4. The proposed canopy is not reasonable given the Site characteristics and negative impacts to the lake and public/neighbors.
5. The proposed dock structure would unreasonably interfere with the riparian rights of the City and the owner to the north as there are other reasonable dock configurations that would reduce the impacts to the other owners and minimize the extent of variances required from the LMCD Code.
6. Water depths within the area would be needed to better evaluate the length variance request.

RECOMMENDATIONS CONT...

Standard Provisions to Include in Variances for Consistency and Efficiency in Administration thereof:

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

PUBLIC HEARING

- **Public Hearing Requirements**
 - Posted in official newspaper on November 24, 2022 (Sun Sailor), and also on November 26, 2022 (Laker Pioneer)
 - Owners of properties within 350 feet notified, 10-day notice sent November 28, 2022
 - Posted online with meeting packet
- **Opportunity for interested individuals to present their views to Board for consideration**
- **Only items under the LMCD Code and Board authority may be considered as part of any Approve or Deny decision**



To preserve and enhance the "Lake Minnetonka experience"

QUESTIONS?



COPY

ITEM 11A

LAKE MINNETONKA CONSERVATION DISTRICT

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

DATE: December 14, 2022 (Prepared December 8, 2022)

TO: LMCD Board of Directors

FROM: Thomas Tully, Environmental Administrative Technician

CC: Vickie Schleuning, Executive Director

SUBJECT: Variance for Adjusted Dock Use Area, Side Setback, Dock Length, 2000 Shadywood Road, Orono

ACTION

Board consideration of a variance for an adjusted dock use area including side setbacks for 2000 Shadywood Road on Crystal Bay in the City of Orono (PID 17-117-23-31-0001) and receive public input during the public hearing.

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

Approval

I make a motion to direct LMCD legal counsel or staff to prepare Findings of Fact and Order approving the variance application from Arie Tendler, on behalf of the listed owner Cambria Company LLC, for the property located at 2000 Shadywood Rd in Orono for final approval at the January 11, 2022, LMCD Board meeting <subject to the following conditions>...

Denial

I make a motion to direct LMCD legal counsel or staff to prepare Findings of Fact and Order denying the variance application from Arie Tendler, on behalf of the listed owner Cambria Company LLC for the property located at 2000 Shadywood Rd in Orono for a final vote at the January 11, 2022, LMCD Board meeting based on...

APPLICATION SUMMARY

The applicant, Arie Tendler, ("Applicant") has submitted an application on behalf of the property owner listed by Hennepin County Property Information records, Cambria Company LLC, for a variance to adjust the dock use area including side setbacks and dock length for 2000 Shadywood Road in the City of Orono ("Site"). The Applicant's parcel has approximately 36.4 feet of 929.4 feet OHW shoreline. The request includes sharing of the shorelines and dock use areas of the adjacent City of Orono alley, as well as a residential property located north of the Alley. The variance application was submitted due to the converging lot lines and nonconformance with standard regulations revealed during the change of ownership.

Site Background

The Applicant's parcel has approximately 36.4 feet of 929.4 feet OHW shoreline. The Applicant proposes to install a dock structure with one Boat Storage Unit (BSU) with a size of 12.1 feet wide by 32.6 feet in length, with a walkway of 4.1 feet wide. The proposed dock length is 64.1 feet. A canopy is proposed. The Applicant's current dock does not meet the standard LMCD Code requirements.

The Applicant proposes to use the shoreline and dock use area of a City alley dedicated by plat ("Alley") and a resident's property to the north of the Alley for placement of their dock and watercraft storage. The Alley has approximately 13.5 feet of 929.4 feet OHW shoreline. The property to the north of the Alley (1998 Shadywood Rd.) has approximately 52 feet of shoreline. Based on the submitted site plan, it appears the Applicant is proposing to encroach completely in front of the Alley site and approximately 16 feet beyond the extended side site line and into the residential property dock use area to the north of the alley, which does not consider any setback provisions. This is approximately 29.5 feet including both the Alley and residential property, not considering any setback allowance and beyond the Site's allowance. The proposed setback to the southern extended side site line is 20 feet.

The LMCD Code allows properties with shoreline of less than 40 feet and in existence on or before February 2, 1970 to extend the dock structure and storage out to four (4) feet of water depth or a maximum of 60 feet into the lake (LMCD Code Section 2-3.03, Subd. 2, paragraph (d)(2)). The Applicant did not provide any water depths for review. Additionally, the LMCD Code allows for a reduced setback of 5 feet for dock structures and watercraft storage for a property with under 50 feet of shoreline and in existence on February 2, 1970 (Section 2-3.03, Subd. 3(c)). For shorelines 50 feet to 100 feet, LMCD Code requires setbacks of 10 feet for the first 50 feet of dock structure as it extends into the lake, and setbacks of 15 feet for structure 50-100 feet extending into the lake (LMCD Code Section 2-3.03, Subd. 3(a)). The Applicant is proposing to use approximately 60 feet of shoreline between the three sites, which would no longer qualify for "reduced" setbacks. The Applicant is also proposing the use of a canopy on the site, LMCD Code requires a minimum 20-foot setback for canopies (LMCD Code Section 2-3.03, Subd. 3(d)).

The Applicant did not provide the LMCD with any documentation that the City or the owner on the other side of the Alley consents to the Applicant's proposed use of their authorized dock use area. As the Board is aware, recent proposals in which an owner proposed to cross or use a portion of a city's fire lane were specifically consented to by the affected city. Under LMCD Code, Section 2-3.05, Subd. 3, adjoining owners of non-commercial sites may agree by mutual consent to adjust side setback distances and dock use areas. Absent such consent, the Applicant must seek a variance and show the proposed use of the Lake is reasonable and does not unduly interfere with the use of the Lake by the neighboring riparian owners.

Converging lots lines have often served as a basis for the Board to grant a variance to help ensure a riparian owner has reasonable access to navigable waters of the Lake. However, a balance must be struck so that granting a variance to one owner does not unreasonably interfere with the use of the Lake by another owner. Each case is unique and requires the Board to consider the facts surrounding the particular site so it can apply its regulations in fair and equitable way that

achieves the purposes of the LMCD Code while not unreasonably interfering with the riparian rights of any owner.

In this case, the Applicant propose a dock that extends entirely across the authorized dock use area of the City's Alley and into the authorized dock use area of the neighbor on the other side of the alley. Such a configuration would effectively preclude any reasonable use of the City's riparian rights and would impact the area of the Lake available for use by the neighbor to the north during the boating season. A different configuration for a dock at the Site would provide the Applicant reasonable access to and use of the Lake while reducing the scope of the required variances and the extent of interference with the riparian rights of the neighboring owners.

CONSIDERATIONS OF VARIANCE

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

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

PUBLIC COMMENTS

In compliance with MN DNR General Permit 97-6098, the MN DNR, MCWD, and the City of Orono were provided information regarding the application on November 28, 2022. City and agency comments were due by December 7, 2022. Comments received as of December 7, 2022, are summarized below. Any comments received after that date will be provided at the Board meeting for review.

- No comments were received from the MCWD or MN DNR.
- The City of Orono provided feedback with concerns about the proposed variance. The City of Orono, Orono Police Chief, and Hennepin County Sheriff's Office Water Patrol stated they would not object to a seasonal dock during the boating season; however, it is important to keep the access fully open for snowmobile access in the winter. Additionally, the City of Orono recommends reviewing the placement of the proposed non-permanent dock, suggesting that the non-permanent dock should shift as far

southward along the lakeshore to decrease any encroachment into the city alley space. The City of Orono would strongly object to any permanent dock structure in the proposed location. However, the City would not necessarily object to a non-permanent dock if it met the above condition of shifting to a more southernly location so as to not encroach. A letter is attached.

Comments received by LMCD staff from the general public as of the date indicated above are summarized below:

- The LMCD received comments voicing concern from the property owners north of the City of Orono Alley. The property is located at 1998 Shadywood Road. The property owners voiced that they had originally purchased the property in 2020 with plans to install their own dock. At the time of purchase the dock installed at 2000 Shadywood Road was already encroaching into the City alley and the dock use area 1998 Shadywood Road. A temporary agreement was reached between the two properties which allowed the shared use of the dock installed at 2000 Shadywood Road. The shared dock concept worked well as a temporary measure; however, the property owners strongly oppose a variance to allow the continued encroachment into their dock use area. An email is attached.

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 identifying potential issues and impacts of a project. Only items under the LMCD Code and that are within the Board's regulatory authority may be considered as part of any approval or denial decision.

The public hearing notice was published in the November 24, 2022 edition of the Sun Sailor (official newspaper) and the November 26, 2022 edition of the Laker Pioneer. On November 28, 2022, a public hearing notice was mailed to persons who reside upon or are owners of property within 350 feet of the Site. In addition, the Board packet was posted online and the agenda was posted on the LMCD bulletin board.

RECOMMENDATION

Based on the information available at the time of this report, staff is recommending denial of the requested variance based on the following items. This recommendation could change based on new information that is provided after preparation of this report and through the public hearing. The Board may wish to consider other items as well.

- 1) The Applicant's proposal significantly interferes with the riparian use of the Alley by blocking the entire area within the City's extended side site lines.
- 2) The Applicant's proposal significantly reduces the riparian use of the Lake at 1998 Shadywood Road by reducing the authorized dock use area with a shoreline of approximately 52 feet to 36 feet, not including the further reduction of 20 feet to accommodate side setbacks for a dock that extends out to a maximum of 50 feet or 30 feet for a dock that extends out to 60 feet in length. Functionally, this allows the site a width of approximately 16 feet to place a dock, watercraft storage, and other structures, lesser for a

longer dock/storage.

- 3) The Applicant's proposal does not provide any options to minimize the impacts of violations. For example, the proposed dock is larger than previous docks as illustrated by historical aerials.
- 4) The proposed canopy is not reasonable given the Site characteristics and negative impacts to the lake and public/neighbors.
- 5) The proposed dock structure would unreasonably interfere with the riparian rights of the City and the owner to the north as there other reasonable dock configurations that would reduce the impacts to the other owners and minimize the extent of variances required from the LMCD Code.
- 6) Water depths within the area would be needed to better evaluate the length variance request.

BUDGET _____

N/A

STRATEGIC PRIORITIES _____

☐

Operational
Effectiveness

☐

Clear & Timely
Communications

☐

Effective
Governance

☒

Lake
Protection

☐

Other

ATTACHMENTS _____

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



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 _____

☐

Operational
Effectiveness

☐

Clear & Timely
Communications

☐

Effective
Governance

☒

Lake
Protection

☐

Other

ATTACHMENTS _____

1. LMCD Code Excerpts
2. Aerial Imagery of Site
3. Proposed Site Plan
4. Multiple Dock License Application and Submittals (Applicant Attorney Letter, Quit Claim Deed, Court Decree of Descent, Assignment and Transfer of All Riparian Rights, MN Business Filing)
5. Applicant Time Limit Extension Request
6. Public Hearing Notice (Sun Sailor)
7. Public Hearing Notice Mailing
8. Public Comments

ITEM 11A ATTACHMENT

LMCD Code Excerpts



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

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

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

- (a) General Limit. The length of an authorized dock use area extends into the Lake a distance equal to the length of shoreline frontage of the site as measured at right angles to the side site lines as extended into the Lake. The total length of the authorized dock use area shall not extend beyond 100 feet, even if the site has more than 100 feet of shoreline frontage, unless otherwise specifically provided in this Section.

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

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

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

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

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

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

Section 2-4.05. General Density Rule.

Subd. 1. How Density is Determined. The number of restricted watercraft that may be stored at a site, which is referred to herein as restricted watercraft density, shall be determined in accordance with this Section and any applicable special density rules set out in Section 2-4.09. The restricted watercraft density for a site may be increased if a special density license is issued as provided in Section 2-4.11. For purposes of this Chapter, a site is considered to be used for mooring or docking more than the permitted number of restricted watercraft if a greater number of restricted watercraft than are allowed by this Chapter are moored, docked, anchored, or secured at the site, for any period of time, on three or more calendar days in any 14-day period.

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

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:

- (n) Whether the proposed structure is compatible with the LMCD watercraft density classification criteria in Article 2, Chapter 4;
- (o) Whether the proposed structure complies with the authorized dock use area requirements in Article 2, Chapter 3;
- (p) Whether the proposed structure will be structurally safe for use by the intended users;
- (q) Whether the structure will comply with the regulations contained in this Code;
- (r) 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;

- (s) Whether the proposed structure will be compatible with the adjacent development;
- (t) Whether the proposed structure will be compatible with the maintenance of the natural beauty of the Lake;
- (u) Whether the proposed structure will affect the quality of the water of the Lake and the ecology of the Lake;
- (v) 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;
- (w) Whether adequate sanitary and parking facilities will be provided in connection with the proposed structure;
- (x) Whether the proposed structure will serve the general public as opposed to a limited segment of the public or a limited geographical area;
- (y) 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
- (z) 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).

Subd. 5. Limitations. The following limitations and restrictions apply to structures licensed under this Section.

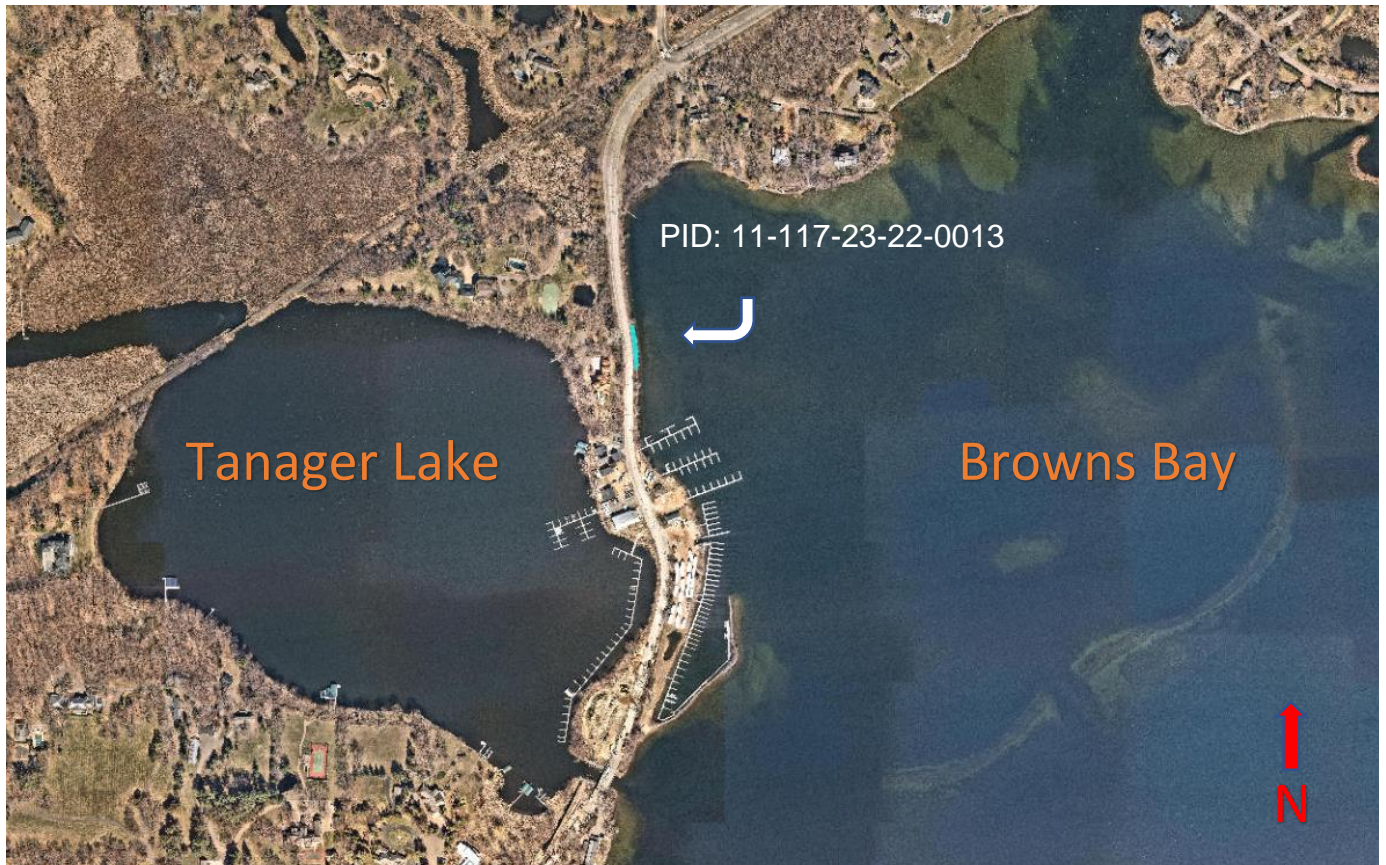
- (a) Zoning Districts. No commercial single dock shall extend across the extended zone line between sites zoned differently by a municipality.
- (b) Non-Continuous Shoreline. If the dock use area of the site includes non-continuous shoreline, the limitations in Section 2-4.09, subdivision 4(a) apply.

Subd. 6. As-Built Survey. Upon completion of the dock installation, the licensee shall provide the LMCD an as-built survey of the docks and site indicating the 929.4 NGVD foot shoreline, a line indicating the 100 foot distance from shore, dock dimensions, setbacks from the extended property lines, and witness marks for seasonal docks. The Executive Director or the Board may waive this requirement in writing.

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

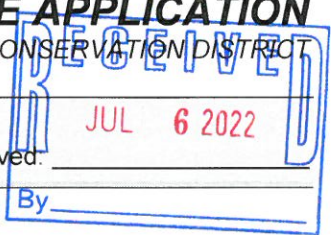
For illustrative purposes only. Source: Hennepin County Interactive Property Map, 08/12/2022





vd

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



For LMCD Use
Fee Amount: \$702.50 Check # 5626 Date Received: _____
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
RECORDED 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

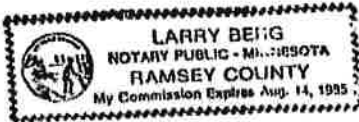
THIS
DEED IS PART OF
THIS INSTRUMENTThis grant is subject to the restriction that said property not be
used for boat launching purposes, and that said property not be
transferred by the Grantee without holding a public hearing to con-
sider such a transfer, and to the further restriction that no fishing
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 [Signature] 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

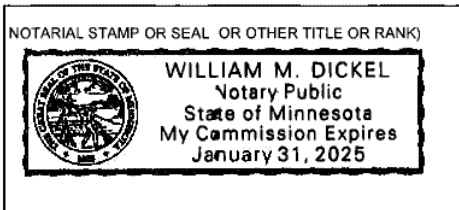
Estate of Anne B. Duff
Grantor

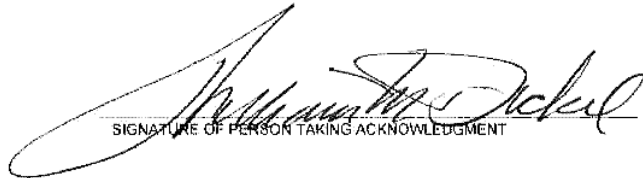


Elizabeth C. Duff, Special Administrator

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

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

A handwritten signature in black ink, appearing to read 'Thomas Tully', is placed over the 'FROM:' line of the header.

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.

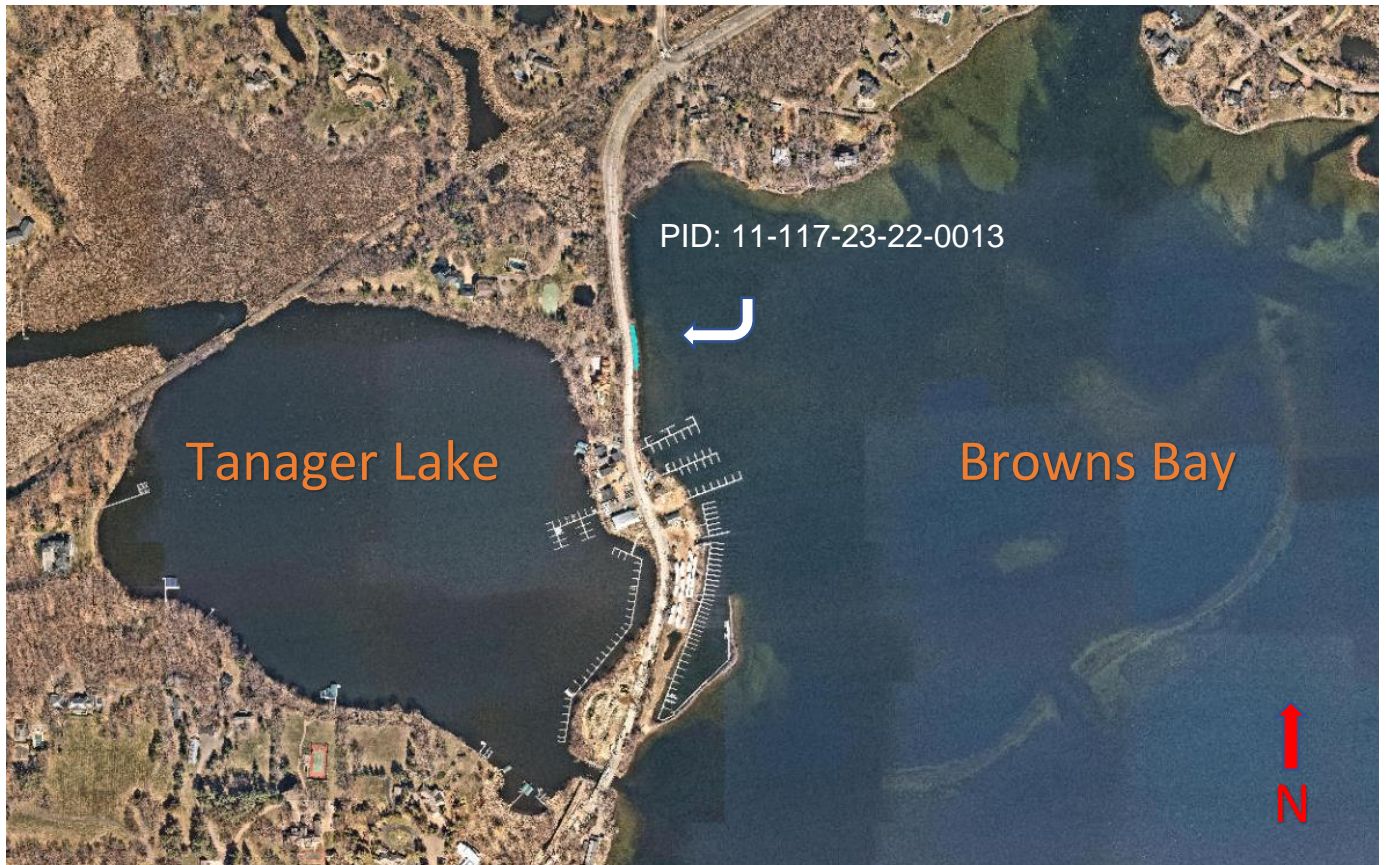
Those desiring to participate in the hearing may also email the Environmental Administrative Technician at tully@lmcd.org for information. The meeting place is Wayzata City Hall, 600 Rice Street, Wayzata, MN 55391. Information about meeting logistics will be available on the LMCD website, www.lmcd.org.

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.

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

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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