



LAKE MINNETONKA CONSERVATION DISTRICT

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AGENDA
LAKE MINNETONKA CONSERVATION DISTRICT
Wednesday, June 28, 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.

6:00 Work Session to discuss:

1. Watercraft for Hire Policy
2. Report from Board Retreat

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 (06/14/2023 LMCD Regular Board Meeting)**

7) APPROVAL OF CONSENT AGENDA

- A) Audit of Vouchers (06/16/2023 – 06/31/2023)
- B) Resolution Accepting Save the Lake Contributions (05/10/2023 – 06/09/2023)

8) 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. 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.*

9) PRESENTATIONS

- A) Bowfishing Tournament Presentation from Home Town Heroes Outdoors
- B) Special Event Presentation from Project Got Your Back

10) PUBLIC HEARING

- A) Variance for 135 Mound Ave

11) OTHER BUSINESS

12) OLD BUSINESS

13) NEW BUSINESS

- A) Administrative Fines Cover Memo, Notice of Violation, and Draft Ordinance
- B) Variance Fees, Escrow, Recording

14) TREASURER REPORT

- A) May Balance Sheet and I and E Reports

15) EXECUTIVE DIRECTOR UPDATE

- A) Summer Hours
- B) Staff Compensation
- C) Banking Update
- D) Scanning Update

16) ADJOURNMENT

ARTICLE 7
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CHAPTER 1
WATERCRAFT FOR HIRE

7-1.01. Certificate of Registration.

Subd. 1. Required. No person shall operate or offer to operate a watercraft for hire on the Lake without first obtaining a certificate of registration from the LMCD.

Subd. 2. Obtaining a Certificate. Applications for a certificate of registration to operate a watercraft for hire on the Lake shall be submitted and processed as provided in Section 6-5.13.

Subd. 3. Renewals. A renewal certificate of registration is required for each year of operation and must be obtained by March 1st of each year.

7-1.03. Watercraft Registration. All watercraft for hire or charter shall be registered with the state of Minnesota as “For Hire” or be United States Coast Guard Documented for Commercial Use. The license number shall be affixed to the hull with a valid registration sticker. The United States Coast Guard Documentation number must be affixed on a main bulkhead or structural member of the watercraft. The full name of the watercraft must be displayed on the hull, either the stern or on the port and starboard sides of the watercraft.

7-1.05. Required Equipment. When a watercraft is in use and carrying passengers for hire, the equipment identified in this Section must be on board and be in a serviceable condition.

Subd. 1. Fire Extinguishers. Fire extinguishers shall be of a number and type that meets the requirements of the Minnesota DNR and, in addition, each such watercraft shall have installed a fixed fire extinguishing system to protect the engine room(s) on all watercraft using gasoline or other fuel having a flash point of 110 degrees F or lower; provided, however, that where the engine room(s) are so open to the atmosphere to make the use of a fixed system ineffective, no such system will be required. The system shall have the appropriate number of pounds of chemical for the gross volume of space to be covered as specified in 46 CFR § 181.410.

Subd. 2. Bilge Pumps. The watercraft for hire must have one fixed bilge pump for each non-connected bilge compartment. The bilge pump shall be rated at 10 GPM or greater.

Subd. 3. Personal Floatation Devices.

- (a) Number. All watercraft for hire must carry on board one Coast Guard Approved Type 1 adult personal floatation device for each person permitted to be carried on the watercraft, including the crew. In addition, unless children are never to be carried, the watercraft must carry a number of personal floatation devices suitable for children equal to 10 percent of the total number of persons permitted to be carried, or one for each child, whichever is greater;
- (b) Labeling and Reflectivity. All Type 1 PFD’s must be labeled with the vessel’s name or registration number and be in good and serviceable condition. All PFD’s shall have 200 sq. cm. (31 sq. in) of retro-reflective material attached to the front side, 200 sq. cm. of retro-reflective material attached to the back side and on each of the reversible sides; and
- (c) Distribution and Stowing. Life preservers shall be distributed through the upper part of the vessel in protected places convenient to the passengers on board. Life preservers for children shall be stowed separately. When life preservers are stowed so that they are not readily visible to passengers, the containers in which they are stowed shall be marked “LIFE PRESERVERS” and with the number contained therein, in at least one inch letters and figures. This legend shall indicate if the stowage is for “ADULT” or “CHILDREN” life preservers.

Subd. 4. Ring Buoy/Life Buoy. All watercraft for hire must have one ring buoy. The ring buoy shall have 30 feet of line, retro-reflective tape on both sides, and the name of the watercraft on the buoy. The ring buoy must be mounted in an accessible area. The ring buoy shall be 20 inches or more in diameter for watercraft less than 26 feet. For watercraft over 26 feet, a 24 inch buoy is required. If the watercraft is operated during night time hours, buoys shall be fitted with a water activated or automatic light.

Subd. 5. First Aid Kit. All watercraft for hire must have a stocked first aid kit on board.

Subd. 6. Electrical. All watercraft for hire must have all batteries fastened down so as not to move in any direction more than one inch, and the entire battery shall be covered to eliminate sparking or arching.

Subd. 7. Communications. All watercraft for hire shall be required to have one of the following types of communications: VHF Marine Radio with Channels 16 and 6 and/or a cellular telephone.

7-1.07. Number of Passengers Permitted. The maximum number of passengers and crew permitted to be carried on a watercraft for hire shall be determined by the LMCD and/or the Sheriff and shall be stated on the inspection report. The maximum number of passengers and crew permitted on any vessel for hire of reasonable design and proportions may be determined by length of rail criteria, deck area criteria, or fixed seating criteria. A final test may be a stability test at the owner's expense.

Subd. 1. Length of Rail Criteria. One passenger may be permitted for each 30 inches of rail space available to the passengers at the watercraft's sides and across the transom with a minimum of 18 inches of open deck space.

Subd. 2. Deck Area Criteria. One passenger may be permitted for each 10 square feet of deck area available for the passengers' use. In computing such deck area, the areas occupied by the following shall be excluded:

- (a) Concession stands;
- (b) Toilets and washrooms;
- (c) Companionways, stairways, etc.;
- (d) Spaces occupied by and necessary for handling lifesaving equipment;
- (e) Spaces below deck which are unsuitable for passengers;
- (f) Pilot control area; and

- (g) Interior passageways less than 30 inches wide and passageways on the open deck less than 18 inches wide.

Subd. 3. Fixed Seating Criteria. One passenger may be permitted for each 18 inches of width of fixed seating provided.

Subd. 4. Stability. Notwithstanding the number of passengers permitted by any of the criteria described above, the maximum number may be further limited by stability.

7-1.09. Operational Rules. The following rules shall apply to watercraft issued a certificate of registration under this Chapter and failure to comply with any of these rules is a violation of this Code and may result in the revocation of the certificate of registration.

Subd. 1. Pilots. A person under the age of 18 may not operate the watercraft. All pilots must have a current and valid State of Minnesota pilots' license.

Subd. 2. Major Repairs and Alterations. No major repairs or alterations affecting the safety of the watercraft or passengers with regard to the hull, super structure, machinery, or equipment shall be made without the knowledge and approval of the Sheriff's water patrol. Proposed alterations shall be approved by the Sheriff's water patrol before any work is started. Drawings, sketches, or written specifications describing the alterations in detail may be required. Drawings will not be required for repairs in kind.

Subd. 3. Prohibitions. No pilot of a watercraft holding a certificate under this Chapter shall, while carrying passengers for hire, do any of the following:

- (a) Stop, moor, or anchor closer than 300 feet from shore except at authorized ports of call;
- (b) Stop, moor, or anchor at any place in the lake other than an authorized port of call after 6:00 p.m. for more than two hours;
- (c) Pass within 300 feet of the shoreline except at an authorized port of call or in channels having a width of less than 600 feet in which case such watercraft shall remain as nearly in the center as is consistent with good seamanship and the rules of the road;
- (d) Play any live or amplified music or amplified voice except in fully enclosed areas of the watercraft or in emergency situations; and
- (e) Conduct operations and activities on the watercraft in such a way as to constitute a public nuisance on the watercraft or to interfere with the peaceful enjoyment of the Lake and of surrounding properties by riparian owners and by the public.

Subd. 4. Acts of Employees. The act of any employee on the watercraft is deemed the act of the certificate holder as well, and the certificate holder shall be liable to all penalties provided by this Code and the law equally with the employee.

Subd. 5. Hours of Operation. All watercraft carrying passengers for hire must disembark all customers, passengers, or patrons by 12:30 a.m. and must return to and be tied, moored, or secured for the night at its home port by 1:00 a.m.

7-1.11. Watercraft Size Exception. Watercraft issued a certificate of registration may exceed the limitations on the size of watercraft set forth in 8-1.09, providing the following conditions are met:

- (a) The size of the watercraft may not exceed either 90 feet in length or 22 feet in width;
- (b) The watercraft may not have a rated capacity of over 149 passengers, excluding crew;
- (c) The watercraft must have twin engines and bow thrusters to ensure maneuverability of the watercraft;
- (d) Watercraft exceeding the size limits of Section 8-1.09 may only be operated on the Main Upper Lake and Main Lower Lake, except that such watercraft may be operated on other areas of the Lake either to store the watercraft at its home port or to pick up or drop off passengers at authorized ports of call; and
- (e) The watercraft shall be of a height that allows it to pass between the Main Upper Lake and Main Lower Lake under the Narrows Bridge between Lafayette Bay and Carman Bay.

CHAPTER 2
ADULT USES ON A WATERCRAFT FOR HIRE

7-2.01. Statement of Intent. It is declared to be the purpose and intent of this Chapter to protect the public health, safety, and welfare of the Lake communities by curtailing the dangers and potential criminal offenses associated with watercraft for hire featuring adult cabaret or exotic dancing. The Board has determined that adult cabarets and exotic dancing may be dangerous if performed on watercraft for hire and may lead to prostitution, sexually-transmitted diseases, drug and alcohol offenses, or other criminal activity. However, it is not the intent of this Chapter to inhibit the freedom of speech component of exotic dancing. Instead, this Chapter represents a balancing of competing interests: reduced dangerous or criminal activity through the regulation of exotic dancing versus the protected rights of exotic dancers and their patrons.

7-2.03. Licensing.

Subd. 1. Required. Adult cabaret or exotic dancing may only be performed on a watercraft for hire issued a certificate of registration under this Code and then only upon issuance of a license from the LMCD.

Subd. 2. Obtaining a License. Applications for a license to host an adult cabaret or exotic dancing on a watercraft for hire on the Lake shall be submitted and processed as provided in Section 6-5.15.

Subd. 3. Conditions. A watercraft for hire issued an adult entertainment license under Section 6-5.15 is subject to, in addition to the conditions expressly placed on the license, all of the following conditions:

- (a) Shall comply with the requirements in this Code for a watercraft for hire, all other applicable provisions of this Code, and any other federal, state, or local law, rule, regulation, and ordinance that may apply;
- (b) Is prohibited from also being licensed for the sale of alcohol under Article 7, Chapter 3;
- (c) Exotic dancing or adult cabaret performances may not be in any way visible or perceivable, including aurally, at any time from outside the watercraft;
- (d) Exotic dancing or adult cabaret may not in any way depict sexual activities;
- (e) Exotic dancing or adult cabaret may not involve display of less than completely and opaquely covered human genitals, female breast(s) below a point immediately above the top of the areola, buttocks, anus, pubic region or male genitals in a discernibly turgid state, even if completely and opaquely covered;
- (f) Exotic dancers and cabaret performers must be at least 21 years of age;

- (g) Patrons must be at least 21 years of age;
- (h) Exotic dancing may only be performed on a platform intended for that purpose which is raised at least two feet from the level of the floor. The platform must incorporate a padded safety rail that will prevent dancers or performers from falling from the platform in the event of windy or inclement boating conditions;
- (i) Exotic dancing shall not occur closer than 10 feet from any patron;
- (j) No exotic dancer or performer shall touch, fondle, or caress any patron and no patron shall touch, fondle, or caress any exotic dancer or performer;
- (k) No patron shall directly pay or give any gratuity to any exotic dancer or performer;
- (l) No licensed watercraft may dock at any location except the dock from which the watercraft originates, except in the case of emergency;
- (m) No person other than a law enforcement officer may board a licensed watercraft except from the dock from which the watercraft originates;
- (n) No exotic dancer or performer shall solicit any pay or gratuity from any patron;
- (o) Licensed watercraft may not have booths, stalls, partitioned portions of a room, or individual rooms, except:
 - (1) Restrooms are allowed as long as they are no larger than reasonably necessary to serve the purposes of a restroom, no other activities are provided or allowed in the rooms, and there are no chairs, benches, or reclining surfaces in the rooms; and
 - (2) Storage rooms and private offices are allowed, if the storage rooms and offices are used solely for running the business and no person other than the owner, manager, and employees is allowed in them;
- (p) The operator of the watercraft is responsible for the conduct of his or her place of business and the conditions of order in it. The act of an employee of the licensed watercraft is deemed the act of the operator as well, and the operator is liable for all penalties provided by this Chapter equally with the employee, except criminal penalties; and
- (q) The license issued under this Chapter must be posted in a conspicuous place in the portion of the watercraft used for exotic dancing or adult cabaret.

Subd. 4. Violations. Any person violating this Section or Section 6-5.15 shall be guilty of a misdemeanor.

CHAPTER 3
ALCOHOLIC BEVERAGES AND LICENSING

7-3.01. State Law.

Subd. 1. Authority. The LMCD, pursuant to Minnesota Laws 1986, Chapter 437, has all of the powers of a municipality under Minnesota Statutes, chapter 340A to regulate liquor and issue liquor licenses on the Lake.

Subd. 2. State Law Adopted. The provisions of Minnesota Statutes, chapter 340A, relating to the definition of terms, licensing, consumption, sales, conditions of bonds of licensees, hours of sale, and all other matters pertaining to the retail sale, distribution, consumption, and display of alcoholic beverages are adopted and made a part of this Code as if set out in full.

Subd. 3. Intent. The LMCD recognizes that there are practical differences in the issuance of licenses and the regulation of alcoholic beverages on the Lake than in the typical on-land setting. These differences result in limits on the types of license available for issuance and those eligible to receive them. It is intent of the LMCD to remain as strict as the requirements of Minnesota Statutes, chapter 340A in the regulation of alcoholic beverages and the issuance of alcoholic beverage licenses. To the extent any provision in this Chapter may be less strict than a provision of Minnesota Statutes, chapter 340A, the stricter statutory requirement shall apply. The licenses issued under this Chapter do not authorize the sale of alcoholic beverages on land.

7-3.03. License Required.

Subd. 1. Sale of Alcoholic Beverages. No person shall directly or indirectly deal in, sell, or keep for sale on the Lake any alcoholic beverages without first obtaining a license to do so from the LMCD as provided in this Code. The presence of alcoholic beverages on a watercraft for hire shall be prima facie evidence of possession of alcoholic beverages for the purpose of sale. On-sale alcoholic beverage licenses shall be of three kinds: “on-sale liquor,” “on-sale wine,” and “on-sale 3.2 percent malt liquor” licenses. Sales under each of these on-sale licenses shall be for consumption on the watercraft for hire only. No person holding an on-sale liquor license or an on-sale 3.2 percent malt liquor license shall sell alcoholic beverages on Sundays without first obtaining a “Sunday sales” license from the LMCD.

Subd. 2. Consumption and Display of Alcoholic Beverages. A business establishment that does not hold an on-sale license under this Code shall not directly or indirectly allow the consumption and display of alcoholic beverages, or knowingly serve any liquid for the purpose of mixing with intoxicating liquor, without first having obtained a “consumption and display” permit from the LMCD as provided in this Code. The serving of any liquid on a watercraft for hire for the purpose of mixing with intoxicating liquors shall be prima facie evidence that intoxicating liquor is being permitted to be consumed and displayed.

Subd. 3. License and Permit Issuance. All licenses and permits provided for under this Chapter shall be submitted, processed, and acted on in accordance with Section 6-5.17.

7-3.05. License and Permit Types.

Subd. 1. On-Sale Liquor Licenses. On-sale liquor licenses shall be issued only to authorized agents of a registered watercraft for hire that meets the requirements of Minnesota Statutes, chapter 340A. On-sale licenses shall only be issued to authorized agents of registered watercraft for hire which provide food service and which have on-demand facilities to serve full meals as well as snacks to all of its patrons.

Subd. 2. On-Sale Wine Licenses. On-sale wine licenses shall be issued only to authorized agents of a registered watercraft for hire that has a restaurant for seating at least 25 guests at one time and shall permit only the sale of wine not exceeding 24 percent alcohol by volume, for consumption on the watercraft for hire only, in conjunction with the sale of food. The holder of an on-sale wine license may sell wine on Sundays without a Sunday sales license. A holder of an on-sale wine license who also holds an on-sale 3.2 percent malt liquor license, and whose gross receipts are at least 60 percent attributable to the sale of food, may sell intoxicating malt liquors on-sale without an additional license, except that sales on Sundays shall require a Sunday sales license. A person issued an on-sale liquor license shall not be required to obtain an on-sale wine license in order to sell wine on the watercraft for hire.

Subd. 3. On-Sale 3.2 percent Malt Liquor Licenses. On-sale 3.2 percent malt liquor licenses shall be issued only to authorized agents of registered watercraft for hire which meet the requirements of Minnesota Statutes, chapter 340A for restaurants, clubs or establishments and allows the sale of 3.2 percent malt liquor. A person issued an on-sale liquor license shall not be required to obtain an on-sale 3.2 percent malt liquor license in order to sell 3.2 percent malt liquor on the watercraft for hire.

Subd. 4. Consumption and Display Permits. Consumption and display permits shall be issued only to a business establishment that operates a registered watercraft for hire that does not hold an on-sale license. A consumption and display permit allows the business establishment to permit the consumption and display of alcoholic beverages on the watercraft for hire, but does not authorize the sale of alcoholic beverages.

Subd. 5. Sunday Sales License. A special license authorizing sales on Sunday in conjunction with the serving of food may be issued to authorized agents of a registered watercraft for hire that meets the qualifications of Minnesota Statutes, chapter 340A for restaurants or clubs which has facilities for serving at least 30 guests at one time, and which has an on-sale license. A special Sunday license is not needed for sales by on-sale wine licensees.

7-3.07. Persons Ineligible for License. No license shall be granted to or held by any person who:

- (a) Is ineligible for such a license under state law by reason of age;
- (b) Has, within five years prior to the application for such license, been convicted of a felony, or of violating any law of this state or local ordinance relating to the manufacture, sale, distribution or possession for sale or distribution of alcoholic beverages and cannot show competent evidence under Minnesota Statutes, section

364.03, of sufficient rehabilitation and present fitness to perform the duties of an alcoholic beverages licensee;

- (c) Has a direct or indirect interest in manufacturers, brewers, or wholesalers of alcoholic beverages;
- (d) Is a non-resident who is not a resident alien;
- (e) Is not of good moral character or repute;
- (f) Has had an intoxicating liquor or 3.2 percent malt liquor license revoked within five years of the license application, or to any person who at the time of the violation owns any interest, whether as a holder of more than five percent of the capital stock of a corporation licensee, as a partner or otherwise, in the premises or in the business conducted thereon, or to a corporation, partnership, association, enterprise, business, or firm in which any such person is in any manner interested;
- (g) Is or during the period of this license becomes the holder of a federal retail liquor dealer's special tax stamp for the sale of intoxicating liquor at any place unless there has also been issued to him a local license to sell intoxicating liquor at such place; or
- (h) Is not the proprietor of the watercraft for hire for which the license is issued.

7-3.09. Businesses Ineligible for License.

Subd. 1. General Prohibition. No alcoholic beverage license shall be issued for any business ineligible for such a license under state law, where a licensee has been convicted of the violation of this Code or of Minnesota Statutes, chapter 340A, or for any watercraft for hire for which an adult entertainment license has been issued or requested.

Subd. 2. Delinquent Taxes and Charges. No alcoholic beverages license shall be granted for operation on any premises on which financial claims of the LMCD are delinquent and unpaid.

7-3.11. Persons and Watercraft Licensed; Transfer. Each license required under this Chapter shall be issued only to the applicant and for the watercraft described in the application. No transfer of a license to another watercraft or to another applicant is authorized without first securing a new license from the LMCD. Any transfer of stock of a corporate licensee is deemed a transfer of the license and a transfer of stock without prior Board approval is a ground for revocation of the license. No licenses may be granted except to watercraft for hire holding a watercraft for hire certificate of registration from the LMCD.

7-3.13. Conditions of License. Every license issued under Section 6-5.17 is subject to the conditions set out in this Section, all other provisions of this Code, and of any other applicable federal, state, or local laws, rules, regulations, and ordinances.

Subd. 1. Federal Stamps. No licensee shall possess a federal wholesale liquor dealer's special tax stamp or a federal gambling stamp.

Subd. 2. Sales to Under Age or Intoxicated Persons. No alcoholic beverages shall be sold or served to any intoxicated person or to any person under legal age.

Subd. 3. Consumption by Under Age Persons. No person under legal age shall be permitted to consume alcoholic beverages on the watercraft for hire.

Subd. 4. Interest of Manufacturers or Wholesalers. No manufacturer or wholesaler of alcoholic beverages shall have any ownership of or interest in an establishment licensed to sell at retail contrary to the provisions of state law. No retail licensee and manufacturer or wholesaler of alcoholic beverages shall be parties to any exclusive purchase contract. No retail licensee shall receive any benefits contrary to law from a manufacturer or wholesaler of alcoholic beverages and no such manufacturer or wholesaler shall confer any benefits contrary to law upon a retail licensee.

Subd. 5. Liquor Dealers' Stamp. No licensee shall sell alcoholic beverages while holding or exhibiting in the watercraft for hire a federal retail liquor dealer's special tax stamp unless the person is licensed under the laws of Minnesota to sell intoxicating liquors.

Subd. 6. Sales of Intoxicating Liquor. No 3.2 percent malt beverage licensee who is not also licensed to sell intoxicating liquor and who does not hold a consumption or display permit shall sell or permit the consumption and display of intoxicating liquors on the watercraft for hire or serve any liquids for the purpose of mixing with intoxicating liquor. The presence of intoxicating liquors on the watercraft for hire shall be prima facie evidence of possession of intoxicating liquors for the purpose of sale. Additionally, the serving of any liquid for the purpose of mixing with intoxicating liquors shall be prima facie evidence that intoxicating liquor is being permitted to be consumed or displayed contrary to this Chapter.

Subd. 7. Searches and Seizures. Any law enforcement officer may enter, inspect, and search a watercraft for hire of a licensee during business hours without a search and seizure warrant and may seize all alcoholic beverages found on the watercraft for hire operating in violation of this Chapter.

Subd. 8. Licensee's Responsibility. Every licensee is responsible for the conduct of the licensee's place of business and the conditions of sobriety and order in it. No watercraft for hire holding a license under this Chapter may play any live or amplified music or amplified voice except in fully enclosed areas of the watercraft or in emergency situations. Operations and activities on the watercraft shall be so conducted as not to interfere with the peaceful enjoyment of the Lake and of surrounding properties by riparian owners and by the public. License holders shall be responsible to ensure that operations and activities shall be so conducted as not to constitute a public nuisance under this Code. The act of any employee on the watercraft for hire is deemed the act of the licensee as well, and the licensee shall be liable to all penalties provided by this Code and the law equally with the employee.

Subd. 9. Inspections. Every licensee shall allow any peace officer, health officer, or properly designated officer or employee of the LMCD, Hennepin County, or the State of Minnesota to enter, inspect, and search the premises of the licensee during business hours without a warrant.

Subd. 10. Display During Prohibited Hours. No watercraft for hire for which a license or permit is issued under this Chapter shall display any alcoholic beverage to the public during hours when the sale of alcoholic beverages is prohibited.

Subd. 11. Gambling. No gambling or any gambling device shall be permitted on any watercraft for hire.

7-3.15. Mandatory Training. Each year, at the direction of the Board, the Executive Director will conduct one or more training sessions for applicants for new or renewal on-sale licenses. Training shall be given in state laws and local ordinances relating to the sale of alcoholic beverages and to the operation of watercraft for hire. No new or renewal license shall be granted to an applicant who has not attended a training session for that license year, either personally or by authorized representative.

7-3.17. Clubs. No club shall sell alcoholic beverages except to members and to guests in the company of members.

7-3.19. Restrictions on Purchase and Consumption.

Subd. 1. Age Misrepresentation. It is unlawful for any underage person to claim to be 21 years old or older for the purpose of obtaining or purchasing an alcoholic beverage.

Subd. 2. Inducing Purchase. It is unlawful for any person to induce an underage person to purchase or procure an alcoholic beverage, or to lend or knowingly permit the use of the person's driver's license, permit, Minnesota identification card, or other form of identification by an underage person for the purpose of purchasing or attempting to purchase an alcoholic beverage.

Subd. 3. Procurement. It is unlawful for any person to sell, barter, furnish, or give an alcoholic beverage to an underage person.

Subd. 4. Possession. It is unlawful for any underage person to possess an alcoholic beverage with the intent to consume it. Possession of an alcoholic beverage creates a rebuttable presumption of intent to consume. This presumption may be rebutted by a preponderance of the evidence.

Subd. 5. Consumption. It is unlawful for any underage person to consume an alcoholic beverage. As used in this subdivision, "consume" includes the ingestion of an alcoholic beverage and the physical condition of having ingested an alcoholic beverage. A violation of this subdivision exists if consumption, or evidence of consumption, is observed.

Subd. 6. Liquor Consumption and Display. No person shall consume or display any alcoholic beverage on the premises of a business establishment, club, charter boat, or watercraft for hire that is not also licensed to sell alcoholic beverages or who does not hold a consumption and display permit.

Subd. 7. Watercraft Owners and Operators. It is unlawful for an owner of a watercraft who is present in the watercraft, or for the operator of a watercraft if the owner is not present, to allow, or fail to take reasonable steps to prevent, the possession or consumption of any alcoholic beverage by an underage person on the watercraft if the owner or operator knows, or reasonably should know, the underage person possesses or is consuming any alcoholic beverage. This prohibition does not apply to situations in which an underage person is lawfully in possession of alcoholic beverages during the course and scope of employment.

Subd. 8. Fish Houses. It is unlawful for the license holder of a fish house who is present in the fish house to allow, or fail to take reasonable steps to prevent, the possession or consumption of any alcoholic beverage by an underage person in the fish house if the license holder knows, or reasonably should know, that the underage person possesses or is consuming any alcoholic beverage.

7-3.21. Hours of Operation. No sale of alcoholic beverages may be made except during times established by state law. All watercraft for hire to which any license has been issued under this Code must disembark all customers, passengers or patrons by 12:30 a.m. and must return to, and be tied, moored or secured for the night at its home port by 1:00 a.m. until 5:00 a.m.

7-3.23. Restrictions; Vested Rights. Upon granting a license under this Code, the Board may impose any restrictions on the operations of the licenses deemed by the Board to be necessary or desirable to protect the public safety, the enjoyment of the Lake by the public, or the safety of passengers on the watercraft for hire. The granting of a license shall create no vested rights in the licensee and all rights and operations of the licensee shall continue to be subject to further or additional regulation by the LMCD.

7-3.25. Authorized Ports of Call.

Subd. 1. Designation. At the time of application for any license under this Chapter, the applicant shall designate specific docks, moorings, or other facilities at which passengers will be embarked and disembarked. Licenses granted by the Board will designate specific authorized ports of call, and no passengers, except law enforcement personnel or employees, may be embarked or disembarked except at either authorized ports of call or other locations at a frequency of no more than once each year at any one location.

Subd. 2. Certificate. No ports of call shall be authorized by the Board without first securing a certificate from the municipality within which such port of call lies stating that the activities to be conducted by the applicant at the port of call are in compliance with municipal zoning laws. No embarkation or disembarkation at other locations is authorized unless permission for such activity has been secured from appropriate officials of the municipality in which it occurs.

Subd. 3. Stopping, Mooring, Anchoring Prohibited. No watercraft for hire issued a license under this Chapter shall stop, moor, or anchor closer than 300 feet from shore except at authorized ports of call or at any place in the Lake other than authorized ports of call after 6:00 p.m. for more than two hours.

Subd. 4. Additional Ports of Call. A licensee may request approval of additional ports of call upon written request of the Executive Director, and consideration by the Board which may grant or deny approval for additional ports of call, or grant approval with conditions in the same manner as in action on an application for a new license. No public hearing is required for an existing licensee who is applying to add additional ports of call.

WS ITEM 2



May 24th 2023 Board Meeting (Workshop)

Facilitator: Dr. Irina Fursman

Workshop Purpose & Objectives:

- To review strategic plan and discuss committee structure
- Continue to develop high performing and cohesive board
- Provide clarity on the work of the Board and priorities

CURRENT STRATEGIC PLAN REVIEW

Reviewing and reflecting on the current strategic plan, LMCD Board Members identified strategic initiatives that are no longer relevant, still relevant, existing barriers to accomplishing some initiatives, and added what is missing.

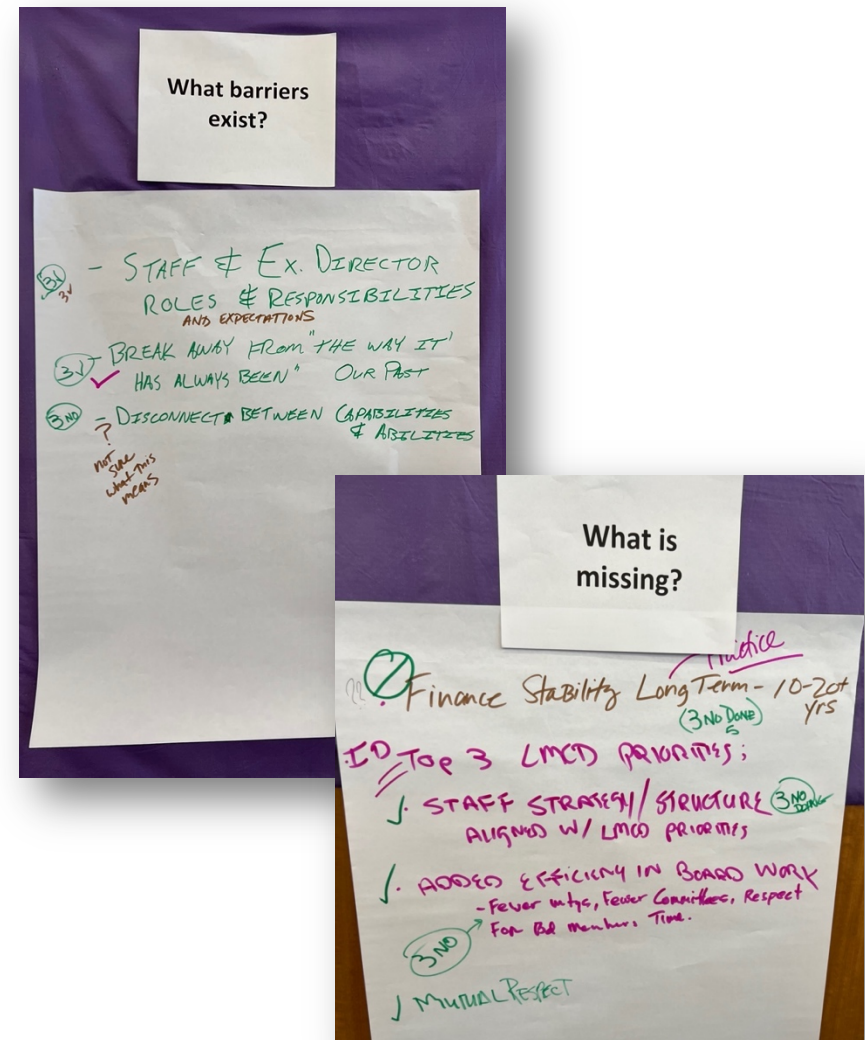
Based on this review and following conversation, the current strategic plan is considered to be completed with an understanding that some initiatives are now SOPs (standard operating procedures) and need to be incorporated into the operational plans for the staff and the Board where appropriate.

What barriers exist?

- Staff and executive director roles, responsibilities, and expectations
- Break away from “the way it has always been” – our past
- Disconnect between capabilities and abilities

What is missing?

- Finance stability long term: 10-20+ years (discussion led to acknowledging that the financial stability question is directly tied to the nature of the agency and the way it is funded through taxes)
- ID top 3 LMCD priorities
- Staff strategy /structure aligned with LMCD priorities
- Added efficiency in Board work (fewer meetings, fewer committees, respect for board members’ time)
- Mutual respect



Lake Minnetonka Conservation District
Board Meeting May 24th, 2023

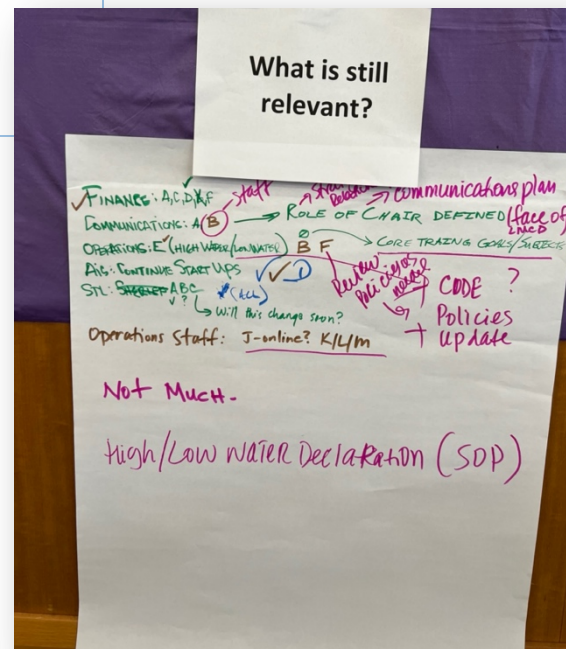
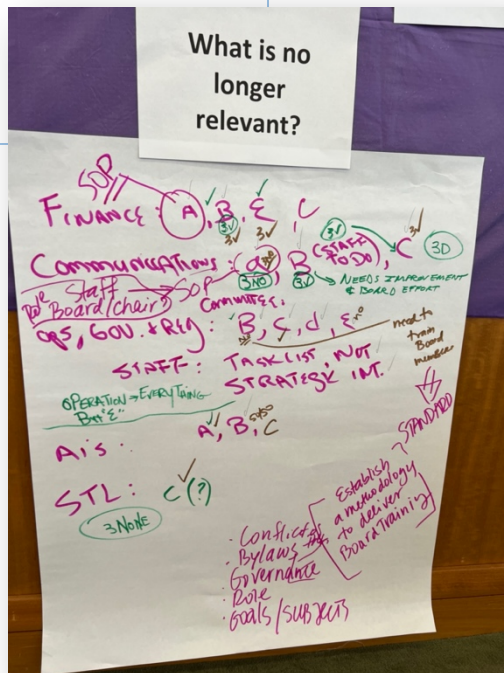


Strategic Priority:	What is no longer relevant? <i>(Completed or proven to be ineffective)</i>	Becoming SOP <i>(Standard Operating Procedure)</i>	Still Relevant <i>(Needs more conversation)</i>
I. Finance	b) finalize and maintain a capital equipment plan; e) assess legal fees and use of attorney;	a) explore investment fund options c) create new funding sources analysis	d) review LMCD fee structure f) fund reserves of 30% to 50% (target 35% and distribute access over 5 years)
II. Communications	c) continue to refine feedback mechanisms for stakeholder and partner initiatives.	a) identify and utilize most effective outlets to convey public information about safety, rules, and best practices (differentiate roles of staff and board; Board Chair to be the spokesperson); b) continue to develop relationships with and regularly update cities, legislators, agencies, and others regarding LMCD activities (needs improvement and board effort);	d) Communications committee to set priorities and develop recommendations for Board for annual budget (i.e. Communication Plan)
III. Operations, Governance, and Regulation	c) continue annual Board self-evaluation process; d) review opportunities for continued officer and board member engagement in LMCD initiatives and committees	e) Update wake, high water and quiet water area policies (change from “update” to “declare”); f) analyze competing lake uses, impacts and lake management options (review policies as needed, code and policies update) <i>All Staff Role items are tasks not strategic initiatives and should be incorporated into staff’s work plans</i>	a) Develop succession plan for LMCD Executive Leadership b) develop training plan for Board regarding standards, process, inclusion, and diversity, etc. (Establish a methodology to deliver Board Training /Onboarding)

Lake Minnetonka Conservation District
Board Meeting May 24th, 2023



Strategic Priority:	What is no longer relevant? (completed or proven to be ineffective)	Becoming SOP (Standard Operating Procedure)	Still Relevant or Needs More Conve
IV. Lake Protection & AIS	<p>a) Close out master plan and roll into a board approved adopted AIS strategy;</p> <p>b) Explore grants/other funding opportunities (e.g., state, federal, local, institution, fees, etc.)</p> <p>c) Finance \$80,000 funded from reserves for 2022</p>		<p>d) Support new ongoing funding mech for AIS treatment and prevention (Funding Strategy)</p> <p>Continue Start Ups</p>
V. Save The Lake	<p>c) Provide for expanded boater education (youth) through online curriculum</p>		<p>a) Fund Hennepin County Sheriff Office Water Patrol officers as request and validated</p> <p>b) Develop and improved fundraising strategy and protocol</p> <p>= > Change to Fund Safety Program</p>



COMMITTEE STRUCTURE & BOARD PRIORITIES

Committee structure discussion resulted in elimination of Operations, Governance, and Regulation Committee with the Officers of the Board taking responsibility to establish a workshop model (replace one regular meeting a month with the workshop).

The remaining committees established the following priorities:

Finance: Fund reserves to target 35% of reserves to budget expenses via the budget and shoot for a 5 year target

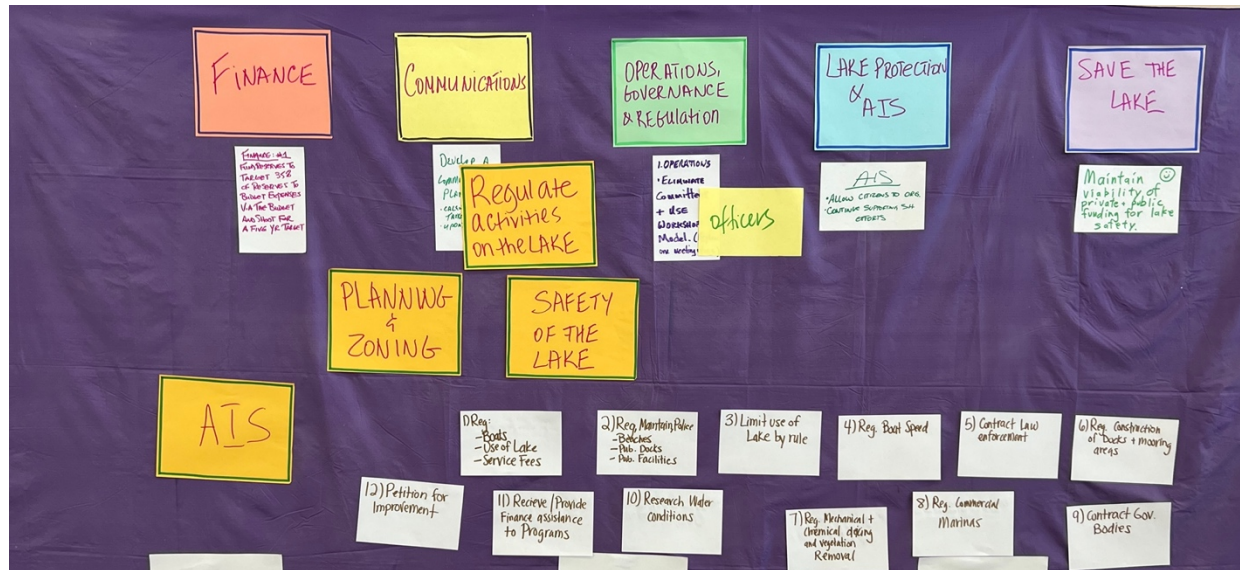
Communications: Develop a communications plan (calendar of tasks, updated periodically)

Lake Protection & AIS: Allow citizens to org; Continue supporting SH efforts

Save The Lake: Maintain viability of private and public funding for lake safety

What is our lane?

Based on the review of the strategic plan, reflections on the work completed and LMCD's twelve (12) primary /mandatory responsibilities, the Board identified REGULATE ACTIVITIES ON THE LAKE as their primary purpose and charge for which they are held accountable. The two main lanes that most activities should fall into are PLANNING & ZONING and SAFETY OF THE LAKE.



Next Steps:

- 1) Sunset the Operations, Gov & Reg Committee
- 2) Establish workshop format for one of the monthly meetings
- 3) Review and update Executive Director job description & qualifications /skills desired
- 4) Align staff roles and responsibilities with the two primary lanes and establish report /updates system for accountability
- 5) Develop Communications Plan with external stakeholders

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., June 14, 2023
Wayzata City Hall

1. CALL TO ORDER

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

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

Members present: Ann Hoelscher, Victoria; Rich Anderson, Orono; Mike Kirkwood, Minnetrista; Bill Cook, Greenwood; Ben Brandt, Mound; Dennis Klohs, Minnetonka Beach; Mark Kroll, Excelsior; Ryan Nellis, Tonka Bay; Nicole Stone, Minnetonka; and Deborah Zorn, Shorewood. Also present: Joe Langel, LMCD Legal Counsel; Thomas Tully, Environmental Administrative Technician; and Maisyn Reardan, Administrative Coordinator, Raina Arntson, Seasonal Assistant.

Members absent: Dan Baasen, Wayzata; Gabriel Jabbour, Spring Park; Denny Newell, Woodland; and Jake Walesch, Deephaven.

Persons in Audience: Eric Evenson, Major Shane Magnuson, Sgt. Rick Waldon, Dan Gustafson, and James Ronning.

4. APPROVAL OF AGENDA

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

VOTE: Motion carried unanimously.

5. CHAIR ANNOUNCEMENTS

A) Raina Arntson Introduction

Chair Hoelscher introduced Raina Arntson, the newest LMCD employee, and welcomed her.

B) Update on Implementation of 300 Foot Rule

Hoelscher invited a member of Water Patrol to provide an update on the implementation of the new 300-foot rule.

Sargent Rick Waldon commented that they have fielded many questions and complaints this year on this topic. He stated that there have been two citations on personal watercraft with 16 verbal warnings, and 24 verbal warnings and no citations for regular watercraft. He commented that they are stopping people for this issue.

Anderson commented that he was on the lake today and asked why the channel buoys are not 300 feet out as a visual. He stated that would be a great visual for users.

Waldon agreed and noted that could be a great discussion for next year as he was unsure it could be implemented this year. He commented that many residents want to put their own 300-foot buoys out and they are being referred to the permit process.

Kirkwood asked if the LMCD should do more on public education.

Waldon replied that this is something new and people are creatures of habit. He believed the word is out and there will just need to be more repeated behavior and reminders from Water Patrol.

Stone asked if most people stopped are aware of the rule.

Waldmon stated that the majority of people were aware and either did not realize or had forgotten. He noted that it takes time for new rules to be learned.

Anderson asked the number of citations for BWIs. He noted that the Water Patrol presence on the lake has been outstanding.

Waldon replied that they are up 31 percent from last year with seven BWI arrests, 64 citations, 13 written warnings, and 346 verbal warnings. He stated that there are a lot of new people being trained in therefore they are fully staffed and get boats out every day.

Klohs asked if there has been feedback from landowners. He asked if the behavior on the lake feels different because of the 300-foot rule.

Waldon replied that he is unsure that it has had an impact on behavior. He stated that lakeshore owners are calling in violations.

Kroll commented that he has seen jumpers on Arcola bridge and asked if they should be called in.

Waldon replied that there are jumpers daily and they do not mind the calls.

6. APPROVAL OF MINUTES- 05/24/2023 LMCD Regular Board Meeting

MOTION: Brandt moved, Stone seconded to approve the 05/24/2023 LMCD Regular Board Meeting minutes as submitted.

VOTE: Motion carried unanimously.

7. APPROVAL OF CONSENT AGENDA

MOTION: Cook moved, Zorn seconded to approve the consent agenda as presented. Items approved included: **7A)** Audit of Vouchers (06/01/2023 – 06/15/2023); **7B)** Resolution Disbanding Standing Committees; and **7C)** Renewal of Amendments to Office Lease Agreement.

VOTE: Motion carried unanimously.

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

There were no public comments.

9. PRESENTATIONS

There were no presentations.

10. PUBLIC HEARING

There were no public hearings.

11. OTHER BUSINESS

There was no other business.

12. OLD BUSINESS

A) Modifications/Update to 9-1.01 – Observer Rule

Hoelscher noted that this item is to consider potential updates or changes to the observer rule, noting that the observer rule for Lake Minnetonka is different than other lakes in the state.

James Ronning, 740 Tonkawood Road, stated that they last spoke about this during August of 2020 via Zoom. He stated that Minnesota law allows for a wide-angle mirror in lieu of an observer whereas Lake Minnetonka requires an observer in the boat regardless of whether there is a wide-angle mirror. He stated that White Bear Lake would most likely be most comparable to Lake Minnetonka and allows the wide-angle mirror in lieu of an observer before Memorial Day, after Labor Day, or before 4 p.m. on weekdays or before noon on Saturdays and Sundays. He recognized that there is traffic on Lake Minnetonka that would dictate the need for an observer but there are times when that would not be necessary, as recognized by White Bear Lake. He stated that he set up a time lapse camera on Stubs Bay during 4th of July weekend in 2021 to record the amount of boat traffic.

Hoelscher stated that the current ordinance refers to water skiing and towing and therefore they should most likely update that portion of the ordinance, whether or not the times are adjusted.

Ronning played the time lapse video of the bay showing very little traffic on the bay on that Thursday and

showing little traffic in the mornings with traffic picking up in the afternoons/evenings of that weekend.

Anderson commented that he would not see a need to differentiate before Memorial Day/after Labor Day.

Ronning stated that he would propose an observer be required on holidays, Saturdays and Sundays after 10 a.m. until 30 minutes after sunset; and Monday through Friday noon through 30 minutes after sunset. He stated that prior to the Memorial Day weekend and after Labor Day weekend he would propose an observer be required noon to 30 minutes after sunset; and Monday through Friday 2 p.m. to 30 minutes after sunset.

Anderson stated that in his opinion the marina is jumping on May 15th and therefore does not see Memorial Day and Labor Day causing a start or end with traffic.

Ronning agreed that the lake is busier on the first nice days after people have been cooped up all winter.

Stone commented that she does not oppose this. She stated that there should be some commonsense language as there is a boat parade on the 4th of July on Grays Bay and boats start lining up at 8:30 a.m.

Kroll commented that they have talked about this over the past year to 18 months. He believed that adoption of the White Bear Lake rule would be appropriate and noted that in reference to Stone's comments, people will most likely avoid a bay with 35 boats lined up.

MOTION: Kroll moved, Anderson seconded to direct staff and legal counsel to prepare a Code amendment to state that an observer is required in the boat Saturdays, Sundays and holidays from 10 a.m. to 30 minutes past sunset; and Monday through Friday from noon until 30 minutes past sunset.

Further discussion: Kirkwood asked if this would extend to families towing kids on inflatables.

Anderson stated that if there are too many distinctions, people will become confused, therefore the rule should apply to all.

Kroll stated that he would be open to amending the motion to state that this applies to situations where towed individuals are above a certain age.

Hoelscher stated that she would not use towed individuals as wake surfers are not towed.

Brandt read language used in statute.

Hoelscher suggested that language be mimicked. She stated that legal counsel could take the input tonight to bring forward an amendment that would include the times in the motion and the description of those participating in water activities based on the State statute.

Kroll confirmed that he and Anderson supported the additional language as described by Hoelscher.

VOTE: Motion carried 9 - 1 (Cook opposed).

Langel noted that vote was for the amendment and now the vote would be for the motion.

Brandt noted that the wide-angle mirror would be needed in lieu of the observer.

Kroll confirmed that would be the direction for staff.

VOTE: Motion carried 9 - 1 (Cook opposed).

13. NEW BUSINESS

A) AIS Treatment Funding Request for Browns Bay, Phelps Bay, and Black Lake

Brandt commented that there have been applications brought forward for treatment in Browns Bay, Phelps Bay and Black Lake. He stated that he has reviewed the applications which were submitted on behalf of the bays by Eric Evenson.

Eric Evenson, Director of Lake Minnetonka Association (LMA), presented the request for EWM treatment in Browns Bay, whole lake treatment of Black Lake, and pilot treatment of Phelps Bay and provided an overview of those requests. He provided details on those that would be involved including the contractors, project/fiscal manager, and noted that the grant funds will only be used for treatments noting that plant surveys, in-kind and administrative costs are not included in the request. All plant survey and other data obtained will be shared with the LMCD and the LMCD would be listed as a partner in the project.

Kirkwood asked for details on the treatment area within one of the bays.

Evenson provided details on the proposed area of treatment. He noted that everything would be treated in Black Lake, with the exception of the cattail area. He confirmed that the DNR is supportive of the treatments and is very interested in the pilot project as that entity is also interested in potential application of that product.

Klohs asked if each lakefront owner is contacted for response.

Evenson replied that there is a published notice required and treatment buoys are placed. He noted that LMA has applied on behalf of the bays, with Bay Captains reaching out to the residents to raise the required matching funds.

Klohs asked what would happen if a lakeshore owner objected.

Evenson commented that there is a waiver that could be filled out if a homeowner did not want treatment, noting that has only happened once in his experience and that area in front of that property is left out.

Anderson shared his experience raising funds for treatment in his bay.

Evenson also shared his experience. He noted that it is often easier to raise funds for the initial treatment, as people sometimes do not see the need for ongoing maintenance, or the homes have turned over in ownership and those people have only seen the nicer conditions.

Klohs commented that the transition to this program has been successful and was wondering about the input from the residents as he recalled situations where people were against chemical treatment.

Evenson stated that he does not receive that type of pushback and noted that they are very transparent about the process and treatment.

Brandt referenced Phelps Bay and asked if the green dots on the map are the treatment areas.

Evenson confirmed that the dots circled in yellow are the proposed treatment areas.

Brandt stated that typically they cover 25 percent of the treatment cost and asked for clarification on the request.

Evenson stated that for Phelps Bay they would not be asking for funding if they were using the typical chemical and are therefore asking for assistance covering the difference in the cost between the chemicals as they are hoping to see longer term benefits with this chemical.

Anderson stated that he would recommend funding that in the typical manner of 25 percent with the Bay Captains left to raise the remaining funds.

Cook stated that he would prefer to include the higher amount requested for Phelps Bay.

Anderson stated that he would prefer to apply the program consistently funding 25 percent.

MOTION: Anderson moved, Brandt seconded to authorize funding for the treatment of EWM and CLP in Black Lake, Browns Bay, and Phelps Bay in the amount of \$14,423.08 and authorize LMCD staff, Anderson, and Brandt to make payment upon verification and completion of the project.

VOTE: Motion carried unanimously. (Zorn abstained)

14. TREASURER REPORT

Anderson had no report.

15. EXECUTIVE DIRECTOR UPDATE

A) Boater Safety Education Program Volunteers

Reardan stated that the Boater Safety educational program will be held on Tuesday June 20th, and they are looking for Board volunteers to assist.

Hoelscher advised available Board members to contact staff if they can assist.

B) LMCD Boat at City of Tonka Bay Marina

Hoelscher stated that information was provided in the packet giving an update on this topic.

Tully stated that Tonka Bay did offer the Board an option to store the boat in that location and noted that a memorandum was provided by Brimeyer.

Nellis stated that he spoke with the City Administrator, and he made the connection and there is a formal consideration process to ensure everything is done appropriately.

Anderson asked if a lift would be allowed. He stated that he could rent a lift to the LMCD for \$1 per year.

Nellis commented that while the City was favorable, he was unsure that there was space.

Hoelscher stated that it seems that there was space, and the details are being worked out.

C) Workshop Protocol

Hoelscher stated that the Board Officers met with Brimeyer last week to discuss the protocol for the new workshop format, which was provided in the packet. She noted that the first workshop will be held on the 28th at 6 p.m. She summarized some of the items that will potentially be discussed.

16. ADJOURNMENT

MOTION: Kirkwood moved, Stone seconded to adjourn the meeting at 7:59 p.m.

VOTE: Motion carried unanimously.

Ann Hoelscher, Chair

Michael Kirkwood, Secretary

Lake Minnetonka Conservation District
Check Detail
 June 16 - 30, 2023

ITEM 7A

Date	Num	Name	Memo	Account	Class	Paid Amount
06/30/2023	EFT-23-62	ADP		Alerus Checking		
			Salaries - Admin	4020M10 · Salaries-002 - Admin	Admin.	-7,531.14
			P.E.R.A	2020 · Payroll Liabilities -	Admin.	1,050.52
			ER PERA	4022M10 · ER PERA - Admin	Admin.	-582.78
			ER/FICAMedicare - Admin	4021M10 · ER Share of Admin FICA/Medicare	Admin.	-574.06
			Long Term Disability	2020-LT · Payroll Liabilities - UNUM	Admin.	27.12
			Contract Labor	4024 · Contract Labor	Admin.	-1,560.00
TOTAL						-9,150.34
06/30/2023	EFT-23-63	ADP Service Fee		Alerus Checking		
			Payroll 06/16/2023 to 06/30/2023	4180M10 · Professional Services - Admin.	Admin.	-92.25
TOTAL						-92.25
06/30/2023	EFT-23-64	WEX Health, Inc.		Alerus Checking		
			HSA Contribution June 2023 (Tully)	4380M10 · Employee Benefits - Admin.	Admin.	-125.00
			HSA Contribution June 2023 (Duncan)	4380M10 · Employee Benefits - Admin.	Admin.	-125.00
TOTAL						-250.00
06/30/2023	EFT-23-65	WEX Health, Inc. Service Fee		Alerus Checking		
			HSA Svc Fee May 2023 (Tully)	4380M10 · Employee Benefits - Admin.	Admin.	-2.75
			HSA Svc Fee May 2023 (Duncan)	4380M10 · Employee Benefits - Admin.	Admin.	-2.75
TOTAL						-5.50
06/30/2023	EFT-23-66	P.E.R.A		Alerus Checking		
			Payroll 6/16/23 - 6/30/23	2020 · Payroll Liabilities -	Admin.	-1,050.52
TOTAL						-1,050.52
06/29/2023	22377	Bagy Jo, Inc.		Alerus Checking		
06/21/2023	73471		T-Shirts for Boater Safety	4111M20 · Public Service Education	STL	-886.50
TOTAL						-886.50
06/29/2023	22378	Chuck Struck		Alerus Checking		
06/14/2023	INV0046		Board Meeting 06/14/2023	4182M10 · Media (Cable/Internet) - Admin.	Admin.	-90.00
TOTAL						-90.00
06/29/2023	22379	City of Mound		Alerus Checking		
06/15/2023	00002525		Rent, July 2023	4320M10 · Office Rent - Admin.	Admin.	-1,733.48
TOTAL						-1,733.48

Lake Minnetonka Conservation District
Check Detail
 June 16 - 30, 2023

Date	Num	Name	Memo	Account	Class	Paid Amount
06/29/2023	22380	ECM Publishers, Inc.		Alerus Checking		
06/10/2023	951616		Legal Notice Nelson Fire Lane Variance	4110M10 · Public Info Legal Fees- Admin.	Admin.	-41.25
			Legal Notice Nelson Fire Lane Variance	4110M10 · Public Info Legal Fees- Admin.	Admin.	-64.00
			Boater Safety Education Program Advertisement	4160M20 · Public Health/Safety- SL	STL	-358.03
TOTAL						-463.28
06/29/2023	22381	Goff Public		Alerus Checking		
05/31/2023	18712		Public Relations	4183M10 · Prof/ Serv. - Communications	Admin.	-1,612.50
TOTAL						-1,612.50
06/29/2023	22382	HueLife, LLC		Alerus Checking		
04/04/2023	2742		Consulting Services	4180M10 · Professional Services - Admin.	Admin.	-5,500.00
TOTAL						-5,500.00
06/29/2023	22383	LMCC		Alerus Checking		
06/15/2023	1550		VOD Service for 06/14/2023 Board Meeting	4182M10 · Media (Cable/Internet) - Admin.	Admin.	-200.00
TOTAL						-200.00
06/29/2023	22384	Vern Whitten Photography		Alerus Checking		
06/12/2023	3396		Black Lake and Seton Channel Print	4980M20 · Contingency - S/L	STL	-37.00
TOTAL						-37.00
06/29/2023	22385	Your Computer Hero		Alerus Checking		
06/14/2023	7839		Tammy's New PC & Installation Set Up	4181M10 · Professional Comp. Serv.-Admin.	Admin.	-1,850.00
TOTAL						-1,850.00
06/29/2023	22386	HueLife, LLC		Alerus Checking		
06/19/2023	2797		Consulting Services	4180M10 · Professional Services - Admin.	Admin.	-3,000.00
TOTAL						-3,000.00

ITEM 7B



RESOLUTION 254

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

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

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

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

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

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

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

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

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

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

RESOLUTION #254

Page 2

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

Adopted by the Board this 28th day of June 2023.

ATTEST:

Ann Hoelscher, Chair

Michael Kirkwood, Secretary

DRAFT

Lake Minnetonka Conservation District
Transaction Detail By Account
January 1 through June 9, 2023

ITEM 7B1

Resolution #254 - Save the Lake Contributions

<u>Date</u>	<u>Num</u>	<u>Name</u>	<u>Memo</u>	<u>Amount</u>
Contributions				
3001M20 - Donations (General) - S/L				
05/10/2023	PayPal	Kerry Skelton	Transfer from PayPal (1000.00)	970.61
05/10/2023	PayPal	Katherine Paulson	Transfer from PayPal (100.00)	96.62
05/10/2023	PayPal	Ellen Peterson	Transfer from PayPal (200.00)	193.73
05/10/2023	PayPal	Thomas Whisler	Transfer from PayPal (50.00)	48.06
05/10/2023	10539	John Dawz	STL Donation (General)	100.00
05/10/2023	550473	Mark & Lori Kroll Fund	STL Donation (General)	3,000.00
05/10/2023	8407745	Tom & Susan Enlow	STL Donation (General)	250.00
05/10/2023	3303	William Nunn	STL Donation (General)	100.00
05/10/2023	2481	Kirt & Niclole Woodhouse	STL Donation (General)	1,000.00
05/10/2023	1103	Dean & Doris Akins	STL Donation (General)	500.00
05/10/2023	12063	Chris & Patty Conroy	STL Donation (General)	500.00
05/10/2023	23582	(OPT OUT)	STL Donation (General)	50.00
05/10/2023	Paypal	Elias Yazbek	Transfer from Paypal (100.00)	96.62
05/10/2023	Paypal	Elaine Haydock	Transfer from Paypal (250.00)	242.28
05/10/2023	Paypal	Darryl C. Landstrom	Transfer from Paypal (500.00)	485.06
05/10/2023	Paypal	Christine Grootwassink	Transfer from Paypal (100.00)	96.62
05/17/2023	Paypal	Ben Bergum	Transfer from PayPal (200.00)	193.73
05/17/2023	Paypal	Amy Adlington	Trasfer from PayPal (200.00)	193.73
06/09/2023	6135	Tom Brossard	STL Donation (General)	100.00
06/09/2023	5851	(OPT OUT)	STL Donation (General)	100.00
06/09/2023	10532	Allen J. Scheffers	STL Donation (General)	250.00
06/09/2023	16409	Bonnie Engler	STL Donations (General)	150.00
				8,717.06
3004M20 - Donations (Solar Light) - S/L			Total 3004M20 - Donations (Solar Lights) - S/L	410.57
05/10/2023	067980	Lake Minnetonka Charter Boat Assoc., Inc.		
Total 3001M20 - Donations (General) - S/L				9,127.63



P.O. Box 544 Deerwood, MN 56444 612-802-8370

1-30-2023

Hennepin Co Sheriff's Office

Water Patrol Unit

4141 Shoreline Drive

Spring Park, MN 55384

Dear Sirs,

Enclosed is an application for a night time bowfishing tournament event on Lake Minnetonka. Home Town Heroes Outdoors is a nonprofit organization supporting Veterans, Police, Fire and EMS personnel. For the last six years the bowfishing community has donated their time to support and to give back to these incredible individuals. We would like to hold the water portion of the event on Lake Minnetonka this year to help with the removal of invasive carp.

Currently we are holding the event at Waverly Water Front Park. It begins at 5pm with a pig roast and prizes. We then have the boats leave and launch on various lakes. At the end of the tournament we return weigh and count fish. Trophies are distributed and the event ends quietly.

We handle all fish disposal and have an excellent track record with no complaints.

If you have any questions please feel free to contact me at 612.802.8370

Curtis Cich

ITEM 9B

AUG
19
2023

Lake
Minnetonka



PARADE

COME HELP US BREAK TWO
GUINNESS WORLD RECORDS
AND SUPPORT YOUR
MINNESOTA VETERANS!

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PRESENTED BY

**Project Got
Your Back**



LAKE MTKA

Catch wave
and be a part of two
GUINNESS WORLD RECORDS
As we flow through the
beautiful chains on
Lake Minnetonka

2PM LEAD BOAT > **3PM** > **4PM BROWNS BAY**
DEPARTS MAYNARD'S & FLETCHER'S MEET AT NORTH SIDE OF BIG ISLAND LIVE MUSIC IN THE BAY UNTIL 6:30PM

- Be a part of 2 World Record attempts
 - > Longest boat parade
 - > Most people floating on pool noodles at once taking place in Browns Bay following parade
- Bring your own pool noodles or pick them up at Maynard's or Lord Fletcher's



REGISTER!

Sign up today and
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FREE event!
@PGYB.ORG
Or snap the QR Code

Live Music By

"PT" PAUL THOMAS

IMMEDIATELY FOLLOWING IN BROWNS BAY

#LIVIN






LAKE MINNETONKA CONSERVATION DISTRICT

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

DATE: June 28, 2023 (Prepared June 22, 2023)

TO: LMCD Board of Directors

FROM: Thomas Tully, Environmental Administrative Technician 

CC: Jim Brimeyer, Interim Executive Director

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

ACTION

Board consideration of a variance for an adjusted dock use area including side setbacks for 135 Mound Avenue on Gideon Bay in the City of Tonka Bay (PID 28-117-23-43-0054) and receive public input during the public hearing.

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

Approval

I make a motion to direct LMCD legal counsel to prepare Findings of Fact and Order approving the variance application from Dennis G. Nelson and Barbra Franta for the property located at 135 Mound Avenue in Tonka Bay for final approval at the July 12, 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 variance application from Dennis G. Nelson and Barbra Franta for the property located at 135 Mound Avenue in Tonka Bay for a final vote at the July 12, 2023, LMCD Board meeting based on...

APPLICATION SUMMARY

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

Site Background

A public hearing for the applicant's proposals was originally held on October 26, 2022 and was brought back for final approval at a LMCD Board meeting on November 9, 2022.

A new application for the property located at 135 Mound Ave was submitted to the LMCD on April 26, 2023. The Applicant has requested an amendment to the original Findings of Facts, this would result in a new Variance being issued. The Applicant has concerns with the current language found in the Findings of Fact. Below I have included the current wording found in the Findings of Fact (Order 6 (g)), as well as the Applicants requested change.

Current Wording: "If the City ever elects to more fully exercise its riparian rights associated with the fire lane and withdraws its consent because it determines the Applicant' dock interferes with its proposed use, the Applicant will be required to yield to the superior riparian rights held by the public in the authorized dock use area of the fire lane. *McLafferty v. St. Aubin*, 500 N.W.2d 165, 168 (Minn. App. 1993). If consent is ever withdrawn, the Applicant, or any future owner, is encouraged to work with the City to identify a solution that will work for both parties and to submit an application seeking whatever approvals from the LMCD that may be required to facilitate the agreed upon plan".

Applicants Request: "If the City ever elects to more fully exercise its riparian rights associated with the fire lane and withdraws its consent (because it determines the Applicant' dock may interferes with its proposed riparian uses), the Applicant may be required to modify his dock configuration to reasonably share riparian rights in accordance with Minnesota riparian rights laws and court decisions as they exists at the time of such exercise by the City. If consent is ever withdrawn, the Applicant or any future property owner is encouraged to work with the City to identify a solution that will work for both parties and to submit an application seeking whatever approvals from the LMCD that may be required to facilitate the agreed upon plan."

Please reference the attached Board Memo for the original public hearing (Dated October 26, 2022), and attached Findings of Fact for a full background regarding the proposed Variance.

PUBLIC COMMENTS

In compliance with MN DNR General Permit 97-6098, the MN DNR, MCWD, and the City of Tonka Bay were provided information regarding the application on June 16, 2023. City and agency comments were due by June 26, 2023. Comments received as of June 22, 2023, are summarized below. Any comments received after June 22, 2023, will be provided at the Board meeting for review.

- There have been no agency comments regarding the application.

As of June 22, 2023 comments received by LMCD staff from the general public are summarized below:

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

PUBLIC HEARING

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

The public hearing notice was published in the June 8, 2023, edition of the Sun Sailor (official newspaper) and the June 11, 2022, edition of the Laker Pioneer. On June 15, 2022, a public hearing notice was mailed to persons who reside upon or are owners of property within 350 feet of the Site. In addition, the Board packet was posted online and the agenda was posted on the LMCD bulletin board.

RECOMMENDATION

The Staffs approach has been to work with both the Applicant and the City of Tonka Bay to find a favorable solution to an ongoing problem regarding responsible sharing of a City of Tonka Bay Fire Lane. The City of Tonka Bay, through resolution 22-38 formally supported the original proposed Variance sharing the City of Tonka Bay Fire Lane. LMCD Staff and Legal Council at the time of the approval of original Variance noted the superior riparian rights held by the public, and the Applicants need to submit to such if ever it was determined that the dock structure at 135 Mound Ave interfered with the Fire Lanes proposed use. Therefore, LMCD staff recommends that the Board deny the proposed Variance due to the nature of which the City of Tonka Bay Fire Lane is meant to serve.

BUDGET

N/A

STRATEGIC PRIORITIES

Operational Effectiveness Clear & Timely Communications Effective Governance Lake Protection Other

ATTACHMENTS

1. Original LMCD Board Memo (October 26, 2022)
2. Approved Findings of Fact (November 9, 2022)
3. Aerial Imagery of Site
4. Current Approved Site Plans
5. Variance Application & Submitted Documents
6. Public Hearing Notice (Sun Sailor and Laker Pioneer)
7. Public Hearing Notice Mailing
8. City of Tonka Bay Resolution 22-38




Original Approved Submittal ITEM 10A

LAKE MINNETONKA CONSERVATION DISTRICT

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

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

TO: LMCD Board of Directors

FROM: Thomas Tully, Environmental Administrative Technician 

CC: Vickie Schleuning, Executive Director

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

ACTION

Board consideration of a variance for an adjusted dock use area including side setbacks for 135 Mound Avenue on Gideon Bay in the City of Tonka Bay (PID 28-117-23-43-0054) and receive public input during the public hearing.

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

Approval

I make a motion to direct LMCD legal counsel to prepare Findings of Fact and Order approving the variance application from Dennis G. Nelson and Barbra Franta for the property located at 135 Mound Avenue in Tonka Bay for final approval at the November 9, 2022, LMCD Board meeting <subject to the following conditions>...

Denial

I make a motion to direct LMCD legal counsel to prepare Findings of Fact and Order denying the variance application from Dennis G. Nelson and Barbra Franta for the property located at 135 Mound Avenue in Tonka Bay for a final vote at the November 9, 2022, LMCD Board meeting based on...

APPLICATION SUMMARY

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

Site Background

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

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

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

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

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

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

Proposed Setbacks

Original Submittal

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

Option

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

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

Proposed Dock Length

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

Proposed BSUs

Original Submittal

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

Option

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

CONSIDERATIONS OF VARIANCE

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 Tonka Bay were provided information regarding the application on October 12, 2022. City and agency comments were due by October 22, 2022. Comments received as of October 21, 2022, are summarized below. Any comments received after October 21, 2022, will be provided at the Board meeting for review.

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

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

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

PUBLIC HEARING

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

The public hearing notice was published in the October 13, 2022, edition of the Sun Sailor (official newspaper) and the October 15, 2022, edition of the Laker Pioneer. On October 13, 2022, a public hearing notice was mailed to persons who reside upon or are owners of property within 350 feet of the Site. In addition, the Board packet was posted online and the agenda was posted on the LMCD bulletin board.

RECOMMENDATION

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

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

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

BUDGET _____

N/A

STRATEGIC PRIORITIES _____

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

Type: Variance for Adjusted Dock Use Area and Side Setback
Date: November 9, 2022
Applicant: Dennis G. Nelson and Barbara A. Franta
PIDs: 28-117-23-43-0054
Addresses: 135 Mound Ave
Tonka Bay, MN 55331

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

IN RE:

Application of Dennis G. Nelson and Barbara A. Franta for Variance for Adjusted Dock Use Area and Side Setbacks for the property located at 135 Mound Avenue, Tonka Bay, MN

**FINDINGS OF FACT
AND ORDER**

The Lake Minnetonka Conservation District (“LMCD”) received an application from Dennis G. Nelson and Barbara A. Franta (collectively, the “Applicant”) for a variance for an adjusted dock use area from the side setback requirements to allow Applicant to install a dock that crosses the northern side site line of the property into the authorized dock use area of the City of Tonka Bay (“City”) with the City’s permission. This application applies to the property located at 135 Mound Avenue within Tonka Bay, Minnesota and which is legally described in the attached Exhibit A (“Subject Property”). The LMCD Board of Directors (“Board”) held a public hearing, after due notice having been provided, on the requested variances on October 26, 2022. Based on the proceedings and the record of this matter, the Board hereby makes the following Findings of Fact and Order:

FINDINGS OF FACT

The Subject Property is located in the City of Tonka Bay (“City”) and is on Gideon Bay, which is part of Lake Minnetonka (“Lake”). The unusual configuration of the Subject Property results in the side site lines of the dock use areas to converge, narrowing the respective dock use areas. The Applicant is seeking adjustment to the dock use area and side setback variances to accommodate a dock and boat storage to allow Applicant to have reasonable use of the Lake.

1. The Subject Property is adjacent to a City fire lane dedicated to the public by plat. There have been persistent issues between the owners of the Subject Property and the City regarding docks on the Subject Property and access to the Lake through the fire lane. A dock has existed on the Subject Property for many years with some changes in configuration.

2. LMCD staff has met with the Applicant and representatives of the City regarding options for fire lane use and dock configuration and placement. The current dock does not meet the standard LMCD Code requirements and encroaches into the City fire lane. The Applicant and City agree to a variance approach which shares the shoreline of the Subject Property and the City fire lane to allow Applicant to have a dock at the Subject Property that complies with configuration set out in this Order in order to resolve long-standing concerns.
3. The Applicant are proposing two options. One is to maintain the current location with: 10.1 feet to 10.8 feet side setback as it extends into the Lake on the southern side; 43.8 to 29.5 feet side setback as it extends into the Lake on the northern side; 1 boat storage unit (“BSU”) with a boat lift 14.2 feet wide to 40 feet long; 1 BSU boat lift 8.25 feet wide by 17 feet long on the northern side of dock structure; and dock length of 78 feet (“Current Location”). The second option is a shortened width dock with: 11.8 to 12.5 feet side setback as it extends into the Lake on the southern side; 43.8 to 29.5 feet side setback as it extends into the Lake on the northern side; 1 BSU with a canopy 12.5 feet wide by 40 feet long; 1 BSU boat lift 8.25 feet wide by 17 feet long on the northern side of the dock structure; and dock length 78 feet (“Optional Location”).
4. The Subject Property has approximately 38 feet of 929.4 OHW shoreline. The adjacent City fire lane has 58 feet of 929.4 feet OHW shoreline.
5. Section 2-3.03 of the LMCD Code of Ordinances (“Code”) requires side setbacks of 15 feet for docks 50-100 feet in length.
6. Any canopy at the proposed dock structure must have a 20-foot setback as required by the Code.
7. For the Applicant’s independent shoreline measurement, the Code permits a maximum length to allow access to four feet of water depth as measured from 929.4 feet OHW, but no more than 60 feet in length. With the combined shoreline measurement of 96 feet, the maximum length would be 96 feet if all the shorelines were dedicated to the Applicant and not also dedicated for the City’s public use.
8. No comments were received from the Minnesota DNR or the Minnehaha Creek Watershed District. The Tonka Bay City Council has approved the Applicant’s proposal. No public comments were received prior to the hearing. At the hearing, a neighbor spoke in favor of the Applicant’s request.
9. Based on amount of shoreline, parcel age, and other property characteristics, the number of watercraft proposed does not violate the maximum watercraft density as described in Sections 2-4.05 and 2-4.09 of the Code.
10. The Applicant proposes to install a dock structure as shown on the site plan attached hereto as Exhibit B (“Site Plan”) or as altered for the Optional Location discussed above (Exhibit C).

11. Additional information regarding this matter is provided in the LMCD staff report and presentation presented at the October 26, 2022, meeting (collectively, the “Staff Report”). The Staff Report is incorporated herein by reference, except that the approvals and conditions contained in this document shall be controlling to the extent there are any inconsistencies.
12. Section 6-5.01, Subd. 2 of the Code, allows for the granting of variances where there is any unusual configuration of shoreline or extended lot lines, which causes a conflict between the owners of two or more adjacent or nearby sites as the use of the same area of the Lake for docks, mooring areas, or other structures or for reasonable access thereto.
13. Section 6-5.01, Subd. 6 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.
14. The term “practical difficulties” is defined in Section 1-3.01, Subd. 76 of the Code 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.”
15. Unusual configurations of shorelines and converging side site lines are challenges for a number of properties on the Lake. Often in such cases, as is true here, the conditions do not reasonably allow a dock to be installed that strictly complies with the requirements of the Code. In such cases, it is reasonable for the Board to consider a variance request to provide reasonable access to the Lake by riparian owners. Though in attempting to provide such access the impacts to the neighboring riparian owners must also be considered. Here, the City is in agreement with the Applicant’s proposed dock structure and location.
16. The LMCD understands some members of the public may use the City’s fire lane as a walk-in access to the Lake or to fish. However, the City has not constructed a dock and has not otherwise undertaken a use of the riparian rights associated with the fire lane that are interfered with by the Applicant’s dock, which has extended into the authorized dock use area of the fire lane for several years.
17. Granting the requested variance will not alter the essential character of the area or adversely affect the purposes of the Code as dock structures are common and the use of the proposed dock structure furthers the purposes of the Code by promoting reasonable access to the Lake. The requested variance is also not contrary to the public health, safety, or welfare in that the dock does not pose a safety or navigation problem on the Lake. The proposed dock structure does not interfere with the navigation of watercraft to or from the neighboring docks.
18. The Applicant’s proposed location of the dock, with the City’s consent, to facilitate access to the Lake is a reasonable use of the Subject Property.

19. Practical difficulties exist under the facts of this case that support the Board exercising its authority under Section 6-5.01 of the Code to grant the requested adjusted dock use area and side setback variance for the Subject Property.

ORDER

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

1. Side Site Line Variance. Side site line and authorized dock use area variance is hereby approved to allow the installation of a dock structure with the setback for the southern site line setback 10.1 feet to 10.8 feet, or as altered for the Optional Location with a setback of 11.8 feet to 12.5 feet. The northern side site line as it extends across the City's fire lane to the north shall have setbacks of 43.8 feet to 29.5 feet as shown on the Site Plan attached hereto as Exhibit B or optional Exhibit C, respectively. The dock structure shall be installed and maintained in the location as shown on the Site Plan attached hereto as Exhibit B or as altered for the Optional Location Exhibit C.
2. Updated Site Plan. Applicant must submit an updated site plan with the final configuration and measurements as approved by the LMCD within forty-five (45) days of acceptance.
3. Boat Storage Units. Two boat storage units are approved for the Subject Properties to be used solely by persons who reside at the Subject Property.
4. Boat Canopies. A boat canopy is allowed if the Applicant place the dock structure in the Optional Location.
5. Dock Length. The length of the dock structure and storage should be no longer than proposed 78 feet from the 929.4 feet OHW since water levels appear sufficient during normal 929.4 feet NGVD OHW.
6. Conditions. The variance granted in this Order is subject to compliance with all of the following conditions:
 - (a) All watercraft must be stored within the BSU structure(s).
 - (b) Watercraft stored in boat slips may not extend beyond the length of the slip. Prohibited extensions include any portion of the watercraft, including all attached equipment in its stored position that extend beyond the ends of the dock or boat slip.
 - (c) Any structures placed as part of these variances shall be maintained in good condition and shall promptly be removed, together with any watercraft stored on them, if this variance is ever revoked by action of the Board or if it is rendered null and void.
 - (d) This Order shall be rendered null and void in event the Subject Property is subdivided.

- (e) 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 Properties into conformance with the Code without reliance on this variance within the same period.
- (f) This Order grants no vested rights to the use of the Lake. Use of the Lake shall at all times remain subject to regulation by the LMCD to ensure the public of reasonable and equitable access to the Lake.
- (g) If the City ever elects to more fully exercise its riparian rights associated with the fire lane and withdraws its consent because it determines the Applicant' dock interferes with its proposed use, the Applicant will be required to yield to the superior riparian rights held by the public in the authorized dock use area of the fire lane. *McLafferty v. St. Aubin*, 500 N.W.2d 165, 168 (Minn. App. 1993). If consent is ever withdrawn, the Applicant, or any future owner, is encouraged to work with the City to identify a solution that will work for both parties and to submit an application seeking whatever approvals from the LMCD that may be required to facilitate the agreed upon plan.
- (h) Utilization of the Lake pursuant to this Order constitutes, and shall be deemed, acceptance of, and agreement to, the terms and conditions of this variance without exception, qualification, or reservation.

BY ORDER OF THE BOARD OF DIRECTORS of the Lake Minnetonka Conservation District this 9th day of November 2022.


Gregg Thomas, Chair

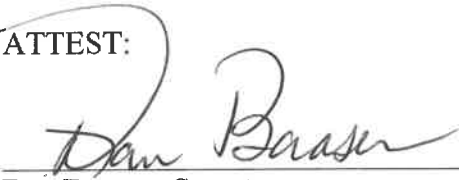
ATTEST:

Dan Baasen, Secretary

EXHIBIT A
Legal Description of Subject Property

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

EXHIBIT B
Site Plan Original

[attached hereto]

LEGAL DESCRIPTION:

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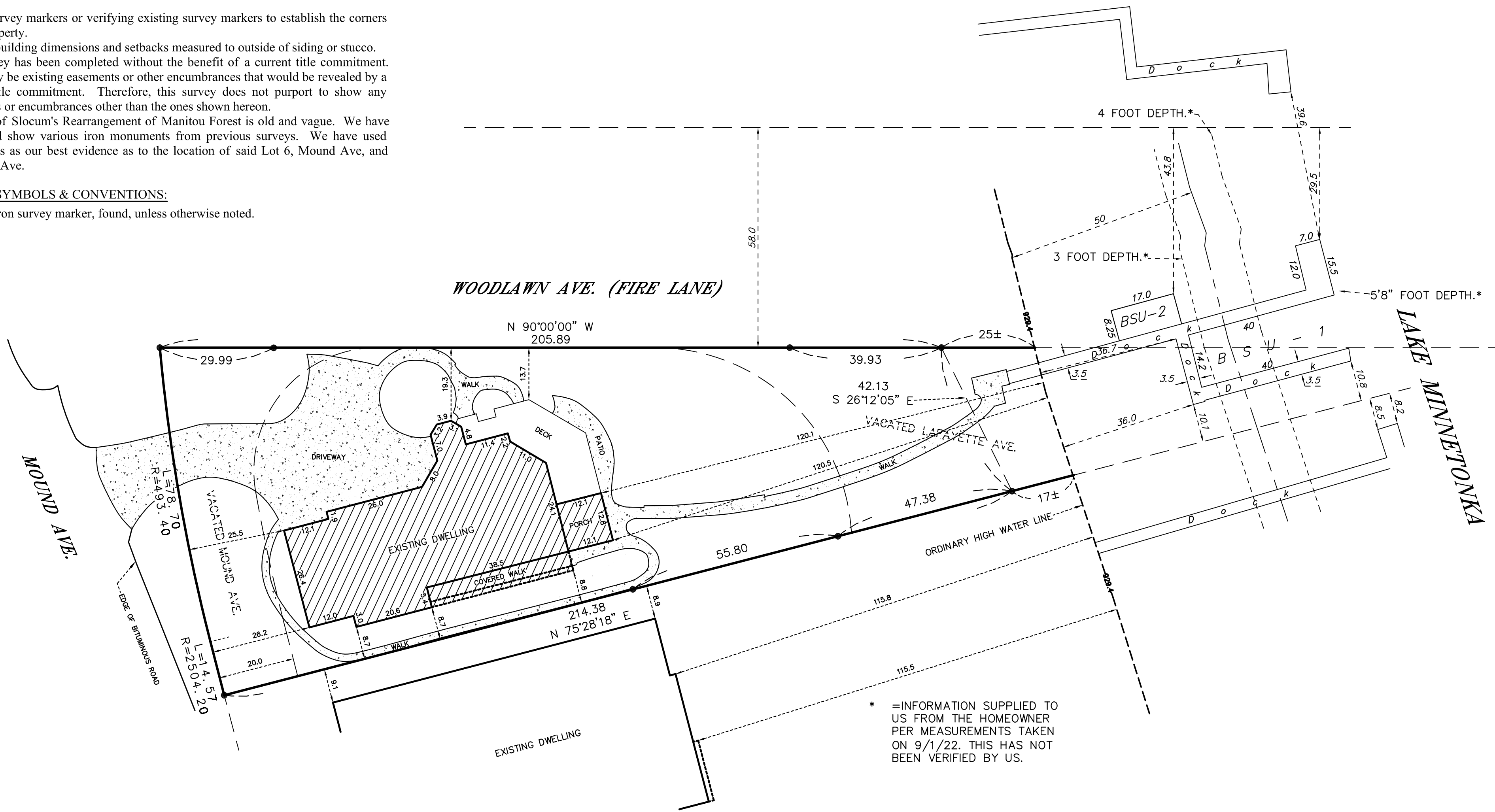
**LMCD Approved Site Plan
(Exhibit B) of Variance,
Dated 11/09/2022**

SCOPE OF WORK & LIMITATIONS:

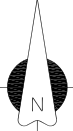
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- Showing the location of observed existing improvements we deem necessary for the survey.
- Setting survey markers or verifying existing survey markers to establish the corners of the property.
- Existing building dimensions and setbacks measured to outside of siding or stucco.
- This survey has been completed without the benefit of a current title commitment. There may be existing easements or other encumbrances that would be revealed by a current title commitment. Therefore, this survey does not purport to show any easements or encumbrances other than the ones shown hereon.
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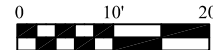
STANDARD SYMBOLS & CONVENTIONS:

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DATE	REVISION DESCRIPTION
9/8/22	ADD DOCKS ONLY. NO OTHER UPDATES SHOWN, IF THERE ARE ANY, FROM 2017

DWG ORIENTATION: 

SCALE: 

CLIENT/JOB ADDRESS

DENNIS NELSON

135 MOUND AVE.
TONKA BAY, MN

Advance
Surveying & Engineering, Co.

17917 Highway No. 7
Minnetonka, Minnesota 55345
Phone (952) 474-7964
Web: www.advsur.com

I HEREBY CERTIFY THAT THIS PLAN, SURVEY OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY REGISTERED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF MINNESOTA.

Wayne W. Preugs
Wayne W. Preugs
#43503
LICENSE NO.
APRIL 5, 2017
DATE

DATE SURVEYED:
MARCH 28, 2017

DATE DRAFTED:
APRIL 5, 2017

SHEET TITLE
EXISTING SURVEY

SHEET SIZE: 17 X 22

DRAWING NUMBER
221646 TB

SHEET NO.
S1

SHEET 1 OF 1

EXHIBIT C
Site Plan Optional

[See Findings of Facts Order]

LEGAL DESCRIPTION:

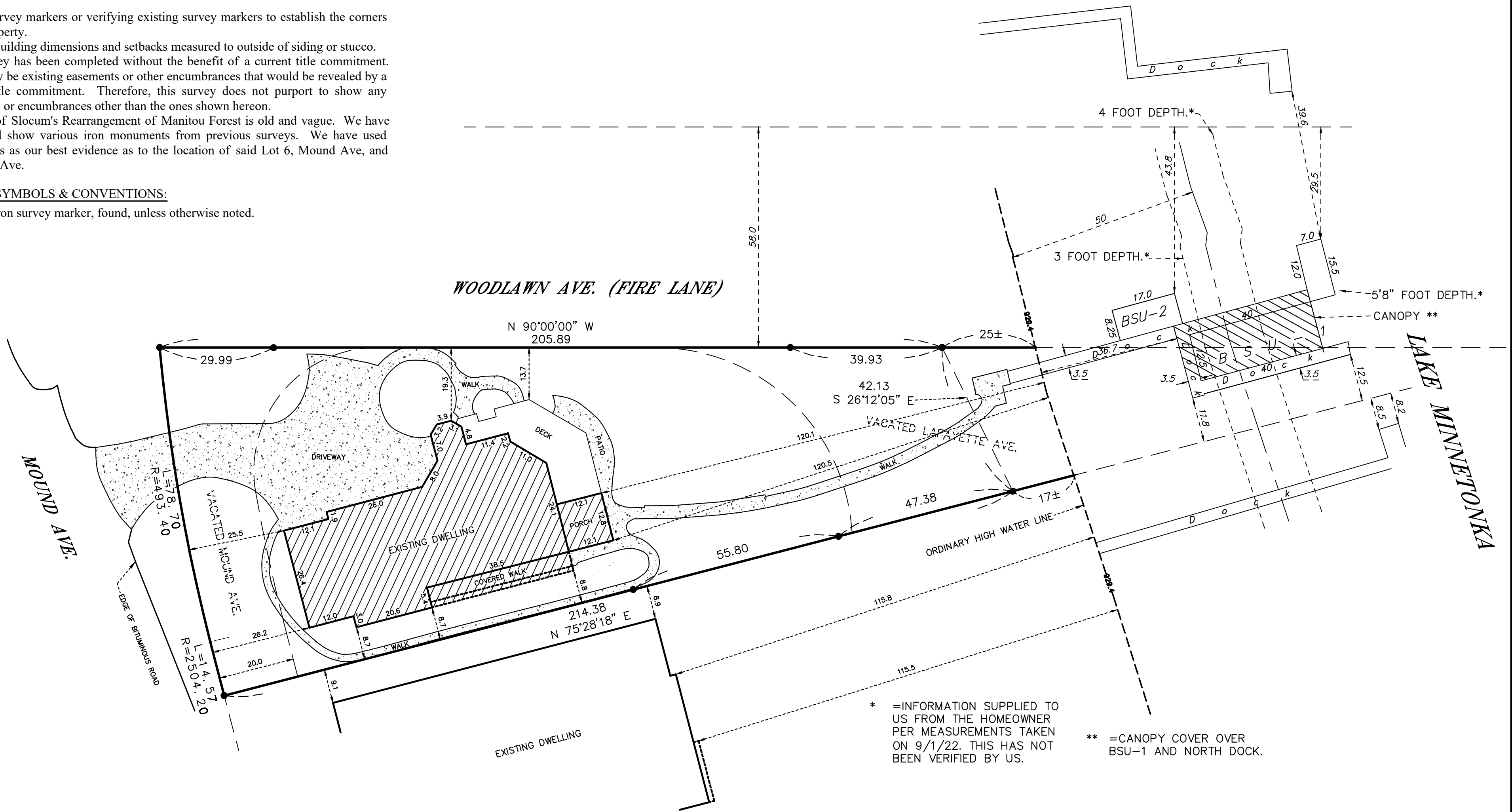
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11/10/22	DOCK SIZE CHANGES

DWG ORIENTATION

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221646 TB
REV 11 - 10

SHEET NO.
S1

SHEET 1 OF 1

Variance Application for Adjusted Dock Use Area and Side Setbacks

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

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



Variance Application for Adjusted Dock Use Area and Side Setbacks

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

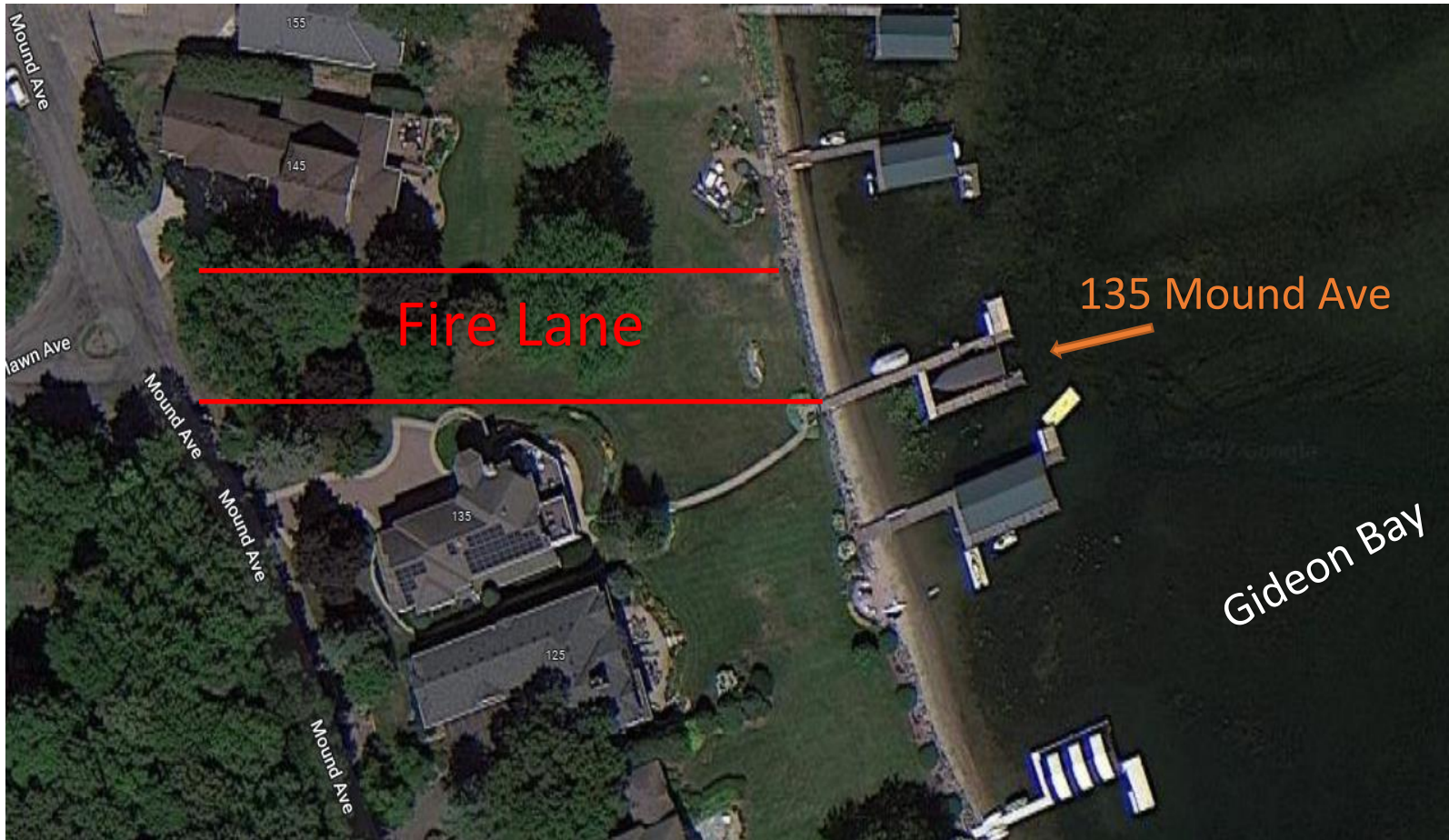
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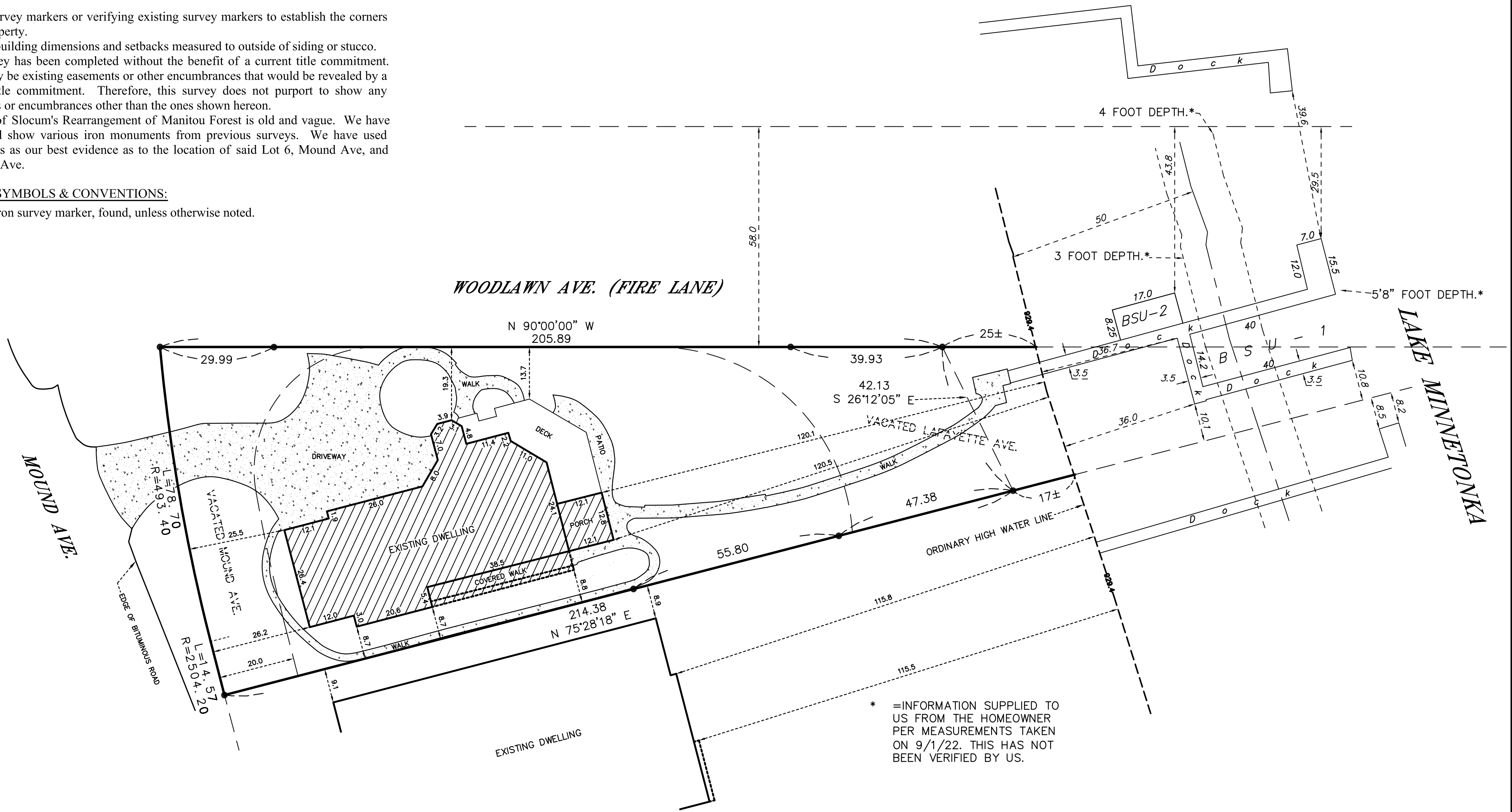
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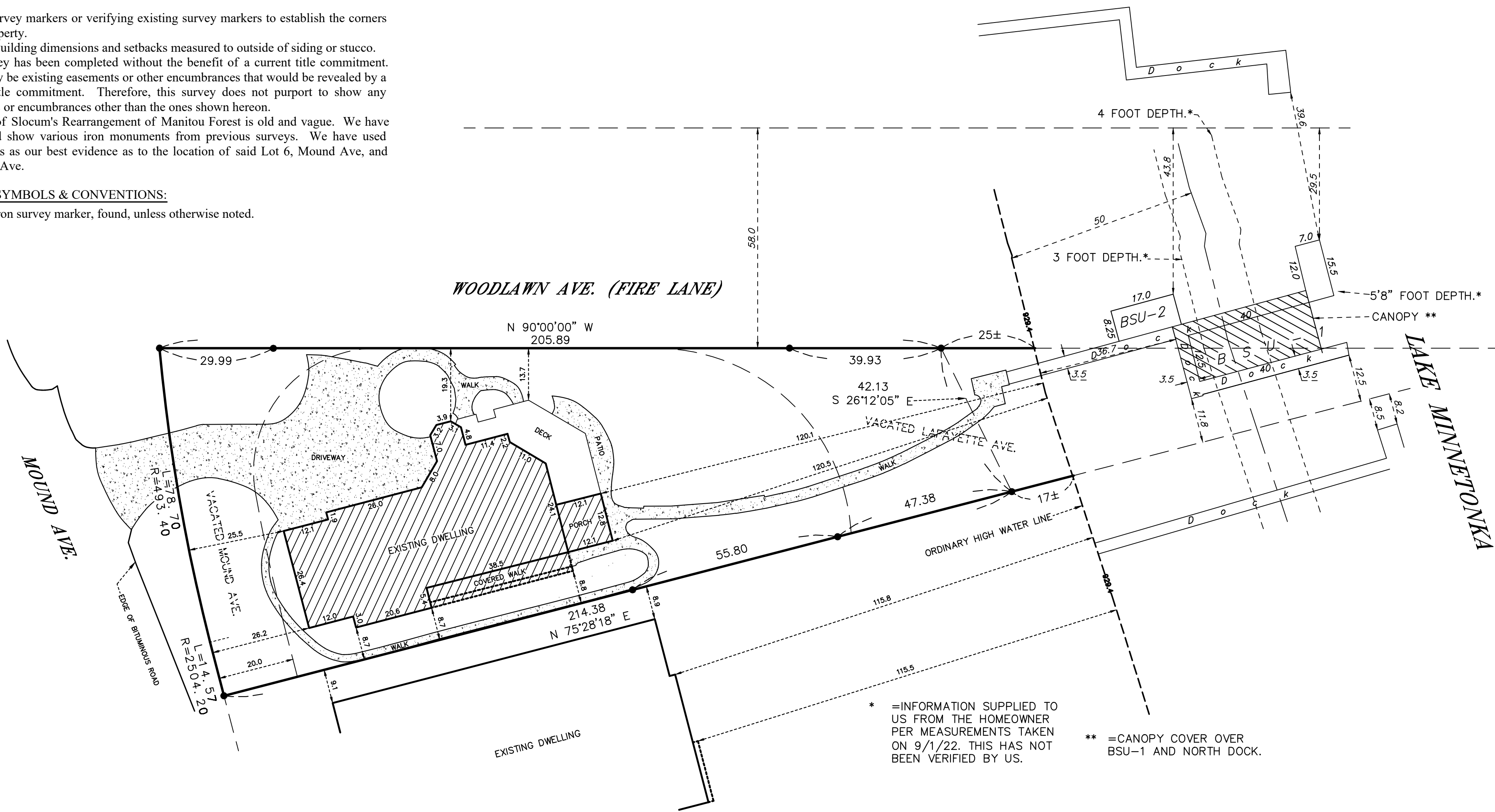
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VARIANCE APPLICATION

LAKE MINNETONKA CONSERVATION DISTRICT

For LMCD use:
Fee Amount: _____ Check # _____ Date Received: April 26

1. CONTACT INFORMATION

Applicant: _____ Title (Owner, Authorized Agent, etc.): _____
Address: _____
City, State, Zip: _____
Phone: _____ Email: _____
Property Owner (if different from applicant): _____
Relationship to Property Owner: _____
Address: _____
City, State, Zip: _____
Phone: _____ Email: _____

2. PROPERTY INFORMATION

Site Address: _____
Abutting Lakeshore Property Owners (Name and Mailing Address)
North or West: _____

South or East: _____

Other affected parties: _____

3. PROPOSED VARIANCE

Type of Variance: _____
State practical difficulties causing the variance to be required: _____

4. ATTACHMENTS

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

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

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

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

5. FEES

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

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

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

Applicant’s Signature:

Name	Title	Date

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

Type: Variance for Adjusted Dock Use Area and Side Setback
Date: November 9, 2022
Applicant: Dennis G. Nelson and Barbara A. Franta
PIDs: 28-117-23-43-0054
Addresses: 135 Mound Ave
Tonka Bay, MN 55331

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

IN RE:

Application of Dennis G. Nelson and Barbara A. Franta for Variance for Adjusted Dock Use Area and Side Setbacks for the property located at 135 Mound Avenue, Tonka Bay, MN

**FINDINGS OF FACT
AND ORDER**

The Lake Minnetonka Conservation District (“LMCD”) received an application from Dennis G. Nelson and Barbara A. Franta (collectively, the “Applicant”) for a variance for an adjusted dock use area from the side setback requirements to allow Applicant to install a dock that crosses the northern side site line of the property into the authorized dock use area of the City of Tonka Bay (“City”) with the City’s permission. This application applies to the property located at 135 Mound Avenue within Tonka Bay, Minnesota and which is legally described in the attached Exhibit A (“Subject Property”). The LMCD Board of Directors (“Board”) held a public hearing, after due notice having been provided, on the requested variances on October 26, 2022. Based on the proceedings and the record of this matter, the Board hereby makes the following Findings of Fact and Order:

FINDINGS OF FACT

The Subject Property is located in the City of Tonka Bay (“City”) and is on Gideon Bay, which is part of Lake Minnetonka (“Lake”). The unusual configuration of the Subject Property results in the side site lines of the dock use areas to converge, narrowing the respective dock use areas. The Applicant is seeking adjustment to the dock use area and side setback variances to accommodate a dock and boat storage to allow Applicant to have reasonable use of the Lake.

1. The Subject Property is adjacent to a City fire lane dedicated to the public by plat. There have been persistent issues between the owners of the Subject Property and the City regarding docks on the Subject Property and access to the Lake through the fire lane. A dock has existed on the Subject Property for many years with some changes in configuration.

2. LMCD staff has met with the Applicant and representatives of the City regarding options for fire lane use and dock configuration and placement. The current dock does not meet the standard LMCD Code requirements and encroaches into the City fire lane. The Applicant and City agree to a variance approach which shares the shoreline of the Subject Property and the City fire lane to allow Applicant to have a dock at the Subject Property that complies with configuration set out in this Order in order to resolve long-standing concerns.
3. The Applicant are proposing two options. One is to maintain the current location with: 10.1 feet to 10.8 feet side setback as it extends into the Lake on the southern side; 43.8 to 29.5 feet side setback as it extends into the Lake on the northern side; 1 boat storage unit (“BSU”) with a boat lift 14.2 feet wide to 40 feet long; 1 BSU boat lift 8.25 feet wide by 17 feet long on the northern side of dock structure; and dock length of 78 feet (“Current Location”). The second option is a shortened width dock with: 11.8 to 12.5 feet side setback as it extends into the Lake on the southern side; 43.8 to 29.5 feet side setback as it extends into the Lake on the northern side; 1 BSU with a canopy 12.5 feet wide by 40 feet long; 1 BSU boat lift 8.25 feet wide by 17 feet long on the northern side of the dock structure; and dock length 78 feet (“Optional Location”).
4. The Subject Property has approximately 38 feet of 929.4 OHW shoreline. The adjacent City fire lane has 58 feet of 929.4 feet OHW shoreline.
5. Section 2-3.03 of the LMCD Code of Ordinances (“Code”) requires side setbacks of 15 feet for docks 50-100 feet in length.
6. Any canopy at the proposed dock structure must have a 20-foot setback as required by the Code.
7. For the Applicant’s independent shoreline measurement, the Code permits a maximum length to allow access to four feet of water depth as measured from 929.4 feet OHW, but no more than 60 feet in length. With the combined shoreline measurement of 96 feet, the maximum length would be 96 feet if all the shorelines were dedicated to the Applicant and not also dedicated for the City’s public use.
8. No comments were received from the Minnesota DNR or the Minnehaha Creek Watershed District. The Tonka Bay City Council has approved the Applicant’s proposal. No public comments were received prior to the hearing. At the hearing, a neighbor spoke in favor of the Applicant’s request.
9. Based on amount of shoreline, parcel age, and other property characteristics, the number of watercraft proposed does not violate the maximum watercraft density as described in Sections 2-4.05 and 2-4.09 of the Code.
10. The Applicant proposes to install a dock structure as shown on the site plan attached hereto as Exhibit B (“Site Plan”) or as altered for the Optional Location discussed above (Exhibit C).

11. Additional information regarding this matter is provided in the LMCD staff report and presentation presented at the October 26, 2022, meeting (collectively, the “Staff Report”). The Staff Report is incorporated herein by reference, except that the approvals and conditions contained in this document shall be controlling to the extent there are any inconsistencies.
12. Section 6-5.01, Subd. 2 of the Code, allows for the granting of variances where there is any unusual configuration of shoreline or extended lot lines, which causes a conflict between the owners of two or more adjacent or nearby sites as the use of the same area of the Lake for docks, mooring areas, or other structures or for reasonable access thereto.
13. Section 6-5.01, Subd. 6 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.
14. The term “practical difficulties” is defined in Section 1-3.01, Subd. 76 of the Code 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.”
15. Unusual configurations of shorelines and converging side site lines are challenges for a number of properties on the Lake. Often in such cases, as is true here, the conditions do not reasonably allow a dock to be installed that strictly complies with the requirements of the Code. In such cases, it is reasonable for the Board to consider a variance request to provide reasonable access to the Lake by riparian owners. Though in attempting to provide such access the impacts to the neighboring riparian owners must also be considered. Here, the City is in agreement with the Applicant’s proposed dock structure and location.
16. The LMCD understands some members of the public may use the City’s fire lane as a walk-in access to the Lake or to fish. However, the City has not constructed a dock and has not otherwise undertaken a use of the riparian rights associated with the fire lane that are interfered with by the Applicant’s dock, which has extended into the authorized dock use area of the fire lane for several years.
17. Granting the requested variance will not alter the essential character of the area or adversely affect the purposes of the Code as dock structures are common and the use of the proposed dock structure furthers the purposes of the Code by promoting reasonable access to the Lake. The requested variance is also not contrary to the public health, safety, or welfare in that the dock does not pose a safety or navigation problem on the Lake. The proposed dock structure does not interfere with the navigation of watercraft to or from the neighboring docks.
18. The Applicant’s proposed location of the dock, with the City’s consent, to facilitate access to the Lake is a reasonable use of the Subject Property.

19. Practical difficulties exist under the facts of this case that support the Board exercising its authority under Section 6-5.01 of the Code to grant the requested adjusted dock use area and side setback variance for the Subject Property.

ORDER

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

1. Side Site Line Variance. Side site line and authorized dock use area variance is hereby approved to allow the installation of a dock structure with the setback for the southern site line setback 10.1 feet to 10.8 feet, or as altered for the Optional Location with a setback of 11.8 feet to 12.5 feet. The northern side site line as it extends across the City's fire lane to the north shall have setbacks of 43.8 feet to 29.5 feet as shown on the Site Plan attached hereto as Exhibit B or optional Exhibit C, respectively. The dock structure shall be installed and maintained in the location as shown on the Site Plan attached hereto as Exhibit B or as altered for the Optional Location Exhibit C.
2. Updated Site Plan. Applicant must submit an updated site plan with the final configuration and measurements as approved by the LMCD within forty-five (45) days of acceptance.
3. Boat Storage Units. Two boat storage units are approved for the Subject Properties to be used solely by persons who reside at the Subject Property.
4. Boat Canopies. A boat canopy is allowed if the Applicant place the dock structure in the Optional Location.
5. Dock Length. The length of the dock structure and storage should be no longer than proposed 78 feet from the 929.4 feet OHW since water levels appear sufficient during normal 929.4 feet NGVD OHW.
6. Conditions. The variance granted in this Order is subject to compliance with all of the following conditions:
 - (a) All watercraft must be stored within the BSU structure(s).
 - (b) Watercraft stored in boat slips may not extend beyond the length of the slip. Prohibited extensions include any portion of the watercraft, including all attached equipment in its stored position that extend beyond the ends of the dock or boat slip.
 - (c) Any structures placed as part of these variances shall be maintained in good condition and shall promptly be removed, together with any watercraft stored on them, if this variance is ever revoked by action of the Board or if it is rendered null and void.
 - (d) This Order shall be rendered null and void in event the Subject Property is subdivided.

- (e) 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 Properties into conformance with the Code without reliance on this variance within the same period.
- (f) This Order grants no vested rights to the use of the Lake. Use of the Lake shall at all times remain subject to regulation by the LMCD to ensure the public of reasonable and equitable access to the Lake.
- (g) If the City ever elects to more fully exercise its riparian rights associated with the fire lane and withdraws its consent because it determines the Applicant' dock interferes with its proposed use, the Applicant will be required to yield to the superior riparian rights held by the public in the authorized dock use area of the fire lane. *McLafferty v. St. Aubin*, 500 N.W.2d 165, 168 (Minn. App. 1993). If consent is ever withdrawn, the Applicant, or any future owner, is encouraged to work with the City to identify a solution that will work for both parties and to submit an application seeking whatever approvals from the LMCD that may be required to facilitate the agreed upon plan.
- (h) Utilization of the Lake pursuant to this Order constitutes, and shall be deemed, acceptance of, and agreement to, the terms and conditions of this variance without exception, qualification, or reservation.

BY ORDER OF THE BOARD OF DIRECTORS of the Lake Minnetonka Conservation District this 9th day of November 2022.


Gregg Thomas, Chair

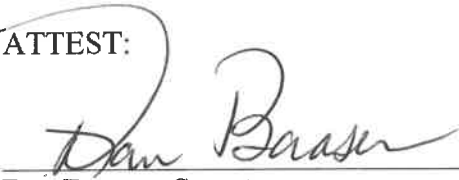
ATTEST:

Dan Baasen, Secretary

EXHIBIT A
Legal Description of Subject Property

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

EXHIBIT B
Site Plan Original

[attached hereto]

EXHIBIT C
Site Plan Optional

[See Findings of Facts Order]

LEGAL DESCRIPTION:

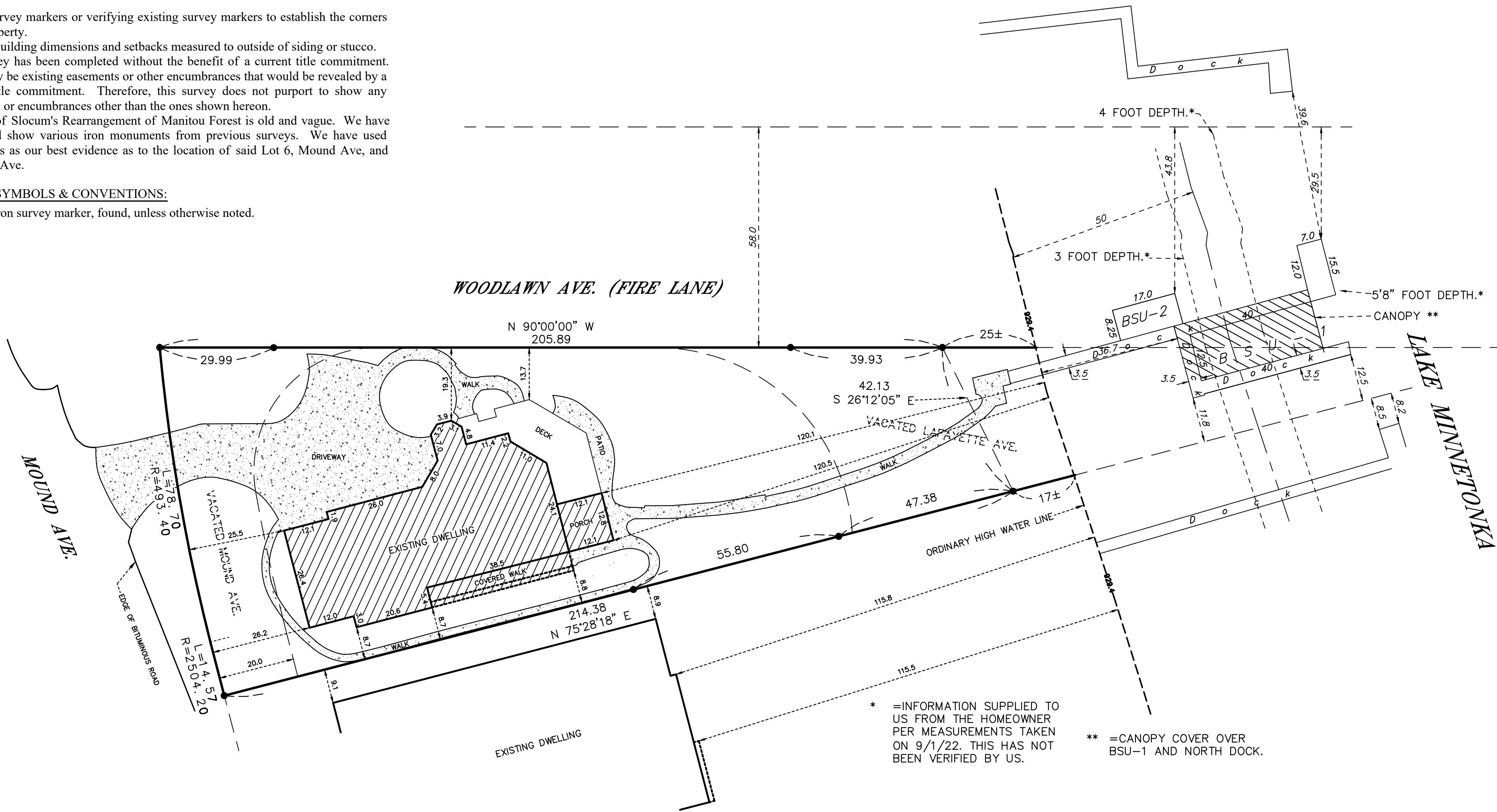
Lot 6, that part of adjoining vacated Mound Avenue and that part of adjoining vacated Lafayette Avenue, Slocum's Rearrangement of Manitou Forest all described as beginning at the intersection of the extension Westerly of the Southerly line of said Lot 6 with a line drawn parallel with and 20 feet Westerly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

SCOPE OF WORK & LIMITATIONS:

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

STANDARD SYMBOLS & CONVENTIONS:

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



* = INFORMATION SUPPLIED TO US FROM THE HOMEOWNER PER MEASUREMENTS TAKEN ON 9/1/22. THIS HAS NOT BEEN VERIFIED BY US.

** = CANOPY COVER OVER BSU-1 AND NORTH DOCK.

DATE	REVISION DESCRIPTION
9/8/22	ADD DOCKS ONLY. NO OTHER UPDATES SHOWN, IF THERE ARE ANY, FROM 2017
11/10/22	DOCK SIZE CHANGES

DWG ORIENTATION

SCALE

CLIENT/JOB ADDRESS

DENNIS NELSON

135 MOUND AVE.
TONKA BAY, MN

Advance
Surveying & Engineering, Co.

17917 Highway No. 7
Minnetonka, Minnesota 55345
Phone (952) 474-7964
Web: www.advsur.com

HEREBY CERTIFY THAT THIS PLAN, SURVEY OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY REGISTERED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF MINNESOTA.

Wayne W. Preugs
Wayne W. Preugs
#43503
LICENSE NO.
APRIL 5, 2017
DATE

DATE SURVEYED:
MARCH 28, 2017

DATE DRAFTED:
APRIL 5, 2017

SHEET TITLE
EXISTING SURVEY

SHEET SIZE: 17 X 22

DRAWING NUMBER
221646 TB
REV 11 - 10

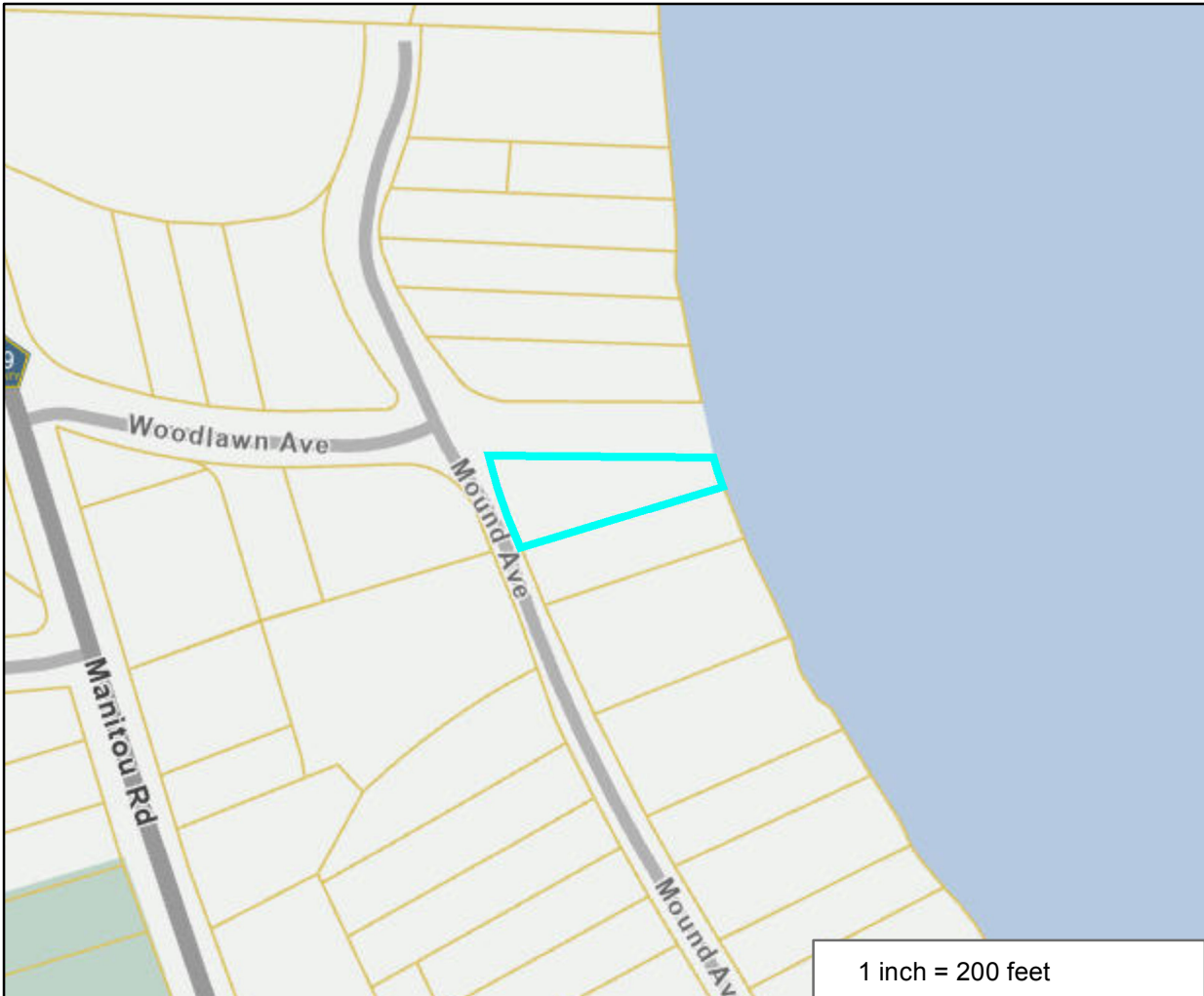
SHEET NO.
S1

SHEET 1 OF 1



Hennepin County Property Map

Date: 9/12/2022



PARCEL ID: 2811723430054

OWNER NAME: D Nelson & B Franta

PARCEL ADDRESS: 135 Mound Ave, Tonka Bay MN 55331

PARCEL AREA: 0.36 acres, 15,743 sq ft

A-T-B: Torrens

SALE PRICE: \$250,000

SALE DATE: 06/1989

SALE CODE: Warranty Deed

ASSESSED 2021, PAYABLE 2022

PROPERTY TYPE: Residential

HOMESTEAD: Homestead

MARKET VALUE: \$1,143,000

TAX TOTAL: \$14,570.98

ASSESSED 2022, PAYABLE 2023

PROPERTY TYPE: Residential

HOMESTEAD: Homestead

MARKET VALUE: \$1,454,000

Comments:

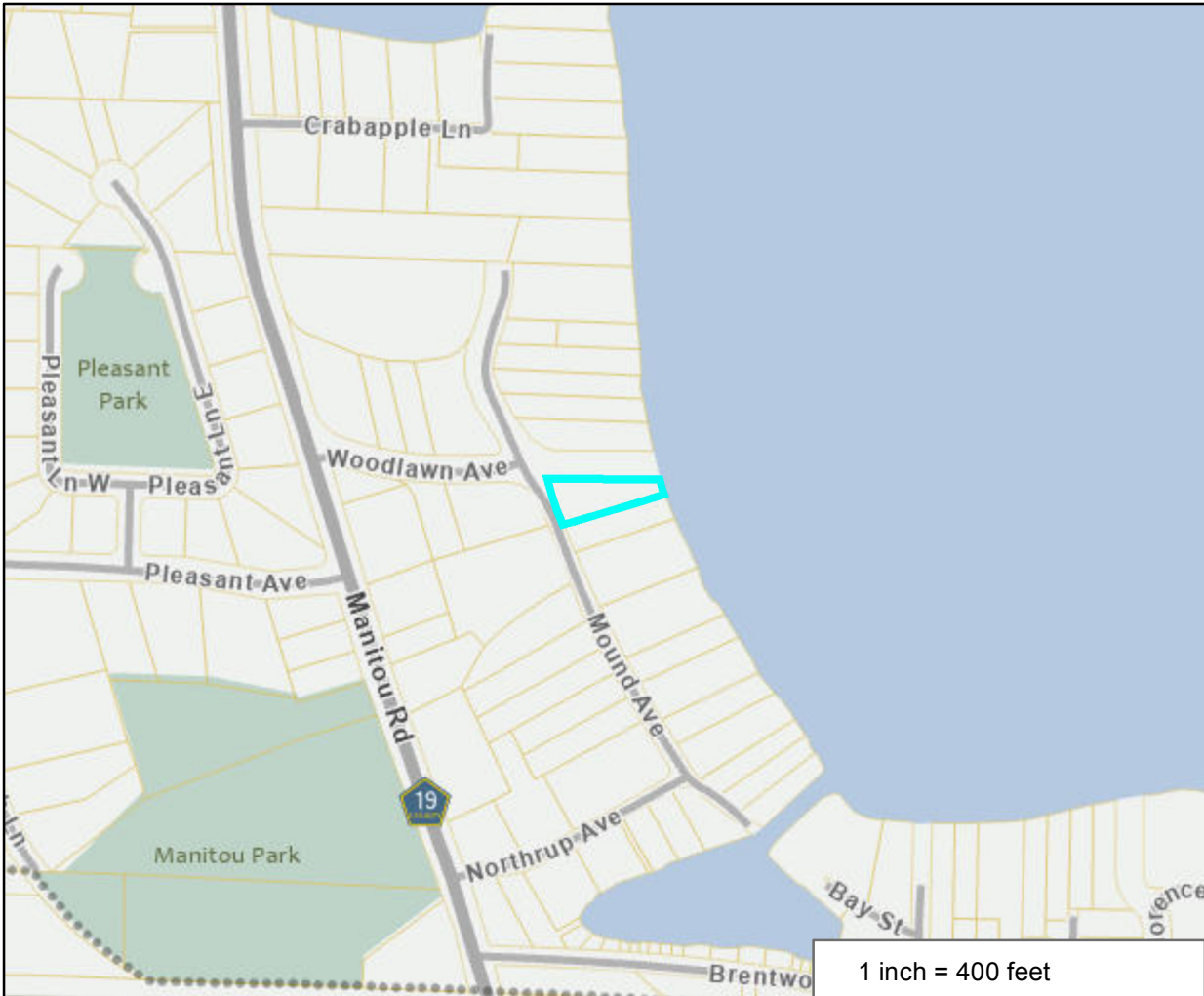
This data (i) is furnished 'AS IS' with no representation as to completeness or accuracy; (ii) is furnished with no warranty of any kind; and (iii) is not suitable for legal, engineering or surveying purposes. Hennepin County shall not be liable for any damage, injury or loss resulting from this data.

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Hennepin County Property Map

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MARKET VALUE: \$1,454,000

Comments:

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97 28-117-23 43 0001
CITY OF TONKA BAY
4901 MANITOU RD
TONKA BAY MN 55331

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

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

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

97 28-117-23 43 0028
HEIDI LYNN JACQUIN
DAVID MICHAEL JACQUIN JR
751 SHILOH TERRACE
SANTA ROSA CA 95403

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

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

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

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

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

97 28-117-23 43 0032
ERIN WILBUR HEARST 2014 TRST
17001 THESTRAND
MINNETONKA MN 55345

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

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

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

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

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

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

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

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

97 28-117-23 43 0051
KEITH SCHLEETER
LAURIE LICENCE SCHLEETER
6600 IROQUOIS TR
EDINA MN 55439

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

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

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

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

97 28-117-23 43 0023
PAUL J KASTER
2600 CASCO POINT RD
WAYZATA MN 55391

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

97 28-117-23 43 0074
SURESH KRISHNA
BHUVANA NANDAKUMAR
105 MOUND AVE
TONKA BAY MN 55331

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

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

Attachment 1

Practical Difficulties Discussion

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

The subject property has approximately 35ft of shoreline (without considering the property that is part of the easement known as Woodlawn firelane) at the 929.4 OHWL with extreme pieing of the extended south easement line with my extended south property line. This is created by the layout of the Woodlawn firelane which happened sometime in the 1800s. This firelane was originally 60ft wide but is now 58ft due to a 1965 Vacation on the other side of the firelane (i.e. Mallery or north side) and represents a perpendicular ingress/egress easement. This easement ends at the water’s edge (the 929.4 OHWL) based on Minnesota Supreme Court precedent. *Troska v. Brecht*, 167 N.W. 1042, 1044 (Minn. 1918). This condition creates the practical difficulty as this easement was originally designed as a street with an angle to make it easier for horses to get up the hill on Woodlawn Ave. to Mound Ave. from Lafayette Ave. Lafayette Ave. was a street that ran along the shore of Lake Minnetonka (a bordering easement) and was Vacated many decades ago except where it intersected with Woodlawn Ave.

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

- 1) This property has historically had a dock on it prior to 1978. Attached are pictures which we believe show the pre-1978 placement of a dock on this property and where my original dock was placed when I put in my first new dock after I bought the property in 1989 (See original dock pics attached). The historical aspect of docks on this property is an important consideration when considering the reasonable nature of sharing of riparian rights as set forth in the original code of the LMCD.
- 2) The property owners have exchanged correspondence with the City of Tonka Bay a few times over the years regarding our dock placement and usually with a new city administrator. We have consistently responded with the practical difficulties we are faced with but have never effectively reached a written resolution. In working with the current city administrator (Dan Tolsma) we have decided to proceed with this formal Variance request to the LMCD to resolve this issue so it does not continue to come up as a potential issue. Attached as Attachment #2 is Resolution 22-38 of the City of Tonka Bay dated October 25, 2022, that supports the placement of my dock as set for in my previously approved variance request to the LMCD and such placement is identical in this variance request.
- 3) The Woodlawn firelane (firelane #16) is a class one firelane under Tonka Bay ordinance and its prescribed public use is as follows:

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

Attachment 1

Practical Difficulties Discussion

My dock placement does not impede any member of the public from carrying on these activities as the entire shoreline of firelane #16 is unimpeded and the 40ft that separates my dock from my neighbors, at its closest point (which is approximately 78 ft out into the lake), is more than adequate to allow any such public users easy access to the entire surface of Lake Minnetonka. A Minnesota Court of appeals case that would be relevant here is the McLafferty vs St. Aubin (Attachment #3). In this case the court allowed fee title owners (with no property directly abutting the lake, as the right of way was a bordering easement between their properties and the lake) to continue to maintain their docks which attached to the right of way until the city prescribed what riparian activities would be prescribed for the public and then evaluate if such use conflicted with keeping the docks there. In my case my dock attaches to my property clear of the easement, but the discussion is instructive for purposes of your review of my request. In addition the discussion in the case specifically discusses perpendicular or ingress/egress easements and the key part of the discussion which the previous LMCD legal counsel refused to acknowledge with the applicant is as follows:

In other cases, the issue was the ownership of riparian rights when a street provides ingress and egress to a body of water, a concern different from that in bordering street easement cases. See *Flynn v. Beisel*, 257 Minn. 531, 537–39, 102 N.W.2d 284, 289–90 (1960); *Troska v. Brecht*, 140 Minn. 233, 238–39, 167 N.W. 1042, 1044 (1918). An ingress/egress easement (perpendicular to the shore) ordinarily does not have the potential to deprive a fee owner of all riparian rights because the fee owner owns adjoining property abutting the lake and providing separate riparian rights.

- 4) The City of Tonka Bay has approved and/or allows reasonable divergence from the ADUA for several abutting property owners to class one, two and three firelanes in Tonka Bay. The most recent involving a variance from the LMCD for a similar situation to mine at 435 Lakeview Ave. which abuts class one firelane #9. The property at 435 Lakeview Ave. has approximately 51ft of lake shoreline abutting Lake Minnetonka (without considering the property that is part of the easement) with a dock that is approximately 84ft long. The easement line angles or pieing of the easement line with the opposite lot line, created by the firelane #9 easement layout, created conflicting riparian interests. The City of Tonka Bay approved the dock placement for 435 Lakeview Ave. at the December 8, 2020, city council meeting (Proposed dock placement survey – Attachment #4 and city approval minutes – Attachment #5) prior to final LMCD variance approval.

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

Attachment 1

Practical Difficulties Discussion

- a) There are other firelanes in Tonka Bay where the City of Tonka Bay allows for reasonable sharing of riparian rights with abutting riparian rights holders. They all appear to me to allow placement of docks by abutting property owners outside the City of Tonka Bay and LMCD ADUAs in a reasonable way. Most docks on these properties appear to cross into the extended easement lines of the abutting firelane and all allow for allowances from the ADUAs. These situations involve firelanes #1, #3, #5, #8, #10, #12, #15, #18, #19 and #21. Firelanes #1, #9, #10, #12, #15, #19 and #21 are class one firelanes. Firelanes #3, #8 and #18 are class two firelanes. Firelane #5 is a class three firelane.
- b) The placement of my dock is presented on the site surveys I have included with abutting property owners' docks (note: surveys only includes sections of dock that are abutting to my property as each has a Canopy boat house and the typical "h" configuration (see "pic from Lower Walkout" attached). My dock is similar in size and length to almost all the docks on riparian lots on Mound Ave. and to most docks on Lake Minnetonka. When compared to the City of Tonka Bay and LMCD approved dock at 435 Lakeview Ave. my dock only extends into the extended easement line of the firelane by less than 50% of the firelane width (28.5ft out of 58ft) compared to the over 95% (24ft out of 25ft) for 435 Lakeview Ave. In addition, my dock has a 40ft opening between my dock and my neighbors dock to allow access to Lake Minnetonka for public users of the firelane compared to the 34ft for the 435 Lakeview dock and in that situation, it requires public users to maneuver between the docks as it is not a spread that is parallel to the shoreline like my situation. This survey with dock presentation shows that my dock is a reasonable sharing of riparian rights with the City of Tonka Bay Woodlawn firelane #16.
- c) I would also like to note that the surveys that I have provided regarding placement of my dock shows unequivocally that my dock does not encroach on the firelane. My dock may reasonably share riparian rights by crossing the extended easement line once beyond the 929.4 ft. OHWL of Lake Minnetonka but in no case does it encroach on the Woodlawn firelane as the November 9, 2022 LMCD Finding of Facts and Order erroneously states. I do request that any findings of fact and order created as a part of this variance request accurately reflect this fact.
- 5) As previously approved by the LMCD in my previous variance request, I would like to have the opportunity to add a boat house canopy to my dock as I am having issues with low water and my boat lift with automatic cover requires the lake to be above 928.13 to get my boat off the lift without scraping the boat against the lift as it is backed out. I had to take my boat off my lift on 9/6/22 as the lake level reached 928.13 and park it next to my dock with mooring covers on and awaiting rain and lake level rise to get it back on the lift. As of filing date of this variance request my boat still cannot go back on my lift. My fear is I may be gone for an extended period some summer and come back and not be able to get the boat off the lift at all. However, a boat house canopy would work much better since the prospect of low lake levels with global warming are a continuing threat.

My lower-level walkout patio is approximately 21ft above the 929.4 OHWL as well as the walkout level of all the neighboring properties with the closest properties either the same height or higher at their walkout levels. As a result, a boat house canopy would not restrict the lake

Attachment 1 Practical Difficulties Discussion

views of any neighboring properties. In addition, for those using the firelane there would be close to 50ft of the “extended” firelane with no boat canopy to block a view from shore (see “pic from middle of firelane shore” attached). One additional benefit of a boat house canopy would be that I could reduce the width of my slip as I had to expand it by two feet to fit the lift. I could use that 2ft to get to approximately 13ft from my south neighbor’s property line and the canopy about 16 to 17ft from that property line.

- 6) I would also like to have the opportunity to extend my dock during LMCD declared low water emergencies as all other riparian property owners have the right to do.

- 7) I would like to summarize and clarify the variances that I am seeking. First, I would like to state that the City of Tonka Bay has allowed me to use the entire shoreline of the Woodlawn firelane to be included with my shoreline (without considering the amount of my property that is part of the Woodlawn firelane easement) when considering how long my dock is permitted to be under LMCD guidelines. With my easement free shoreline of 35ft and the Woodlawn firelane at 58ft that would allow for a dock of 93ft. The length of my current dock and proposed dock is approximately 78ft. This should also support my request to allow for the extension of my dock under LMCD declared low water emergencies.

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

The variance for a canopy boat house (which would allow me to shrink the width of the “h” by 22inches) from my extended south property line would be about 2.5ft for the dock beyond 50ft from 929.4 OHWL as the setback would be a approximately 12.5ft compared to a 15ft LMCD prescribed set back. The variance for the set back of the canopy would be about 4ft as the canopy would be set back approximately 16ft from the extended south property line compared to a 20ft LMCD prescribed set back.

The variance request for my dock without a canopy boat house from my south extended property line would be approximately 4.2ft for the portion of the dock beyond 50ft from the 929.4 OHWL

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

Attachment 1

Practical Difficulties Discussion

Conclusion

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

The condition associated with this variance that was in paragraph 6.g. of the November 9, 2022 approved variance would instead read as follows:

- If the City ever elects to more fully exercise its riparian rights associated with the fire lane and withdraws its consent (because it determines the Applicant's dock may interfere with its proposed riparian uses), the Applicant may be required to modify his dock configuration to reasonably share riparian rights in accordance with Minnesota riparian rights laws and court decisions as they exist at the time of such exercise by the City. If consent is ever withdrawn, the Applicant or any future property owner is encouraged to work with the City to identify a solution that will work for both parties and to submit an application seeking whatever approvals from the LMCD that may be required to facilitate the agreed upon plan.

The applicant believes this condition is proportional to the potential variance to be granted which merely confirms that I have been reasonably sharing riparian rights with the City of Tonka Bay easement known as the Woodlawn Firelane. The McLafferty case that was cited in the originally approved variance conditions deals with a different set of facts from the case at hand and ignores specific language in such case that points out that the issue may be resolved differently if the easement is a **perpendicular** ingress/egress public access (as the Woodlawn Firelane is) vs a **bordering** public access as existed in the McLafferty case. This case is still relevant from the standpoint that if the city has not fully exercised its riparian rights the fee owners of the easement (even those fee owners with no private property directly abutting the lake) may avail themselves of such riparian rights not exercised as long as they do not unreasonably interfere with those riparian rights so exercised by the municipality.

CITY OF TONKA BAY

RESOLUTION 22-38

A RESOLUTION SUPPORTING A DOCK VARIANCE APPLICATION AT 135 MOUND AVENUE

WHEREAS, the City of Tonka Bay has a fire lane located adjacent to 135 Mound Avenue; and

WHEREAS, the property at 135 Mound Avenue has unique physical characteristics where a traditional dock layout requires responsible sharing of the riparian area adjacent to both properties; and

WHEREAS, the City Council of Tonka Bay endeavors to achieve a favorable solution that will be documented with the Lake Minnetonka Conservation District and serve as a mutually agreed to point of reference in the future; and

WHEREAS, The City Council of Tonka Bay reviewed the proposed layout prepared by the property owner of 135 Mound Avenue and have found it to be a reasonable and worthy proposal to achieve the desires and wishes of both the property owner and the City.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Tonka Bay:

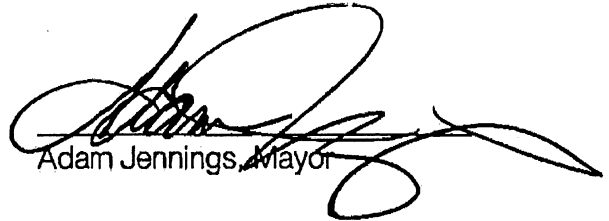
The City Council hereby offers their support and recommendation of the dock variance application submitted to the Lake Minnetonka Conservation District for the property located at 135 Mound Avenue in Tonka Bay, Minnesota.

PASSED AT A REGULAR MEETING of the Tonka Bay City Council this 25th day of October 2022.

Motion introduced by Connelly and seconded by Anderson.

Roll call vote:

Councilmember Anderson	Aye
Councilmember Connelly	Aye
Councilmember Viger	Aye
Councilmember Wischmeier	Absent
Mayor Jennings	Aye


Adam Jennings, Mayor

ATTEST: 
Rachel Myskevitz, City Clerk

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

Patrick J. McLAFFERTY, et al., Appellants,
v.
John B. **ST. AUBIN**, et al., Defendants,
and
City of Shoreview, Intervenor, Respondent.

No. C5-92-2249.
|
May 25, 1993.

Synopsis

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

Reversed.

Procedural Posture(s): On Appeal.

West Headnotes (5)

- [1] [Water Law](#) → Title and rights in general
[Water Law](#) → Easements Over Riparian Lands and for Access to and Use of Waters

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

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

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

1 Cases that cite this headnote

- [3] [Water Law](#) → Nature and Extent of Rights in General
[Water Law](#) → Right to construct or maintain

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

4 Cases that cite this headnote

- [4] [Water Law](#) → Wharves, docks, piers and similar structures

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

1 Cases that cite this headnote

- [5] [Water Law](#) → Wharves, docks, piers and similar structures

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

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

[2 Cases that cite this headnote](#)

***166** *Syllabus by the Court*

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

Attorneys and Law Firms

[Peter J. McCall](#), Stapleton, Nolan & McCall, P.A., **St.** Paul, for appellants.

[Jerome P. Filla](#), [John Michael Miller](#), Peterson, Fram & Bergman, **St.** Paul, for respondent.

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

Considered and decided by [AMUNDSON](#), P.J., and [CRIPPEN](#) and [DAVIES](#), JJ.

OPINION

[DAVIES](#), Judge.

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

FACTS

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

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

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

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

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

return to its natural state.

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

ISSUES

I. Does the dedicated street easement bordering Lake Wabasso confer exclusive riparian rights on the city?

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

II. Is the city's current exercise of its riparian rights sufficient to require the property owners to remove lakeshore improvements?

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

*167 ANALYSIS

I.

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

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

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

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

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

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

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

50 Minn. at 443–44, 52 N.W. at 914.

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

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

II.

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

^[3] 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).

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

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

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

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

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

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

Reversed.

All Citations

500 N.W.2d 165

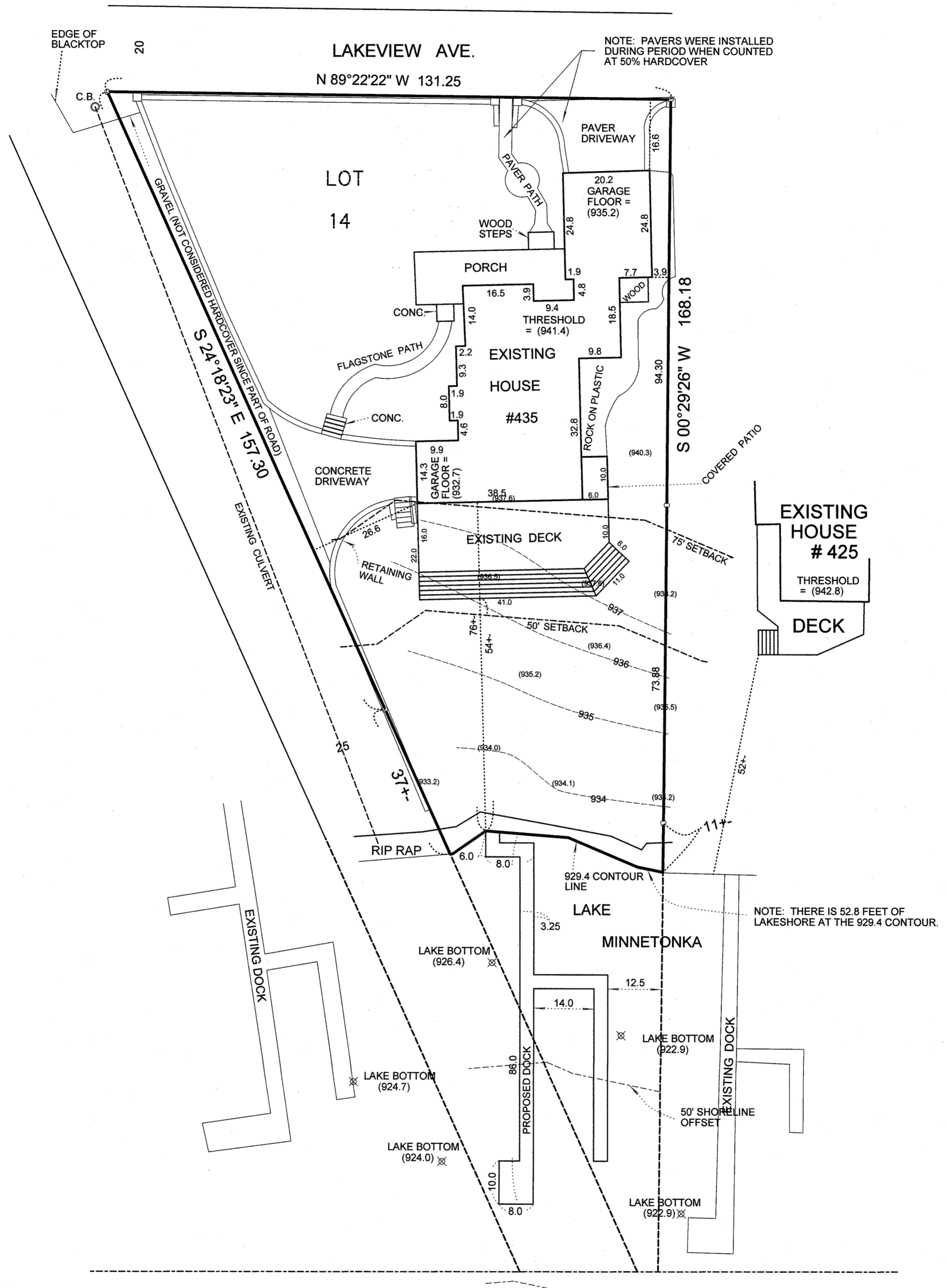
DECISION

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

Footnotes

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

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



LEGAL DESCRIPTION OF PREMISES:
 Lot 14, AUDITOR'S SUBDIVISION NUMBER 113,
 Hennepin County

- : Denotes iron marker
- (935.2) : Denotes existing spot elevation
- 936- : Denotes existing contour lines
- ⊗ : Denotes location of existing lake bottom elevation

Bearings shown are based on assumed datum.

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

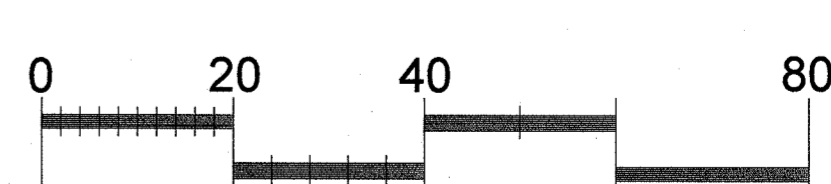
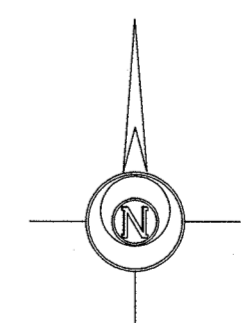
EXISTING HARDCOVER

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

LOT AREA = 15601+ SQ.FT.
 5363 / 15601 x 100 =34.38%

NOTE: THERE IS 52.8 FEET OF LAKESHORE AT THE 929.4 CONTOUR.

NOTE: PAVERS WERE INSTALLED DURING PERIOD WHEN COUNTED AT 50% HARDCOVER



SCALE IN FEET

REVISIONS		DESIGNED	I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.
DATE	REMARKS	DRAWN	
2-24-20	ADDED LAKESHORE OFFSETS AND 929.4 DISTANCE		
		CHECKED	

DATE 2-24-20 MINN. LICENSE NUMBER 12755

DATE 1-30-20
 SCALE 1"=20'
 JOB NO. 20-027
 SHEET OF SHEETS

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

increased height and floor area for the garage.

Jennings and Ramler-Olson discussed the height restrictions.

De La Vega opened the public hearing.

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

De La Vega closed the public hearing.

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

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

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

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

8. OLD BUSINESS

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

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

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

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

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

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

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

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

9. NEW BUSINESS

None.

10. MATTERS FROM THE FLOOR

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

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

11. REPORTS

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

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

Jennings thanked Ansari and De La Vega for their service.

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

Dennis Nelson Public Comments
at LMCD December 14, 2022 Board Meeting

Good Evening, my name is Dennis Nelson and I reside at 135 Mound Ave in Tonka Bay.

I would like to take my five minutes to talk about my experience, as a variance applicant, of the process I went through and what I consider good and bad

I started this process with a meeting on July 22 with LMCD staff, City of Tonka Bay staff and their attorney. The first question I asked was whether we could resolve our issue through agreement as neighbors do, without a variance, through informal agreement to eliminate the property line between us as board member Jabbour commented during the public hearing. The basic answer I heard to my question is a formal variance might be preferred as it would be filed against my Hennepin county property records (latter in process I would learn that such filing would be totally my responsibility). I was convinced by LMCD staff that a variance was the way to go.

The process went reasonable smooth until it came to the findings of facts and Order. With less than a week before the next board meeting I quickly responded to the draft with edits to correct erroneous facts and compromise language on conditions associated with contingent future events. The only edit they would accept was a correction in the spelling of my wife's name. The reason I was given is that they would not make changes based on advice from their legal counsel.

I sought to have a conversation with LMCD legal council to discuss the issues I was having with this document, thinking I could arrive at a reasonable compromise. However, after given permission to contact LMCD counsel I was informed that he would not be available for 3 or 4 days. Once he was available, one day before the

meeting, he refused to take my calls and refused to return my calls. All I received was a couple of cryptic emails including an email that I would have to debate him at the board meeting to change any of the language. Not having adequate time to prepare or hire competent legal counsel to debate LMCD counsel I decided to stop trying to change anything and just watch what would happen at the meeting the next day.

The finding of facts and order was simply approved as part of a consent agenda with no discussion.

I believe there are numerous erroneous facts in the final document and several that make me look bad. The findings say that I have persistently blocked access to Lake Minnetonka through the fire lane, which is false. They also say that my dock encroaches into the city fire lane even though I provided a survey to the LMCD that shows that it does not.

The findings of fact and order incorporates the staff report by reference and it has numerous errors. Most of these errors I had tried to alert the staff to prior to the public hearing but they still persist.

The most significant issue I have is the condition stated in paragraph 6.g. which has me concede that the city of Tonka Bay has superior riparian rights to me and if they expand their riparian uses I must yield to them. There is no indication in the record that the City of Tonka Bay requested this language. The case that is cited has a different set of facts than exists in my situation and I believe the attorney's wording overreaches on the concept of "superior" riparian rights. I simply tried to get the wording changed to acknowledge my separate riparian right that the case he cites acknowledges for properties that have private property that directly abuts the lake. They case he cites deals with properties that do not have private property that directly abuts the lake as they had a boarding easement between them and the lake and not a perpendicular easement boarding their properties with each abutting the lake. I did acknowledge that if the City of Tonka Bay did expand their riparian rights that I would need to work with the city to come up with a new dock set up but one that would reasonable share riparian rights equally and not where one was superior to the other.

I have also found that LMCD counsel is partners in the same law firm as the City of Tonka Bay counsel, which creates a conflict of interest. I see that the LMCD RFP for new legal counsel asks proposing law firms to indicate what procedures the firms would utilize to identify and resolve conflicts of interest. I am concerned that there had been no discussion of the conflict of interest that existed during my variance request process or procedures that might have been used to resolve it.

I am not sure what can be done at this time to fix the issues with the findings of fact and order but I would appreciate if the Board would move to resolve the issues I have raised. If nothing can be done, is there a process to apply for an annulment of the existing variance and potentially start over as I believe the condition imposed is not the law and is not proportional to the simple confirmation that my dock, without adjustment, reasonable shares riparian rights with the fire lane.

462.357 OFFICIAL CONTROLS: ZONING ORDINANCE.

Subdivision 1. **Authority for zoning.** For the purpose of promoting the public health, safety, morals, and general welfare, a municipality may by ordinance regulate on the earth's surface, in the air space above the surface, and in subsurface areas, the location, height, width, bulk, type of foundation, number of stories, size of buildings and other structures, the percentage of lot which may be occupied, the size of yards and other open spaces, the density and distribution of population, the uses of buildings and structures for trade, industry, residence, recreation, public activities, or other purposes, and the uses of land for trade, industry, residence, recreation, agriculture, forestry, soil conservation, water supply conservation, conservation of shorelands, as defined in sections 103F.201 to 103F.221, access to direct sunlight for solar energy systems as defined in section 216C.06, flood control or other purposes, and may establish standards and procedures regulating such uses. To accomplish these purposes, official controls may include provision for purchase of development rights by the governing body in the form of conservation easements under chapter 84C in areas where the governing body considers preservation desirable and the transfer of development rights from those areas to areas the governing body considers more appropriate for development. No regulation may prohibit earth sheltered construction as defined in section 216C.06, subdivision 14, relocated residential buildings, or manufactured homes built in conformance with sections 327.31 to 327.35 that comply with all other zoning ordinances promulgated pursuant to this section. The regulations may divide the surface, above surface, and subsurface areas of the municipality into districts or zones of suitable numbers, shape, and area. The regulations shall be uniform for each class or kind of buildings, structures, or land and for each class or kind of use throughout such district, but the regulations in one district may differ from those in other districts. The ordinance embodying these regulations shall be known as the zoning ordinance and shall consist of text and maps. A city may by ordinance extend the application of its zoning regulations to unincorporated territory located within two miles of its limits in any direction, but not in a county or town which has adopted zoning regulations; provided that where two or more noncontiguous municipalities have boundaries less than four miles apart, each is authorized to control the zoning of land on its side of a line equidistant between the two noncontiguous municipalities unless a town or county in the affected area has adopted zoning regulations. Any city may thereafter enforce such regulations in the area to the same extent as if such property were situated within its corporate limits, until the county or town board adopts a comprehensive zoning regulation which includes the area.

Subd. 1a. **Certain zoning ordinances.** A municipality must not enact, amend, or enforce a zoning ordinance that has the effect of altering the existing density, lot-size requirements, or manufactured home setback requirements in any manufactured home park constructed before January 1, 1995, if the manufactured home park, when constructed, complied with the then existing density, lot-size and setback requirements.

Subd. 1b. **Conditional uses.** A manufactured home park, as defined in section 327.14, subdivision 3, is a conditional use in a zoning district that allows the construction or placement of a building used or intended to be used by two or more families.

Subd. 1c. **Amortization prohibited.** Except as otherwise provided in this subdivision, a municipality must not enact, amend, or enforce an ordinance providing for the elimination or termination of a use by amortization which use was lawful at the time of its inception. This subdivision does not apply to adults-only bookstores, adults-only theaters, or similar adults-only businesses, as defined by ordinance.

Subd. 1d. **Nuisance.** Subdivision 1c does not prohibit a municipality from enforcing an ordinance providing for the prevention or abatement of nuisances, as defined in section 561.01, or eliminating a use determined to be a public nuisance, as defined in section 617.81, subdivision 2, paragraph (a), clauses (i) to (ix), without payment of compensation.

Subd. 1e. **Nonconformities.** (a) Except as otherwise provided by law, any nonconformity, including the lawful use or occupation of land or premises existing at the time of the adoption of an additional control under this chapter, may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion, unless:

(1) the nonconformity or occupancy is discontinued for a period of more than one year; or

(2) any nonconforming use is destroyed by fire or other peril to the extent of greater than 50 percent of its estimated market value, as indicated in the records of the county assessor at the time of damage, and no building permit has been applied for within 180 days of when the property is damaged. In this case, a municipality may impose reasonable conditions upon a zoning or building permit in order to mitigate any newly created impact on adjacent property or water body. When a nonconforming structure in the shoreland district with less than 50 percent of the required setback from the water is destroyed by fire or other peril to greater than 50 percent of its estimated market value, as indicated in the records of the county assessor at the time of damage, the structure setback may be increased if practicable and reasonable conditions are placed upon a zoning or building permit to mitigate created impacts on the adjacent property or water body.

(b) Any subsequent use or occupancy of the land or premises shall be a conforming use or occupancy. A municipality may, by ordinance, permit an expansion or impose upon nonconformities reasonable regulations to prevent and abate nuisances and to protect the public health, welfare, or safety. This subdivision does not prohibit a municipality from enforcing an ordinance that applies to adults-only bookstores, adults-only theaters, or similar adults-only businesses, as defined by ordinance.

(c) Notwithstanding paragraph (a), a municipality shall regulate the repair, replacement, maintenance, improvement, or expansion of nonconforming uses and structures in floodplain areas to the extent necessary to maintain eligibility in the National Flood Insurance Program and not increase flood damage potential or increase the degree of obstruction to flood flows in the floodway.

(d) Paragraphs (d) to (j) apply to shoreland lots of record in the office of the county recorder on the date of adoption of local shoreland controls that do not meet the requirements for lot size or lot width. A municipality shall regulate the use of nonconforming lots of record and the repair, replacement, maintenance, improvement, or expansion of nonconforming uses and structures in shoreland areas according to paragraphs (d) to (j).

(e) A nonconforming single lot of record located within a shoreland area may be allowed as a building site without variances from lot size requirements, provided that:

(1) all structure and septic system setback distance requirements can be met;

(2) a Type 1 sewage treatment system consistent with Minnesota Rules, chapter 7080, can be installed or the lot is connected to a public sewer; and

(3) the impervious surface coverage does not exceed 25 percent of the lot.

(f) In a group of two or more contiguous lots of record under a common ownership, an individual lot must be considered as a separate parcel of land for the purpose of sale or development, if it meets the following requirements:

(1) the lot must be at least 66 percent of the dimensional standard for lot width and lot size for the shoreland classification consistent with Minnesota Rules, chapter 6120;

(2) the lot must be connected to a public sewer, if available, or must be suitable for the installation of a Type 1 sewage treatment system consistent with Minnesota Rules, chapter 7080, and local government controls;

(3) impervious surface coverage must not exceed 25 percent of each lot; and

(4) development of the lot must be consistent with an adopted comprehensive plan.

(g) A lot subject to paragraph (f) not meeting the requirements of paragraph (f) must be combined with the one or more contiguous lots so they equal one or more conforming lots as much as possible.

(h) Notwithstanding paragraph (f), contiguous nonconforming lots of record in shoreland areas under a common ownership must be able to be sold or purchased individually if each lot contained a habitable residential dwelling at the time the lots came under common ownership and the lots are suitable for, or served by, a sewage treatment system consistent with the requirements of section 115.55 and Minnesota Rules, chapter 7080, or connected to a public sewer.

(i) In evaluating all variances, zoning and building permit applications, or conditional use requests, the zoning authority shall require the property owner to address, when appropriate, stormwater runoff management, reducing impervious surfaces, increasing setback, restoration of wetlands, vegetative buffers, sewage treatment and water supply capabilities, and other conservation-designed actions.

(j) A portion of a conforming lot may be separated from an existing parcel as long as the remainder of the existing parcel meets the lot size and sewage treatment requirements of the zoning district for a new lot and the newly created parcel is combined with an adjacent parcel.

Subd. 1f. **Substandard structures.** Notwithstanding subdivision 1e, Minnesota Rules, parts 6105.0351 to 6105.0550, may allow for the continuation and improvement of substandard structures, as defined in Minnesota Rules, part 6105.0354, subpart 30, in the Lower Saint Croix National Scenic Riverway.

Subd. 1g. **Feedlot zoning controls.** (a) A municipality proposing to adopt a new feedlot zoning control or to amend an existing feedlot zoning control must notify the Pollution Control Agency and commissioner of agriculture at the beginning of the process, no later than the date notice is given of the first hearing proposing to adopt or amend a zoning control purporting to address feedlots.

(b) Prior to final approval of a feedlot zoning control, the governing body of a municipality may submit a copy of the proposed zoning control to the Pollution Control Agency and to the commissioner of agriculture and request review, comment, and recommendations on the environmental and agricultural effects from specific provisions in the ordinance.

(c) The agencies' response to the municipality may include:

(1) any recommendations for improvements in the ordinance; and

(2) the legal, social, economic, or scientific justification for each recommendation under clause (1).

(d) At the request of the municipality's governing body, the municipality must prepare a report on the economic effects from specific provisions in the ordinance. Economic analysis must state whether the ordinance will affect the local economy and describe the kinds of businesses affected and the projected impact the proposal will have on those businesses. To assist the municipality, the commissioner of agriculture, in cooperation with the Department of Employment and Economic Development, must develop a template for measuring local economic effects and make it available to the municipality. The report must be submitted

to the commissioners of employment and economic development and agriculture along with the proposed ordinance.

(e) A local ordinance that contains a setback for new feedlots from existing residences must also provide for a new residence setback from existing feedlots located in areas zoned agricultural at the same distances and conditions specified in the setback for new feedlots, unless the new residence is built to replace an existing residence. A municipality may grant a variance from this requirement under section 462.358, subdivision 6.

Subd. 1h. Comprehensive plans in greater Minnesota; open spaces. When adopting or updating a comprehensive plan in a municipality located within a county that is not a greater than 80 percent area, as defined in section 103G.005, subdivision 10b, and that is located outside the metropolitan area, as defined by section 473.121, subdivision 2, the municipality shall consider adopting goals and objectives for the preservation of agricultural, forest, wildlife, and open space land and the minimization of development in sensitive shoreland areas. Within three years of updating the comprehensive plan, the municipality shall consider adopting ordinances as part of the municipality's official controls that encourage the implementation of the goals and objectives.

Subd. 1i. Airport safety zones on zoning maps. Airport safety zones must be included on maps that illustrate boundaries of zoning districts and that are adopted as official controls.

Subd. 2. General requirements. (a) At any time after the adoption of a land use plan for the municipality, the planning agency, for the purpose of carrying out the policies and goals of the land use plan, may prepare a proposed zoning ordinance and submit it to the governing body with its recommendations for adoption.

(b) Subject to the requirements of subdivisions 3, 4, and 5, the governing body may adopt and amend a zoning ordinance by a majority vote of all its members. The adoption or amendment of any portion of a zoning ordinance which changes all or part of the existing classification of a zoning district from residential to either commercial or industrial requires a two-thirds majority vote of all members of the governing body.

(c) The land use plan must provide guidelines for the timing and sequence of the adoption of official controls to ensure planned, orderly, and staged development and redevelopment consistent with the land use plan.

Subd. 3. Public hearings. No zoning ordinance or amendment thereto shall be adopted until a public hearing has been held thereon by the planning agency or by the governing body. A notice of the time, place and purpose of the hearing shall be published in the official newspaper of the municipality at least ten days prior to the day of the hearing. When an amendment involves changes in district boundaries affecting an area of five acres or less, a similar notice shall be mailed at least ten days before the day of the hearing to each owner of affected property and property situated wholly or partly within 350 feet of the property to which the amendment relates. For the purpose of giving mailed notice, the person responsible for mailing the notice may use any appropriate records to determine the names and addresses of owners. A copy of the notice and a list of the owners and addresses to which the notice was sent shall be attested to by the responsible person and shall be made a part of the records of the proceedings. The failure to give mailed notice to individual property owners, or defects in the notice shall not invalidate the proceedings, provided a bona fide attempt to comply with this subdivision has been made.

Subd. 4. Amendments. An amendment to a zoning ordinance may be initiated by the governing body, the planning agency, or by petition of affected property owners as defined in the zoning ordinance. An amendment not initiated by the planning agency shall be referred to the planning agency, if there is one, for study and report and may not be acted upon by the governing body until it has received the recommendation

of the planning agency on the proposed amendment or until 60 days have elapsed from the date of reference of the amendment without a report by the planning agency.

Subd. 5. Amendment; certain cities of the first class. The provisions of this subdivision apply to the adoption or amendment of any portion of a zoning ordinance which changes all or part of the existing classification of a zoning district from residential to either commercial or industrial of a property located in a city of the first class, except a city of the first class in which a different process is provided through the operation of the city's home rule charter. In a city to which this subdivision applies, amendments to a zoning ordinance shall be made in conformance with this section but only after there shall have been filed in the office of the city clerk a written consent of the owners of two-thirds of the several descriptions of real estate situate within 100 feet of the total contiguous descriptions of real estate held by the same owner or any party purchasing any such contiguous property within one year preceding the request, and after the affirmative vote in favor thereof by a majority of the members of the governing body of any such city. The governing body of such city may, by a two-thirds vote of its members, after hearing, adopt a new zoning ordinance without such written consent whenever the planning commission or planning board of such city shall have made a survey of the whole area of the city or of an area of not less than 40 acres, within which the new ordinance or the amendments or alterations of the existing ordinance would take effect when adopted, and shall have considered whether the number of descriptions of real estate affected by such changes and alterations renders the obtaining of such written consent impractical, and such planning commission or planning board shall report in writing as to whether in its opinion the proposals of the governing body in any case are reasonably related to the overall needs of the community, to existing land use, or to a plan for future land use, and shall have conducted a public hearing on such proposed ordinance, changes or alterations, of which hearing published notice shall have been given in a daily newspaper of general circulation at least once each week for three successive weeks prior to such hearing, which notice shall state the time, place and purpose of such hearing, and shall have reported to the governing body of the city its findings and recommendations in writing.

Subd. 6. Appeals and adjustments. Appeals to the board of appeals and adjustments may be taken by any affected person upon compliance with any reasonable conditions imposed by the zoning ordinance. The board of appeals and adjustments has the following powers with respect to the zoning ordinance:

(1) To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by an administrative officer in the enforcement of the zoning ordinance.

(2) To hear requests for variances from the requirements of the zoning ordinance including restrictions placed on nonconformities. Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance and when the variances are consistent with the comprehensive plan. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. Variances shall be granted for earth sheltered construction as defined in section 216C.06, subdivision 14, when in harmony with the ordinance. The board of appeals and adjustments or the governing body as the case may be, may not permit as a variance any use that is not allowed under the zoning ordinance for property in the zone where the affected person's land is located. The board or governing body as the case may be, may permit as a variance the temporary use of a one family dwelling as a two family dwelling. The board or governing body as the

case may be may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

Subd. 6a. **Normal residential surroundings for persons with disabilities.** It is the policy of this state that persons with disabilities should not be excluded by municipal zoning ordinances or other land use regulations from the benefits of normal residential surroundings. For purposes of subdivisions 6a through 9, "person" has the meaning given in section 245A.02, subdivision 11.

Subd. 7. **Permitted single family use.** A state licensed residential facility or a housing with services establishment registered under chapter 144D serving six or fewer persons, a licensed day care facility serving 12 or fewer persons, and a group family day care facility licensed under Minnesota Rules, parts 9502.0315 to 9502.0445 to serve 14 or fewer children shall be considered a permitted single family residential use of property for the purposes of zoning, except that a residential facility whose primary purpose is to treat juveniles who have violated criminal statutes relating to sex offenses or have been adjudicated delinquent on the basis of conduct in violation of criminal statutes relating to sex offenses shall not be considered a permitted use.

Subd. 8. **Permitted multifamily use.** Except as otherwise provided in subdivision 7 or in any town, municipal or county zoning regulation as authorized by this subdivision, a state licensed residential facility serving from 7 through 16 persons or a licensed day care facility serving from 13 through 16 persons shall be considered a permitted multifamily residential use of property for purposes of zoning. A township, municipal or county zoning authority may require a conditional use or special use permit in order to assure proper maintenance and operation of a facility, provided that no conditions shall be imposed on the facility which are more restrictive than those imposed on other conditional uses or special uses of residential property in the same zones, unless the additional conditions are necessary to protect the health and safety of the residents of the residential facility. Nothing herein shall be construed to exclude or prohibit residential or day care facilities from single family zones if otherwise permitted by a local zoning regulation.

Subd. 9. **Development goals and objectives.** In adopting official controls after July 1, 2008, in a municipality outside the metropolitan area, as defined by section 473.121, subdivision 2, the municipality shall consider restricting new residential, commercial, and industrial development so that the new development takes place in areas subject to the following goals and objectives:

- (1) minimizing the fragmentation and development of agricultural, forest, wildlife, and open space lands, including consideration of appropriate minimum lot sizes;
- (2) minimizing further development in sensitive shoreland areas;
- (3) minimizing development near wildlife management areas, scientific and natural areas, and nature centers;
- (4) encouraging land uses in airport safety zones that are compatible with the safe operation of the airport and the safety of people in the vicinity of the airport;
- (5) identification of areas of preference for higher density, including consideration of existing and necessary water and wastewater services, infrastructure, other services, and to the extent feasible, encouraging full development of areas previously zoned for nonagricultural uses;
- (6) encouraging development close to places of employment, shopping centers, schools, mass transit, and other public and private service centers;
- (7) identification of areas where other developments are appropriate; and

(8) other goals and objectives a municipality may identify.

History: 1965 c 670 s 7; 1969 c 259 s 1; 1973 c 123 art 5 s 7; 1973 c 379 s 4; 1973 c 539 s 1; 1973 c 559 s 1,2; 1975 c 60 s 2; 1978 c 786 s 14,15; Ex1979 c 2 s 42,43; 1981 c 356 s 248; 1982 c 490 s 2; 1982 c 507 s 22; 1984 c 617 s 6-8; 1985 c 62 s 3; 1985 c 194 s 23; 1986 c 444; 1987 c 333 s 22; 1989 c 82 s 2; 1990 c 391 art 8 s 47; 1990 c 568 art 2 s 66,67; 1994 c 473 s 3; 1995 c 224 s 95; 1997 c 113 s 20; 1997 c 200 art 4 s 5; 1997 c 202 art 4 s 11; 1997 c 216 s 138; 1999 c 96 s 3,4; 1999 c 211 s 1; 2001 c 174 s 1; 2001 c 207 s 13,14; 2002 c 366 s 6; 2004 c 258 s 2; 2005 c 56 s 1; 1Sp2005 c 1 art 1 s 92; art 2 s 146; 2007 c 140 art 12 s 14; 2008 c 297 art 1 s 60,61; 2009 c 149 s 3; 2011 c 19 s 2; 1Sp2019 c 3 art 3 s 110,111







**LAKE MINNETONKA
CONSERVATION DISTRICT
PUBLIC HEARING NOTICE
7:00 PM, JUNE 28, 2023**

**DENNIS G. NELSON
135 MOUND AVE,
TONKA BAY, MN 55331
GIDEONS BAY,
LAKE MINNETONKA**

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

The meeting will be held at Wayzata City Hall, 600 Rice Street E, Wayzata, MN 55391. Information about meeting location and meeting logistics will be available on the LMCD website, www.lmcd.org. 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
June 8, 2023
1320246



LAKE MINNETONKA CONSERVATION DISTRICT

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

DATE: June 16, 2023

TO: Property Owner

FROM: Thomas Tully, Environmental Administrative Technician

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

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

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

Public Hearing Information

A public hearing will be held at 7:00 PM, June 28, 2023. The items detailed above will be reviewed and considered for approval. All interested persons will be given an opportunity to comment. Alternatively, please submit comments in writing to the LMCD (address below) or by emailing staff at lmcd@lmcd.org.

Those desiring to participate in the hearing may also email the Environmental Administrative Technician at ttully@lmcd.org, or to receive more 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.

CITY OF TONKA BAY

RESOLUTION 22-38

A RESOLUTION SUPPORTING A DOCK VARIANCE APPLICATION AT 135 MOUND AVENUE

WHEREAS, the City of Tonka Bay has a fire lane located adjacent to 135 Mound Avenue; and

WHEREAS, the property at 135 Mound Avenue has unique physical characteristics where a traditional dock layout requires responsible sharing of the riparian area adjacent to both properties; and

WHEREAS, the City Council of Tonka Bay endeavors to achieve a favorable solution that will be documented with the Lake Minnetonka Conservation District and serve as a mutually agreed to point of reference in the future; and

WHEREAS, The City Council of Tonka Bay reviewed the proposed layout prepared by the property owner of 135 Mound Avenue and have found it to be a reasonable and worthy proposal to achieve the desires and wishes of both the property owner and the City.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Tonka Bay:

The City Council hereby offers their support and recommendation of the dock variance application submitted to the Lake Minnetonka Conservation District for the property located at 135 Mound Avenue in Tonka Bay, Minnesota.

PASSED AT A REGULAR MEETING of the Tonka Bay City Council this 25th day of October 2022.

Motion introduced by Connelly and seconded by Anderson.

Roll call vote:

Councilmember Anderson	Aye
Councilmember Connelly	Aye
Councilmember Viger	Aye
Councilmember Wischmeier	Absent
Mayor Jennings	Aye

ATTEST:


Rachel Myskevitz, City Clerk


Adam Jennings, Mayor



To preserve and enhance the "Lake Minnetonka experience"

**135 MOUND AVENUE
GIDEONS, TONKA BAY
VARIANCE APPLICATION
PUBLIC HEARING**

Lake Minnetonka Conservation District

Board Meeting

June 28, 2023

Presented by: Thomas Tully, Environmental Administrative Technician

OVERVIEW

- Board Action
- History
- Background
- 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 to prepare Findings of Fact and Order approving the variance application from Dennis G. Nelson and Barbra Franta for the property located at 135 Mound Avenue in Tonka Bay for final approval at the July 12, 2023 LMCD Board meeting <subject to the following conditions>...
 - **Deny**
 - I make a motion to direct LMCD legal counsel to prepare Findings of Fact and Order denying the variance application from Dennis G. Nelson and Barbra Franta for the property located at 135 Mound Avenue in Tonka Bay for a final vote at the July 12, 2023, LMCD Board meeting based on...

135 MOUND AVENUE, TONKA BAY



135 MOUND AVENUE, TONKA BAY



RECENT HISTORY HIGHLIGHT

- These sites have had persistent ongoing issues. The following is a brief summary of recent communications , addressed concern regarding dock structure and watercraft storage for these sites.
- On July 22, 2022, staff met with City of Tonka Bay staff, City legal counsel, and Applicant regarding options for fire lane use and dock configuration and placement.
- A public hearing for the applicant's proposals was originally held on October 26, 2022 and was brought back for final approval at a LMCD Board meeting on November 9, 2022.
- A new application for the property located at 135 Mound Ave was submitted to the LMCD on April 26, 2023.
- The Applicant has requested an amendment to the original Findings of Facts, this would result in a new Variance being issued. The Applicant has concerns with the current language found in the Findings of Fact.

BACKGROUND

- Applicant's property has approximately 38 feet of 929.4 feet OHW shoreline located on Gideons Bay. Parcel located next to a City fire lane with approximately 58 feet of 929.4 feet OHW shoreline. The current variance allows the Applicant to use the total length of fire lane shoreline toward dock length and side setbacks.
- City of Tonka Bay Resolution 22-38 formally supported the original proposed Variance sharing the City of Tonka Bay Fire Lane.
- Applicant has concerns with current language found in Findings of fact Order 6. Sub. (G).

APPROVED SITE PLAN 1

LEGAL DESCRIPTION:

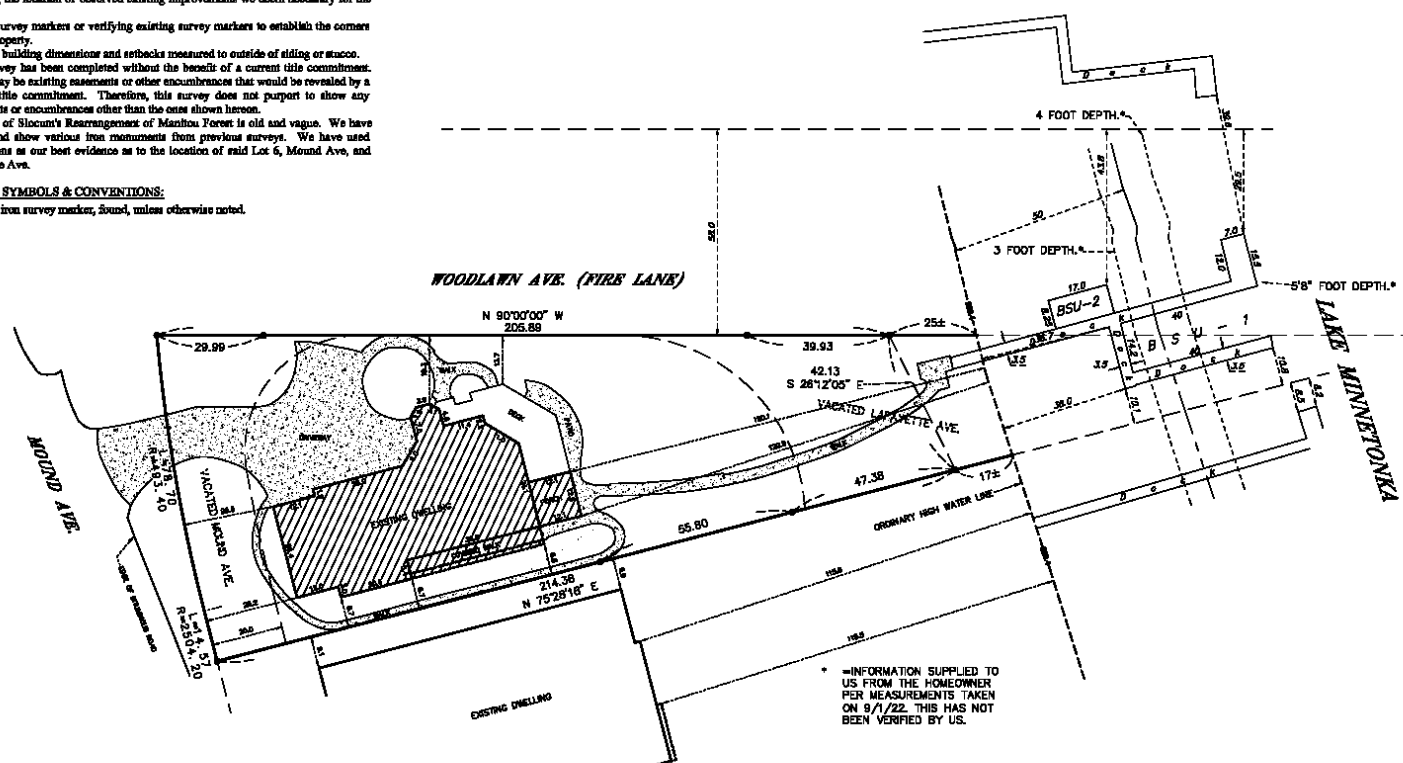
Lot 6, that part of adjoining vacated Mound Avenue and that part of adjoining vacated Lafayette Avenue, Slocum's Rearrangement of Mound Forest all described as beginning at the intersection of the extension Westerly of the Southerly line of said Lot 6 with a line drawn parallel with and 20 feet Westerly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

SCOPE OF WORK & LIMITATIONS:

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

STANDARD SYMBOLS & CONVENTIONS:

● Denotes iron survey markers, found, unless otherwise noted.



DATE	REVISION DESCRIPTION
9/1/22	ADD DOGS ONLY, NO OTHER UPDATES SHOWN, IF THERE ARE ANY, FROM 2017



DENNIS NELSON
 186 MOUND AVE.
 TONKA BAY, MN

Advance
 Surveying & Engineering Co.
 11971 Highway 161
 Minnetonka, Minnesota 55362
 Phone 952.476.7100
 Web www.advance.net

I HEREBY CERTIFY THAT THIS PLAN, SPECIFIC TO PROJECT NO. 221046, IS A TRUE AND CORRECT REPRESENTATION OF THE SURVEY DATA AND INFORMATION PROVIDED TO ME BY THE CLIENT AND THAT I AM A LICENSED SURVEYOR IN THE STATE OF MINNESOTA.
Wayne R. Nelson
 Wayne R. Nelson
 LICENSED SURVEYOR
 LICENSE NO. 10000
 APRIL 6, 2017
 DATE

DATE SURVEYED:
 MARCH 28, 2017

DATE DRAWN:
 APRIL 6, 2017

SHEET TITLE
 EXISTING SURVEY

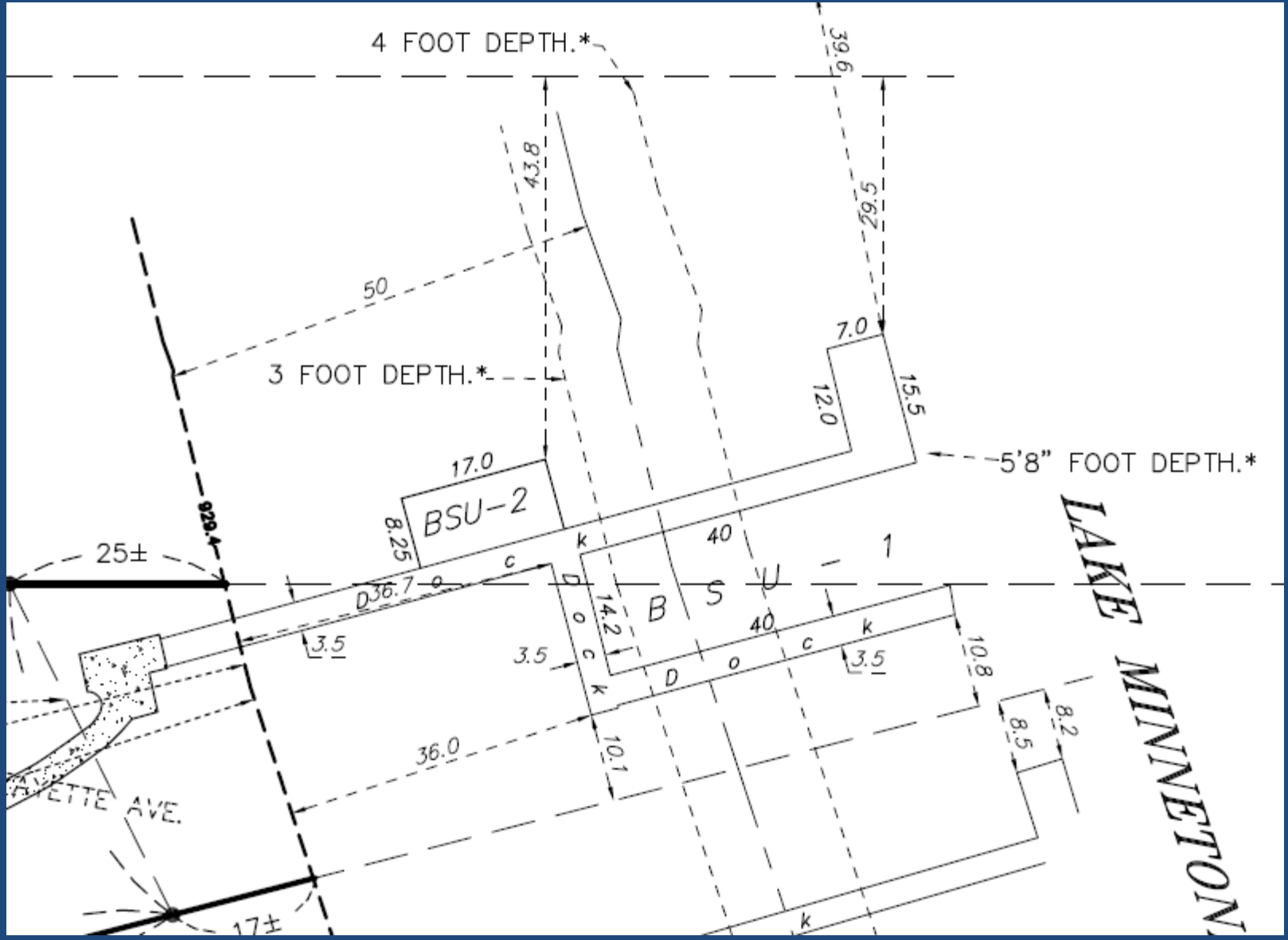
SHEET SIZE: 17 X 22

DRAWING NUMBER
 221046_TB

SHEET NO.
 S1

8 OF 1 OF 1

APPROVED SITE PLAN 1 EXCERPT



CURRENT WORDING (ORDER 6 SUB. (G))

Current Wording:

“If the City ever elects to more fully exercise its riparian rights associated with the fire lane and withdraws its consent because it determines the Applicant’ dock interferes with its proposed use, the Applicant will be required to yield to the superior riparian rights held by the public in the authorized dock use area of the fire lane. McLafferty v. St. Aubin, 500 N.W.2d 165, 168 (Minn. App. 1993). If consent is ever withdrawn, the Applicant, or any future owner, is encouraged to work with the City to identify a solution that will work for both parties and to submit an application seeking whatever approvals from the LMCD that may be required to facilitate the agreed upon plan”.

APPLICANTS PROPOSED WORDING (ORDER 6 SUB. (G))

Applicants Request:

“If the City ever elects to more fully exercise its riparian rights associated with the fire lane and withdraws its consent (because it determines the Applicant’ dock may interferes with its proposed riparian uses), the Applicant may be required to modify his dock configuration to reasonably share riparian rights in accordance with Minnesota riparian rights laws and court decisions as they exists at the time of such exercise by the City. If consent is ever withdrawn, the Applicant or any future property owner is encouraged to work with the City to identify a solution that will work for both parties and to submit an application seeking whatever approvals from the LMCD that may be required to facilitate the agreed upon plan.”

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 the MN DNR or the MCWD.
 - No formal decision regarding the application was made by the City of Tonka Bay, although there was some discussion at the June 27, Council Meeting.
- **Public Comments**
 - Residents at 85 Mound Ave submitted a comment in strong support of the Applicants request.

ON SITE REVIEW



ON SITE REVIEW



ON SITE REVIEW



ON SITE REVIEW



RECOMMENDATION

- **The Staffs approach has been to work with both the Applicant and the City of Tonka Bay to find a favorable solution to an ongoing problem regarding responsible sharing of a City of Tonka Bay Fire Lane. The City of Tonka Bay, through resolution 22-38 formally supported the original proposed Variance sharing the City of Tonka Bay Fire Lane. LMCD Staff and Legal Council at the time of the approval of original Variance noted the superior riparian rights held by the public, and the Applicants need to submit and seek a new solution with the City if ever it was determined that the dock structure at 135 Mound Ave interfered with the Fire Lanes proposed use.**
- **Therefore, LMCD staff recommends that the Board deny the proposed Variance due to protecting the nature of which the City of Tonka Bay Fire Lane is meant to serve.**

PUBLIC HEARING

- **Public Hearing Requirements**
 - Posted in official newspaper on June 8, 2023 (Sun Sailor), and also on June 11 2023 (Laker Pioneer)
 - Owners of properties within 350 feet notified, 10-day notice sent June 15, 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?



ITEM 13A

LAKE MINNETONKA CONSERVATION DISTRICT

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

DATE: June 28, 2023 (Prepared June 20, 2023)
TO: LMCD Board of Directors
FROM: Jim Brimeyer, *James J. Brimeyer* Interim Executive Director
SUBJECT: Administrative Fines

ACTION

Board consideration of the Administrative Fine Process.

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

Approval

I make a motion to approve the Administrative Fine Process <with the following conditions/exceptions...>

Denial

I make a motion to deny the Administrative Fine Process <based on the following conditions...>

BACKGROUND

The Benefits: The only option available to many public agencies is criminal prosecution and penalties. The criminal process does not always regard code violations as being important resulting in long delays in resolution. Citizens resent being labeled as criminals for violations of administrative regulations. The burden of proof and the potential for heavy fines or incarceration are not usually appropriate for many administrative violations. The criminal process is too expensive to be useful for violations of administrative regulations. The Administrative Fine process has proven to be more effective at encouraging compliance, is more efficient and less burdensome.

The Concept: Once a violation is registered and verified, the person committing the violation is sent a notice of the violation, what needs to happen to correct the violation and a reasonable time (depending upon the nature of the violation) in which to make corrections. If this does not happen within the timeframe, either imposed or negotiated, the initial fine per day is \$200.00 for a period of thirty days; a continuing, or subsequent violation is \$300.00 per day for thirty days and a third continuing, or subsequent, violations is \$500.00 per day for thirty days. The party cited can request, in writing, an appeal to the governing board. If this appeal is not filed within ten days of the notice, this constitutes an admission of guilt of the violation and appeal rights are waived.

The maximum fine levied does not exceed \$25,000.00.

Administrative Fines
LMCD Board Meeting
June 28, 2023

If the fine is not paid, the governing body can place a lien on the property which can be collected in the same manner as taxes. Also, the violation could result in the revocation of a license, permit or other approval required by code and possible ineligibility to receive a license or a permit. Ultimately, the violator could face a criminal charge and a sentence of up to ninety (90) days in jail.

RECOMMENDATION _____

STRATEGIC PRIORITIES _____

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

ATTACHMENT _____

- Draft Ordinance Regarding Administrative Fines
- Draft Letter of Violation

AN ORDINANCE RELATING TO ADMINISTRATIVE CITATIONS AND CIVIL PENALTIES FOR VIOLATION OF DISTRICT ORDINANCES

PART I.

Purpose

Section 1.01. The Board of Directors finds that there is a need for educating the public and for alternative methods of enforcing the District ordinances. There are certain negative consequences for both the District and the accused when criminal fines and penalties are the only available enforcement mechanism. Criminal law enforcement personnel and the criminal enforcement process do not always regard District ordinance violations as having sufficient priority. The delay inherent in that system does not ensure prompt resolution. Reluctance to label citizens as criminals for violations of ordinances may discourage enforcement. The higher burden of proof and the potential of incarceration do not appear appropriate for administrative enforcement. Accordingly, the Board finds that the use of administrative citations and the imposition of civil penalties is a legitimate and necessary alternative method of enforcement. This method of enforcement is in addition to any other legal remedy that may be pursued for District ordinance violations. The District thus enacts this ordinance in order to fully execute its duties as provided in Minnesota Statutes, Sections 1038.651 to 1038.691.

PART II.

General Provisions

Section 2.01. Administrative offense. A violation of a provision of the District ordinances is an administrative offense that may be subject to an administrative citation and civil penalties. Each day a violation exists constitutes a separate offense.

Section 2.02. Civil penalty. An administrative offense may be subject to a civil penalty of \$200.00 per day for the first thirty (30) days for any continuing, or subsequent violation; \$300.00 for the next thirty (30) days for any continuing, or subsequent, violation; and \$500.00 per day for the next thirty (30) days for any continuing, or subsequent violation, depending upon the duration of the violation. Total fines will not exceed a total of \$25,000.00, plus any costs, including restitution or abatement, as provided herein.

Section 2.03. Amount of civil penalty. The Board of Directors must adopt by resolution a schedule of civil penalties for offenses initiated by administrative citation. The Board of Directors is not bound by that schedule when a matter is appealed to it for administrative review.

Section 2.04. Procedures. The Board of Directors must appoint one or more education and enforcement officers and adopt procedures to administer the administrative citation program.

Section 2.05. Enforcement authority. The Board of Directors must authorize by resolution the appointment of one or more education and enforcement officers and any persons other than sworn peace officers who shall enforce District ordinances by means of administrative citation.

Part III.

Administrative Citation

Section 3.01. Citation issuance. A person authorized to enforce provisions of the District ordinances may issue an administrative citation upon probable cause that a code violation has occurred. The citation must be issued in person or by mail to the person alleged to be responsible for the violation or may be attached to the watercraft or vehicle in the case of a watercraft or vehicle offense. The citation must state the date, time, and nature of the offense, the name of the authorized enforcement person issuing the citation, the amount of the scheduled civil penalty, and the manner for paying the civil penalty or appealing the citation.

Section 3.02. Responsibility of the accused. The person responsible for the violation must either pay the scheduled civil penalty or request a hearing within ten days after personal service of the citation or 13 days after mailed service of the citation. Payment of the civil penalty constitutes admission of the administrative violation. A late payment fee of 10 percent of the scheduled civil penalty amount may be imposed under Section 7.04. Admission of an administrative violation shall not be admission to any crime.

Section 3.03. Criminal option. Participation by any charged person in these administrative enforcement proceedings is voluntary. Any charged person may withdraw from these proceedings at any stage and elect to have the matter treated as a criminal proceeding by so informing the District or its representatives. The administrative citation will be withdrawn and a criminal citation or complaint issued for the same offense.

Part IV.

Administrative Hearing

Section 4.01. Hearing officer. The Board of Directors will periodically appoint a hearing officer to hear and determine a matter for which a hearing is requested. The accused will have the right to request no later than five days before the date of the hearing that the assigned hearing officer be removed from the case. One request for each case will be granted automatically by the Board. A subsequent request must be directed to the assigned hearing officer who will decide whether he or she has reason to withdraw. If the hearing officer withdraws, the District Staff will assign another hearing officer. The hearing officer is not a judicial officer but is a public officer as defined by Minn Stat., #609.41

Section 4.02. Orders. Upon the hearing officer's own initiative or upon written request of an interested party demonstrating the need, the officer may issue an administrative order served in the manner for serving subpoenas in a civil action for the attendance of a witness or the production of books, papers, records or other documents that are material to the matter being heard. The party requesting the order is responsible for serving the order in the manner provided for civil actions and for paying the fees and expenses of a witness. A person served with an order may file an objection with the hearing officer promptly but no later than the time specified in the order for compliance. The hearing officer may cancel or modify the order if it is unreasonable or oppressive. A person who, without just cause, fails, or refuses to attend and testify or to produce the required documents in obedience to such an order may be subject to such penalties, including default, as the hearing officer may deem fair under the circumstances.

Alternatively, the party requesting the order may seek an order from district court directing compliance.

Section 4.03. Notice. Notice of the hearing must be served in person or by mail on the person responsible for the violation at least 10 days in advance unless a shorter time is accepted by all parties.

Section 4.04. Evidence. At the hearing, the parties will have the opportunity to present testimony and question any witnesses, but strict rules of evidence will not apply. The hearing officer must tape record the hearing and receive testimony and exhibits. The officer must receive and give weight to evidence, including hearsay evidence, that possesses probative value commonly accepted by reasonable and prudent people in the conduct of their affairs. In a case of alleged pollution, alleged safety or sanitation violations, or alleged detriment to the quality of waters or wildlife, evidence of an improper or prohibited action may be considered sufficient proof without demonstrating that the action resulted in actual harm.

Section 4.05. Determination. The hearing officer has the authority to determine that a violation occurred; to dismiss a citation; to impose the scheduled civil penalty; to reduce, stay, or waive a scheduled civil penalty either unconditionally or upon compliance with appropriate conditions; to refer the matter to the Board for suspension or revocation of a District-issued license; to order the accused person to cease and desist from conduct in violation; to order the performance remedial measures; and to impose or recover costs, including restitution and abatement of a nuisance or hazardous condition, as may be incurred by the District and other parties in conducting these proceedings and in undertaking cleanup or remedial measures. When imposing a penalty for a violation, the hearing officer may consider any or all of the following factors:

- (a) the duration of the violation;
- (b) the frequency or reoccurrence of the violation;
- (c) the seriousness of the violation;
- (d) the history of the violation;
- (e) subsequent remedial measures taken by the violator after issuance of the citation;
- (f) the good faith effort by the violator to comply;
- (g) the economic impact of the penalty on the violator;
- (h) the impact of the violation upon the community;
- (i) the impact of the violation upon the environment of the lake, shoreland, or watershed;
- (j) any other factors appropriate to a just result.

Section 4.06. Limited appeal Except for matters subject to administrative review under Part V, the decision of the hearing officer is final without any further right of administrative appeal. In a matter subject to administrative review under Part V, the hearing officer's decision may be appealed to the Board of Directors by submitting a request in writing to the District staff within 10 days after the hearing officer's decision.

Section 4.07. Failure to attend hearing. When the accused fails without good cause to attend the hearing, the hearing officer will either reissue the civil citation or refer the matter for criminal prosecution. Failure to appear a second time constitutes withdrawal from these administrative proceedings and the hearing officer will refer the matter for criminal prosecution. Examples of "good cause" are: death or incapacitating illness of the accused or a family member; a court order requiring the accused to appear for another hearing at the same time; and lack of proper service of the citation or notice of the hearing. "Good cause" does not include: forgetfulness and intentional delay.

PART V.

Administrative Review

Section 5.01. Appeal to the Board. The hearing officer's decision in any of the following matters may be appealed by a party in writing to the Board of Directors for administrative review:

- (a) an alleged failure to obtain a permit, license, or other approval from the Board of Directors as required by an ordinance;
- (b) an alleged violation of a permit, license, other approval, or the conditions attached to the permit, license, or approval, that was granted by the Board of Directors; and/or
- (c) an alleged violation of regulations governing a person or entity who has received a license granted by the Board of Directors.

Section 5.02. Review by the Board. The review will be conducted by the Board of directors after notice served in person or by mail at least 10 days in advance. The Board may request parties to present oral or written arguments regarding the hearing officer's decision.

Section 5.03. Board consideration. The Board of Directors must consider the record, the hearing officer's decision, and any additional arguments before making a determination. The Board is not bound by the hearing officer's decision, but may adopt all or part of the officer's decision. The Board's decision must be in writing.

Section 5.04. Board finding, penalty, and order. If the Board makes a finding of a violation, it may impose a civil penalty not exceeding \$700.00 per day per violation and may consider any or all of the factors contained in Section 4.0S(a) through (j). The Board may also reduce, stay, or waive a civil penalty unconditionally or based on reasonable and appropriate conditions. In addition to the civil penalty, the Board may impose or recover costs, including restitution and abatement of a nuisance or hazardous condition, as may be incurred by the District and other parties in conducting these proceedings and in undertaking cleanup or remedial measures. Further, the Board may order the performance of remedial measures and may order the accused person to cease and desist from conduct in violation.

Section 5.05. License revocation or suspension. In addition to imposing a civil penalty, the Board may suspend or revoke a District-issued license, permit, or other approval associated with the violation. The Board will suspend or revoke a license when, in its judgment, such action will serve to cease, abate, clean up, or remediate a violation.

Part VI.

Judicial Review

Section 6.01. Judicial review. An aggrieved party may obtain judicial review of the decision of the hearing officer or the Board of Directors by proceeding under a writ of certiorari or other means authorized by law. At any time prior to the hearing herein, an aggrieved party may require the issuance of a criminal citation or complaint in lieu of an administrative citation.

Part VII.

Recovery of Civil Penalties

Section 7.01. Failure to pay penalty. If a civil penalty is not paid within the time specified, it will constitute a personal obligation of the violator.

Section 7.02. Property lien. Nothing in this provision precludes the District from seeking and obtaining a lien on the property of the violator to recover the civil penalty or costs incurred by the District or other parties, including restitution and abatement of a nuisance or hazardous condition, in undertaking cleanup or remedial measures.

Section 7.03. Personal obligation. A personal obligation may be collected by appropriate legal means.

Section 7.04. Late fee. A late payment fee of 10 percent of the civil penalty shall be assessed for each 30-day period, or part thereof, that the civil penalty remains unpaid after the due date.

Section 7.05. Revocation of license. Failure to pay a civil penalty is grounds for suspension or revocation of a license related to the violation.

Part VIII.

Criminal Prosecution

8.01. Failure to pay penalty. Failure to pay a civil penalty within 30 days after it was imposed, or such other time as may be established by the hearing officer or the Board of Directors, may be deemed by the hearing officer or the Board to constitute withdrawal from these administrative proceedings and the District may prosecute the offense as a criminal matter.

8.02. Limit to prosecution. After final adjudication under the administrative penalty

procedure herein, the District may not prosecute a criminal violation in district court based on the same set of facts. This does not preclude the District from pursuing a criminal conviction for a violation of the same provision based on a different set of facts. A different date of violation will constitute a different set of facts.

DRAFT



LAKE MINNETONKA CONSERVATION DISTRICT

5341 MAYWOOD ROAD, SUITE 200 • MOUND, MINNESOTA 55364 • PH: (952) 745-0789

To:

Date:

RE: Notice of Violation - Location of Dock

We have discussed with you on several occasions the requirement for you to obtain a permit for your dock installation. This permit is required per Chapter _____ of LMCD Code. Dock permit applications are subject to review and approval by the LMCD staff and eventually the Board. The process and the application are as follows:_____.

You are hereby notified that you are in violation of Chapter _____ of the LMCD Code for failure to apply for and obtain a permit for your dock. If you do not either (i) remove the dock or (ii) deliver to LMCD offices a complete application for a Dock permit (including payment of the application fee) within 15 days from the date of this notice, an administrative citation will be issued pursuant to Section _____ Chapter _____ of the LMCD Code. The initial fine is \$200.00 per day for thirty days.

A second continuing, or subsequent, violation is \$300.00 per day for thirty days and a third continuing, all subsequent, violations are \$500.00 per day. Each day a violation continues constitutes a separate and additional violation. The maximum fine is a total of \$25,000.00.

After issuance of an administrative citation, you have 10 days to pay the fine or deliver a written request for appeal of the citation and fine to the LMCD offices. Failure to file an appeal within 10 days of service of the citation constitutes an admission of the violation and a waiver of your right to appeal.

If the administrative fine is not paid within the time specified, the consequences include:

- Imposition of a lien on the real property at this location and collected in the same manner as taxes;
- A personal obligation of the person committing the violation;
- Ineligibility to receive any license, permit or other approval required by code;
- Potential suspension or revocation of an existing license or permit;
- A potential for criminal prosecution with up to a ninety (90) day jail sentence

Additional fees and late charges

Sec. _____ of the LMCD Code contains a more complete description of the administrative citation, fine, and appeal and administrative hearing processes.

The LMCD Code can be found on the LMCD web site: www.lmcd.org

DRAFT



ITEM 13B

LAKE MINNETONKA CONSERVATION DISTRICT

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

DATE: June 28, 2023 (Prepared June 20, 2023)

TO: LMCD Board of Directors

FROM: Jim Brimeyer, *James J. Brimeyer* Interim Executive Director

SUBJECT: Variance Fees, Escrow, and Recording

ACTION

Board consideration of the Administrative Fine Process. The following motions are offered depending on whether the Board wishes to approve or deny the request:

Approval

I make a motion to approve the Administrative Fine Process <with the following conditions/exceptions...>

Denial

I make a motion to deny the Administrative Fine Process <based on the following conditions...>

BACKGROUND

WE have had considerable discussion about the fees for variances and do the fees currently cover the costs of staff time and outside consultants (legal, engineering, surveys). A survey of the lake communities and a few other locations indicate that most of the cities have a variance fee, and escrow fee and the variance once granted is recorded on the title of record for the property.

RECOMMENDATION

Staff recommend an initial fee of \$750.00 (non-refundable) and an escrow in the amount of \$1,500.00. Unused amounts would be refunded. Any additional amounts needed for outside consultants would be required in order to continue the variance process.

All variances granted would be recorded by our legal counsel and the fees paid from the escrow fund.

STRATEGIC PRIORITIES

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

N/A

Lake Minnetonka Conservation District
General Income & Expense 2023 Budget Comparison
 January through May 2023

ITEM 14A

	Jan - May 23	Budget	\$ Over Budget	% of Budget
Ordinary Income/Expense				
Income				
Grants & Other Income				
3080M10 · Interest - Gen	3,246.96	2,600.00	646.96	124.9%
3260M10 · Court Fines - Admin.	44,528.00	60,000.00	-15,472.00	74.2%
3300M10 · Other Income - Admin.	3,273.96	6,190.00	-2,916.04	52.9%
Total Grants & Other Income	51,048.92	68,790.00	-17,741.08	74.2%
Licenses/Permits				
3110M10 · Multiple/Perm. Dock Lic -Admin.	79,752.76	85,200.00	-5,447.24	93.6%
3120M10 · DMA license - Admin.	3,450.00	3,000.00	450.00	115.0%
3130M10 · Deicing License - Admin.	419.00	6,000.00	-5,581.00	7.0%
3170M10 · Variances - Admin.	1,000.00	10,600.00	-9,600.00	9.4%
3200M10 · Special Density - Admin.	360.00			
3240M10 · Charter Boats - Admin.	2,400.00	3,200.00	-800.00	75.0%
3280M10 · Liquor/Beer/Wine License-Admin.	17,850.00	19,000.00	-1,150.00	93.9%
Total Licenses/Permits	105,231.76	127,000.00	-21,768.24	82.9%
3020M10 · Municipal Dues - Admin.	127,501.00	255,000.00	-127,499.00	50.0%
3400M10 · Transfers In - Admin.	0.00	125,000.00	-125,000.00	0.0%
Total Income	283,781.68	575,790.00	-292,008.32	49.3%
Gross Profit	283,781.68	575,790.00	-292,008.32	49.3%
Expense				
AIS Administration				
4181M30 · Prof. Services	5,000.00	78,000.00	-73,000.00	6.4%
4221M30 · Office Supplies -AIS Prevention	0.00	2,000.00	-2,000.00	0.0%
Total AIS Administration	5,000.00	80,000.00	-75,000.00	6.3%
General & Admin Expenses				
4060 · Telephone/Internet	1,250.14	3,500.00	-2,249.86	35.7%
4070M10 · Webpage & Digital	3,800.00	590.00	3,210.00	644.1%
4090M30 · DMV	0.00	50.00	-50.00	0.0%
4340M10 · Insurance - Admin.	6,142.00	4,500.00	1,642.00	136.5%
4340M30 · Insurance W/C	0.00	1,400.00	-1,400.00	0.0%
4350M30 · Ins./Equip.	0.00	400.00	-400.00	0.0%
4360M10 · Subs/Memberships - Admin.	200.00	2,400.00	-2,200.00	8.3%
Total General & Admin Expenses	11,392.14	12,840.00	-1,447.86	88.7%

Lake Minnetonka Conservation District General Income & Expense 2023 Budget Comparison January through May 2023

	Jan - May 23	Budget	\$ Over Budget	% of Budget
Legal				
4110M10 · Public Info Legal Fees- Admin.	463.12	1,750.00	-1,286.88	26.5%
4620M10 · Civil Legal Fees - Admin.	17,374.67	31,325.00	-13,950.33	55.5%
4640M10 · Prosecution Legal Fees - Admin.	16,084.14	30,000.00	-13,915.86	53.6%
Total Legal	33,921.93	63,075.00	-29,153.07	53.8%
Office, Supplies, Equip				
4080 · Postage	1,009.09	3,000.00	-1,990.91	33.6%
4100M10 · Printing - Admin.	5,302.43	1,260.00	4,042.43	420.8%
4140M10 · Office Equipment R&M - Admin.	2,279.33	6,000.00	-3,720.67	38.0%
4160M10 · Watercraft/Vehicle Maint	0.00	1,500.00	-1,500.00	0.0%
4220M10 · Office Supplies -Admin.	1,414.20	1,700.00	-285.80	83.2%
4230M10 · Meeting Exp. - Admin.	2,093.51	12,000.00	-9,906.49	17.4%
4320M10 · Office Rent - Admin.	10,400.88	22,000.00	-11,599.12	47.3%
4400M10 · Mileage/Exp's - Admin.	0.00	400.00	-400.00	0.0%
4410M10 · Training/Prof. Devel.	0.00	500.00	-500.00	0.0%
4520M10 · Furniture & Equip - Admin.	0.00	750.00	-750.00	0.0%
4530M10 · Comp. Sftwr & Hdwr - Admin.	1,485.91	3,515.00	-2,029.09	42.3%
4531M30 · Software & Hardware/Training	410.08	500.00	-89.92	82.0%
Total Office, Supplies, Equip	24,395.43	53,125.00	-28,729.57	45.9%
Personnel Expenses				
4020M10 · Salaries-002 - Admin	86,196.84	246,050.00	-159,853.16	35.0%
4021M10 · ER Share of Admin FICA/Medicare	6,574.30	17,700.00	-11,125.70	37.1%
4022M10 · ER PERA - Admin	5,529.54	17,500.00	-11,970.46	31.6%
4024 · Contract Labor	18,700.00			
4380M10 · Employee Benefits - Admin.	16,182.09	33,750.00	-17,567.91	47.9%
Total Personnel Expenses	133,182.77	315,000.00	-181,817.23	42.3%
Professional Services- ADM				
4040M10 · Auditing - Admin.	14,156.00	11,500.00	2,656.00	123.1%
4180M10 · Professional Services - Admin.	6,919.54	6,000.00	919.54	115.3%
4181M10 · Professional Comp. Serv.-Admin.	2,689.99	2,500.00	189.99	107.6%
4182M10 · Media (Cable/Internet) - Admin.	2,774.10	3,500.00	-725.90	79.3%
4183M10 · Prof/ Serv. - Communications	19,151.70	20,000.00	-848.30	95.8%
Total Professional Services- ADM	45,691.33	43,500.00	2,191.33	105.0%

Lake Minnetonka Conservation District
General Income & Expense 2023 Budget Comparison
 January through May 2023

	Jan - May 23	Budget	\$ Over Budget	% of Budget
Public Education & Safety				
4111M20 · Public Service Education	0.00	2,500.00	-2,500.00	0.0%
4160M20 · Public Health/Safety- SL	303.45	0.00	303.45	100.0%
4535M10 · Public Health Solar Lights	0.00	5,000.00	-5,000.00	0.0%
Total Public Education & Safety	303.45	7,500.00	-7,196.55	4.0%
Total Expense	253,887.05	575,040.00	-321,152.95	44.2%
Net Ordinary Income	29,894.63	750.00	29,144.63	3,986.0%
Net Income	29,894.63	750.00	29,144.63	3,986.0%

Lake Minnetonka Conservation District STL Income & Expense 2023 Budget Comparison January through May 2023

	Jan - May 23	Budget	\$ Over Budget	% of Budget
Ordinary Income/Expense				
Income				
Contributions				
3001M20 · Donations (General) - S/L	21,116.28	43,050.00	-21,933.72	49.1%
3004M20 · Donations (Solar Light) - S/L	410.57			
3012M20 · Donations Carp Removal West Arm	50.00			
Total Contributions	21,576.85	43,050.00	-21,473.15	50.1%
Grants & Other Income				
3300M20 · Other Income - S/L	0.00	750.00	-750.00	0.0%
Total Grants & Other Income	0.00	750.00	-750.00	0.0%
3400M20 · Transfers in - S/L	0.00	42,000.00	-42,000.00	0.0%
Total Income	21,576.85	85,800.00	-64,223.15	25.1%
Gross Profit	21,576.85	85,800.00	-64,223.15	25.1%
Expense				
Office, Supplies, Equip STL				
4080M20 · Postage - S/L	0.00	800.00	-800.00	0.0%
4100M20 · Printing - S/L	0.00	1,000.00	-1,000.00	0.0%
Total Office, Supplies, Equip STL	0.00	1,800.00	-1,800.00	0.0%
Public Education & Safety				
4535M10 · Public Health Solar Lights	0.00	84,000.00	-84,000.00	0.0%
Total Public Education & Safety	0.00	84,000.00	-84,000.00	0.0%
Total Expense	0.00	85,800.00	-85,800.00	0.0%
Net Ordinary Income	21,576.85	0.00	21,576.85	100.0%
Net Income	21,576.85	0.00	21,576.85	100.0%

10:59 AM

06/22/23

Accrual Basis

Lake Minnetonka Conservation District
Balance Sheet
As of May 31, 2023

	<u>May 31, 23</u>
ASSETS	
Current Assets	
Checking/Savings	
Alerus Checking	
1024M20 · Alerus Checking - STL	-62,478.00
Alerus Checking - Other	96,218.93
Total Alerus Checking	33,740.93
1010M10 · Petty Cash	38.60
1090M10 · Alerus Bank - Savings	
1090M50 · Alerus Savings - Equip. Repl	125,652.32
1090M10 · Alerus Bank - Savings - Other	591,199.85
Total 1090M10 · Alerus Bank - Savings	716,852.17
Total Checking/Savings	750,631.70
Accounts Receivable	
1150M10 · Accounts Rec. - Gen	33,328.75
Total Accounts Receivable	33,328.75
Other Current Assets	
1300M10 · Due From Other Gov. - Gen.	1,820.00
Total Other Current Assets	1,820.00
Total Current Assets	785,780.45
Fixed Assets	
1640M90 · Fixed Assets	155,233.00
1645M90 · Accumulated Depreciation	-95,427.00
Total Fixed Assets	59,806.00
Other Assets	
1650M90 · Leased Asset	172,361.00
1655M90 · Accumulated Amortization-Lease	-22,969.00
Total Other Assets	149,392.00
TOTAL ASSETS	994,978.45

Lake Minnetonka Conservation District
Balance Sheet
As of May 31, 2023

	May 31, 23
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
2090 · Accounts Payable	15,635.87
Total Accounts Payable	15,635.87
Credit Cards	
1087M10 · US Bank (Credit Card)	-1,265.68
Total Credit Cards	-1,265.68
Other Current Liabilities	
2020-LT · Payroll Liabilities - UNUM	-54.19
2020 · Payroll Liabilities -	8.55
2050M10 · Accrued Payroll - Gen	5,068.00
2150M90 · Accrued compensated absences	14,439.00
2151M90 · Current portion of comp absens	3,337.93
2916M90 · Lease Liability - Short Term	25,290.00
Total Other Current Liabilities	48,089.29
Total Current Liabilities	62,459.48
Long Term Liabilities	
2915M90 · Lease Liability - Long Term	126,242.00
Total Long Term Liabilities	126,242.00
Total Liabilities	188,701.48
Equity	
Retained Earnings	946,254.89
2910M10 · Fund Balance - Admin.	48,727.51
2910M20 · Fund Balance - S/L	226,468.17
2910M30 · Fund Balance - EWM	40,088.85
2910M50 · Fund Balance - Equip Repl	79,004.07
2910M90 · Fixed Assets - Conversion Fund	-585,738.00
Net Income	51,471.48
Total Equity	806,276.97
TOTAL LIABILITIES & EQUITY	994,978.45



LAKE MINNETONKA CONSERVATION DISTRICT

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

DATE: June 28, 2023 (Prepared June 20, 2023)
TO: LMCD Board of Directors
FROM: Jim Brimeyer, Interim Executive Director
SUBJECT: LMCD Office Summer Hours

ACTION

Board consideration of new Summer Hours as of July 3, 2023. The LMCD Office Hours will be Monday through Thursday, 7:30am to 5:00pm., and Fridays from 8:00am to 11:30am.

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

Approval

I make a motion to approve the new Summer Hours effective July 3, 2023, Monday through Thursday 7:30am to 5:00pm, and Fridays from 8:00am to 11:30am. <with the following conditions/exceptions...>

Denial

I make a motion to deny the new Summer Hours <based on the following conditions...>

BACKGROUND

Over the past few months I have noticed a few things – many of the “lake communities” have summer hours from Memorial Day to Labor Day. Also, once we get an agenda “out the door” on Thursdays, Fridays can be a “bit slow”.

RECOMMENDATION

Staff is advising the Board to approve the new Summer Hours effective July 1, 2023, Monday through Thursday 7:30am to 5:00pm, and Fridays 8:00am to 11:30am.

STRATEGIC PRIORITIES

- Operational Effectiveness (checked), Clear & Timely Communications, Effective Governance, Lake Protection, Other

ATTACHMENT

- N/A



ITEM 15B

LAKE MINNETONKA CONSERVATION DISTRICT

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

DATE: June 28, 2023 (Prepared June 20, 2023)

TO: LMCD Board of Directors

FROM: Jim Brimeyer, *James J. Brimeyer* Interim Executive Director

SUBJECT: Staff Items - Compensation

ACTION

Board consideration of increasing staff compensation

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

Approval

I make a motion to approve increasing staff compensation <with the following conditions/exceptions...>

Denial

I make a motion to deny increasing staff compensation based on the following conditions...

BACKGROUND

I have done some thinking about how LMCD staff is compensated. I have observed the quality and effort that our staff makes to make sure we are providing a high level of service to the board and our customers. I am more than satisfied. I also am of the opinion that hourly rates vs an annual salary do not reflect the value that we should have for our employees.

This item has been discussed by the Officers Working Group and meets their approval.

RECOMMENDATION

Effective retroactively to June 1, 2023, I am recommending the following:

Current

Tammy \$23.47 per hour

Tom \$31.48 per hour + OT X 1.5*

Maisyn \$22.05 per hour + OT X 1.5**

Raina \$23.00 per hour

Proposed:

\$30.00 per hour to enhance high five under PERA

\$35.00 per hour + OT X 1.5

\$27.50 per hour + OT X 1.5

\$25.00 per hour at six months (or annual salary)

Staff Items - Compensation
LMCD Board Meeting
June 28, 2023

Effective September 1, 2023

Tammy - part time at \$30.00 per hour

Tom – potential annual salary range \$70,000 - \$80,000 (TBD) – no overtime

Maisyn – potential annual salary range \$50,000 - \$60,000(TBD) – no overtime

Raina – potential annual salary range – TBD – no overtime

*\$74,000 (current earnings)

**\$47,000 (current earnings)

STRATEGIC PRIORITIES

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