



# LAKE MINNETONKA CONSERVATION DISTRICT

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

**AGENDA**  
**LAKE MINNETONKA CONSERVATION DISTRICT**  
**Wednesday, September 13, 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.**

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

**No Work Session**

## **FORMAL MEETING AGENDA**

**7:00 p.m.**

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

- 1) **CALL TO ORDER**
- 2) **PLEDGE OF ALLEGIANCE**
- 3) **ROLL CALL**
- 4) **APPROVAL OF AGENDA**
- 5) **CHAIR ANNOUNCEMENTS**
  - A) Bill Cook Recognition
- 6) **APPROVAL OF MINUTES (08/09/2023 LMCD Regular Board Meeting)**
- 7) **APPROVAL OF CONSENT AGENDA**

- A) Audit of Vouchers (08/16/2023 – 08/31/2023)
- B) Audit of Vouchers (09/01/2023 - 09/15/2023)

**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**

**10) PUBLIC HEARING**

- A) 4290 Cottonwood Lane Variance

**11) OTHER BUSINESS**

**12) OLD BUSINESS**

- A) Approval of Modified Waterski Observer Rule 9-1.01
- B) Approval of Employee Organization Chart and Flex Time
- C) Wayzata Panoway Project

**13) NEW BUSINESS**

**14) TREASURER REPORT**

- A) August Balance Sheet
- B) August General & STL Income and Expense Reports

**15) EXECUTIVE DIRECTOR UPDATE**

- A) Update on Ongoing Complaints
  - i) Schussler
  - ii) Cripe
- B) Prosecution Attorney Update
- C) Professor Newman Status
- D) Watercraft for Hire Workgroup Update
- E) JJ Hill and Apple Days Update

**16) ADJOURNMENT**



## LAKE MINNETONKA CONSERVATION DISTRICT

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September 13, 2023

Bill Cook  
5195 Greenwood Circle  
Greenwood, MN 55331

Dear Bill:

Thank you for serving on the Lake Minnetonka Conservation District (LMCD) Board from 2017 to 2023. During your appointment, you served as LMCD Board Treasurer from 2018 to 2020, and on various committees, task forces, and workgroups including:

- AIS Task Force/Committee (2018 – 2023)
- Communications Committee/Workgroup (2018 – 2020)
- Deicing/Permanent Dock Workgroup (2020)
- Finance Committee/Workgroup (2018 - 2023)
- Nominating Committee (2018)
- Officer's Workgroup (2019 - 2020)
- Operations Committee (2023)
- Save the Lake Committee (2018 – 2023)

LMCD is governed by a voluntary Board of Directors composed of one member appointed by the City Councils of the 14 municipalities that border Lake Minnetonka. Board members typically serve three-year terms subject to recall by the cities. In addition to the formal board meetings, members are active on committees, workshops, or special projects, as well as in their communities.

The Board provides direction for the organization, develops policies and initiatives, and helps build partnerships to carry out the mission of preserving and enhancing the Lake Minnetonka experience. We appreciate your service on the Board and guiding the future of Lake Minnetonka, helping to protect the lake, the surrounding communities, and all those who enjoy it.

Bill, thank you for your professionalism, contributions, and dedication to the Lake and its stakeholders.

Respectfully,

A handwritten signature in cursive script that reads "James J. Brimeyer".

Jim Brimeyer

Interim Executive Director

cc: Ann Hoelscher, Board Chair

**LAKE MINNETONKA CONSERVATION DISTRICT  
BOARD OF DIRECTORS**

7:00 P.M., August 9, 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; Gabriel Jabbour, Spring Park; Dennis Klohs, Minnetonka Beach; Mark Kroll, Excelsior; Ryan Nellis, Tonka Bay; Denny Newell, Woodland; Nicole Stone, Minnetonka; and Deborah Zorn, Shorewood. Also present: Joe Langel, LMCD Legal Counsel; Thomas Tully, Environmental Administrative Technician; Maisyn Reardan, Administrative Coordinator; Raina Arntson, Administrative Intern; and Interim Executive Director Jim Brimeyer.

**Members absent:** Dan Baasen, Wayzata and Jake Walesch, Deephaven.

**4. APPROVAL OF AGENDA**

**MOTION:** Kirkwood moved; Kroll seconded to approve the agenda as amended with item 7A having additional vouchers added to the audit and new item 7D.

**VOTE:** Motion carried unanimously.

**5. CHAIR ANNOUNCEMENTS**

There were no Chair announcements.

**6. APPROVAL OF MINUTES-** 07/12/2023 LMCD Regular Board Meeting

Cook commented he was not noted as present nor absent in the minutes.

Chair Hoelscher directed staff to make the necessary change.

**MOTION:** Cook moved; Newell seconded to approve the 07/12/2023 LMCD Regular Board Meeting minutes with the addition of Director Cook being added to the minutes.

**VOTE:** Ayes (8), Abstained (4), (Zorn, Kirkwood, Nellis, Klohs). Motion carried.

**VOTE:** Motion carried unanimously.

**7. APPROVAL OF CONSENT AGENDA**



Newell asked for details on the agreements included in the consent agenda. Hoelscher noted that it is an agreement that is required every five years.

Brimeyer explained that this allows the prosecuting attorney to access files from different entities related to criminal cases. He noted that the agreement allows information sharing between the LMCD attorney and the other entities.

Anderson commented about a voucher included in the audit to reconfirm it was placed in the correct category.

**MOTION:** Stone moved; Zorn seconded to approve the consent agenda as presented. Items so approved included: **7A)** Audit of Vouchers (07/16/23 – 07/31/23 and 08/01/23 – 08/15/23); **7B)** Resolution Accepting Save the Lake Contributions (06/10/23 – 07/31/23); **7C)** Findings of Fact and Order for New Multiple Dock License for Reconfiguration of Non-Conforming Structure, Groveland HOA; **7D)** Joint Powers Agreement with Criminal Justice Agency and Court Data Services Subscriber Amendment with CJDN.

**VOTE:** Motion carried unanimously.

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

Jane Anderson, 5060 Edgewater Drive in Mound, and Sherry Wallace, 2135 Overland Lane in Mound, commented that they cofounded the Harrison Bay Association. Ms. Anderson thanked the LMCD for the work it does, noting that it is amazing. She commented on the recent action of the Board to lift the ban on night bowhunting for the veterans event. She commented that 120 veterans and retired fire and police members bow hunted for one night on Lake Minnetonka and took out 8,000 pounds of carp at no charge. She commented that it was phenomenal, and the participants enjoyed the event. She hoped that the event could continue in the future. She commented that they heard about a local company, Two Mikes, which uses carp to make organic fertilizer. She stated that they drove to meet with the owners of the company, and they were thinking this could be an opportunity to brainstorm with the AIS Committee.

Ms. Wallace commented that she is aware that some people were not aware of the bowhunting activity and were asking questions on a social media platform. She commented that the community does not like carp but may not fully be aware of the devastating impact on the ecology of the lake because of carp. She stated that they need to develop unique ways to educate the public about the impact of carp and different ways to manage that population. She thanked the LMCD for the support they have given for researching and tracking carp and would like to continue to find unique ways to get carp out of the lake that do not cost money to the taxpayers.

Hoelscher thanked the residents for the input and update.

**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) Administrative Fines History

Brimeyer stated that this has been before the Board several times and at the last review there had been a request from one of the cities for additional information. He stated that they did send the information to all the cities welcoming input, and they received four responses, thanking the LMCD for input and one city voiced support. He stated that in terms of legality administrative fines are not allowed and not prohibited by state law, but many municipalities utilize this system. He stated that they received a letter from the Lake Minnetonka Association (LMA) which provides the opinion that administrative fines are not legal.

Jabbour stated that perhaps rather than stating it is not allowed or prohibited by state law, it would be better stated that the item is not addressed by state law.

Brimeyer agreed.

Eric Evenson, LMA, stated that when he heard this was the direction the LMCD was heading it was surprising. He stated that he discussed this with the LMA Board, as to whether the LMCD has the legal authority to charge administrative fines. He stated that they contracted with an attorney to ask that question. He stated that although he does agree that administrative fines have their place and can be effective, it is the opinion of LMA and the legal counsel it sought that it would be illegal for the LMCD to charge administrative fines. He commented that administrative fines can be misused, although he does not believe that current LMCD staff would abuse that ability. He noted that because administrative fines can be abused, the legislature provides clear authority on how the fines can be used. He stated that he understands that White Bear Lake Conservation District uses administrative fines but would be cautious about basing this decision on the fact that a similar entity uses that process. He commented that there are wealthy individuals on Lake Minnetonka that have the ability to fight, there are also individuals that may not have the ability to fight back or afford the penalty. He commented that this would be a big hammer to use against people. He commented that LMA is opposed to this process and believes it to be illegal.

Hoelscher noted that the written correspondence from LMA would be entered into the record for the meeting.

Jabbour asked about the knowledge that Evenson has related to how White Bear Lake Conservation District

(WBLCD) has applied this. He stated that the LMCD was told that WBLCD never used this process.

Evenson stated that it is his understanding that WBLCD attempted to use it, but questions arose about the legality and therefore the staff and legal counsel decided not to use it. He commented that in the case of a marina with an issue related to density, the fine could be charged per slip that is out of compliance.

Hoelscher noted that there is a cap of \$25,000.

Evenson noted that would be per case, therefore if there were five violations that would be five times that cap.

Kirkwood asked how this came to be presented from LMA, whether it was discussion of the Board or the perspective of Evenson.

Evenson replied that the letter from the attorney is on behalf of the LMA and approved by the LMA, not just himself. He stated that he attended an LMCD meeting where the topic was discussed, which led to him asking more questions in attempt to gain answers. He stated that he is familiar with the administrative fine process, as the watershed was provided that authority through the legislature. He stated that he was surprised that the LMCD would be doing this outside of having the legislative ability to do so. He stated that if the LMCD would like this authority, it should request the legislative change to gain that authority.

Newell commented that he does not want the LMCD to put itself in the position where it could be legally penalized down the road and asked legal counsel for his opinion.

Langel replied that as he has said before there is no expressed authority for this, likewise that authority does not exist for cities and cities have been using this authority for years. He stated that there is case law which goes back decades and provided details on those rulings. He commented that it is not black and white on whether the LMCD has implied power as that is an open question, similar to cities. He stated that the League of Minnesota Cities has acknowledged that cities use administrative penalties that is beneficial in providing due process and avoiding legal actions. He stated that the League has also cautioned that it has been questioned as to whether cities have that implied authority. He disagreed with whether the issue is black or white or absolutely illegal, but also cannot say there is unquestioned authority to do so. He noted again that cities would fall into that same category.

Newell asked if Langel was aware of any cities that have been challenged and overturned by using this process.

Langel replied that he is not, noting that cities have been doing this for years and continue to do so on a daily basis.

Kroll commented that he is torn on this and has concerns with the deep state and fines. He stated that he also believes that the LMCD needs a softer hammer below threatening to lock someone up for 90 days. He stated that there is a court case that is currently going on where the property owners have not responded to requests for compliance for over two years. He stated that he has come around to supporting the concept of

administrative fines as it would provide another tool.

Cook agreed with Kroll.

Klohs stated that there is a lot of litigation around the lake and would expect this to be challenged. He asked legal counsel for input on that process and how long that challenge process could take, noting that some people could find it entertaining to challenge the LMCD.

Langel stated that litigation could easily drag on for two years, similar to the case mentioned. He stated that he would assume that would be covered under the League of Minnesota Cities coverage. He stated that he could not guarantee that the LMCD would prevail.

Klohs asked if it would be possible that the League policy would not cover this.

Langel stated that would depend upon the scope of the coverage, noting that he has not read that policy.

Klohs commented that it would seem that it would be possible that the LMCD could have to pay those court costs out of pocket.

Langel replied that he would guess a challenge to ordinance would be covered under the policy but would have to review the scope of coverage.

Kirkwood asked what the process would be to have a law passed by the legislature that would provide support for this authority.

Hoelscher stated that they would have to lobby the legislature and it would have to come forward as an amendment to the enabling ordinance or through another statute.

Jabbour commented that process would be three to five years and could open the door to changing or eliminating the LMCD.

Kirkwood asked if it would make sense to pursue that to address this issue for the longer term.

Hoelscher stated that would be a secondary question. She suggested that they deal with this matter tonight.

Stone commented that she supports this for the same reasons as Kroll as it would provide a softer hammer. She stated that the example of someone that refuses to respond for two years is a waste of staff time and energy. She stated that it seems like an entity wants to make this an issue and therefore she was unsure if this would be worth pursuing.

Anderson commented that he was a champion of this cause initially. He noted that they used the example of WBLCD to base this model on and referenced the example where WBLCD attempted to use the policy, charging a fine for each slip which was out of compliance. He stated that when reviewing what the LMCD is

legislated to do, there are express powers to fine \$100 or 90 days in jail. He stated that he cannot believe that the LMCD is not different from a city in using administrative fines. He used the example that an administrative fine is charged and that is then challenged, noting that cost is then unknown. He stated that the cost is known for the prosecuting attorney to take these cases to court. He stated that even though he likes the idea of administrative fines, he would not support this because the expressed authority provides the ability for a fine of \$100 or 90 days in jail.

Newell stated that personally he is trying to sort through the information to decide. He stated that on appearance he thinks administrative fines would add another tool to the toolbox and if properly used, provides another option. He stated that he is still unsure about the fine amounts but would lean towards having this option to use.

Jabbour stated that the enabling act is based around choosing, with the language may versus shall. He stated that the language cautioned against unfunded mandates. He stated that 100 percent of the ordinance is written as a criminal act. He stated that the LMCD has a problem, that it is taking three to five years to address complaints, which was a staff problem related to the former lack of leadership. He stated that is the same feeling coming from the law enforcement. He stated that people should be given 30 days and then the complaint is filed in court. He noted multiple cases that are four to six years old where the complaints have not even been filed in court. He asked the LMCD to think about a different way to engage in those services. He stated that \$25,000 could put someone out of their home. He stated that if he gets a ticket, he would want to go in front of the judge as the enabling ordinance states that the penalty for a criminal act would be \$100, but this would provide a penalty of \$25,000 for a civil act. He stated that when the state established this organization \$100 was specified and that is clear. He stated that this would be a decision of the LMCD to state that it is within its power to do this. He commented that there is a difference between a City which has elected officials compared to a Board that is appointed. He stated that he has an enormous amount of conflict with this issue. He stated that the one task the LMCD is tasked to handle is docks, and if they do not believe they could handle that, the power should be given back to the cities.

Nellis referenced the letter from Evenson which states Board members who vote to approve of this ordinance in violation of state law have no legal immunity and could be subject to criminal or civil lawsuits. He asked legal counsel if the insurance would apply to the LMCD, individuals on the Board or staff, and/or both.

Langel replied that typically insurance of that nature would cover staff and elected officials acting within the course of their duties. He stated that the only time the coverage would not cover those people is when they are blatantly acting outside the course and scope of their duties. He stated that taking a vote on an ordinance would be within the scope of duties.

Nellis commented that he would vote against this as it seems too risky.

Zorn commented that she is also in between as she likes to provide the ability to address these lingering, ongoing enforcement issues on the lake but also feels that the WBLCD provides precedent. She commented that she feels that there are elements to support a decision to move forward based on the history of municipalities. She believes that lobbying the legislature for a change would be too big of a beast to hinge

this decision upon. She stated that if there have been instances in WBLCD where they have been able to work with the homeowner, the administrative fines could be motivating.

Hoelscher agreed with many of the comments made. She commented that she believes this would be a positive step that would provide another tool and lesser hammer to gain compliance. She stated that this would not be used on every violation on the lake but could help staff to be more efficient and to gain response from residents. She stated that unfortunately the LMA has seemed to draw a line in the sand saying they would back someone to challenge this, which is not a fight that she wants to get into. She did not believe it would be worthwhile to proceed when it has been blatantly threatened and therefore, she will not support this.

**MOTION:** Kroll moved; Cook seconded to approve the Administrative Fines Ordinance as presented.

**VOTE:** Ayes (4) (Stone, Kroll, Kirkwood, Cook), Nays (8). Motion failed.

## **B) Strategic Plan Adoption**

Hoelscher stated that the revised Strategic Plan for 2023/2024 was included in the Board packet.

Anderson referenced the language related to AIS, noting that the concept was to be an incubation for other groups to begin AIS treatments and management.

Cook agreed. He suggested using “encourage” rather than “fund”.

Hoelscher suggested the word “support”

Cook noted that he also considered that word but prefers encourage.

Klohs commented that encourage would seem to leave out contributing at all.

Cook stated that encouraging could provide time, resources, money, etc.

Anderson referenced lake use and safety noting that there are two different nomenclatures. He asked for clarification on the use of “ensure public safety on Lake Minnetonka” and “fully support Water Patrol activities”.

Cook stated that he does not like the word ensure as that is a synonym for guarantee.

Hoelscher stated that they could spend all night wordsmithing the document. She stated that they had discussed this in the workshop and if additional wordsmithing is needed, perhaps this is brought back to a future workshop.

Anderson commented that they had a workshop, and this is the final document to vote on, noting that he just had additional input. He stated that people can still provide opinions on the language.

Hoelscher asked for input from the Board on whether this item should be postponed to the next workshop.

Kroll commented that if they are going to change more than one or two words, this should go to a workshop.

Newell stated that he liked that the AIS Committee was an incubator where people could bring in ideas that could be vetted before deciding whether to bring it forward to the Board. He stated that as that committee structure has been changed, he was curious as to how new ideas would come forward.

Hoelscher commented that is a good question and the thought process would be that items could be discussed at an Officer meeting or in a workshop setting. She stated that if there are issues with the Strategic Plan, she would prefer to hold off to the next workshop to ensure everyone is comfortable.

Jabbour asked how they would deal with the fact that they had to wait ten minutes to gain a quorum at the workshop to discuss the Strategic Plan. He stated that it is his opinion that people either show up and participate or trust those that showed up to participate. He stated that if the changes proposed are limited to two or three words, they could proceed.

**MOTION:** Anderson moved; Cook seconded to adopt the 2023/2024 LMCD Strategic Plan, with the changes as discussed and described by Anderson.

Further discussion: Newell asked if this change would result in no funding for AIS from the LMCD.

Anderson replied that he would not see the strategy changing, simply the language changed in the document. He stated that an applicant could still come to the LMCD, where the concept could be discussed, and if deemed appropriate a funding request could still come before the Board at a regular meeting.

**VOTE:** Motion carried unanimously.

### C) Update to Waterskiing/Towing Observer Ordinance

Hoelscher noted that Anderson requested an update on this item. She noted that since voting on the item, they have received feedback from Water Patrol that they are strongly against changing the observer rule and therefore that should come back before the Board for additional consideration. She noted that they would still want to proceed with the updates to the language which would bring it into compliance with State law.

Kroll stated that he would ask that Water Patrol be specific with its concerns about the updates.

Hoelscher stated that a letter has been received from Water Patrol that can be distributed to the Board.

Jabbour commented that the U.S. Coast Guard accident summary was released for 2022 and the third cause was lack of observer. He stated that the former LMCD representative from Mound t-boned a boat because he did not have an observer. He commented that two years ago, with the sun in the eyes of the Water Patrol and lack of observer, the Water Patrol hit the rope of the skier and the skier ended up in the hospital. He

noted that the driver of that boat received a ticket for not having an observer and that matter is in litigation. He stated that they cannot continue to operate in a vacuum.

Hoelscher noted that will return to the Board at the next meeting or first meeting in September.

### 13. NEW BUSINESS

#### A) Watercraft for Hire Work Group

Hoelscher stated that there was a workshop on this topic in the last month and staff has since met with Water Patrol to discuss the issues. She stated that because this is a large issue there has been a desire to create a working group for this matter. She noted that Jabbour and Walesch have expressed interest in joining that group and asked that other members interested reach out to staff. She stated that for those that are not going to participate in the work group, they could offer input at this time.

Anderson asked if there would be outside members on the work group, or only Board members.

Hoelscher stated that the work group would include members of the Board and staff and that group could consult with others that they feel would add necessary input.

Newell stated that he would like to consider having Mr. Evenson attend a future workshop to discuss Maxwell Bay including boat traffic and the impact of weeds.

Hoelscher noted that at this time she is requesting input for the Watercraft for Hire Work Group.

Brimeyer commented that this is an example of why workshops are held every other Wednesday and attendance is necessary so that information is not repeated at the regular meeting. He stated that they spent a lot of time with Water Patrol on this to review the information and make suggestions. He stated that they do not believe that this document needs a lot of tweaking, and this should not be dragged out for months.

Hoelscher stated that there was a workshop on this issue but there was not a lot of structure, therefore she believed that a smaller more structured group could provide a framework for the rest of the Board to discuss.

Brimeyer commented that if people do not attend the workshop and bring up questions at the regular meeting, there should be some repercussion. He reviewed the members that would be at the work group meeting including Jabbour, Nellis, and Walesch.

Hoelscher stated that this group would meet with staff to develop the framework that will be reviewed with the full Board in a workshop setting.

Brimeyer noted that the moratorium was only three months, so the clock is ticking.

Anderson commented that he agrees with Brimeyer that there were three members of Water Patrol at the last



meeting and a lot of time has been spent developing this document. He stated that he feels solid moving forward with this document.

Brimeyer noted that he was not expecting action tonight, but believed that the document is about 75 percent done. He believed that the work group could meet to finish this. He noted that they are not going to cancel anymore workshops and they will be holding two workshops per month. He noted that the first meeting of the work group would be August 17<sup>th</sup>.

#### **14. TREASURER REPORT**

##### **A) June and July 2023 Balance Sheets**

Anderson provided an overview of the June and July balance sheets. He noted the interest payment received from the new bank.

Brimeyer commented that if the change from hourly to salary payments to employees is approved there would be a change in the next payroll, providing additional details and noting when the old bank account would be able to be closed out.

##### **B) July 2023 General and STL Income and Expense Reports**

No additional comments.

#### **15. EXECUTIVE DIRECTOR UPDATE**

##### **A) James J. Hill Days (Sept. 8<sup>th</sup> – 10<sup>th</sup>) – Volunteers for September 9<sup>th</sup> and 10<sup>th</sup>**

Brimeyer stated that volunteers are needed for this event.

Hoelscher stated that she spoke with Baasen tonight and he is recovering well. She stated that Baasen has been following along and reading minutes, hoping to come back in September. She noted that Baasen typically staffed this event but asked that someone else step up this year to assist.

Jabbour commented that while the LMCD used to go to these events, it does not mean it still has to. He believed that they should stop attending these events and perhaps instead hold a town hall meeting to gather public input.

Hoelscher commented that some members enjoy staffing a booth at their city event. She noted that members that would like to volunteer for this event of Apple Days should reach out to staff.

##### **B) Excelsior Apple Days (Sept. 15<sup>th</sup> – 17<sup>th</sup>) – Volunteers for September 16<sup>th</sup> and 17<sup>th</sup> (Gregg/Mark)**

No additional comments.

**C) Employee Organizational Chart**

Brimeyer provided background information on the staffing changes and how he evaluated the duties that people were handling and enjoyed and those that they did not. He stated that he used that information in order to create this organizational chart. He asked that the Board review this and he will present it for action at the next meeting along with compensation.

**D) Flex Time**

Brimeyer commented that he is not a fan of letting employees accumulate sick time which is then paid out at 30 percent when they leave. He stated that he would prefer to use flex time which can be used for time off, whether that is when someone is sick or on vacation. He explained that employees would not lose any of their current accrued time off and explained how that bank would be used. He stated that this would be fair for employees and would not cause employees to call in sick when they simply want to use their accrued paid time off.

Hoelscher stated that she believes that this item and the previous are great ideas and would love to hear from Board members that have more experience in this area.

Zorn commented that she fully supports both noting that they are updated and modern.

Hoelscher confirmed the consensus of the Board.

Anderson commented that Brimeyer has done a wonderful job with this and appreciated that. He stated that in terms of the organizational chart he also likes the elimination of Environmental Specialist. He agreed that this would be within the budget.

**E) Tonka Bay Boat**

Brimeyer commented that the slip is in, and the boat will go in tomorrow.

**F) Scanning**

Brimeyer reported that there was a delay with the scanning, and they arrived yesterday and left with 135 boxes, when 91 boxes were estimated. He noted that the cost would then be increasing.

Hoelscher stated that there are funds within the reserves to cover that expense.

**G) Other**

Brimeyer commented that the newest member of the LMCD tabulated a list of answers to general questions the Board may receive.

Anderson asked if a permanent dock was installed at Tonka Bay.

Brimeyer stated that they did not install a permanent dock at this time. He noted that it was a condition that he mentioned.

Anderson stated that he would be opposed to that as they would not need to put in a permanent dock.

Newell suggested that one of the workshop topics include Mr. Evenson and information that he discovered about Maxwell Bay.

Brimeyer confirmed that he has a list of workshop items and that is on the list.

Anderson asked if the City of Wayzata has presented a variance to go to 200 feet.

Tully replied that the city has not submitted such request.

Brimeyer commented that Wayzata received funds through the state bonding bill for the boardwalk and additional questions are being asked about the project. He stated that the dock license will most likely need to be amended in at least four spots so the state can ensure that the city is following the requirements.

Hoelscher stated that it would seem Wayzata would submit the request for the Board to review.

Brimeyer confirmed that the attorney for Wayzata has reached out in attempt to resolve this matter, therefore it will come forward to the Board.

Jabbour commented on the fiasco about carp fishing and noted that everyone should know that was done inappropriately. He stated that what they did was illegal. He commented that the LMCD needs to pay attention to state law more than the LMCD law, using the example of water towing and noting that the LMCD could simply refer to the state law and follow that process. He believed that the LMCD should rehab the way it does things to make it easier and more modern.

## 16. ADJOURNMENT

**MOTION:** Kroll moved; Cook seconded to adjourn the meeting at 8:41 p.m.

**VOTE:** Motion carried unanimously.

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Ann Hoelscher, Chair

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Michael Kirkwood, Secretary

**Lake Minnetonka Conservation District  
Check Detail  
August 16 - 31, 2023**

Date	Num	Name	Memo	Account	Class	Paid Amount
08/24/2023		Sta-Safe Locksmiths	VOID:	Alerus Checking		
TOTAL						0.00
08/24/2023	EFT-23-87	ADP Service Fee		Alerus Checking		
			Payroll 08/16/23 - 08/31/23	4180M10 · Professional Services - Admin.	Admin.	-94.10
TOTAL						-94.10
08/24/2023	EFT-23-88	Health Partners	16962	Alerus Checking		
			Dental Insurance August 2023 (Tully)	4380M10 · Employee Benefits - Admin.	Admin.	-60.91
TOTAL						-60.91
08/24/2023	EFT-23-89	Medica		Alerus Checking		
			Medica Insurance August 2023 (Duncan)	4380M10 · Employee Benefits - Admin.	Admin.	-757.58
			Medica Insurance August 2023 (Schleuning)	4380M10 · Employee Benefits - Admin.	Admin.	-757.58
			Medica Insurance August 2023 (Tully)	4380M10 · Employee Benefits - Admin.	Admin.	-757.58
TOTAL						-2,272.74
08/24/2023	EFT-23-90	WEX Health, Inc.		Alerus Checking		
			August 2023 HSA (Tully)	4380M10 · Employee Benefits - Admin.	Admin.	-125.00
TOTAL						-125.00
08/24/2023	EFT-23-91	ADP		Alerus Checking		
			Salaries - Admin	4020M10 · Salaries-002 - Admin	Admin.	-7,288.75
			P.E.R.A - Admin	2020 · Payroll Liabilities -	Admin.	1,020.41
			ER PERA	4022M10 · ER PERA - Admin	Admin.	-546.65
			ER/FICA/Medica - Admin	4021M10 · ER Share of Admin FICA/Medicare	Admin.	-557.59
TOTAL						-7,372.58
08/24/2023	EFT-23-92	US Bank		Alerus Checking		
			August Credit Card Charges	1087M10 · US Bank (Credit Card)	Admin.	-1,106.00
TOTAL						-1,106.00
08/24/2023	22424	FRANCOTYP-POSTALIA, INC.		Alerus Checking		
08/24/2023	105878816		Quarterly Rental Fee for Postage Meter	4080 · Postage	Admin.	-86.85
TOTAL						-86.85
08/24/2023	22425	City of Mound		Alerus Checking		
08/24/2023	2525		Building Lease (September)	4320M10 · Office Rent - Admin.	Admin.	-1,733.48
TOTAL						-1,733.48

**Lake Minnetonka Conservation District**  
**Check Detail**  
**August 16 - 31, 2023**

<u>Date</u>	<u>Num</u>	<u>Name</u>	<u>Memo</u>	<u>Account</u>	<u>Class</u>	<u>Paid Amount</u>
08/24/2023	22426	LMCC		<b>Alerus Checking</b>		
08/24/2023	1556		08/09/2023 Board Meeting VOD Services	4182M10 · Media (Cable/Internet) - Admin.	Admin.	-200.00
TOTAL						-200.00
08/24/2023	22427	Steven M. Tallen Attorney At Law		<b>Alerus Checking</b>		
08/24/2023	072023		July Prosecution Costs	4640M10 · Prosecution Legal Fees - Admin.	Admin.	-6,031.37
TOTAL						-6,031.37
08/24/2023	22428	TimeSaver Off Site Secretarial, Inc.		<b>Alerus Checking</b>		
08/24/2023	28465		8/9/23 Board Meeting Minutes	4230M10 · Meeting Exp. - Admin.	Admin.	-251.25
TOTAL						-251.25

**Lake Minnetonka Conservation District**  
**Check Detail**  
**September 1 - 15, 2023**

Date	Num	Name	Memo	Account	Paid Amount	Class
09/15/2023	EFT-23-95	ADP		<b>Bridgewater Checking</b>		
			Salaries - Admin	4020M10 · Salaries-002 - Admin	-7,837.44	Admin.
			P.E.R.A	2020 · Payroll Liabilities -	1,096.65	Admin.
			ER PERA	4022M10 · ER PERA - Admin	-587.49	Admin.
			ER PERA/FICA/Medicare - Admin	4021M10 · ER Share of Admin FICA/Medicare	-599.26	Admin.
			Long Term Disability	2020-LT · Payroll Liabilities - UNUM	4.10	Admin.
			Contract Labor (Jim)	4024 · Contract Labor	-740.00	Admin.
TOTAL					-8,663.44	
09/15/2023	EFT-23-96	P.E.R.A	<b>9236-00</b>	<b>Bridgewater Checking</b>		
			Payroll 9/1/23 - 9/15/23	2020 · Payroll Liabilities -	-1,096.65	Admin.
TOTAL					-1,096.65	
09/15/2023	EFT-23-97	Unum Life Insurance	<b>0510159</b>	<b>Alerus Checking</b>		
			Long Term Disability September 2...	2020-LT · Payroll Liabilities - UNUM	-8.20	Admin.
TOTAL					-8.20	
09/15/2023	EFT-23-98	WEX Health, Inc.		<b>Alerus Checking</b>		
			HSA Contribution September 202...	4380M10 · Employee Benefits - Admin.	-125.00	Admin.
TOTAL					-125.00	
09/15/2023	EFT-23-99	ADP Service Fee		<b>Bridgewater Checking</b>		
			Payroll 9/1/23 - 9/15/23	4180M10 · Professional Services - Admin.	-94.10	Admin.
TOTAL					-94.10	
09/14/2023	23001	AIS Advanced Imaging Solutions		<b>Bridgewater Checking</b>		
09/14/2023	509638821		Copier Contract 8/20/23 - 9/20/2023	4140M10 · Office Equipment R&M - Admin.	-447.95	Admin.
TOTAL					-447.95	

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09/07/23

**Lake Minnetonka Conservation District**  
**Check Detail**  
**September 1 - 15, 2023**

Date	Num	Name	Memo	Account	Paid Amount	Class
09/14/2023	23002	ECM Publishers, Inc.		<b>Bridgewater Checking</b>		
09/14/2023	962093 & 96...		9/13/23 Jewett Dock Variance Adv...	4110M10 · Public Info Legal Fees- Admin.	-105.25	Admin.
TOTAL					-105.25	
09/14/2023	23003	James Hoghaug		<b>Bridgewater Checking</b>		
09/14/2023	08242023		8/9/2023 Board Meeting VOD Ser...	4180M10 · Professional Services - Admin.	-60.00	Admin.
TOTAL					-60.00	
09/14/2023	23004	NCPERS Group Life Insurance		<b>Bridgewater Checking</b>		
09/14/2023	923600092023		Life Insurance (Duncan) Life Insurance (Tully)	4380M10 · Employee Benefits - Admin. 4380M10 · Employee Benefits - Admin.	-16.00 -16.00	Admin. Admin.
TOTAL					-32.00	
09/14/2023	23005	PLM Lake and Land Management ...		<b>Bridgewater Checking</b>		
09/14/2023			Black, Browns, and Phelps Bay C...	4181M30 · Prof. Services	-14,324.00	AIS
TOTAL					-14,324.00	
09/14/2023	23006	Ratwik, Roszak & Maloney, P.A.		<b>Bridgewater Checking</b>		
09/14/2023			Civil Legal Fees July 2023	4620M10 · Civil Legal Fees - Admin.	-2,280.00	Admin.
TOTAL					-2,280.00	
09/14/2023	23007	Steven M. Tallen Attorney At Law		<b>Bridgewater Checking</b>		
09/14/2023			August 2023 Prosecutions Costs	4640M10 · Prosecution Legal Fees - Admin.	-7,036.50	Admin.
TOTAL					-7,036.50	
09/14/2023	23008	Your Computer Hero		<b>Bridgewater Checking</b>		
09/14/2023	8025		August 2023 Computer Maintenanc...	4181M10 · Professional Comp. Serv.-Admin.	-510.00	Admin.
TOTAL					-510.00	

3:11 PM

09/07/23

**Lake Minnetonka Conservation District**  
**Check Detail**  
September 1 - 15, 2023

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<u>Date</u>	<u>Num</u>	<u>Name</u>	<u>Memo</u>	<u>Account</u>	<u>Paid Amount</u>	<u>Class</u>
09/15/2023	23009	United States Treasury	41-0954466	Bridgewater Checking		
09/15/2023	CP161		PICORI 2023 Unpaid Tax	4380M10 · Employee Benefits - Admin.	-9.15	Admin.
TOTAL					-9.15	






## LAKE MINNETONKA CONSERVATION DISTRICT

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

**DATE:** Sept 13, 2023 (Prepared September 07, 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 Length, 4290 Cottonwood Lane, Deephaven, MN 55331, South Lower Lake

### ACTION

Board consideration of a variance for an adjusted dock use area and length allowance for 4290 Cottonwood Lane on South Lower Lake in the City of Deephaven (PID 24-117-23-32-0082) 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 Tony Jewett for the property located at 4290 Cottonwood Lane in for final approval at the September 27, 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 Tony Jewett for the property located at 4290 Cottonwood Lane in Shorewood for a final vote at the September 27, 2023, LMCD Board meeting based on...

### APPLICATION SUMMARY

The applicant, Tony Jewett (“Applicant”) has submitted a variance application to adjust the dock use area (“DUA”) and allowed length of the dock structure for 4290 Cottonwood Lane in Deephaven; (“Site”). The Applicant’s parcel has approximately 64 feet of 929.4 feet OHW shoreline. The variance application was submitted in an effort to resolve the issue of water depth, and conflicting dock use areas located at the site.

#### 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 to allow for access to more navigable waters. The Applicant’s parcel has approximately 64 feet of 929.4 feet OHW shoreline. The site is located on the southern shore of the South Lower Lake on what appears to

be a large sand bar. This variance would allow for the Applicant to extend the dock structure at the site to a length of 114 feet to reach a water depth of approximately 4 feet. Additionally, the Applicants is proposing a 0 foot setback on both the Eastern and Western sides of the dock structure.

The Applicant proposes to install a dock structure with one (1) Boat Storage Unit (BSU) 13 feet wide by 40 feet in length. The walkways of the dock structure are 4 feet wide, and there is a platform 8 feet wide by 20 feet long on the northeastern end. The applicant is also proposing to be allowed additional watercrafts. LMCD Staff inspected the property and found two additional watercrafts at the site. The applicant has informed LMCD staff that additional watercrafts historically has been set at the site. LMCD code allows for up to four restricted watercraft to be moored or docked at a residential property granted they are meeting LMCD setbacks and are for the sole use of the property owner. Any additional watercraft stored at the property should need to be in strict compliance with LMCD Code. These additional watercrafts were meeting LMCD setbacks.

The current dock structure for the site is roughly 90 feet. LMCD Code allows properties with shorelines greater than 60 feet to extend their dock structure out a distance into the lake equal to the length of their shoreline, but not more than 100 feet. Meaning that at the current placement the applicants dock does not meet LMCD code.

Additionally, there is a 15-foot setback for dock structure extending into the lake 50 to 100 feet, and a 20-foot setback for dock structure extending 100-200 feet. This dock structure also has a canopy which requires a 20-foot setback regardless of where it is located along the dock structure. Currently the Applicant has encroached over into the dock use area of the neighboring property to the west and is not meeting LMCD Setbacks. Allowance for the property to extend 114 feet into the Lake results in a 0 foot setback, Navigation as well as safety should be taken into account when reviewing the application.

Water depths were taken by LMCD Staff for review. The applicant is requesting this variance due to issues with water depth. At 63 feet from the 929.4 OWHL the water depth for the site is under "normal conditions" would be approximately 3.3 feet. At 90 feet the average water depth for the property would be roughly 3.7 feet. This length variance would allow the Applicant to reach navigable waters, which the state deems to be 4 feet.

It should also be noted that there is a small finger dock to the east of the property that extends approximately 60 feet into the Lake. The Applicant has stated that this parcel is a shared use property and has been used as a swim area. No watercrafts have been stored at this property. A reduction in the size of the platform on the eastern end of the dock structure would increase the setback.

## **CONSIDERATIONS OF VARIANCE**

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

1. Has the Applicant sufficiently demonstrated practical difficulties exist such that each of following are true?

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

### **PUBLIC COMMENTS**

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In compliance with MN DNR General Permit 97-6098, the MN DNR, MCWD, the City of Shorewood, and the general public were provided information regarding the application on August 22, 2023. City and agency comments were due by September 1, 2023. Comments received as of September 8, 2023, are summarized below. Any comments received after September 8, 2023, will be provided at the Board meeting for review.

- There have been no agency comments regarding the application.

As of September 8, comments received by LMCD staff from the general public are summarized below:

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

### **PUBLIC HEARING**

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

The public hearing notice was published in the August 24, 2023, edition of the Sun Sailor (official newspaper) and the August 26, 2023, edition of the Laker Pioneer. On August 22, 2023, a public hearing notice was mailed to persons who reside upon or are owners of property within 350 feet of the Site. In addition, the Board packet was posted online and the agenda was posted on the LMCD bulletin board.

### **RECOMMENDATION**

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If the board chooses to approve the variance, based on review of the Considerations of Variance

factors, the minimum recommendations are provided for consideration. The Board may wish to consider other items.

1. Ensure all watercrafts are contained within the BSU's located at the site.
2. For the Western side setbacks, maintain a minimum 0 foot-setback from shore as it extends into the lake as indicated on the site plan.
3. For the Eastern side setbacks, maintain a minimum 0 foot setback from the end of the dock structure located at the site.
4. The length of the dock structure and storage should be no longer than the proposed 114 feet from the 929.4 feet OHW since water levels would be sufficient during normal OHW.
5. Allow up to four (4) BSUs for the Site granted all LMCD Setbacks are being met.
6. Provide an updated site plan with final configuration and measurements as approved by the Board, this includes all watercraft for the site and their respective BSU.
7. Apply standard variance conditions reflecting environmental, nuisances, maintenance, etc.

**BUDGET**

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N/A

**STRATEGIC PRIORITIES**

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<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**

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1. LMCD Code Excerpts
2. Aerial Imagery of Site
3. Proposed Site Plan
4. Basic Site Overlay
5. Variance Application & Submitted Documents
6. Public Hearing Notice (Sun Sailor and Laker Pioneer)
7. Public Hearing Notice Mailing
8. LMCD 60 Day Extension



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

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

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

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

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

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

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

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

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

- (b) Setbacks Doubled. Setbacks shall be doubled for all multiple docks or mooring areas and commercial single docks on each side where such structures are not located adjacent to another multiple dock, mooring area, or commercial single docks.
- (1) Exception – May 3, 1978. Multiple docks, mooring areas, and commercial single docks in existence on May 3, 1978 shall be considered nonconforming structures and shall not be subject to setback doubling if such structures are not expanded. The reconfiguration of the structure pursuant to Article 2, Chapter 8 shall not be considered an expansion.
- (c) Sites with 50 feet of Width or Less – February 2, 1970. For a site in existence on February 2, 1970 with a width of 50 feet or less, the authorized dock use area may be expanded to a side setback limitation of five feet, provided that such setback in no way impair access to neighboring docks.
- (d) Canopies. Canopies must be setback from side site lines a minimum distance of 20 feet.

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

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

Application for Variance at 135 Mound Ave, Tonka Bay

LMCD Board Meeting

October 26, 2022

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

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

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

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

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

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

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

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

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

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

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

### **Section 6-5.01. Variances.**

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

Application for Variance at 135 Mound Ave, Tonka Bay

LMCD Board Meeting

October 26, 2022

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

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

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

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



**Variance Application for Adjusted Dock Length and Side Setbacks**

**Property:** 4290 Cottenwood Ln, Deephaven, 55331 (Applicant: Tony Jewett)

*For illustrative purposes only. Source: Hennepin County Interactive Property Map, 07/18/2023*

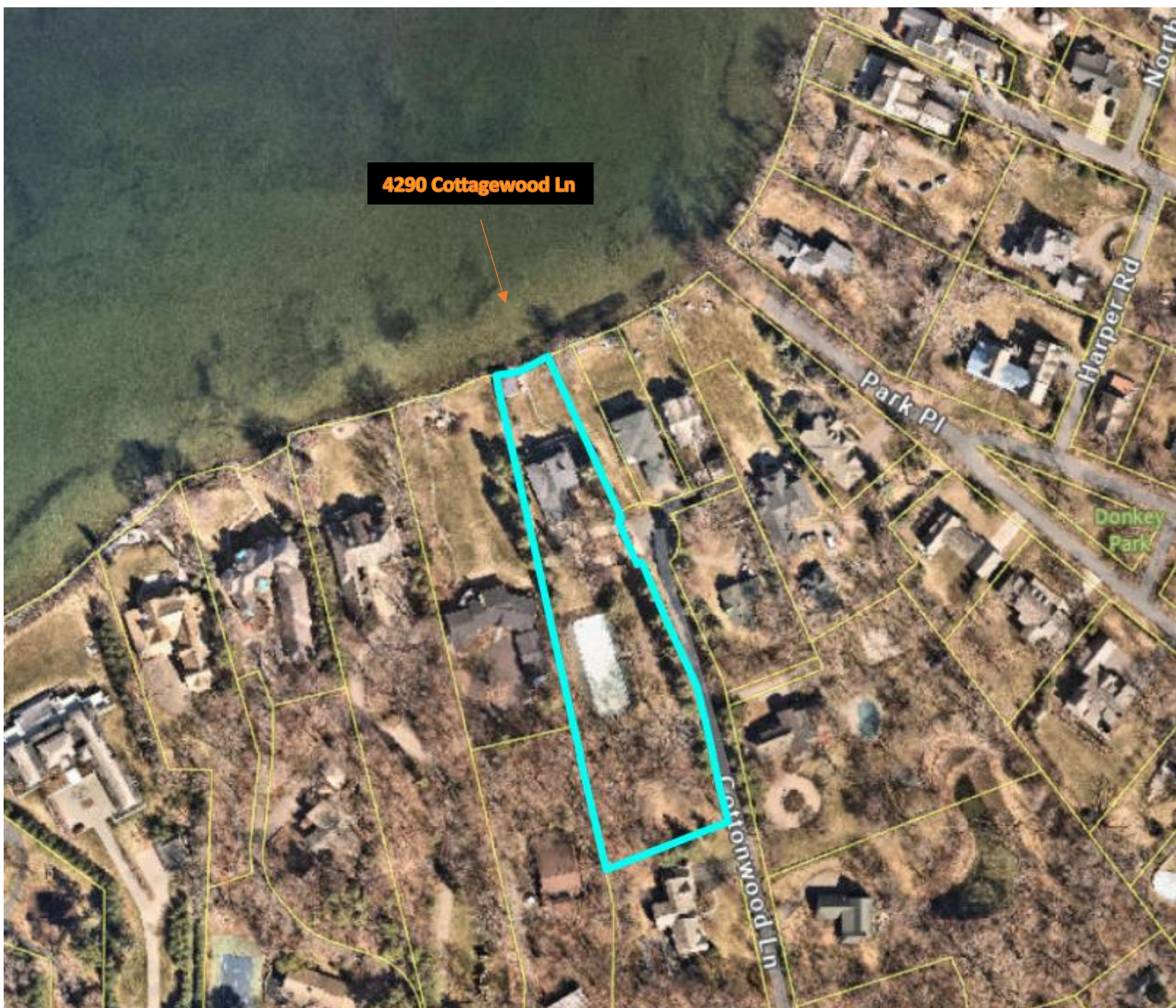




**Variance Application for Adjusted Dock Length and Side Setbacks**

**Property:** 4290 Cottenwood Ln, Deephaven, 55331 (Applicant: Tony Jewett)

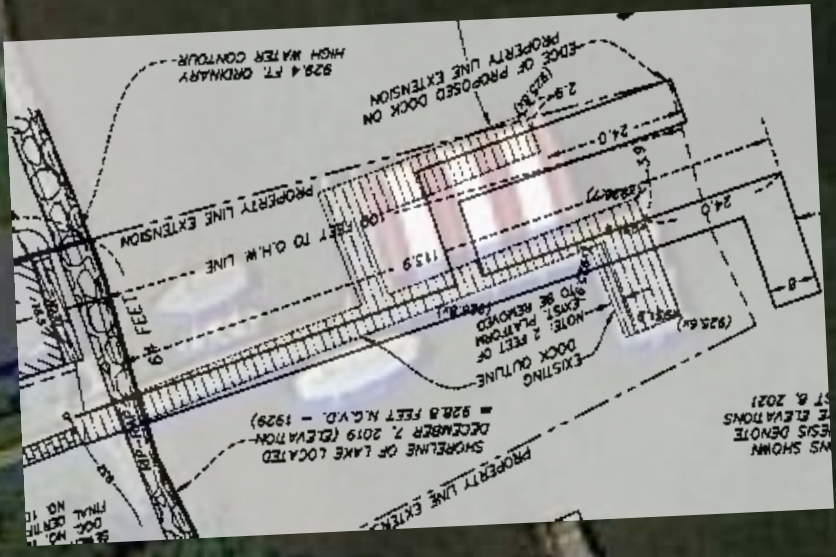
*For illustrative purposes only. Source: Hennepin County Interactive Property Map, 07/18/2023*











AS SHOWN  
 THESE ELEVATIONS  
 ST. 8, 2021

SHORELINE OF LAKE LOCATED  
 DECEMBER 7, 2019 (ELEVATION  
 = 928.8 FEET M.C.V.D. - 1929)

DOC. NO. 10  
 FINAL



# VARIANCE APPLICATION

LAKE MINNETONKA CONSERVATION DISTRICT

For LMCD use:  
Fee Amount: \_\_\_\_\_ Check # \_\_\_\_\_ Date Received: \_\_\_\_\_

### 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

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

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:

<b>Name</b>	<b>Title</b>	<b>Date</b>

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



**4. ATTACHMENTS**

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

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

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

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


**5. FEES**

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<b>TOTAL FEE ENCLOSED</b> (This fee is for processing of the application and does not entitle the applicant to a variance.)	<b><u>\$500.00</u></b>

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

**Applicant's Signature:**


Owner
7/13/23  
 Name \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

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

# AERIAL IMAGE (U OF MN HISTORICAL AERIAL PHOTOGRAPHS) 1937





# AERIAL IMAGE (U OF MN HISTORICAL AERIAL PHOTOGRAPHS) 1964



1964-1014 Aerial.jpg



417%





**AERIAL IMAGE OF COMBINED DOCKS WITH CANOPIES (LMCD OFFICE) 1988**





# Hennepin County Property Map

Date: 2/14/2023



Aerial Image (Hennepin County) 2000

1 inch = 200 feet

PARCEL ID: 2411723320082

OWNER NAME: A R Jewett & L C Jewett

PARCEL ADDRESS: 4290 Cottonwood La,Deephaven MN 55331

PARCEL AREA: 1.54 acres, 67,241 sq ft

A-T-B: Torrens

SALE PRICE: \$1,650,000

SALE DATE: 10/2012

SALE CODE: Excluded From Ratio Studies

ASSESSED 2021, PAYABLE 2022  
PROPERTY TYPE: Residential  
HOMESTEAD: Homestead  
MARKET VALUE: \$2,379,000  
TAX TOTAL: \$32,069.10

ASSESSED 2022, PAYABLE 2023  
PROPERTY TYPE: Residential  
HOMESTEAD: Homestead  
MARKET VALUE: \$2,934,000

**Comments:**

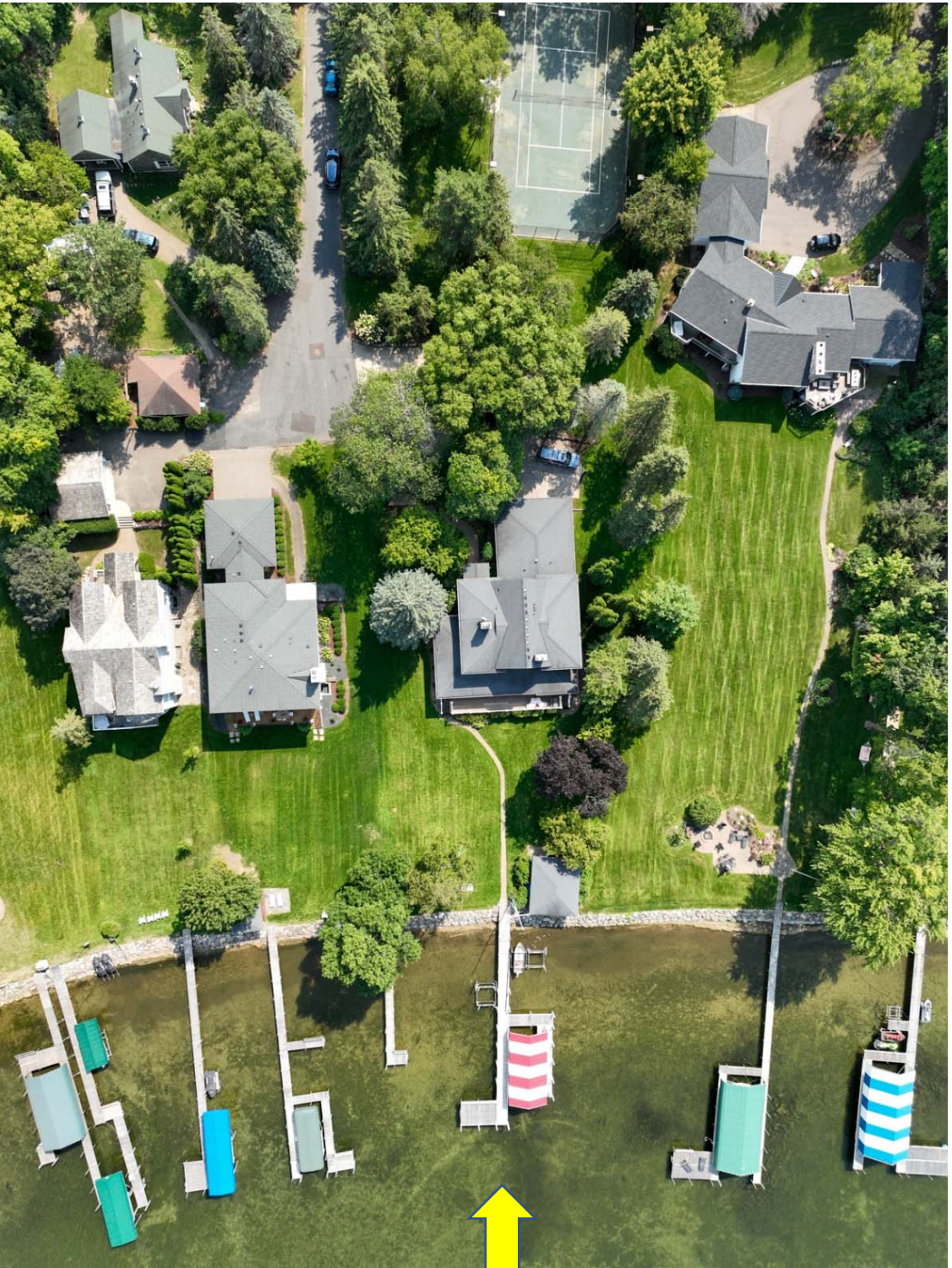
2000 Hennepin County  
Aerial Image

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.

COPYRIGHT © HENNEPIN  
COUNTY 2023

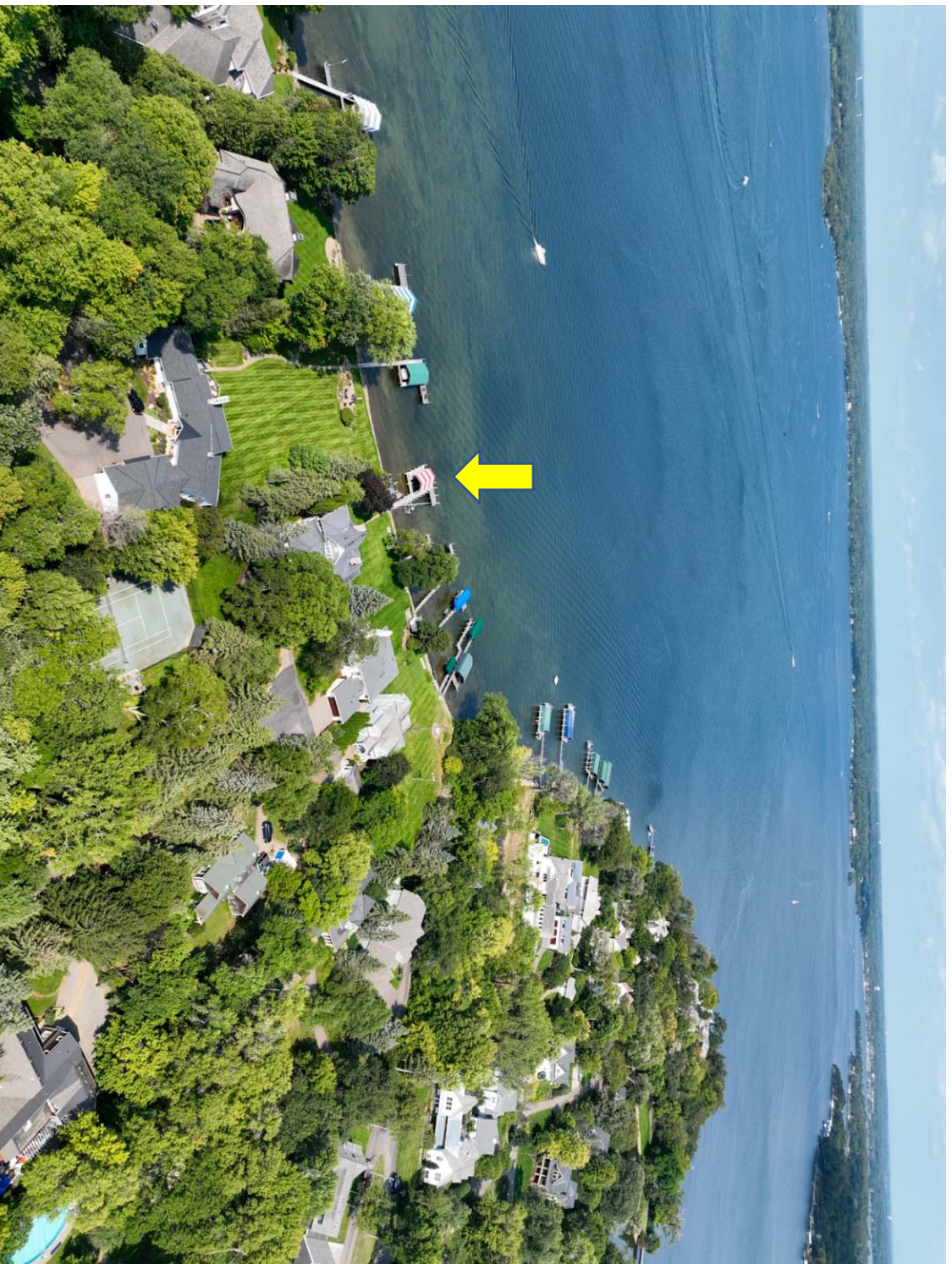


**AERIAL IMAGE (OVERHEAD) 2022**



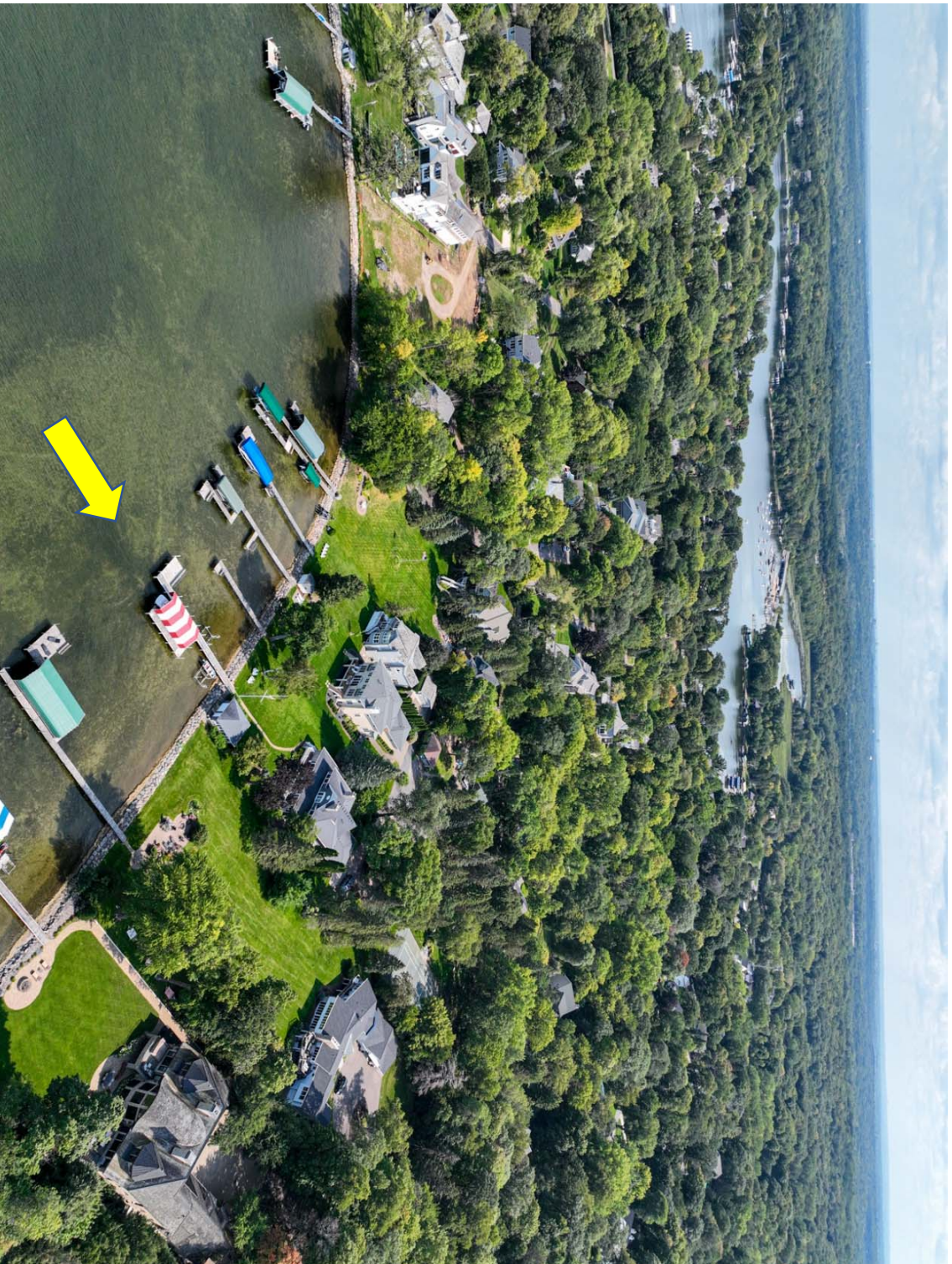


**AERIAL IMAGE (FACING NORTH) 2022**





**AERIAL IMAGE (FACING EAST) 2022**





**AERIAL IMAGE (FACING WEST) 2022**





**AERIAL IMAGE (FACING NORTHEAST) 2022**





**View of lakeshore and dock, canopy in line with boat house on land (circa 1960)**



**View of lakeshore and start of dock next to boat house on land (circa 1960)**



**View of dock/canopy extending beyond west side of boathouse on land (circa 1960)**





**View of boathouse with corner of dock structure slightly visible behind (2022)**





**View towards shore with lake level at 927.8 and water depth of 1 foot (9/28/22)**



## LAKE MINNETONKA CONSERVATION DISTRICT

### RE: APPLICATION OF JEFF AND JILL PUGH

#### FINDINGS

On June 13, 2007, at 7:00 p.m., pursuant to due notice, a public hearing was held by the Lake Minnetonka Conservation District ("LMCD") Board of Directors at the Wayzata City Hall in the City of Wayzata, Minnesota. The hearing was held to consider the application by Jeff and Jill Pugh ("Applicants") for dock length, side setback and adjusted dock use area variances for property at 3585 Frederick Street in the City of Orono, Minnesota. The property has approximately 21 feet of shoreline at elevation 929.4 NGVD and is located on the north end of Carmans Bay.

The Applicants have proposed a 90-foot long adjusted dock use area. Within the proposed dock use area, the Applicants propose a 90-foot long straight dock, which would be four feet wide, along the westerly extended side site line (with a 0-foot setback); the storage of two restricted watercraft on the east side of the dock (a boat and a personal watercraft); and a five-foot setback from the adjusted easterly extended side site line.

The hardships submitted by Applicants were shallow water and converging lot lines.

The Board finds that the shallow water and converging lot lines constitute a hardship within the meaning of LMCD Code, Section 1.07. However, providing the adjustments requested by the Applicants necessarily involve changes to the authorized dock use areas of one or more of the properties adjacent to the subject property.

The Applicants have documented a water depth of 2.8 feet 60 feet from the shoreline, 3.3 feet 70 feet from the shoreline, 3.7 feet 80 feet from the shoreline and 3.9 feet 90 feet from the shoreline.

The effect of the adjustment of dock use areas on adjacent properties can be mitigated by granting variances to those properties to offset the adverse impact of the adjustment of the dock use area granted by this order.

The Board finds that granting a variance that would allow more than one restricted watercraft to be stored at this site is not appropriate because there would not be sufficient room for more than one restricted watercraft in the dock use area at the site even if the hardship conditions did not exist.

## ORDER

ON THE BASIS OF THE FOREGOING, IT IS ORDERED:

1. That the requested length variance to allow construction of a dock 90 feet in length from elevation 929.4 NGVD is granted.
2. The dock use area shall be measured from lot lines that are adjusted as follows:
  - a. The westerly lot line of the subject property is deflected 11 degrees 46 minutes to the west from the point at which the line crosses elevation 929.4 NGVD.
  - b. The easterly lot line of the subject property is deflected 9 degrees 55 minutes to the east from the point at which the line crosses elevation 929.4 NGVD.
  - c. These adjustments result in adjusted extended lot lines that are 19 feet apart at a point 90 feet from the shoreline.
3. Setback variances, measured from the extended lot lines adjusted in accordance with the preceding paragraph, shall be 0 feet from the east lot line and 5 feet from the west lot line with the watercraft stored on the east side of the dock.
4. Variances granted hereby are subject to the following conditions:
  - a. No canopy will be allowed at facilities at the subject property.
  - b. No low water extensions will be granted to extend the dock beyond 90 feet from elevation 929.4 NGVD.
  - c. Only one restricted watercraft may be stored at the site. That watercraft may not be longer than 26 feet length overall. For purposes of this order, the term "length overall" means the length of the watercraft including all attached equipment in its operating position.

IT IS FURTHER ORDERED, that dock length variances are granted for the adjacent properties at 2480 Casco Point Road and 3565 Frederick Street, each for authorized dock use areas extending 120 feet from the shoreline at elevation 929.4 NGVD. Setbacks for such dock use areas shall be measured from lot line extensions adjusted in accordance with paragraphs 2a and 2b of this Order.

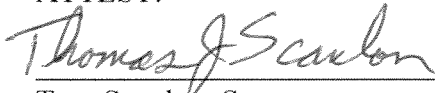
The variances herein provided shall grant no vested rights to the use of Lake Minnetonka. Such use shall, at all times, remain subject to regulation by the District to assure the public of reasonable and equitable access to the Lake.

BY ORDER OF THE BOARD OF DIRECTORS of the Lake Minnetonka Conservation  
District this 27<sup>th</sup> day of June, 2007.



\_\_\_\_\_  
Tom Skramstad, Chair

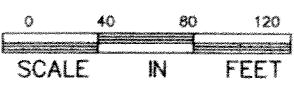
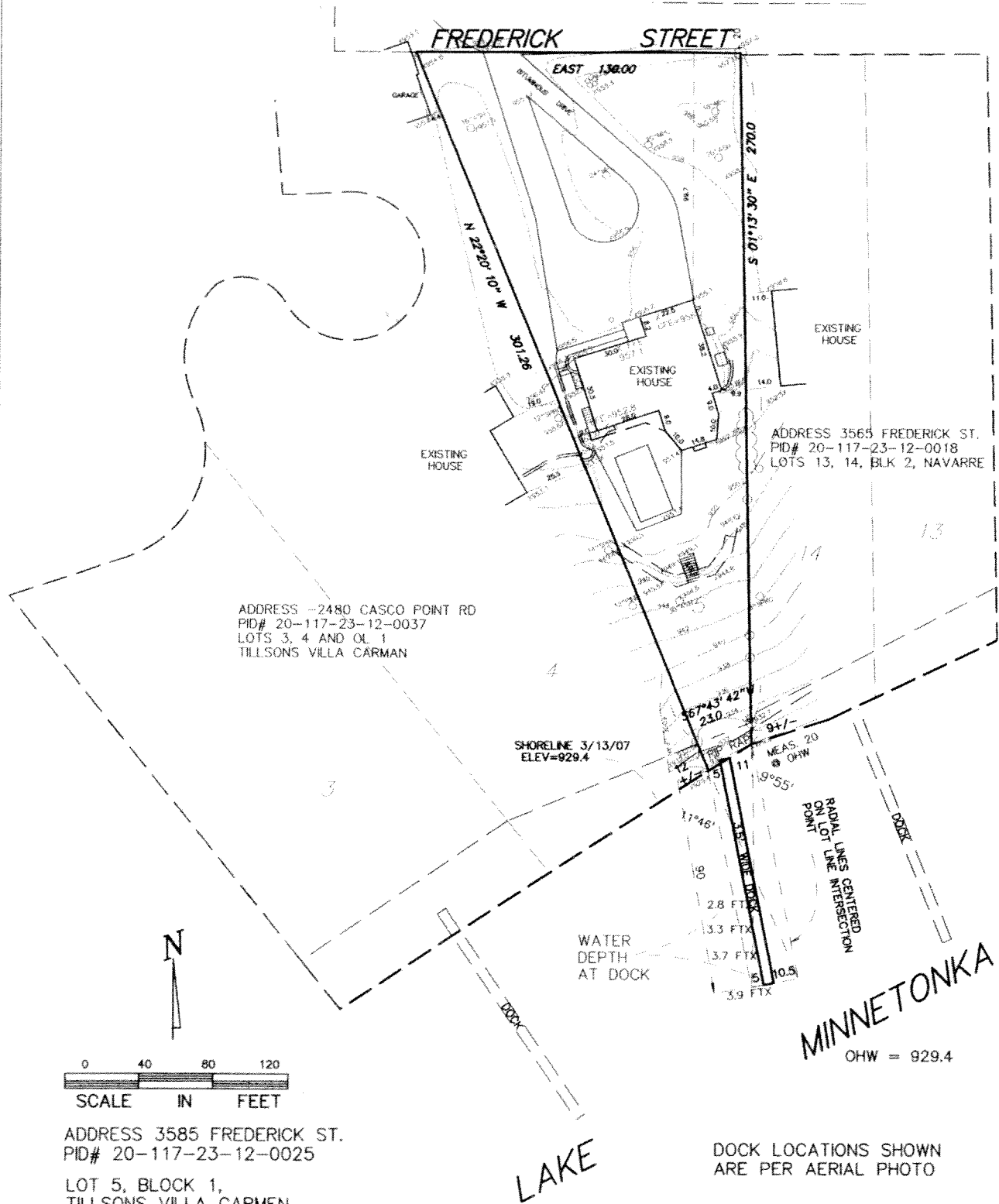
ATTEST:



\_\_\_\_\_  
Tom Scanlon, Secretary



# Attachment One



ADDRESS 3585 FREDERICK ST.  
PID# 20-117-23-12-0025  
LOT 5, BLOCK 1,  
TILLSONS VILLA CARMEN

DOCK LOCATIONS SHOWN  
ARE PER AERIAL PHOTO

6/21/07 REV DEFL. ANG.  
REV. 5/30/07 DOCKS, WATER DEPTH

PROJECT NO.	BOOK	<b>DOCK PERMIT SURVEY</b>	Land Surveyor  <b>Frank R. Cardarelle</b> 6440 FLYING CLOUD DRIVE EDEN PRAIRIE, MN 55344 952-941-3031
DATE <b>MAR 30, 2007</b>	PAGE		
REVISIONS		for <b>JEFF PUGH</b>	

FRANK R. CARDARELLE REG. NO. 6508

B1



# LAKE MINNETONKA CONSERVATION DISTRICT

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

**DATE:** August 22, 2023

**TO:** Property Owner

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

**SUBJECT:** Public Hearing Notice- Variance 4290 Cottonwood Lane, Deephaven, South Lower Lake

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 4290 Cottonwood Lane in Deephaven and has shoreline on South Lower Lake. The applicant is Tony Jewett of 4290 Cottonwood Lane, Deephaven, 55331.

The applicant proposes to adjust the dock use area for the site as well as the setbacks and dock length. 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, September 13, 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](mailto:lmcd@lmcd.org).

Those desiring to participate in the hearing may also email the Environmental Administrative Technician at [ttully@lmcd.org](mailto: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](http://www.lmcd.org).

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

**Variance Application for Adjusted Dock Length and Side Setbacks**

**Property:** 4290 Cottenwood Ln, Deephaven, 55331 (Applicant: Tony Jewett)

*For illustrative purposes only. Source: Hennepin County Interactive Property Map, 07/18/2023*

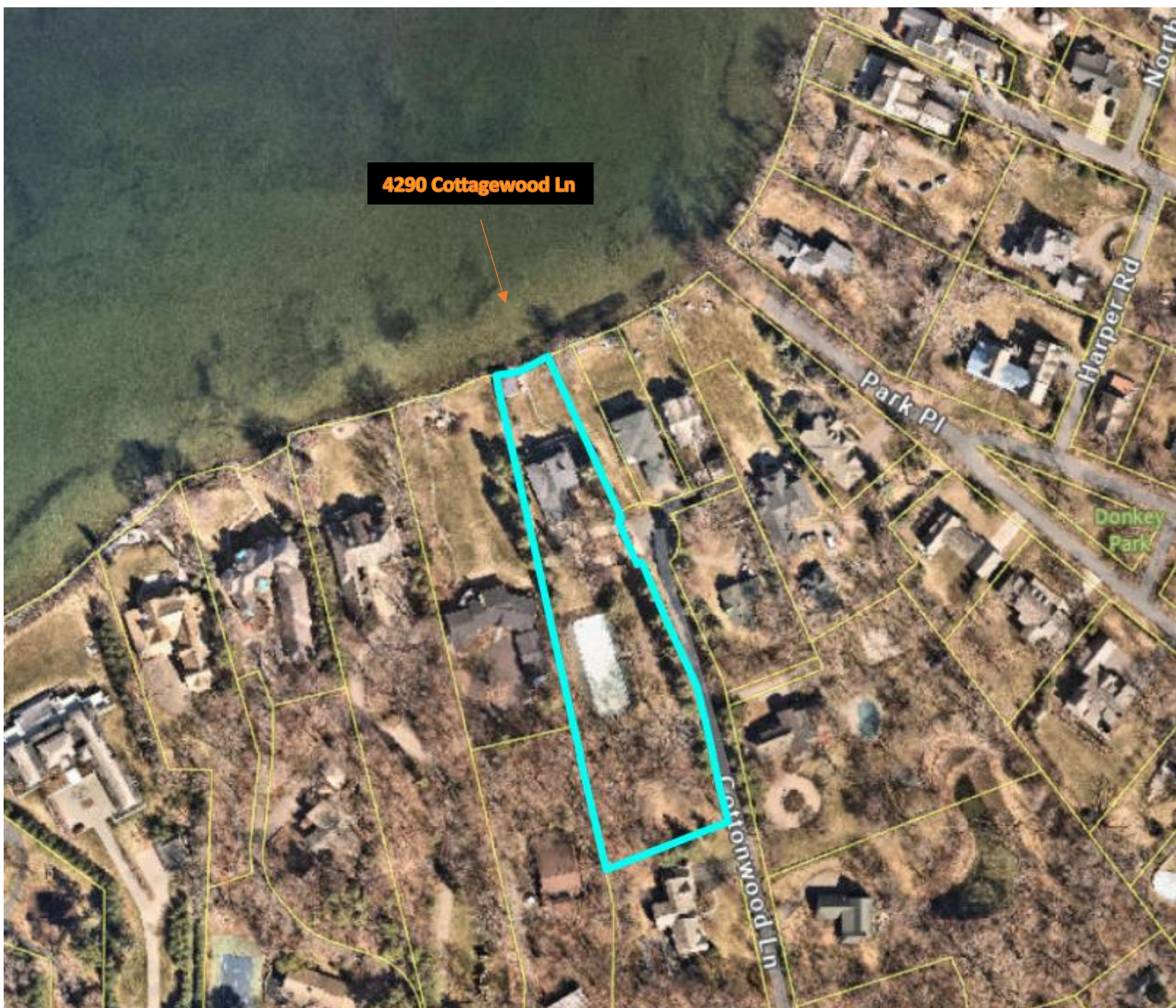




**Variance Application for Adjusted Dock Length and Side Setbacks**

**Property:** 4290 Cottenwood Ln, Deephaven, 55331 (Applicant: Tony Jewett)

*For illustrative purposes only. Source: Hennepin County Interactive Property Map, 07/18/2023*





# PROPOSED DOCK LAYOUT FOR: TONY JEWETT

## SURVEY ITEMS PER SCHEDULE B:

ITEM 2: Easements for utility and drainage purposes, if any, as shown on the recorded plat. None dedicated on the plat of "Ideville".

ITEM 3: Rights of the Public to streets, highways and/or alleys.

ITEM 4: Rights of the public, the State of Minnesota and of the U.S. Government to use that part of the premises which lies below the high water mark or U.S. Government Harbor line of Lake Minnetonka. Rights, if any, of any riparian owners and of the public to use the surface, sub-surface, and bed of Lake Minnetonka, and any adverse claims based on the assertion that the bed of Lake Minnetonka has changed. The Ordinary High Water elevation contour is depicted on the survey.

ITEM 5: Riparian rights are neither guaranteed nor insured herein.

ITEM 6: Easement for Sanitary Sewer purposes over part of above land, as shown in Document No. 1078965. The easement contained in said document is depicted on the survey.

ITEM 7: Terms and conditions of Final Certificate City of Deephaven acquiring a perpetual easement for sanitary sewer purposes over part of Lot 18 (PS-523), filed October 30, 1973, as Document No. 1090179. The easement contained in said Final Certificate is depicted on the survey.

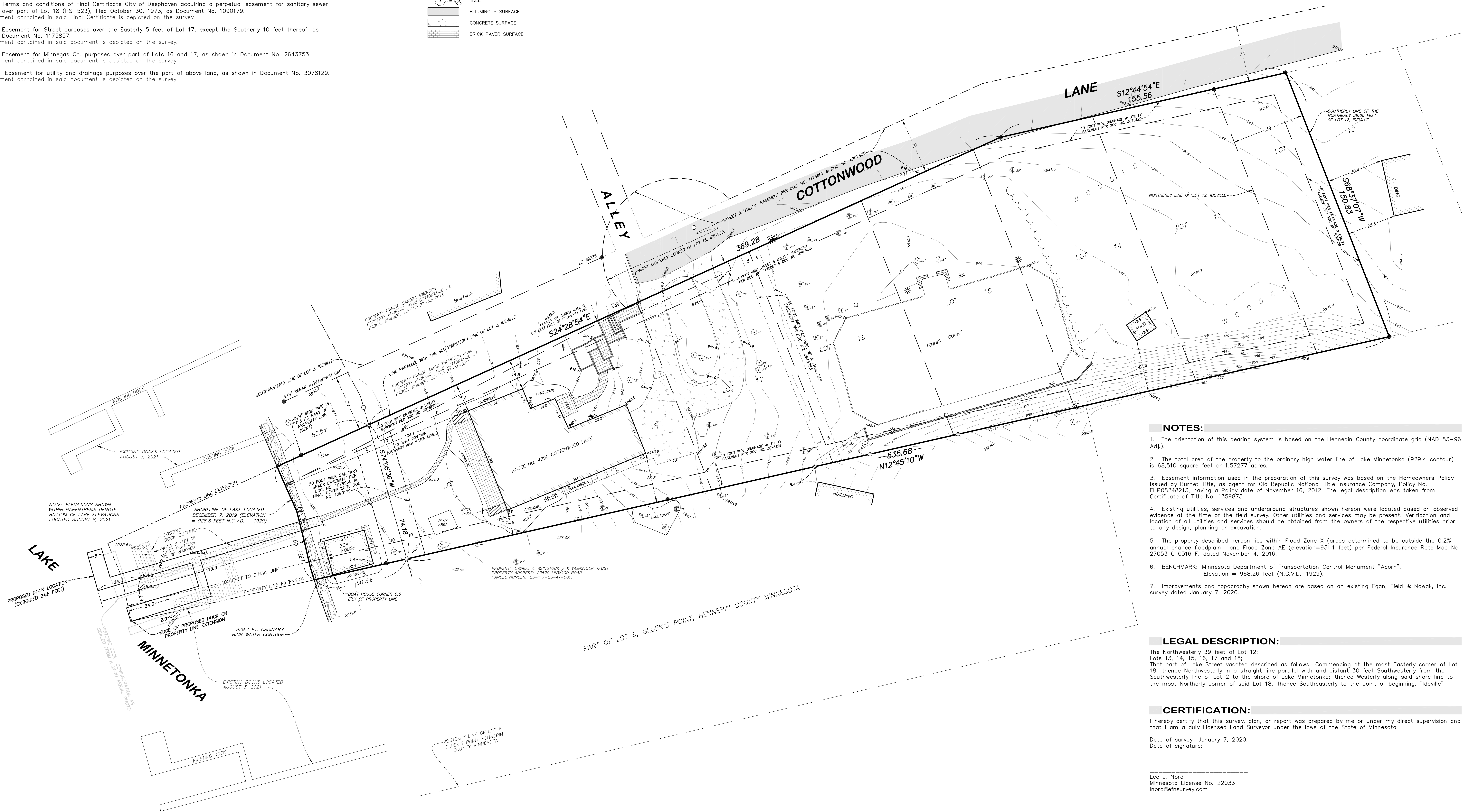
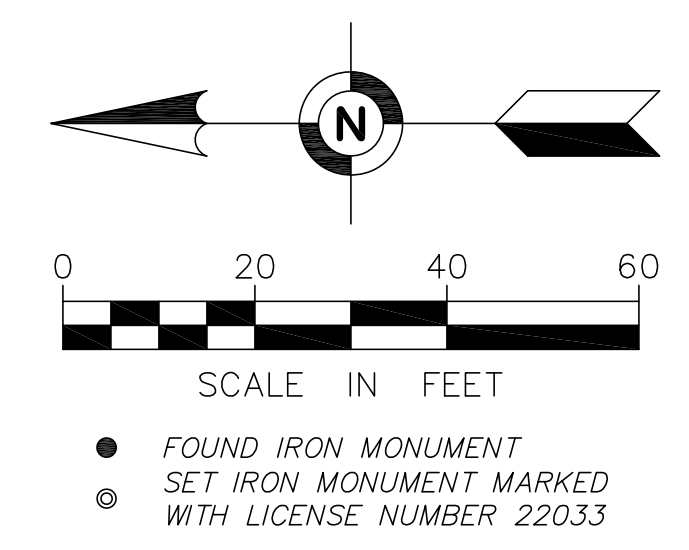
ITEM 8: Easement for Street purposes over the Easterly 5 feet of Lot 17, except the Southerly 10 feet thereof, as shown in Document No. 1175857. The easement contained in said document is depicted on the survey.

ITEM 9: Easement for Minnegas Co. purposes over part of Lots 16 and 17, as shown in Document No. 2643753. The easement contained in said document is depicted on the survey.

ITEM 10: Easement for utility and drainage purposes over the part of above land, as shown in Document No. 3078129. The easement contained in said document is depicted on the survey.

### LEGEND

- MANHOLE
- ROOF DRAIN (OUTLET)
- ⊕ WELL
- ▣ AIR CONDITIONER
- ⊞ ELECTRIC BOX
- ⊞ ELECTRIC METER
- ⊞ LIGHT
- ⊞ COMMUNICATION BOX
- ⊞ GAS METER
- SIGN
- FLAGPOLE
- BASKETBALL HOOP
- CHAIN LINK FENCE
- WALL
- TREELINE
- SPOT ELEVATION
- EXISTING CONTOUR LINE
- TREE
- BITUMINOUS SURFACE
- CONCRETE SURFACE
- BRICK PAVER SURFACE



### NOTES:

1. The orientation of this bearing system is based on the Hennepin County coordinate grid (NAD 83-96 Adj.).
2. The total area of the property to the ordinary high water line of Lake Minnetonka (929.4 contour) is 68,510 square feet or 1.57277 acres.
3. Easement information used in the preparation of this survey was based on the Homeowners Policy issued by Burnet Title, as agent for Old Republic National Title Insurance Company, Policy No. EHP08248213, having a Policy date of November 16, 2012. The legal description was taken from Certificate of Title No. 1359873.
4. Existing utilities, services and underground structures shown hereon were located based on observed evidence at the time of the field survey. Other utilities and services may be present. Verification and location of all utilities and services should be obtained from the owners of the respective utilities prior to any design, planning or excavation.
5. The property described hereon lies within Flood Zone X (areas determined to be outside the 0.2% annual chance floodplain, and Flood Zone AE (elevation=931.1 feet) per Federal Insurance Rate Map No. 27053 C 0316 F, dated November 4, 2016.
6. BENCHMARK: Minnesota Department of Transportation Control Monument "Acorn". Elevation = 968.26 feet (N.G.V.D.-1929).
7. Improvements and topography shown hereon are based on an existing Egan, Field & Nowak, Inc. survey dated January 7, 2020.

### LEGAL DESCRIPTION:

The Northwestly 39 feet of Lot 12; Lots 13, 14, 15, 16, 17 and 18; That part of Lake Street vacated described as follows: Commencing at the most Easterly corner of Lot 18; thence Northwestly in a straight line parallel with and distant 30 feet Southwestly from the Southwestly line of Lot 2 to the shore of Lake Minnetonka; thence Westery along said shore line to the most Northerly corner of said Lot 18; thence Southeastly to the point of beginning, "Ideville"

### CERTIFICATION:

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

Date of survey: January 7, 2020.  
Date of signature:

Lee J. Nord  
Minnesota License No. 22033  
lnord@efnsurvey.com

FIELD BOOK	PAGE	FIELDWORK CHIEF:	REVISIONS	
2668	52	I.C. / D.V.	NO.	DATE
DRAWN BY:				
CHECKED BY:				
FILE NO. 247				

**PROPOSED DOCK LAYOUT**

SURVEY FOR:  
**TONY JEWETT**

PROPERTY ADDRESS:  
**4290 COTTONWOOD LANE  
DEEHPAVEN, MINNESOTA 55331**

**Egan, Field & Nowak, Inc.**  
land surveyors since 1872

475 Old Highway 8 NW, Suite 200  
New Brighton, Minnesota 55112  
PHONE: (612) 466-3300  
WWW.EFNSURVEY.COM  
COPYRIGHT © 2023 BY EGAN, FIELD & NOWAK, INC.

**LAKE MINNETONKA  
CONSERVATION DISTRICT  
PUBLIC HEARING NOTICE**

**7:00 PM,  
SEPTEMBER 13, 2023**

**TONY JEWETT  
DOCK VARIANCE**

**4290 COTTONWOOD LANE,  
DEEPHAVEN, MN 55331  
SOUTH LOWER LAKE,  
LAKE MINNETONKA**

The Lake Minnetonka Conservation District (LMCD) will hold a public hearing to consider a variance application to adjust the dock length and side setback from Tony Jewett of 4290 Cottonwood Lane, Deephaven. The applicant is proposing to increase the length of dock structure due to water depth issues. All interested persons will be given an opportunity to comment. Details are available at the LMCD Office, 5341 Maywood Road, Suite 200, Mound, MN 55364 or by calling (952) 745-0789.

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

Published in the  
Sun Sailor  
August 24, 2023  
1336038



*To preserve and enhance the "Lake Minnetonka experience"*

**4290 COTTONWOOD LANE  
SOUTH LOWER LAKE, DEEPHAVEN  
VARIANCE APPLICATION  
PUBLIC HEARING**

**Lake Minnetonka Conservation District**

**Board Meeting**

**September 13, 2023**

Presented by: Thomas Tully, Environmental Administrative Technician

# OVERVIEW

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



# BOARD ACTION

## ▪ **Approval of Variance Request**

- Approval
- I make a motion to direct LMCD Staff and Legal Counsel to prepare Findings of Fact and Order approving the variance application from Tony Jewett for the property located at 4290 Cottonwood Lane in for final approval at the September 27, 2023, LMCD Board meeting <subject to the following conditions>...

## ▪ **Denial of Variance Request**

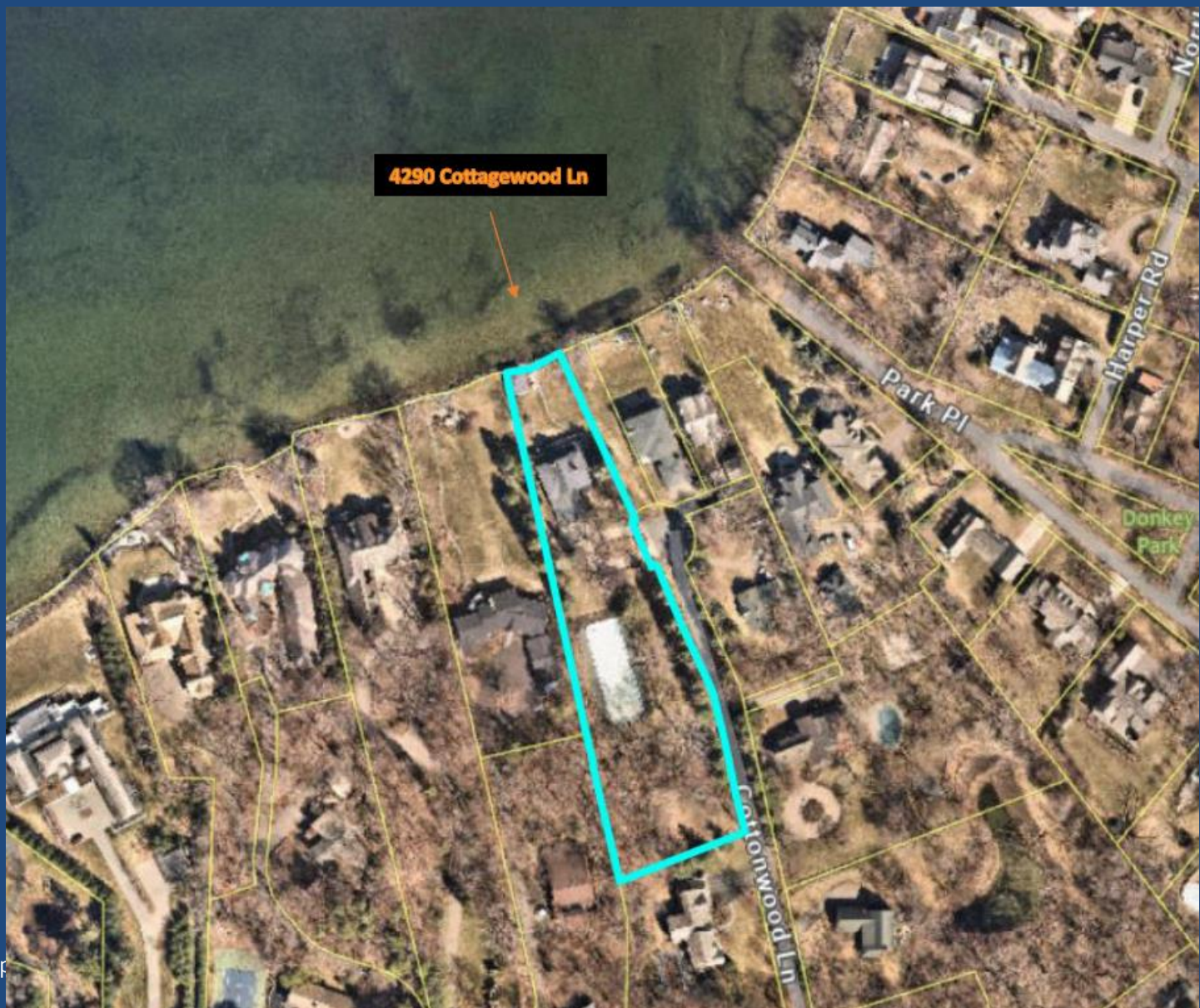
- Denial
- I make a motion to direct LMCD Staff and Legal Counsel to prepare Findings of Fact and Order denying the variance application from Tony Jewett for the property located at 4290 Cottonwood Lane in Shorewood for a final vote at the September 27, 2023, LMCD Board meeting based on...

# 4290 COTTENWOOD LN, DEEPHAVEN





# 4290 COTTENWOOD LN, DEEPHAVEN



# 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 to allow for access to more navigable waters
- Current Dock structure at the site is 90 feet in length and encroaches over the western side site line.
- Standard LMCD Code allows residential properties with more than 60 feet of 929.4 OHW Shoreline to extend their dock structure out into the lake equal to the length of shoreline, with a maximum of 100-foot dock structure
- Standard LMCD Code requires setbacks of 10ft, 15ft, 20ft
- The Applicant is asking for a length variance to reach a more navigable water depth as well as a setback reduction due to conflicting dock use areas



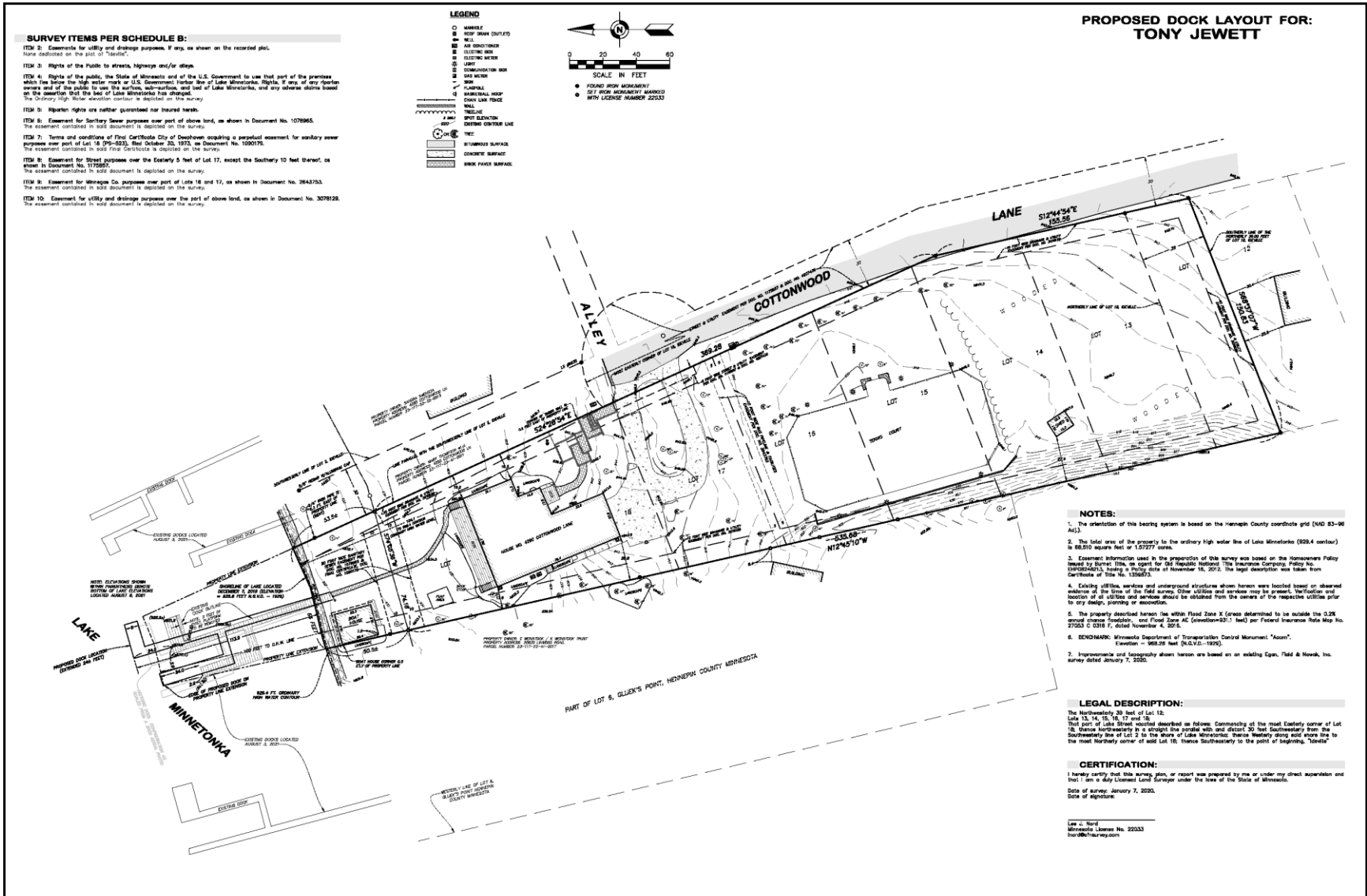
# BACKGROUND CONT.

- Applicant's property has approximately 63 feet of 929.4 feet OHW shoreline.
- One parcel (PID 24-117-23-32-0082)
- The variance application was submitted in an effort to resolve the issue of water depth and conflicting dock use area located at the site due to abnormal site conditions.
- Site is located on a large sand bar
- Neighboring properties in area are out of LMCD compliance

# APPLICANT PROPOSAL SUMMARY

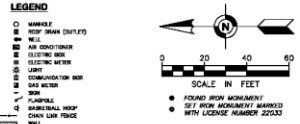
- Extend the dock structure at the site to a length of 114 feet to reach a water depth of approximately 4 feet
- 1 Boat Storage Units (BSU's)
  - 1 BSU, with a canopy, 13.0 feet wide by 40 feet in length
- Applicant is also asking for the private use of up to 3 additional watercrafts
  - 2 watercrafts were seen during a site inspection
    - Small Sailboat on Eastern side,
    - Small Fishing boat on Western side
  - These additional watercrafts met LMCD standard setbacks
- Walkways of 4 feet wide, and a platform measuring 8 feet wide by 24 feet long on the northeastern end of the structure
- Maintain a minimum 0-foot setback from the Eastern side site line at of the dock structure
- Maintain a minimum 0-foot setback from the Western side site line at the End entirety of the dock structure

# PROPOSED SITE PLAN EXCERPT



## PROPOSED DOCK LAYOUT FOR: TONY JEWETT

- SURVEY ITEMS PER SCHEDULE B:**
- ITEM 2: Easements for utility and drainage purposes, if any, as shown on the recorded plat. None indicated on the plat of "Islets".
  - ITEM 3: Rights of the Public to streets, highways and/or ways.
  - ITEM 4: Rights of the public, the State of Minnesota and of the U.S. Government to use that part of the premises which lies below the high water mark or U.S. Government harbor line of Lake Minnetonka. Rights, if any, of any riparian owners and of the public to use the surface, bottomlands, and bed of Lake Minnetonka, and any adverse claims based on the assertion that the bed of Lake Minnetonka has changed. The Ordinary High Water elevation contour is depicted on the survey.
  - ITEM 5: Riparian rights are neither guaranteed nor insured herein.
  - ITEM 6: Easement for Sanitary Sewer purposes over part of above land, as shown in Document No. 1078965. The easement contained in said document is depicted on the survey.
  - ITEM 7: Terms and conditions of Final Certificate City of Deephaven acquiring a perpetual easement for sanitary sewer purposes over part of Lot 18 (95-023), Red October 20, 1973, as Document No. 1000179. The easement contained in said Final Certificate is depicted on the survey.
  - ITEM 8: Easement for Street purposes over the Eastern 5 feet of Lot 17, except the Southern 10 feet thereof, as shown in Document No. 1179667. The easement contained in said document is depicted on the survey.
  - ITEM 9: Easement for Mortgage Co. purposes over part of Lots 18 and 17, as shown in Document No. 2643703. The easement contained in said document is depicted on the survey.
  - ITEM 10: Easement for utility and drainage purposes over the part of above land, as shown in Document No. 3078128. The easement contained in said document is depicted on the survey.



- NOTES:**
1. The orientation of this bearing system is based on the Hennepin County coordinate grid (NAD 83-90 Adj.).
  2. The total area of the property to the ordinary high water line of Lake Minnetonka (928.4 contour) is 88,510 square feet or 1.67277 acres.
  3. Easement information used in the preparation of this survey was based on the Homeowners Policy issued by Street Title, an agent for Old Republic National Insurance Company, Policy No. 300000001, having a policy date of November 16, 2012. The legal description was taken from Certificate of Title No. 133627.
  4. Existing utilities, services and underground structures shown herein were located based on observed evidence of the lines of the field survey. Other utilities and services may be present. Verification and location of all utilities and services should be obtained from the owners of the respective utilities prior to any deepening or excavation.
  5. The property described herein lies within Flood Zone X (areas determined to be outside the 0.2% annual chance floodplain), and Flood Zone AC (sewerback-0.2% flood) per Federal Insurance Rate Map No. 27053-C-0318-7, dated November 4, 2011.
  6. BENCHMARK: Minnesota Department of Transportation Control Monument "Acon", Elevation = 888.28 feet (N.A.S.D. 1928).
  7. Improvements and topography shown herein are based on an existing Egan, Field & Nowak, Inc. survey dated January 7, 2000.

**LEGAL DESCRIPTION:**

The Northwesterly 20 feet of Lot 12; Lot 13, 14, 15, 16, 17 and 18; that part of Lake Street located between the Eastern corner of Lot 18, thence Northwesterly to a strip of the system with one distant 30 feet Southwesterly from the Southwesterly line of Lot 2 to the shore of Lake Minnetonka; thence Westerly along said shore line to the most Northerly corner of said Lot 16, thence Southwesterly to the point of beginning, "Islets".

**CERTIFICATION:**

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

Date of survey: January 7, 2020.  
Date of signature:

Lee J. Nord  
Minnesota License No. 22533  
lorn@efn-survey.com

FIELD BOOK	PAGE	FIELDWORK	REVISIONS
2668	52	CHEK	
DRAWING NAME:	38923-0002_P1.dwg	CHECKED BY:	
JOB NO.:	38923		

**PROPOSED DOCK LAYOUT**

**SURVEY FOR:**

**TONY JEWETT**

**PROPERTY ADDRESS:**

4290 COTTONWOOD LANE  
DEEHPHAVEN, MINNESOTA 55311

**EFN**  
Egan, Field & Nowak, Inc.

475 Old Highway 8 NW, Suite 200  
New Brighton, Minnesota 55112  
PHONE: (612) 444-3000  
WWW.EFNSURVEY.COM

COMPANY © 2023 BY EFN, FLD & NOWAK, INC.





# SITE CHARACTERISTICS

- Water depths were taken by LMCD Staff
- At 63 feet from the 929.4 OWHL the water depth for the site under “Normal Conditions” is approximately 3.3 feet.
- At 90 feet the average water depth for the property is approximately 3.7 feet on the western most side and 3.8 feet on the eastern most side
- This length variance would allow the Applicant to reach navigable waters, which the state deems to be 4 feet
- Neighboring dock structure in the area does not meet LMCD Code, during site inspection it was noted that these dock structures extend past 100 feet into the lake

# DOCK USE IN AREA



# BASIC OVERLAY



# VARIANCE STANDARDS

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



# PUBLIC / REVIEW AGENCY COMMENTS

- **Agency Review of Application / Comments (General Permit)**
  - No comments were received from the MN DNR ,MCWD, or the City of Shorewood.
- **Public Comments**
  - No comments were received from the public as part of public hearing process

# CONSIDERATIONS

- **Interaction of applicant's proposed dock configuration and adjacent dock use areas** LMCD Code Section 2-3.03, Subd. 3, paragraph (a):
  - (a) The length of an authorized dock use area extends into the Lake a distance equal to the length of shoreline frontage of the site as measured at right angles to the side site lines as extended into the Lake. The total length of the authorized dock use area shall not extend beyond 100 feet, even if the site has more than 100 feet of shoreline frontage, unless otherwise specifically provided in this Section.
- **Amount of shoreline.** Applicant's parcel approximately 63 feet of shoreline
- **Site Review.** Proposed dock configuration does not appear to impede navigation, impair reasonable use of other dock use areas, and seems compatible with adjacent uses.
- The property to the east is a Common Area and historically does not have watercrafts associated with it. It is a swim area.
- **Considerations of Variance factors**

## RECOMMENDATION (CONTINGENT PUBLIC HEARING COMMENTS)

- Staff Recommendation based on information available prior to public hearing.
  - Approval with the following conditions:
    1. Ensure the 1 watercraft stored in the approved BSU is fully contained within the BSUs located at the site.
    2. For the Eastern side setbacks, maintain a minimum 0 foot-setback from the end of the dock structure as it extends into the lake as indicated on the site plan
    3. For the Eastern side setbacks, maintain a minimum 0 foot-setback from the end of the dock structure as it extends into the lake as indicated on the site plan
    4. The length of the dock structure and storage should be no longer than the proposed 114 feet from the 929.4 feet OHWL since water levels would be sufficient during normal circumstance.

## RECOMMENDATION (CONTINGENT PUBLIC HEARING COMMENTS)

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

5. Allow 1 BSU for the Site measuring 13 feet wide by 40 feet in length.
6. Allow for the storage of up to 3 more personal watercraft at the site, standard LMCD Code would apply to the additional watercrafts
7. Provide an updated site plan with final configuration and measurements as approved by the Board if necessary .
8. Apply standard variance conditions reflecting environmental, nuisances, maintenance, etc.



# RECOMMENDATIONS CONT...

## Previously Suggested Standard Provisions to Include in Variances:

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

# PUBLIC HEARING

- **Public Hearing Requirements**
  - Posted in official newspaper on August 24, 2023 (Sun Sailor) and also on August 26, 2023 (Laker Pioneer)
  - Owners of properties within 350 feet notified, 10-day notice sent August 22, 2023
  - Posted online with meeting packet
- **Opportunity for interested individuals to present their views to Board for consideration**
- **Only items under the LMCD Code and Board authority may be considered as part of any Approve or Deny decision**



*To preserve and enhance the "Lake Minnetonka experience"*

# QUESTIONS?



## LAKE MINNETONKA CONSERVATION DISTRICT

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

**DATE:** September 13, 2023 (Prepared September 7, 2023)

**TO:** LMCD Board of Directors,

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

**SUBJECT:** Water Ski Rules – Observer vs. Mirror

### **ACTION**

---

Board approval of water skier observer rule amendment. The following motions are offered depending on whether the Board wishes to approve or deny the request:

#### Approval

I make a motion to approve an ordinance amending section 9-1.01, subdivision 1 to modify the water skier observer rule by requiring the use of an observer or wide-angle mirror during certain days and hours.

Or

I make a motion to approve an ordinance amending section 9-1.01, subdivision 1 to modify the water skier observer rule by requiring the use of an observer or wide-angle mirror.

#### Denial

I make a motion to deny the approval of an ordinance amending section 9-1.01, subdivision 1.

### **BACKGROUND**

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Included are two versions for the board to consider. One allows for the option for use of a mirror vs an observer and sets certain days and hours for this option. The other allows the option for a wide-angle mirror vs an observer.

### **CONSIDERATIONS**

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The board considered this at a former meeting and suggested the consideration of the LMCD code modification to allow the use of a wide-angle mirror vs the need to have an observer and suggested certain days and times to be able to use this option.

Since the initial discussion, the water patrol expressed a concern about the proposed changes.

The board has the option to make no changes or adopt one of the two options.



**STRATEGIC PRIORITIES**

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

**ATTACHMENTS**

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- Amendment Option 1
- Amendment Option 2

# ITEM 12A Attachment

## ORDINANCE \_\_\_\_

### AN ORDINANCE AMENDING SECTION 9-1.01, WATER SKIING, TO MODIFY THE WATER SKIER OBSERVER REQUIREMENT

The Board of Directors of the Lake Minnetonka Conservation District ordains:

#### **Section 1 – Purpose.**

Pursuant to the authority granted under Minnesota Statutes section 103B.641, this ordinance amends the water skier observer requirement by allowing the use of a wide-angled mirror instead of a personal observer. This amendment provides boat operators with greater flexibility by reducing the number of people necessary to undertake towing or wake surfing during times of lighter lake usage.

#### **Section 2 – Amendment.**

Section 9-1.01, subdivision 1, is amended as follows, with underlined language added and struck out language deleted.

Observers or Mirror Required. On Saturdays, Sundays and holidays (as defined in Section 8-2.05, subd. 2(c)), as well as on Monday through Friday from noon until 30 minutes past sunset,  
~~watercraft~~Watereraft may not be operated to create a wake for a wake surfer or tow a person on water skis, an aquaplane, surfboard, saucer, or similar device, unless there is in such watercraft another person in addition to the operator in a position to continually observe the person being towed. The operator of such watercraft shall be at least 12 years of age and must watch where the watercraft is being driven at all times. The second person on board shall act as observer of the person being towed,~~-shall~~ be at least 12 years of age and shall watch the person, or persons, being towed at all times.

On Monday through Friday before noon, watercraft may not be operated to create a wake for a wake surfer or tow a person on water skis, an aquaplane, surfboard, saucer, or similar device, unless there is an observer as provided above or, in the alternative, the boat is equipped with a mirror providing the operator a wide field of vision to the rear.

#### **Section 3 – Effective Date.**

This ordinance becomes effective from and after its passage and publication.

Adopted this 13<sup>th</sup> day of September 2023 by the Board of Directors of the Lake Minnetonka Conservation District.

---

Ann Hoelscher, Chair

ATTEST:

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Mike Kirkwood, Secretary

# ITEM 12A Attachment

## ORDINANCE \_\_\_\_

### AN ORDINANCE AMENDING SECTION 9-1.01, WATER SKIING, TO INCLUDE WAKE SURFING IN THE WATER SKIER OBSERVER REQUIREMENT

The Board of Directors of the Lake Minnetonka Conservation District ordains:

#### Section 1 – Purpose.

Pursuant to the authority granted under Minnesota Statutes section 103B.641, this ordinance amends the water skier observer requirement to include wake surfing so that the code is consistent with state law.

#### Section 2 – Amendment.

Section 9-1.01, subdivision 1, is amended as follows, with underlined language added and struck out language deleted.

Observers Required. Watercraft may not be operated to create a wake for a wake surfer or tow a person on water skis, an aquaplane, surfboard, saucer, or similar device, unless there is in such watercraft another person in addition to the operator in a position to continually observe the person being towed. The operator of such watercraft shall be at least 12 years of age and must watch where the watercraft is being driven at all times. The second person on board shall act as observer of the person being towed, ~~shall be at least 12 years of age and shall watch the person, or persons, being towed at all times.~~

#### Section 3 – Effective Date.

This ordinance becomes effective from and after its passage and publication.

Adopted this 13<sup>th</sup> day of September 2023 by the Board of Directors of the Lake Minnetonka Conservation District.

---

Ann Hoelscher, Chair

ATTEST:

---

Mike Kirkwood, Secretary





# ITEM 12B

## LAKE MINNETONKA CONSERVATION DISTRICT

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

**DATE:** September 13, 2023 (Prepared September 7, 2023)

**TO:** LMCD Board of Directors

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

**SUBJECT:** Employee Organization Chart and Flex Time

### ACTION

---

Board adoption of LMCD staff organizational chart and flex time policy. The following motions are offered depending on whether the Board wishes to approve or deny the request:

Approval

I make a motion to adopt the LMCD staff organizational chart and flex time policy.

Denial

I make a motion to deny the adoption of the LMCD staff organizational chart and flex time policy.

### BACKGROUND

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This item was previously discussed at the August 9, 2023, Board meeting.

It has been reviewed by the Officers Working Group and received approval.

### STRATEGIC PRIORITIES

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	Docks, Applications, Licenses, Surface Water Management		Lake Use, Safety		Lake Protection	X	Operational Effectiveness		Other
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### ATTACHMENTS

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- LMCD Organization Chart
- Flex Time Policy

# ITEM 12B Attachment

## LMCD ORGANIZATION CHART

### BOARD

LEGAL COUNSEL

PROSECUTING ATTORNEY

### INTERIM EXECUTIVE DIRECTOR

- Work directly with the Board and legal counsel
- Work with member cities
- Monitor and direct staff work load
- Work with water patrol
- Work with consultants and manage contracts

### OFFICE AND FINANCE MANAGER (\$57,000.00)\*

- Office procedures, special projects, file management, agenda/work session prep
- Provide direct assistance to General Manager and staff
- Record STL activity, court fines, levies, receivable collections
- Reconcile bank accounts, monthly financials, assist with budget, audit process, insurance policies, accounts payables, audit vouchers,
- Human resources, payroll, taxes, benefits
- Process contracts/agreements, events
- Maintain databases, operations calendar, logs, filing systems

### MANAGER OF CODE ENFORCEMENT (\$77,000.00)\*

- Variances, dock enforcement, surface water management, code compliance
- Respond, investigate alleged dock, boat violations,
- Recommend code updates in order to better understood LMCD rules,
- Direct activities of Executive Assistant for Environmental Services

### EXECUTIVE ASSISTANT FOR CODE ENFORCEMENT and OPERATIONS (\$54,000.00)\*

- Assist with code enforcement and environmental services,
- Manage special projects, public contact, office work flow, assist with agenda/work session prep
- Maintain the current website, manage new/renewal licenses, respond to complaints and inquiries(maintain “user guide”),
- Phone coverage, voicemail,
- Signage, winter/summer rules, STL records and correspondence

\*All are subject to a three month perf evaluation, no later than 12.31.23

# ITEM 12B Attachment

## LMCD Flex Time

Flex leave replaces individual sick leave and vacation leave and combines them into a single benefit program. Flex leave does not replace LMCD observed holidays, jury duty, military leave, or court leave. Employees accrue flex leave based on length of service with the LMCD. Flex leave can be used for any reason, subject to approval of the Director. As with all paid time off programs, the LMCD needs to ensure that service to the public and work requirements are not adversely impacted.

### Flex Leave - Amounts and Accruals

All regular full-time employees are eligible to receive flex leave. Flex leave is accrued on a per pay period basis and may be used as earned. The official flex leave accrual schedule including balances will be maintained in payroll. Regular full-time employees shall accrue leave as listed below in the flex leave accrual schedule. Regular part-time employees who are also Benefit Earning Employees (work an average of 32 hours/week) shall receive flex time on a pro-rated basis using on their average weekly hours worked, with an average of 40 hours per week being equal to 100%. Flex leave is also pro-rated on the same basis for regular part-time employees who are also Benefit Earning Employees when determining flex leave cap, cash out, severance and other forms of leave.

### Flex Leave Accrual – Regular Full-time Employees

Years of Service	Days	Hours	Maximum
0-4	22	176	352
5-10	23	184	368
11	24	192	384
12	25	200	400
13	26	208	416
14	27	216	432
15+	28	224	448

Employees who leave LMC employment and who return may be given credit for their prior years of service with the LMCD in determining their Years of Service category.

### **Flex Leave Cap**

Employees may carry over two times their annual flex leave accrual as of the first pay day in January of each year, provided, however, that at no time may employees hold accrued flex leave more than the Cap on Maximum Permitted Accrual. For example, an employee with six years of service would be able to use during the year 184 hours of current flex leave and hold or use the amount of accrued flex leave carried over from previous years up to the Cap of 368 hours; however, if that employee at the end of the year had accrued flex leave carried over from prior

years of 368 (the cap amount) and had not used all of his or her flex leave hours earned during the current year, the employee would not be able to carry over any additional hours of flex leave into the next year because the Cap had been reached. Flex leave above the Cap will be forfeited. The foregoing notwithstanding, if on December 31 of any calendar year employee has flex leave hours that are subject to forfeit because the Cap has been reached, employee will be permitted to request payment at employee's current hourly rate of pay for up to 40 hours of flex leave in excess of the Cap. No payment shall be made for hours that would reduce the employee's accrued flex leave to less than the Cap for such employee for that year.

### **Flex Leave – Termination of Employment**

Upon termination of employment, the employee will receive 100% of his or her flex leave balance, not to exceed the flex leave cap. The flex leave balance consists of the current year's accrued but unused flex leave plus the accrued flex leave carried over from prior years, the total of which cannot exceed the flex leave cap. *In no instance shall any employee be paid for hours in excess of the flex leave cap.* Payment of flex leave upon termination will be at the employee's then current hourly rate of pay.

### **Flex Leave – Sick Leave Carry-Over**

Non-exempt employees, who were employed with the LMCD on September 1, 2023, are allowed to convert their accumulated unused sick leave as of August 31, 2023, up to a maximum of 960 hours (120 days), to a "Sick Leave Carry-Over." Employee's Sick Leave Carry-Over can be used during the term of employee's employment only after employee's flex leave has been fully used, and use is governed by the same terms and conditions as flex leave. The foregoing notwithstanding, Sick Leave Carry-Over is not included in or subject to the flex leave cap.

At the time of separation of employment, employer will pay employee an amount equal to one third (1/3) of employee's unused Sick Leave Carry-Over at employee's hourly wage rate at the time of separation.

### **Flex Leave – New/Probationary Employees**

New probationary full-time employees will begin with a flex leave accumulation of three 8-hour days (24 hours) and earn flex leave according to the above schedule titled flex leave accrual for use as needed (pro-rated for benefit earning part-time). These three days are part of the total



accrual for their first year of employment. Probationary employees are allowed to use flex leave as it is accrued. Employees who do not successfully complete the probationary period are not eligible to receive earned, but unused flex leave upon separation.

### **Flex Leave Request - Planned Absences**

Employees may request to take earned flex leave by submitting a request to the Director as soon as practical. Flex leave may be used in amounts no smaller than two (2) hour increments. Approval of the request will be based on work demands within the employee's work unit. Planned and unplanned leaves of absence require Director approval.

### **Flex Leave Request - Unplanned Absences**

In situations when anticipating an absence from work is impossible, the employee must contact the Director as soon as possible, preferably prior to the start of the workday. Provided there is a balance in the employee's flex leave account, flex leave may be used subject to approval by the Director. Flex leave for unplanned absences can be used in amounts no smaller than two (2) hour increments. Additional documentation or medical certification may be required for approval of the absence.

### **Non-Exempt (overtime eligible) Employees**

All non-exempt employees will be compensated at the rate of time and one-half for all hours worked over 40 hours in one work week. Flex leave, compensatory time off and paid holidays do not count toward "hours worked". Compensation will take the form of either time and one-half pay or compensatory time. Compensatory time is paid time off at the rate of 1.5 hours off for each hour of overtime worked.

The Director must approve overtime hours. Advance approval of overtime work is required except in the case of an emergency situation where the Director is not available to provide advance approval. However, in an emergency situation, the employee must notify the Director of the overtime work as soon as possible. The Director has the option of requiring an employee to reduce the number of hours worked on other days of the week in order to reduce the employee's total working hours for the week to 40 hours. An employee who works overtime without the approval of the Director may be subject to disciplinary action.

Overtime earned will be paid at the rate of time and one-half on the next regularly scheduled payroll date, unless the employee indicates on his/her timesheet that the overtime earned is to be recorded as compensatory time in lieu of payment. The use of compensatory time rather than overtime pay must be approved by the Director.

The maximum compensatory time accumulation for any employee is 30 hours per year (20 hours of overtime worked at time and one-half). Once an employee has earned 30 hours of compensatory time in a calendar year, no further compensatory time may accrue in that calendar year. All further overtime will be paid. Employees may request and use compensatory time off in the same manner as other leave requests; provided, however, that compensatory time off shall not be given in increments of less than two hours and must be requested and approved in

advance.

All compensatory time will be marked as such on official timesheets, both when it is earned and when it is used. The LMCD staff will maintain compensatory time records. Employees may request cash payment of accrued and unused compensatory time once each calendar year by written request to the Director on or before November 1<sup>st</sup> of any year. If the request is received on or before November 1<sup>st</sup>, the employee's accrued and unused compensatory time will be paid using the employee's current hourly pay rate and will be included in the employee's first paycheck for November of that year.



## LAKE MINNETONKA CONSERVATION DISTRICT

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

**DATE:** September 13, 2023 (Prepared September 9, 2023)  
**TO:** LMCD Board of Directors  
**FROM:** *James S. Brimeyer*  
Jim Brimeyer, Interim Executive Director  
**SUBJECT:** Wayzata Panoway Project

### ACTION

---

Board Approval of an amendment to the Multiple Dock License awarded to the City of Wayzata, allowing a boardwalk of 10 feet versus 8 feet in width. 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 amendment to the Multiple Dock License awarded to the City of Wayzata, allowing a boardwalk of 10 feet versus 8 feet in width.

#### Denial

I make a motion to deny the amendment to the Multiple Dock License awarded to the City of Wayzata, allowing a boardwalk of 10 feet versus 8 feet in width. based on the following reasons...

### BACKGROUND

---

This item is on the agenda for final approval for an amendment to the Multiple Dock License. One of the significant components of this request is the approval of a boardwalk with width of 10' vs 8'.

As part of funding for this project, the city received funds from the recent legislative session through the state bonding process to cover the expense of the boardwalk. To satisfy the bonding process, the Office of Management and Budget has requested that certain assurances be incorporated in the Final Order issued by the LMCD.

Those modifications are as follows:

Para 1 c New Dock with Variance. Any new variance allowing the boardwalk to be 10 feet wide in order to satisfy ADA regulations.

**LMCD and Applicant acknowledge that due to the use of G. O. bonds to fund the 10' wide boardwalk/dock "Boardwalk", the Commissioner of MMB has certain rights in the Applicant's Boardwalk as set forth in that certain General Obligation Bond Proceeds Grant Agreement/ Construction Grant for the Wayzata Lake Effect Boardwalk Project between Applicant the Department of Employment and Economic Development, dated \_\_\_\_\_, 2023 (the Grant Agreement).**

**Notwithstanding anything to the contrary in this Order, the Boardwalk and the order pertaining to the Boardwalk shall remain subject to Minn Stat #16A.695, the Grant agreement and the Fourth amending Order of Commissioner of Finance Relating to Use and Sale of State Bond Financed Property dated July 30, 2012 for 125% of the useful life of the Boardwalk.**

**Notwithstanding anything to the contrary in this Order, the parties fully intend for the Applicant to continue, to use, operate and the maintain the Boardwalk for not less than twenty (20) years.**

Para 2. C Failure of the Applicant to comply with any with any relevant regulations of all LMCD, Federal, State, County, and Municipal rules and regulations may result in revocation of these approvals.

**Notwithstanding condition of 2(c) of the approvals, LMCD agrees to provide at least six (6) months written notice to the Minnesota Commissioner of Management and Budget (MMB), consult with MMB, and make a good faith effort to the obtain the Commissioner of MMB's consent before modifying, restating, amending, changing in any way, prematurely terminating, of cancelling this Order. Before LMCD terminates or cancels this Order due to Applicant's failure to comply with condition 2(c), LMCD will give written notice of such failure to applicant and will first demand specific performance by Applicant (for the avoidance of doubt, this provision does not require LMCD to obtain a court order to specific performance).**

The Board is hereby advised that the city will be making an application for variance for a dock extension from 150' to approximately 190'. This extension is proposed for safety reasons and ease of navigation.

This notice is made for informational reasons only and is not intended to affect the request for the modifications requested as final approval.

While multiple dock licenses are subject to annual review and approval, if there are no changes to the dock configuration, approval is automatic.

### STRATEGIC PRIORITIES

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Operational Effectiveness     Clear & Timely Communications     Effective Governance     Lake Protection     Other

### ATTACHMENTS

---

N/A



## Lake Minnetonka Conservation District

## Balance Sheet

As of August 31, 2023

08/25/23

Accrual Basis

	Aug 31, 23
<b>ASSETS</b>	
<b>Current Assets</b>	
<b>Checking/Savings</b>	
Alerus Checking	21,772.63
Bridgewater Checking	75,993.49
Bridgewater Savings	500,000.00
1010M10 · Petty Cash	188.60
1090M10 · Alerus Bank - Savings	
1090M50 · Alerus Savings - Equip. Repl	125,652.32
1090M10 · Alerus Bank - Savings - Other	-43,531.58
<b>Total 1090M10 · Alerus Bank - Savings</b>	<b>82,120.74</b>
<b>Total Checking/Savings</b>	<b>680,075.46</b>
<b>Accounts Receivable</b>	
1150M10 · Accounts Rec. - Gen	35,277.50
<b>Total Accounts Receivable</b>	<b>35,277.50</b>
<b>Total Current Assets</b>	<b>715,352.96</b>
<b>Fixed Assets</b>	
1640M90 · Fixed Assets	155,233.00
1645M90 · Accumulated Depreciation	-95,427.00
<b>Total Fixed Assets</b>	<b>59,806.00</b>
<b>Other Assets</b>	
1650M90 · Leased Asset	172,361.00
1655M90 · Accumulated Amortization-Lease	-22,969.00
<b>Total Other Assets</b>	<b>149,392.00</b>
<b>TOTAL ASSETS</b>	<b>924,550.96</b>
<b>LIABILITIES &amp; EQUITY</b>	
<b>Liabilities</b>	
<b>Current Liabilities</b>	
<b>Credit Cards</b>	
1087M10 · US Bank (Credit Card)	581.24
<b>Total Credit Cards</b>	<b>581.24</b>
<b>Other Current Liabilities</b>	
2020-LT · Payroll Liabilities - UNUM	-21.08
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
<b>Total Other Current Liabilities</b>	<b>48,122.40</b>
<b>Total Current Liabilities</b>	<b>48,703.64</b>
<b>Long Term Liabilities</b>	
2915M90 · Lease Liability - Long Term	126,242.00
<b>Total Long Term Liabilities</b>	<b>126,242.00</b>
<b>Total Liabilities</b>	<b>174,945.64</b>

7:47 AM

08/25/23

Accrual Basis

# Lake Minnetonka Conservation District

## Balance Sheet

As of August 31, 2023

---

	<u>Aug 31, 23</u>
<b>Equity</b>	
Retained Earnings	946,364.89
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	-5,310.17
<b>Total Equity</b>	<u>749,605.32</u>
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<u><u>924,550.96</u></u>

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

	Jan - Aug 23	Budget	\$ Over Budget	% of Budget
<b>Ordinary Income/Expense</b>				
<b>Income</b>				
*Uncategorized Income	55.00			
<b>Grants &amp; Other Income</b>				
3080M10 · Interest - Gen	4,111.72	2,600.00	1,511.72	158.1%
3260M10 · Court Fines - Admin.	68,090.00	60,000.00	8,090.00	113.5%
3300M10 · Other Income - Admin.	10,921.03	6,190.00	4,731.03	176.4%
<b>Total Grants &amp; Other Income</b>	83,122.75	68,790.00	14,332.75	120.8%
<b>Licenses/Permits</b>				
3110M10 · Multiple/Perm. Dock Lic -Admin.	81,672.01	85,200.00	-3,527.99	95.9%
3120M10 · DMA license - Admin.	3,450.00	3,000.00	450.00	115.0%
3130M10 · Deicing License - Admin.	1,602.00	6,000.00	-4,398.00	26.7%
3170M10 · Variances - Admin.	2,000.00	10,600.00	-8,600.00	18.9%
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%
<b>Total Licenses/Permits</b>	109,334.01	127,000.00	-17,665.99	86.1%
3020M10 · Municipal Dues - Admin.	191,251.50	255,000.00	-63,748.50	75.0%
3400M10 · Transfers In - Admin.	0.00	125,000.00	-125,000.00	0.0%
<b>Total Income</b>	383,763.26	575,790.00	-192,026.74	66.6%
<b>Gross Profit</b>	383,763.26	575,790.00	-192,026.74	66.6%
<b>Expense</b>				
<b>AIS Administration</b>				
4181M30 · Prof. Services	5,000.00	68,000.00	-63,000.00	7.4%
4221M30 · Office Supplies -AIS Prevention	0.00	2,000.00	-2,000.00	0.0%
<b>Total AIS Administration</b>	5,000.00	70,000.00	-65,000.00	7.1%
<b>General &amp; Admin Expenses</b>				
4060 · Telephone/Internet	2,050.82	3,500.00	-1,449.18	58.6%
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%
<b>Total General &amp; Admin Expenses</b>	12,192.82	12,840.00	-647.18	95.0%

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

	Jan - Aug 23	Budget	\$ Over Budget	% of Budget
<b>Legal</b>				
4110M10 · Public Info Legal Fees- Admin.	820.97	1,750.00	-929.03	46.9%
4620M10 · Civil Legal Fees - Admin.	24,684.31	31,325.00	-6,640.69	78.8%
4640M10 · Prosecution Legal Fees - Admin.	28,960.51	30,000.00	-1,039.49	96.5%
<b>Total Legal</b>	<b>54,465.79</b>	<b>63,075.00</b>	<b>-8,609.21</b>	<b>86.4%</b>
<b>Office, Supplies, Equip</b>				
4080 · Postage	1,409.61	3,000.00	-1,590.39	47.0%
4100M10 · Printing - Admin.	5,302.43	1,260.00	4,042.43	420.8%
4140M10 · Office Equipment R&M - Admin.	3,787.32	6,000.00	-2,212.68	63.1%
4220M10 · Office Supplies -Admin.	2,335.05	1,700.00	635.05	137.4%
4230M10 · Meeting Exp. - Admin.	3,153.45	12,000.00	-8,846.55	26.3%
4320M10 · Office Rent - Admin.	15,601.32	22,000.00	-6,398.68	70.9%
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.	2,182.17	3,515.00	-1,332.83	62.1%
4531M30 · Software & Hardware/Training	410.08	500.00	-89.92	82.0%
<b>Total Office, Supplies, Equip</b>	<b>34,181.43</b>	<b>51,625.00</b>	<b>-17,443.57</b>	<b>66.2%</b>
<b>Personnel Expenses</b>				
4020M10 · Salaries-002 - Admin	159,026.59	246,050.00	-87,023.41	64.6%
4021M10 · ER Share of Admin FICA/Medicare	12,136.56	17,700.00	-5,563.44	68.6%
4022M10 · ER PERA - Admin	10,982.62	17,500.00	-6,517.38	62.8%
4024 · Contract Labor	35,640.00			
4380M10 · Employee Benefits - Admin.	19,518.30	33,750.00	-14,231.70	57.8%
<b>Total Personnel Expenses</b>	<b>237,304.07</b>	<b>315,000.00</b>	<b>-77,695.93</b>	<b>75.3%</b>
<b>Professional Services- ADM</b>				
4040M10 · Auditing - Admin.	14,156.00	11,500.00	2,656.00	123.1%
4180M10 · Professional Services - Admin.	10,502.18	6,000.00	4,502.18	175.0%
4181M10 · Professional Comp. Serv.-Admin.	5,799.99	2,500.00	3,299.99	232.0%
4182M10 · Media (Cable/Internet) - Admin.	3,800.00	3,500.00	300.00	108.6%
4183M10 · Prof/ Serv. - Communications	23,073.65	30,000.00	-6,926.35	76.9%
<b>Total Professional Services- ADM</b>	<b>57,331.82</b>	<b>53,500.00</b>	<b>3,831.82</b>	<b>107.2%</b>



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

	Jan - Aug 23	Budget	\$ Over Budget	% of Budget
<b>Public Education &amp; Safety</b>				
4111M10 · Public Service Education-Admin	2,517.39	2,500.00	17.39	100.7%
4160M10 · Watercraft/Vehicle Maint	0.00	750.00	-750.00	0.0%
4160M20 · Public Health/Safety- SL	59.90	0.00	59.90	100.0%
4535M10 · Public Safety - SolarLights	2,469.00	5,000.00	-2,531.00	49.4%
<b>Total Public Education &amp; Safety</b>	<b>5,046.29</b>	<b>8,250.00</b>	<b>-3,203.71</b>	<b>61.2%</b>
<b>Total Expense</b>	<b>405,522.22</b>	<b>574,290.00</b>	<b>-168,767.78</b>	<b>70.6%</b>
<b>Net Ordinary Income</b>	<b>-21,758.96</b>	<b>1,500.00</b>	<b>-23,258.96</b>	<b>-1,450.6%</b>
<b>Net Income</b>	<b>-21,758.96</b>	<b>1,500.00</b>	<b>-23,258.96</b>	<b>-1,450.6%</b>

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

	Jan - Aug 23	Budget	\$ Over Budget	% of Budget
<b>Ordinary Income/Expense</b>				
<b>Income</b>				
<b>Contributions</b>				
3001M20 · Donations (General) - S/L	24,835.71	43,050.00	-18,214.29	57.7%
3002M20 · Donations (Photograph) - S/L	50.00			
3004M20 · Donations (Solar Light) - S/L	410.57			
3012M20 · Donations Carp Removal West Arm	50.00			
<b>Total Contributions</b>	25,346.28	43,050.00	-17,703.72	58.9%
<b>Grants &amp; Other Income</b>				
3300M20 · Other Income - S/L	0.00	750.00	-750.00	0.0%
<b>Total Grants &amp; Other Income</b>	0.00	750.00	-750.00	0.0%
3400M20 · Transfers In - S/L	0.00	42,000.00	-42,000.00	0.0%
<b>Total Income</b>	25,346.28	85,800.00	-60,453.72	29.5%
<b>Gross Profit</b>	25,346.28	85,800.00	-60,453.72	29.5%
<b>Expense</b>				
<b>Office, Supplies, Equip</b>				
4220M10 · Office Supplies -Admin.	10.67			
<b>Total Office, Supplies, Equip</b>	10.67			
<b>Office, Supplies, Equip STL</b>				
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%
<b>Total Office, Supplies, Equip STL</b>	0.00	1,800.00	-1,800.00	0.0%
<b>Projects &amp; Activities- STL</b>				
4110M20 · Environmental- S/L	1,034.77			
<b>Total Projects &amp; Activities- STL</b>	1,034.77			
<b>Public Education &amp; Safety</b>				
4160M20 · Public Health/Safety- SL	2,204.70	84,000.00	-81,795.30	2.6%
<b>Total Public Education &amp; Safety</b>	2,204.70	84,000.00	-81,795.30	2.6%
4980M20 · Contingency - S/L	37.00			
<b>Total Expense</b>	3,287.14	85,800.00	-82,512.86	3.8%
<b>Net Ordinary Income</b>	22,059.14	0.00	22,059.14	100.0%
<b>Net Income</b>	22,059.14	0.00	22,059.14	100.0%

# ITEM 15B Attachment

**STEVEN M. TALLEN  
ATTORNEY AT LAW  
920 2<sup>nd</sup> Avenue South  
Suite 1540  
Minneapolis, MN 55402  
(612) 349-3900**

Steven M. Tallen  
Attorney  
[steve@tablawmn.com](mailto:steve@tablawmn.com)

Marijo Witte  
Paralegal  
[mwitte@tablawmn.com](mailto:mwitte@tablawmn.com)

August 31, 2023

Mr. Jim Brimeyer  
Interim Director  
Lake Minnetonka Conservation District  
5341 Maywood Road  
Suite 200  
Mound, MN 55364

**Re: August, 2023, Prosecution Invoice**

Dear Ms. Schleuning:

Enclosed please find our invoice for professional services rendered the month of August, 2023. Please feel free to give me a call if you have any questions.

Sincerely,



Steven M. Tallen  
LMCD Prosecuting Attorney

SMT/mw  
Enclosure

As you know, I am joining the Gregerson Rosow Johnson & Nilan firm on September 1, 2023. This is the last bill you will receive from "Steven Tallen Attorney at Law". Starting with the September bills, you will be billed by the Gregerson firm. Please pay the August bill to "Steven M. Tallen, Attorney at Law", but mail the payment to me at:

100 South Washington Avenue  
Suite 1500  
Minneapolis, MN 55401

Thank you!

Firm Line: (612) 338-0755  
Marijo Direct: (612) 349-3900  
Steve Direct: (612) 349-9212  
[mwitte@grjn.com](mailto:mwitte@grjn.com)  
[stallen@grjn.com](mailto:stallen@grjn.com)

**STEVEN M. TALLEN  
ATTORNEY AT LAW  
920 2<sup>nd</sup> Avenue South  
Suite 1540  
Minneapolis, MN 55402  
(612) 349-3900**

Steven M. Tallen  
Attorney  
[steve@tablawmn.com](mailto:steve@tablawmn.com)

**Tax I.D. Number 41-1770593**

Marijo Witte  
Paralegal  
[mwitte@tablawmn.com](mailto:mwitte@tablawmn.com)

**Invoice for Legal Services Rendered**

Client: Lake Minnetonka Conservation District, Jim Brimeyer, Interim  
Director, 5341 Maywood Road, Mound, MN 55364

August, 2023 Prosecution Bill

**File 9513 - Prosecution**

08/01/23	Appear for Zoom payable calendar.	0.2
08/02/23	Appear at the Ridgedale Courthouse for arraignments, pretrials and Rasmussen Hearings.	4.3
08/03/23	Telephone conference with C. Mathews regarding pending BWI; telephone conference with M. Sipper regarding A. Dunlap BWI and damage; telephone conference with P. Cripe regarding dock violations; review D. Palmer BWI file regarding witnesses for Rasmussen Hearing.	1.3
08/04/23	Letter from Minneapolis City Attorney M. Johnson regarding C. Sims BWI; telephone call to Water Patrol regarding same.	0.4
08/09/23	Review A. Manuel file for witnesses.	0.2
08/14/23	Telephone conference with M. Boster regarding docking citation; draft plea petition and letter to Boster regarding same.	0.6



08/15/23	Telephone conference with W. Pepper regarding S. Farnes dock case; telephone conference with neighbor regarding case status of S. Farnes; telephone calls to the Sheriff's Office to cancel witnesses regarding same; letter from Plymouth Prosecutor A. Schwartz regarding LMCD/Hennepin County Attorney jurisdiction; telephone conference with T. Tully regarding pending cases.	2.3
08/16/23	Appear at the Ridgedale Courthouse for arraignments and pretrials.	3.0
08/17/23	Telephone conference with Defense Attorney J. Tamborino regarding H. Hamilton false name case; letter from Defense Attorney R. Crabb regarding C. Matthews BWI; review code; telephone conference with Lieutenant Rehman regarding same; letter to Defense Attorney Crabb regarding dismissal of C. Matthews BWI; draft Rule 30.01 Dismissal regarding same; telephone conference with R. Crabb regarding same; letter from and letter to S. Foertsch regarding Eistenberg BWI.	1.9
08/22/23	Letter from Defense Attorney J. Tamburino regarding H. Hamilton obstructing case; letter from and letter to Defense Attorney D. Valentini regarding J. Doughty BWI.	0.9
08/23/23	Letter from and telephone conference with Defense Attorney P. Leach regarding K. Wallace BWI; letter to Defense Attorney R. Crabb regarding C. Matthews BWI expungement; telephone conference with Detective Howe of the Hennepin County Sheriff's Office regarding boat dock fire from the 4th of July.	1.2
08/24/23	Review files regarding witnesses and discovery; telephone conference with Defense Attorney Pepper regarding Farnes hearing.	0.8
08/30/23	Letter from Defense Attorney Z. Graham regarding E. Cain BWI; telephone conference with Z. Graham regarding same; appear at the Ridgedale Courthouse for arraignments and pretrials	4.0

**Total Hours - 9513**

**21.1**

**File 9514 - Complaint Draft**

**Review Reports and Prepare Gross Misdemeanor Complaints Regarding:**

C. Mathews, 3rd degree BWI; G. Chelberg, 3rd degree BWI; B. Johnson, 3rd degree BWI; A. Dodge, 2nd degree BWI; N. Burkett, 3rd degree BWI; H. Hamilton, false information to police; M. Noonan, 3rd degree child endangerment BWI; W. Sherod, negligent fire; E. Kotlarz, negligent fire. 9.0

**Total Hours - 9514**

**9.0**

**File 9515 - Legal Assistant**

08/01/23 Letter from K. Hoflock of district court regarding E. Vogstrom court date; letter from Defense Attorney K. Sieben regarding D. Balmer body worn camera footage; letter to S. Pearson regarding same; letter from C. Carder of CJIS Court regarding A. Dodge BWI; receive requests for discovery from Defense Attorney M. Keller and from Defense Attorney K. Sieben and e-file State's Disclosure regarding B. Johnson and D. Winge cases. 1.2

08/02/23 Letter from and letter to C. Beasley of district court regarding C. Mathews in-custody report and offer; letter to S. Pearson regarding same; letter to district court regarding B. Johnson court date; letter to Lieutenant Rehman regarding I. Carlson jury trial continuance; letter to S. Pearson requesting H. Abdulkarim operating personal watercraft after hours citation; letter to district court regarding H. Abdulkarim jurisdiction issue in MNCIS: review MNCIS records for updates from August 2, 2023 Zoom payable calendar. 1.8

- 08/03/23 Review court MNCIS records for case updates from August 2, 2023 court, update and prepare files; letter from Defense Attorney M. Keller regarding discovery for B. Johnson BWI; receive and respond to discovery requests from defense regarding J. Haugen and A. Leach cases; letter to Judge Benson's clerk, R. Pokryzwinski, and to Defense Attorney S. Lewis regarding I. Carlson jury trial date; receive request for discovery from Defense Attorney J. Price and e-file State's disclosure regarding E. Vogstrom.
- 1.8
- 08/04/23 Letter from and letter to Defense Attorney S. Meshbesh regarding J. Haugen report; letter from S. Pearson regarding D. Palmer video evidence issues; letter from S. Torjeson, assistant to Defense Attorney P. Keller, regarding B. Johnson court appearance and request for Zoom appearance; letter to S. Torjeson regarding same; office conference with S. Tallen regarding C. Sims July, 2022 BWI/DWI; telephone conference with the Department of Natural Resources regarding same; check court MNCIS records regarding same; telephone call back to S. Tallen regarding same; letter from R. Pokrzywinski, clerk to Judge Benson, regarding I. Carlson jury trial date; prepare new jury trial notice and forward to deputies regarding I. Carlson.
- 1.7
- 08/07/23 Letter from S. Pearson regarding additional video evidence for D. Palmer case; letter from Defense Attorney B. Hunter regarding N. Nyhammer discovery; e-file State's disclosure regarding N. Nyhammer.
- 0.4
- 08/09/23 Prepare D. Palmer Rasmussen Hearing notice and forward to deputies; review August 16, 2023 court calendar and prepare files for court; letter to S. Pearson requesting A. Abouaish watercraft for hire violation; receive request for discovery from K. Young of Bruno Law regarding R. Finke watercraft for hire violation; letter to S. Pearson requesting R. Finke case and video evidence; letter to K. Young forwarding same.
- 1.8

08/10/23	Receive R. Finke and A. Abouaish files from S. Pearson and prepare files for court; letter to district court regarding court date for P. and M. Cripe; receive and respond to discovery requests from Defense Attorney M. Keller regarding B. Johnson and from Defense Attorney R. Crabb regarding C. Mathews, and from Defense Attorney D. Valentini regarding N. Burkett; prepare N. Burkett and A. Dodge files for court; review A. Manuel file for trial witnesses and exhibits; download A. Manuel body worn camera footage, place onto thumb drive, and make additional copy for trial judge; download I. Carlson body worn camera footage and place onto thumb drive for trial judge.	3.0
08/11/23	Letter from Defense Attorney S. Meshbeshier requesting DataMaster records and PBT records regarding J. Haugen BWI; letter to the BCA requesting J. Haugen DataMaster records; letter to Lieutenant Rehman requesting J. Haugen PBT records; letter to Defense Attorney S. Meshbeshier forwarding J. Haugen PBT records.	0.8
08/16/23	Prepare H. Hamilton file for court; prepare and e-file H. Hamilton booking order; receive and respond to requests for discovery from defense attorneys regarding D. Winge, H. Hamilton and J. Illbruck cases; letter to S. Pearson and A. Villani requesting video evidence for H. Hamilton case.	1.2
08/21/23	Letter to S. Pearson requesting H. Johnson careless operation of watercraft citation; letter from C. Carder of district court regarding E. Riebe BWI case scheduling.	0.4
08/22/23	Prepare E. Riebe and H. Johnson files for court; letter to district court regarding jurisdiction for H. Johnson careless operation of watercraft case.	0.4
08/23/23	E-file M. Boster plea petition; letter to district court forwarding fine and surcharge for M. Boster; review MNCIS records for case updates from August 16, 2023, update and prepare files for court; review August 29, 2023 payable calendar, letter to S. Pearson requesting reports and prepare files for court.	2.2

08/24/23	Letter from Defense Attorney E. Olson regarding status of G. Chelberg discovery request; review records and file and letter to E. Olson regarding same; review J. Fieldseth file for trial witnesses and exhibits; prepare and e-file A. Manuel witness and exhibit list; prepare M. Noonan file for court.	1.2	
08/25/23	Letter to district court requesting continuance of S. Farnes Evidentiary Hearing; letter from district court regarding same; respond back to district court.	0.5	
08/29/23	Letter from district court regarding new court date for S. Farnes Evidentiary Hearing.	0.2	
08/30/23	Review court MNCIS records for case updates from August 29, 2023 Zoom payable calendar; prepare files for court; e-file J. Fieldseth Witness and Exhibit List.	1.2	
08/31/23	Review court MNCIS records for case updates from court on August 30, 2023, update and prepare files for court; receive and reply to request for discovery from Defense Attorney E. Olson regarding G. Chelberg; prepare S. Varab court trial notice and letter to Deputy Treptow forwarding same.	1.1	
<b>Total Hours - 9515</b>		<b>20.9</b>	
<b>Total Attorney Hours:</b>		<b>30.1</b>	
<b>Total Legal Assistant Hours:</b>		<b>20.9</b>	
<b>Total Attorney Hours @ \$165.35 Per Hour:</b>			<b>\$4,977.04</b>
<b>Total Legal Assistant Hours @ \$93.10 Per Hour:</b>			<b>\$1,945.79</b>
<b>Expenses and Disbursements:</b>			
	Postage:		\$3.00
	Copies @ \$.20 Each:	188	\$37.60
	Hennepin County Information Access Fee:		\$6.20
	Mileage and Parking:		\$66.87



Total Expenses & Disbursements:

\$113.67

TOTAL DUE:

\$7,036.50

Thank you!

I CERTIFY THAT THIS IS A TRUE AND CORRECT BILL FOR SERVICES RENDERED, AND THAT NO PART OF THIS BILL HAS BEEN PAID.

Dated: 8-31-23

By:   
Steven M. Tallen

# ITEM 15B Attachment

**STEVEN M. TALLEN  
ATTORNEY AT LAW  
920 2<sup>nd</sup> Avenue South  
Suite 1540  
Minneapolis, MN 55402  
(612) 349-3900**

Steven M. Tallen  
Attorney  
[steve@tablawmn.com](mailto:steve@tablawmn.com)

Marijo Witte  
Paralegal  
[mwitte@tablawmn.com](mailto:mwitte@tablawmn.com)

August 23, 2023

Mr. Jim Brimeyer  
Interim Director  
Lake Minnetonka Conservation District  
5341 Maywood Road  
Mound, MN 55364


**Re: Joining New Firm**

Dear Mr. Brimeyer:

I am writing to let you know that effective September 1, 2023, Marijo and I are moving over to the Gregerson Rosow Johnson & Nilan firm, which is located at 100 South Washington Avenue, Suite 1500, Minneapolis, Minnesota. The Gregerson firm currently represents several cities and provides both civil and prosecution services to the City of Eden Prairie. Nothing will change as far as my providing prosecution services to the Lake Minnetonka Conservation District, and our telephone numbers are remaining the same. I suspect the only change you will notice is that the bills will come from Gregerson Rosow Johnson & Nilan, rather than from Steven M. Tallen, Attorney at Law. We have spoken and you indicated you did not believe that any Board action would be required, but if that has changed, please let me know.

I am looking forward to the move and to being associated with Tory Sailer, who is the Eden Prairie prosecutor. I have known Tory for several years and he and I share much of the same approach to prosecution matters so when we are assisting each other, I do not expect your organization will notice any difference in the way the cases are handled. If you have any questions or concerns, please do not hesitate to give me a call. I expect that, at least from the City's perspective, this move will be seamless.

Sincerely,

  
Steven M. Tallen  
Prosecuting Attorney  
Lake Minnetonka Conservation District

*SMT/mw*



LAKE MINNETONKA CONSERVATION DISTRICT

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

DATE: September 13, 2023 (Prepared September 7, 2023)

TO: LMCD Board of Directors,

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

SUBJECT: Update on Professor Neuman

**ACTION** \_\_\_\_\_

None.

**BACKGROUND** \_\_\_\_\_

Professor Neuman received the support of the LMCD, and several other organizations to designate the various arms of Lake Minnetonka into sub basins for the purposes of additional study.

The request went to the DNR for approval and possible funding.

This is the response he received:

**Lake Sub-basins:** Several agencies have the need to divide a lake into sub-basins, in cases where lakes have sub-areas with distinctly different characteristics. These sub-basins are most often identified for water quality or fisheries management purposes. An example would be a north and south arm of a lake connected by a channel. For most lakes the sub-basin number is '00'. The DNR Division of Waters will assign sub-basin numbers upon request.

Professor Neuman understands the hydrologic logic, but subbasins are used for management and water quality or fisheries management purposes are a justification according to MNIT. He might make one more effort and feels the LMCD letter will be useful.

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

- Operational Effectiveness
- Clear & Timely Communications
- Effective Governance
- Lake Protection
- Other

**ATTACHMENTS** \_\_\_\_\_

N/A

# ITEM 15D

## UPDATE ON WATERCRAFT FOR HIRE WORKGROUP - 9/7/23

The Watercraft For Hire Workgroup (WFHW) is comprised of LMCD Staff (primarily Thomas Tully and Jim Brimeyer), LMCD Board Directors (Jabbour, Hoelscher, Anderson, Nellis and Walesch), representatives of the Water Patrol, and various interested stakeholders and parties from the public.

The WFHW will research and make recommendations on three items: 1) The “six-pack” rule; 2) watercraft for hire rules and regulations; and 3) rental watercraft rules and regulations.

Two meetings have been held. The first meeting was more general but focused on watercraft for hire issues. The second meeting focused on the six-pack rule.

The WFHW plans to thoroughly and systematically consider all the relevant issues and make a recommendation to the LMCD Board on possible changes to LMCD code or possible new code. Over the course of the next 60 days, more WFHW meetings will be held. When the WFHW is completed with its work, there will be a LMCD Board workgroup scheduled so the WFHW can present information and recommendations to the LMCD Board. We estimate this LMCD Board workgroup meeting will be prior to the second meeting in October 2023 or before a meeting in November 2023.

If you have questions about the WFHW, please reach out to LMCD staff or one of the LMCD Board Directors on the WFHW.



**LAKE MINNETONKA CONSERVATION DISTRICT**

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

**DATE:** September 13, 2023 (Prepared September 7, 2023)

**TO:** LMCD Board of Directors,

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

**SUBJECT:** Community Festivals

**ACTION** \_\_\_\_\_

None.

**BACKGROUND** \_\_\_\_\_

In the past, a board member from a respective city has been present at community festivals. This past weekend was the James J Hill Days in Wayzata. Staff paid the entry fee to have a booth and a presence at the event.

Since a board member did not volunteer, staff covered this event on Saturday and Sunday. LMCD covered this event using Comp Time under the new Flex Time policy.

In my opinion, this is not a good use of staff Comp Time.

**In the future**, if a board member is not available, LMCD will not be present at these community events.

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

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

**ATTACHMENTS** \_\_\_\_\_

N/A