

Memo

To: Honorable Mayor and City Council
From: Joe Kohlmann, City Administrator
Date: August 15, 2012
Re: North Waseca Fire Lane

Staff has reviewed the North Waseca Fire Lane issue and conducted research on other Fire Lanes and DNR Access points to Lake Minnetonka. Staff should note that the North Waseca Fire Lane appears to be the most restrictive boat launch around Lake Minnetonka (hours, time restrictions, and number of vehicles launched at one time).

Staff has attached the current Resolution regulating the North Waseca Fire Lane and a draft ordinance. Staff wishes to discuss each of the following options available to regulate the North Waseca Fire Lane:

1) Permitting Commercial Use of the Fire Lane

There is speculation that a number of commercial operations use the North Waseca Fire Lane. Some of the operations may include towing services, boat repair, marinas, boat companies and dock companies. Any permitting requirements would be applicable to these types of companies that wish to use the Fire Lane. There would need to be a tracking system created to ensure the commercial entities are following the permit requirement (i.e. electronic gate, keyed gate, enforcement officer, or other mechanism).

2) Permitting all use of the Fire Lane

A comprehensive permitting program could be created to regulate all parties that use the North Waseca Fire Lane. This would likely require a Public Hearing. For this approach there will need to be some type of tracking system in place to ensure each person has a permit. This approach would regulate all parties that wish to use the Fire Lane and there will be no confusion about the rules regarding use of the Fire Lane. A tracking system or enforcement officer would likely be needed in order to monitor the daily use of the Fire Lane.

3) Number of vehicles or number of launches per day

Currently, the North Waseca Fire Lane is limited to being used to launch four watercrafts. This could be increased or decreased. Also, Staff could review the

feasibility of imposing a maximum number of times a day one party can use the launch. This would most likely require some type of tracking system or enforcement officer.

4) Insurance Requirements

The City could impose increased insurance requirements on commercial entities that wish to use the Fire Lane to protect the City. Again, all of the companies listed under #1 would be impacted and there would need to be a tracking mechanism.

5) Moratorium

A moratorium could be placed on the Fire Lane to stop all use until the City can further study the issue.

Council Action Requested:

Discuss each of the points outlined by Staff above and provide Staff with direction.

Memo

To: Jim Penberthy, City Attorney
Joe Kohlmann, City Administrator

From: Greg Kluver, Public Works Superintendent

Date: August 15, 2012

Re: North Waseca Fire Lane Maintenance

As requested, I have provided my comments relating to questions asked by the City Attorney on the North Waseca fire lane.

Q: What type of maintenance is usually required during the course of the year at the North Waseca fire lane, and have you seen a difference in maintenance required this year as opposed to the past 5-6 years?

A: Typically on an average year, public works spends about \$ 250.00 in material costs for gravel. This is normally needed because of heavy rain fall which can cause erosion on the ramp. Occasionally the ramp is rutted by vehicle launching boats also. Park staff mows the grass once a week. Garbage is checked daily. I have seen no difference in the maintenance required this year over what has been needed in the past 5-6 Years.

Q: Have you received any complaints about the fire lane use?

A: I have received no complaints in the last couple of years with the exception of the resident that lives at 120 Lakeview Avenue. While doing some work at the fire lane a couple of weeks ago, she commented on the congestion that had been occurring this year regarding the Jet Ski business and pontoon business.

In other discussion with the City Attorney, I mentioned that the LMCD has requested the use of the fire lane for off-loading milfoil into their trucks from the weed harvester.

MEMORANDUM

TO: Members of the Tonka Bay City Council and Joe Kohlmann
FROM: James G. Penberthy
DATE: August 9, 2012
RE: Regulation of Use of North Waseca Fire Lane (hereinafter called "the fire lane")

BACKGROUND

This memorandum involves the examination of the relevant records of previous meetings and of the various materials going back to 2000 included in your packets.

Minnesota Statutes Section 412.221 Subd. 6. states in relevant part:

The council shall have power by ordinance to regulate the use of streets....

This language enables the City to regulate use of the fire lane by ordinance but does not enable the City to prohibit use of the fire lane by Bay Rentals, Inc., an unknown pontoon rental or other "commercial" uses while at the same time allowing "non-commercial" uses.

The Tonka Bay Zoning Ordinance , Section 1002 .02 Subd. 1. f. states:

Fire Lane. A portion of a platted or dedicated public right-of-way running to Lake Minnetonka and as is designated and numbered on the official zoning map.

The Tonka Bay Zoning Ordinance, Section 1011.20 FIRE LANES. states:

Subd.1. All fire lanes in the City shall be located, identified and the use thereof restricted to one of the following classifications as so designated on the official Zoning Map. All fire lanes are to provide access to the public.

- a. Class I shall be used for pedestrian access to the lake, fishing from shore, launching canoes and other small boats not requiring a trailer, no sporting

activities, involving thrown objects such as catch, softball, baseball, Frisbee, volleyball and football.

- b. Class II can be used for all the activities as designated in Class I as well as snowmobile access during the winter.
- c. Class III shall only be used for fishing, boat launching, and winter vehicular access to the lake.
- d. Class IV shall be used for pedestrian access and fishing from shore.

The fire lane is the only Class III fire lane in the City.

The fire lane abuts property to the North zoned R-1B and currently used as a rental property.

The fire lane abuts property to the South zoned C-1 and currently used as a private marina.

The properties across the street from the fire lane are zoned R-3, medium density, and are currently used as single family homes.

In 2000, neighbors across the street from the fire lane objected to the “commercial” use of the fire lane. The City Council heard comments, discussed the matter at several meetings, reviewed the attached proposed ordinances and decided not to adopt them but instead adopted Resolution 00-58 as a remedial measure. This resolution is in effect.

The City Council also acted to prohibit trailer parking east of County Road 19, permitted parking on only one side of Lakeview Avenue in the area of the fire lane and continued to monitor and enforce parking requirements in all neighborhoods and marinas.

The current neighbors across the street from the fire lane have objected to public urination and the frequency and total time of use of the fire lane by Bay Rentals, a pontoon rental company and other “commercial” uses. The City has addressed and continues to address all other issues raised with current enforcement tools.

Attached is some general information (with disclaimers) for the public boat launches at the City of Minnetonka, the City of Deephaven and the City of Spring Park. These sites are Department of Natural Resources access points on Lake Minnetonka administered by the respective cities.

These launches permit unlimited 24 hour launching. Staff has not found any other restrictions except at Spring Park where launch time is limited to 10 minutes.

I interviewed three persons at the Spring Park site on a recent late weekday afternoon while they were waiting to launch and recover their boats. I inquired of them about complaints they had about the Spring Park launch site. Two persons had no complaints. One person said that the wait period was longer than 10 minutes on weekends and holidays and stated that the time limits were

not enforced.

Attached is the Public Works Superintendent's memorandum addressing some questions regarding use of the fire lane.

FIRST ISSUE

PUBLIC URINATION

The DNR ramps all have at least one toilet.

The restrictive language for the fire lane does not permit pedestrian access to the lake.

SECOND ISSUE

FREQUENCY OF USE AND TOTAL USAGE TIME OF THE RAMP BY BAY RENTALS,

INC. AND A PONTOON RENTAL COMPANY

Requiring licenses for persons using the boat launch is generally possible when the activity, if unregulated, would adversely affect health, safety, morals, safety or comfort of citizens in the community.

It is generally not permissible to require licenses for some persons and not for other persons for the same use unless it is shown that the proposed licensed activity adversely affects the health, safety, morals or comfort of the community.

Essentially, it is not legally permissible to discriminate against one class of persons without the link described above (and other considerations beyond the scope of this memorandum). For example, weight restrictions on public streets are imposed on one class of vehicles and not another because of the link to safety and general welfare of the community in the attempt to ensure that public streets are safe for travel and to contain the high costs of street maintenance.

Some questions which need to be answered with respect to the frequency of use and total usage time by Bay Rentals, Inc., a rental pontoon company and other "commercial" uses to determine whether those users should be licensed and how are:

1. Is launching a boat owned by a business a "commercial use" of the fire lane per se or is it simply the physical act of launching a boat? If it is determined that the launching of a boat by a business is a "commercial use", what factors make it so and distinguish it from the launching of a boat by a non-business owner?
2. Does frequency and total daily use per se affect the health, safety, morals, safety or comfort of citizens in the community?
3. How is "community" defined? Is the community at large the same as the subset of the community made up of those residents living across the street from the fire lane?

4. What are the acceptable numbers for frequency of use and total daily use?
5. How does the City address limiting the number of vehicle trips on a public street?
6. How do the determinations of #4 and #5 relate to the above standards?
7. How does the City Council balance fulfilling the purpose of the ordinance to provide access to the public with the interests of residents who live across the street from the fire lane and who have expressed concerns about the fire lane use?
8. How does the City address the use of the Fire Lane by the LMCD?

To help answer these and other questions which will arise, the City Council will need to discuss a budget for a monitoring system to gather the needed facts to support any action taken.

I have attached a recent article from the Star Tribune discussing monitoring costs and procedures with respect to invasive species control.

CONSIDERATION OF ACTIONS

PUBLIC URINATION

The DNR ramps all have at least one toilet.

The restrictive language for the fire lane does not permit pedestrian access to the lake.

An option would be to install toilet(s).

The City Council must either amend the ordinance language for the fire lane or immediately install signs indicating no pedestrian access and no swimming. The City may have liability issues if someone is injured while in the water, for some reason other than for the purpose of launching or retrieving a boat, in violation of the ordinance when the City has not installed signs. Consideration must be given to the location of the fire lane and traffic volume in the water in determining how to proceed with this issue.

FREQUENCY OF USE AND TOTAL USAGE TIME OF THE RAMP BY BAY RENTALS, INC., A PONTOON RENTAL COMPANY AND OTHER "COMMERCIAL" USES.

1. Consider incorporating the current resolution language into the second rejected ordinance from 2000 with the following added suggested or similar language:

- a. No person shall solicit or advertise for commercial activities at (the fire lane), public boat ramps, docks, or adjacent parking areas and facilities;
- b. No person shall advertise the location of (the fire lane), public boat ramps, docks, and adjacent parking areas and facilities as the physical address of a commercial business or the meeting place of a commercial activity;
- c. No person shall collect or attempt to collect any compensation at (the fire lane), public

boat ramps, docks and adjacent parking area and facilities for any commercial activity or purpose.

2. Impose a moratorium on use of the fire lane pending study of its use and methods to combat invasive species. The DNR has expressed strong interest in the past in acquiring and providing DNR controlled access to Lake Minnetonka from Tonka Bay. This did not come to pass but the DNR has already installed signs at the fire lane without consulting the City. This fire lane is not currently controlled by the DNR as are the other launch sites mentioned.

Council Action Requested:

Discuss and provide Staff with direction.

Public Water Access Report

Minnetonka, Hennepin County

Directions to access:

In Spring Park, off CSAH 15, just SW of intersection with CSAH 51.

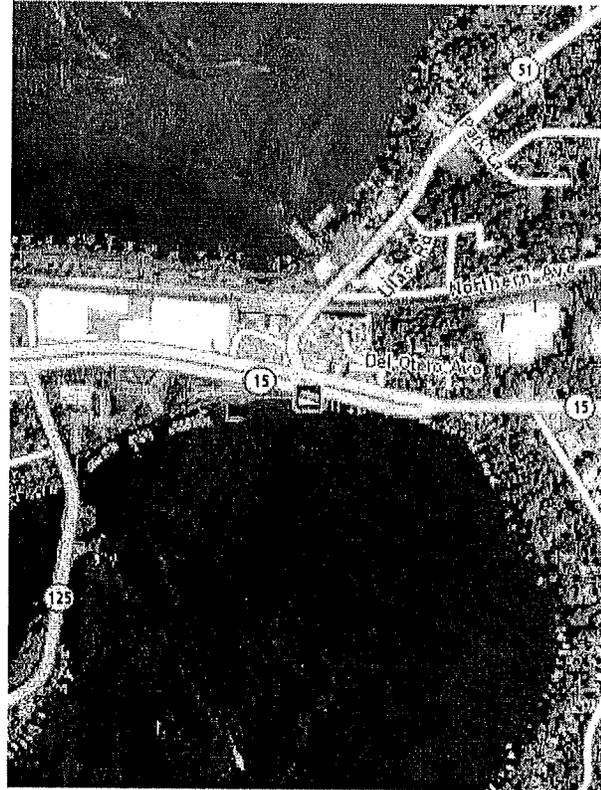
Administrator:

City of Spring Park

Facilities:

- 3 ramp(s) (type=Concrete)
- 2 parking space(s) (auto)
- 8 parking auto/trailer space(s)
- 1 handicapped accessible space(s)
- 3 dock(s)
- 1 toilet(s)

DISCLAIMER: The public water access database is a work in progress and errors do exist. Information deemed reliable, but not guaranteed.



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Public Water Access Report

Minnetonka, Hennepin County

Directions to access:

In Minnetonka, just N of bridge, on E side of Hwy 101, on E shore of Grays Bay causeway.

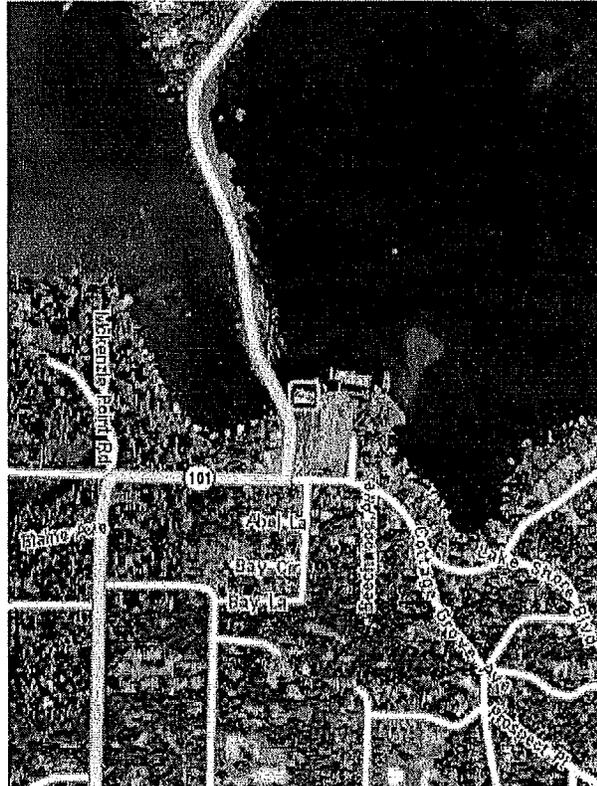
Administrator:

City of Minnetonka

Facilities:

- 3 ramp(s) (type=Concrete)
- 20 parking space(s) (auto)
- 107 parking auto/trailer space(s)
- 6 handicapped accessible space(s)
- 4 dock(s)
- 2 toilet(s)

DISCLAIMER: The public water access database is a work in progress and errors do exist. Information deemed reliable, but not guaranteed.



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Public Water Access Report

Minnetonka, Hennepin County

Directions to access:

In Minnetonka, at the dam on E shore of Grays Bay, accessible via Fairchild.

Administrator:

City of Minnetonka

Facilities:

- 1 ramp(s) (type=Gravel)
- 8 parking space(s) (auto)
- 0 parking auto/trailer space(s)
- 1 handicapped accessible space(s)
- 1 dock(s)
- 1 toilet(s)

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Public Water Access Report

Minnetonka, Hennepin County

Comments: Parking permit required

Directions to access:

In Deephaven, 0.25 miles W of Vine Hill Rd, on East shore of Lake Minnetonka.

Administrator:

City of Deephaven

Facilities:

- 2 ramp(s) (type=Concrete)
- 0 parking space(s) (auto)
- 17 parking auto/trailer space(s)
- 0 handicapped accessible space(s)
- 0 dock(s)
- 1 toilet(s)

DISCLAIMER: The public water access database is a work in progress and errors do exist. Information deemed reliable, but not guaranteed.



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War on invasive species ramps up in west metro

KELLY SMITH, Star Tribune

A new group wants to ratchet up control of local lakes and creeks with a bold \$8 million plan to regulate every public boat access in the west metro -- from Minneapolis' Chain of Lakes to sprawling Lake Minnetonka.

That would mean controversial steps that may not be popular with anglers and boaters, such as installing electronic gates at every one of the 30 accesses in the Minnehaha Creek Watershed District, shutting down some access points and requiring every boater to go to regional inspection stations before entering a lake.

They're urgent, "take-no-prisoners" ideas that leaders say are needed to stop -- not just slow -- the war against aquatic invasive species because the Minnesota Department of Natural Resources' efforts are failing.

"It's time to quit screwing around," said Joe Shneider of Shorewood, president of the Christmas Lake Homeowners Association. "It's big, it's bold and quite frankly, we're hoping that other areas not in the watershed will glom on."

His lake association and seven others banded together last week to create the Coalition of Minnehaha Creek Waters to protect Lake Minnetonka and nearby waterways from milfoil, zebra mussels and other invasive species on the cusp of threatening Minnesota's pristine lakes. Their plan covers a huge area spanning Hennepin and Carver counties, 29 west metro cities, the Three Rivers Park District, Minneapolis Park and Recreation Board, several lake associations, eight creeks and 129 lakes.

They're hoping the Minnehaha Creek Watershed District will take the lead -- and cut the check for the first year's \$2.4 million in costs -- and will present their plan to the district Thursday. Watershed board chair Jim Calkins said the board won't vote on it, but may consider wrapping some or all the ideas into its own plan to be released by the end of the year.

"We're pleased to have that input," he said. "It encompasses groups we would've been working with anyway."

Bold new rules at every lake

The DNR wouldn't comment yet on the coalition's specific ideas, spokesman Chris Niskanen said, but with more than 3,000 public accesses and 11,800 lakes in Minnesota, the lack of DNR efforts is "not a criticism, that's a reality," he said. "The DNR has been given a limited budget on this."

This year, the DNR added 150 inspectors to check boats throughout the state, started roadside checks and increased fines for violators. And yet, one in five boaters ignore regulations such as pulling drains.

"If we keep waiting for the DNR to be ramping up ... it's going to be game over," Shneider said.

That's why, he said, every boat should be inspected before entering a lake. To post inspectors at every access would require about \$40,000 for each place for a year, so the group has a solution: install electronic gates at every access so boaters have to go to one of four regional inspection stations to get an electronic keypad code that would open the gate.

The coalition also wants to require inspectors at private marinas, close some private accesses or at least install gates at them and shut down low-volume accesses, which they acknowledge would be controversial.

"Anything short of this is just a slogan," said Dick Osgood, director of the Lake Minnetonka Association. "Controlling those access points will be a significant reduction in the risk."

The coalition is appealing to the Minnehaha Creek Watershed District because it would have the authority -- and public money -- to lead and pay for the effort in the first year before they ask cities, counties and others to share in future costs. They're lobbying the district now because its 2013 budget will be approved next month.

A 'nightmare' for boaters

Minnehaha Creek Watershed District board member Pam Blixt understands the urgency, but as a public entity, she said the board has to balance ideas from all stakeholders, limiting the spread of invasive species but also maintaining access.

"They're really impatient because they're property owners, but you have to consider the rest of the public," she said. "It's very ambitious, and I commend them. If you don't have that groundswell and grassroots effort I don't think it would move forward."

A watershed district task force with city leaders, anglers and other representatives is working to draft a plan for future invasive species prevention and has considered nearly all the ideas the coalition is now suggesting, Calkins said. No matter what, he and others expect some pushback from boaters for what is approved.

On Lake Minnetonka, fishing guide Doug Warren said he supports slowing invasive species, but the new ideas are 10 years too late and would be a "nightmare" to enforce on busy Lake Minnetonka.

"Regulating stuff with a keypad I don't think is feasible," he said. "For anyone that has a boat, this is going to be a big deal."

Shneider and Osgood say they know their ideas won't be palatable for all anglers, but that the invasive species situation is now a new reality for one of Minnesota's most popular traditions. They likened their suggestions to the tighter airport security regulations implemented over the past decade.

"We didn't like it in the beginning, and we still might not like it, but we accept it," Shneider said. "This is a huge behavioral change; it's a huge mindset shift."

Kelly Smith - 612-673-4141; Twitter: @kellystrib