

October 4, 2022

VIA EMAIL TO Contact-Council@ci.stpaul.mn.us and
CouncilHearing@ci.stpaul.mn.us

Saint Paul City Council
15 West Kellogg Boulevard
Saint Paul, Minnesota 55102

Re: Considering the appeal of Friends of Pigs Eye Lake Park - Tom Dimond to a decision by the Board of Zoning Appeals denying a request to issue a Stop Work Order on the Pigs Eye Lake Island Building Project, a project regulated and permitted by the Department of Natural Resources; File ABZA 22-2

Dear Members of the Saint Paul City Council,

Please accept this letter as part of the record for your consideration of the appeal of the decision made by the Board of Zoning Appeals (BZA), pertaining to the island building project within Pigs Eye Lake (the "Project"). On September 6, 2022, the BZA denied the appeal of the denial of a "stop work order" requested by Mr. Tom Dimond on behalf of the Friends of Pigs Eye Lake Park. This was the correct decision, and the denial by the BZA should be affirmed by the City Council.

Ramsey County has reviewed the information included in Mr. Dimond's appeal. Respectfully, this information distorts the facts, the issues, and the authority of the City Council in this matter. This information is asserted as facts about the Project and the process. However, the assertions in the appeal take the actual facts out of context, and turn them on their heads, all in an effort to persuade the City Council to take an action that is beyond its authority.

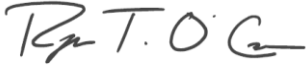
As is outlined in the letter that Ramsey County submitted to the BZA (attached), and as demonstrated by the analysis submitted by the Minnesota Department of Natural Resources ("MNDNR") related to the location of the Project in a public water below the Ordinary High Water Level, all relevant authority to regulate this Project is vested in the MNDNR, the Minnesota Pollution Control Agency, and the Ramsey-Washington Metro Watershed District. Ramsey County, as the project sponsor, applied for and received all required permits from these authorities following an exhaustive review process. The BZA correctly concluded that none of the regulations cited by Mr. Dimond—the Mississippi River Corridor Critical Area rules; the Wetland Conservation Act; and flood plain rules—apply to the Project. Therefore, the City does not have any regulatory authority over the Project.

After consulting with the Ramsey County Attorney's Office, it is my understanding that the City Council will overrule the findings of the BZA if the Council concludes that there were errors of fact, process, or findings by the BZA. Despite the distractions and misrepresentations presented in this appeal, the true facts and evidence make it clear that there were no errors by the BZA.

If the City Council puts aside all of these distractions, this is actually a simple matter. It is a question of jurisdiction. The City does not have jurisdiction over the Project. Accordingly, an order from the City Council to reverse the decision of the BZA, or an order to stop work on the Project would be invalid.

Ramsey County requests that the City Council affirm the decision of the BZA.

Sincerely,

A handwritten signature in black ink that reads "R. T. O'Connor". The signature is written in a cursive style with a horizontal line at the end.

Ryan T. O'Connor
Ramsey County Manager

Enclosure: Ramsey County Letter to BZA, dated August 5, 2022

cc: Johanna Berg, Deputy Ramsey County Manager
Mark McCabe, Ramsey County Parks & Recreation Director
Amy Schmidt, Assistant Ramsey County Attorney
Andrew Hogg, City of Saint Paul
Dan Scollan, DNR East Metro Area Hydrologist

August 5, 2022

Board of Zoning Appeals
City of Saint Paul
375 Jackson Street, Suite 220
Saint Paul, MN 55101-1806

Re: Appeal of a decision made by the Zoning Administrator pertaining to a Department of Natural Resources project within Pigs Eye Lake

Board of Zoning Appeals,

Ramsey County (County) was notified on July 11, 2022, of an appeal of the decision made by the City of Saint Paul Zoning Administrator denying a request for a “stop work order” from Mr. Tom Dimond related to the County’s Pigs Eye Lake Island Project. It is the County’s understanding that the City’s denial is based on the conclusion that the City does not have the authority to issue such an order. The County agrees with this conclusion, and requests that the Board of Zoning Appeals affirm the decision of the Zoning Administrator.

The Pigs Eye Lake Island Project is a habitat restoration project that is being conducted pursuant to a Project Partners Agreement between the County with the United States Army Corps of Engineers (USACE). Its objectives are to improve aquatic habitat; to improve the quantity and quality of habitat for migratory birds; and to maintain or enhance the quantity of shoreline habitat. The Project has been thoroughly reviewed and vetted, and nowhere in the process was the City of Saint Paul identified as having permitting jurisdiction over the Project.

Project Review Summary

The Project Partners Agreement between the County and USACE was approved by the Ramsey County Board of Commissioners on June 4, 2019 (Resolution B2019-136), after many years of study and preparation. The formal process that culminated in the Project started as early as October 17, 2012, when the County Parks & Recreation Department requested a federal interest study. On May 14, 2015, USACE received a federal interest determination, and a feasibility study was initiated on June 17, 2015. That *Feasibility Study with Integrated Environmental Assessment*, which explored a variety of options for completing project objectives, was completed in August 2018. Upon execution of the Project Partners Agreement, USACE completed Project plans and specifications, and awarded a construction contract on June 25, 2021.

This *Feasibility Study with Integrated Environmental Assessment* involved extensive coordination with local, state, and federal agencies: the City; Ramsey-Washington Metro Watershed District; Metropolitan Council; Minnesota Department of Natural Resources (MNDNR); Minnesota Pollution Control Agency (MPCA); Minnesota Department of Transportation (MNDOT); USACE; National Parks Service; and U.S. Fish and Wildlife. The County also facilitated robust, multi-level public engagement about the Project in two phases: first, as part of the State EQB-EAW and federal NEPA processes; and second, as part of preparing an Amendment to the Pigs Eye Master Plan. These processes at all levels of local, state, and federal government, also included participation by Tribal groups, Friends of Pool 2, Friends of the

Mississippi River, and Friends of the Parks and Trails of Saint Paul and Ramsey County. Multiple comment periods were advertised and were open to any interested party.

In addition to this cross-agency cooperation and review, the County applied for funding support from the Lessard Sam's Outdoor Heritage Council (LSOHC). The LSOHC was established by the Minnesota Legislature and is charged with making recommendations to the Legislature for funding projects that directly relate to the restoration, protections, and enhancements of wetlands, prairies, forests, and habitat for fish, game, and wildlife. The funding is a competitive process each year, and the projects that are awarded funding are those that best fit the goals and requirements of the Minnesota Conservation and Preservation Plan. Prior to its recommendation that the Project be awarded funding, LSOHC conducted a thorough review of the Project plans. Due to the high project significance and benefit received, the LSOHC advanced project funding. Because the Project is a significant step in increasing habitat diversity within the core Metro area, it is the first restoration project in this area to receive LSOHC's recommendation for funds.

Project Permits

Throughout this entire process of study and review across regulatory agencies all levels of government, the County and/or USACE obtained all required permits for the Project as planned and approved, including the following:

1. Construction Stormwater General Permit from MPCA (June 15, 2022, Permit ID number: C00064122);
2. Construction Permit from the Ramsey-Washington Metro Watershed District (June 20, 2022; Permit No. 20-27);
3. Section 401 Water Quality Certification Waiver from MPCA (July 20, 2020); and
4. Public Waters Work Permit from MNDNR (August 26, 2020; Permit Number 2020-1818).

If the Project were subject to City permitting jurisdiction, the County would have applied for any permits required by the City. While it is true that the Project is located within in the Mississippi River Critical Corridor Area, all work related to the Project is occurring within public waters and under the Ordinary High Water Level. Accordingly, the authority of the MNDNR effectively preempts any regulatory authority of the City over the work being done as part of the Project.

With these permits, USACE has begun work on the Project. USACE estimates that the Project will be complete in approximately October of 2025.

Pigs Eye Lake Park

The County is aware that Mr. Dimond asserts that Pigs Eye Lake Park is jointly owned by the City and the County. This is not true. Pigs Eye Regional Park that is located on the north end of Pigs Eye Lake is distinct and separate from Pigs Eye Lake where the Project is occurring. It is my understanding that Pigs Eye Regional Park is owned by the City. However, since the adoption of the Battle Creek Regional Park Master Plan in 1981, Pigs Eye Lake and the County-owned property surrounding it have been a segment of Battle Creek Regional Park, a Ramsey County Regional Park. The fact that a part of the City's Pigs Eye Regional Park might touch the water of Pigs Eye Lake does not create a co-owner relationship

between the City and the County, nor does that fact confer any regulatory authority over Pigs Eye Lake to the City. Again, all work related to the Project is occurring within public waters and under the Ordinary High-Water Level, which is the jurisdiction of the MNDNR. The City lacks the authority to intervene to stop the Project.

Conclusion

For all of the reasons outlined in this letter, the County concurs with the City's conclusion that it does not have authority to regulate this Project, and requests that the Board of Zoning Appeals affirm the denial of Mr. Dimond's request for intervention by the City to stop work on the Project.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mark McCabe".

Mark McCabe
Director, Ramsey County Parks & Recreation