

**CITY OF SAINT PAUL**  
**BOARD OF ZONING APPEALS RESOLUTION**  
**ZONING FILE NUMBER: 22-072764**  
**DATE: September 6, 2022**

WHEREAS, Tom Dimond has applied for an Administrative Review, from the strict application of the provisions of Section 61.701 of the Saint Paul Legislative Code pertaining to a decision by the Zoning Administrator to deny a request to issue a “stop work order” regarding island building work in Pigs Eye Lake. The Zoning Administrator determined that the City had no authority to issue a stop work order because the Project is taking place within a public water under the jurisdiction of the Minnesota Department of Natural Resources pursuant to a permit issued by the Department of Natural Resources in the R1 zoning district at Pigs Eye Lake PIN: 102822410002; and

WHEREAS, the Saint Paul Board of Zoning Appeals conducted a public hearing on August 8, 2022 pursuant to said application in accordance with the requirements of Section 61.303 of the Legislative Code; and

WHEREAS, the Saint Paul Board of Zoning Appeals based upon evidence presented at the public hearing, as substantially reflected in the minutes, made the following findings of fact:

1. Appellant contends the Administrator failed to apply Mississippi River Corridor Critical Area (“MRCCA”) rules to the Project. The City’s MRCCA jurisdiction is established by law. This jurisdiction is typically applied to development on land that takes place above the Ordinary High Water Level (“OHWL”).

The OHWL is defined as “the boundary of water basins, watercourses, public waters, and public waters wetlands, and . . . is an elevation delineating the highest water level that has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly the point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial.” Minn. Stat. § 103G.005, subd. 14(1). The OHWL elevation is determined and established by the DNR.

In order to issue a stop work order, there must be underlying authority to authorize the action. In evaluating Appellant’s request, the Administrator concluded that the Project lies within the DNR’s jurisdiction over public waters because the Project takes place below the elevation of the OHWL and was therefore outside of the City’s jurisdiction under MRCCA. This conclusion was based in part in consultation with the DNR’s East Metro Area Hydrologist who estimated that the OHWL for Pigs Eye Lake at 692.9 feet. The Administrator also consulted with the USACE to determine the elevation of the Project’s islands. The USACE advised that the elevation of the constructed islands will be 692.6 feet.

Based upon these estimations, the Administrator reasonably concluded that the Project’s islands are below the OHWL and therefore within the basin of Pigs Eye Lake which is within the DNR’s regulatory jurisdiction and outside of the City’s jurisdiction. The 692.9 OHWL elevation reasonably defines the jurisdictional boundary of the DNR’s “public waters” permit authority. As a designated public water, permitting authority over work in in the lake which is taking place below the OHWL of this designated public water is specifically vested in the DNR. See, Minn.

Stat. § 103G.245, subd.1(2) (“a political subdivision of the state [in this case, the Ramsey County Parks Department] . . . must have a public-waters-work permit [to] change . . . the . . . cross section of public waters, . . . by any means, including filling, excavating, or placing of materials in or on the beds of public waters.”). Minn. Stat. § 103G.245, subd.1(2) clearly does not contain language giving the City additional permitting authority – or, by inference – any regulatory authority to issue “stop work orders.” While the Appellant has also argued that Minn. Stat. § 103G.245, subd. A allows work in public waters to be delegated to local unit of government, the DNR has never delegated its public water work permit authority to the City under Minn. Stat. §103G.245, subd. A.

The County [and the USACE] obtained a public waters work permit as required under Minn. Stat. § 103G.245, subd.1(2). Because the Project work is being performed within a public water and below the OHWL elevation of the lake, there is no additional permitting required from the City for the Project which would form a basis for issuing a stop work order under Minn. Stat. § 103G.245.

Likewise, there is no authority under MRRCA for the City to issue a stop work order. Generally, the DNR approves MRRCA regulations proposed by municipalities with land within the MRCCA. See, Leg. Code § Sec. 68.101(a) (the intent and purpose of Leg. Code Chap. 68 establishes a “River Corridor Overlay District . . . designed to provide comprehensive floodplain and river bluff management for the city in accordance with the policies of Minnesota Statutes Chapters 103 and 116G, Minnesota Regulations and Governor's Executive Order No. 79-19.”). The City’s current MRCCA regulations, codified under Leg. Code Chap. 68 have been approved by the DNR. The City is in the process of updating Leg. Code Chap. 68 and is working with the DNR to develop new MRCCA ordinances. However, the existing MRCCA ordinances remain effective until the City adopts a new MRCCA ordinance.

The purpose of MRCCA regulations is generally to regulate development on lands above the OHWL. See, Leg. Code § 68.102(a) (“This chapter shall apply to all lands within the city shown on the river corridor overlay zoning district maps . . .”). As noted above, the Project work objected to by the Appellant is taking place below the OHWL over which the City’s current MRCCA ordinances do not apply.

2. Appellant contends the City has violated Wetland Conservation Act (“WCA”) rules. MN Rule Chapter 8420 implements the regulatory provisions of the Wetland Conservation Act of 1991. Per MN Rule 8420.0100 Subd. 3, The Wetland Conservation Act is administered by local government units with oversight provided by the Board of Water and Soil Resources. Enforcement of the act is provided by Department of Natural Resources conservation officers and other peace officers. MN Rule 8420.0150 covers the scope of WCA, however as stated in MN Rule 8420.0150, Subd. E (This chapter does not apply to the public waters and public waters wetlands as defined in Minnesota Statutes, section 103G.005, subdivisions 15 and 15a, which have been inventoried by the commissioner according to Minnesota Statutes, section 103G.201). As previously noted above, this project is within a Public Water and all work is below the OWHL and thus not covered under WCA rules as being regulated by the City of Saint Paul but is under the jurisdiction of the DNR.

3. Appellant contends the Project has failed to meet flood plain rules. The Project is located in a flood plain under the jurisdiction of the Ramsey Washington-Metro Watershed District (RWMWD). The Project was previously reviewed by staff of the RWMWD as well as by the City’s Water Resources Manager. Based its review, the RWMWD conditionally issued

RWMWD watershed permit No. 20-27 to the Project on August 5, 2020. Subsequently, on June 20, 2022, the RWMWD issued a construction permit for the Project. The RWMWD also granted a variance for floodplain fill because the Project is “within an ineffective flow area resulting in no adverse impacts to water surface elevations.” The Administrator was advised that a RWMWD engineer reviewed the Project’s hydraulic modeling prior to the RWMWD approval. Accordingly, under the jurisdiction of the RWMWD, an allegation of floodplain rules violations should be addressed to the RWMWD given its jurisdiction over floodplain matters.

4. Appellant contends that the City’s statement in its June 30, 2022, decision letter that “Pig’s Eye Lake Regional Park is owned and operated by Ramsey County and is not a component of the City’s park system” is inaccurate. Appellant appears to contend that the Project is taking place within a City-owned park. It has since been verified by staff from the City’s Park Department that certain parcels of land located generally to the north of the Pigs Eye Lake shoreline Park are in fact owned and operated by the City as a part of the City’s park system as Pigs Eye Lake Regional Park.

However, Parks Department staff noted that but for the City’s parkland that abuts the northernmost shoreline of Pigs Eye Lake, the vast majority of land surrounding Pigs Eye Lake is owned by Ramsey and operated by it as the Pigs Eye Unit of Battle Creek Regional Park. Furthermore, City Park’s staff advised that the City’s jurisdiction over the land abutting the shoreline of Pig’s Eye Lake ends at the OHWL because the OHWL would form a defined boundary between the City’s Pigs Eye Lake Regional Park and the County’s Pigs Eye Unit of Battle Creek Regional Park. City Park’s staff noted that Ramsey is designated as the implementing agency for the Pigs Eye Unit of Battle Creek Regional Park and, as such, this land is a part of County’s park system and subject to Ramsey’s jurisdiction. More specifically, the master plan for Battle Creek Regional Park (dated June 1981) specifically states: “Ramsey County will have operational responsibility for two sections: Battle Creek *and Pigs Eye Lake.*” (italics added) (1981 master plan, pg. 40). The boundary of the regional park is shown in the 1981 master plan and is also reaffirmed in a current draft master plan for Battle Creek Regional Park.

Therefore, the City’s parkland north of the lake and operated by the City as Pigs Eye Lake Regional Park. is outside of Ramsey’s jurisdictional and operational boundaries of the Pigs Eye Unit of Battle Creek Regional Park as defined by the OHWL of the lake. Accordingly, the locations of the Project’s islands are entirely within park areas administered and operated by Ramsey. The City does not have any park-related jurisdiction of the lake below the OHWL, and the statement made in the City’s June 30, 2022, decision letter is not inaccurate.

5. Appellant lists several projects as examples of work along the river that was either approved or denied by the City of Saint Paul. However, as the Appellant admits, these projects were above the OHWL. Accordingly, they are not relevant to the claim made by the Appellant.

NOW, THEREFORE, BE IT RESOLVED, by the Saint Paul Board of Zoning Appeals, that the administrative appeal alleging that the Zoning Administrator erred in denying a request to issue a “stop work order” regarding the island building work within Pigs Eye Lake; and legally described as UTM zone 15N, 497941m east, 4973841m north (centroid), SENE of Section 15, T28N, R22W, NENE of Section 15, T28N, R22W, SWNW of Section 14, T28N, R22W, NWNW of Section 14, T28N, R22W, SWSW of Section 11, T28N, R22W, SESE of Section 10, T28N, R22W; in accordance with the application for appeal of the Zoning Administrator’s decision, **IS HEREBY DENIED.**

**MOVED BY:** Rangel Morales

**SECONDED BY:** Saylor

**IN FAVOR:** 4

**AGAINST:** 0

**MAILED:** September 8, 2022

**TIME LIMIT:** No decision of the zoning or planning administrator, planning commission, board of zoning appeals or city council approving a site plan, permit, variance, or other zoning approval shall be valid for a period longer than two (2) years, unless a building permit is obtained within such period and the erection or alteration of a building is proceeding under the terms of the decision, or the use is established within such period by actual operation pursuant to the applicable conditions and requirements of the approval, unless the zoning or planning administrator grants an extension not to exceed one (1) year.

**APPEAL:** Decisions of the Board of Zoning Appeals are final subject to appeal to the City Council within 10 days by anyone affected by the decision. Building permits shall not be issued after an appeal has been filed. If permits have been issued before an appeal has been filed, then the permits are suspended and construction shall cease until the City Council has made a final determination of the appeal.

**CERTIFICATION:** I, the undersigned Secretary to the Board of Zoning Appeals for the City of Saint Paul, Minnesota, do hereby certify that I have compared the foregoing copy with the original record in my office; and find the same to be a true and correct copy of said original and of the whole thereof, as based on approved minutes of the Saint Paul Board of Zoning Appeals meetings held on August 8, 2022, August 22, 2022, and September 6, 2022 and on record in the Department of Safety and Inspections, 375 Jackson Street, Saint Paul, Minnesota.

**SAINT PAUL BOARD OF ZONING APPEALS**

Maxine Linston  
- Herlinda Kamas  
**Maxine Linston**  
**Secretary to the Board**

