



MEMORANDUM

DATE: June 7, 2021
TO: Honorable Mayor and City Councilmembers
Dave Perrault, City Administrator
FROM: Jessica Jagoe, Senior Planner
SUBJECT: Shoreland Ordinance and Lake Classification Discussion

Budgeted Amount: N/A	Actual Amount: N/A	Funding Source: N/A
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Council Should Consider the Following

The City Council should provide further direction on lake classification and Planning Case 21-008, Ordinance Amendment to Section 1330.03 Subd. 5, E of the Arden Hills City Code.

Background

At its May 24, 2021 Regular Meeting, the City Council reviewed the Zoning Code Amendment for Planning Case 21-008 to permit accessory storage sheds within the required structure setback from the ordinary high water level of up to 100 square feet in size and 8 feet in height. At that meeting, the City Council tabled the amendment to allow for further discussion and review of lake classifications.

Historical Information

In 1969, the State of Minnesota passed the Shoreland Management Act due to concerns over rapid development, crowding, and declining water quality and recreational value of the State’s lakes and rivers. From 1967 – 1982, the Minnesota Department of Natural Resources (DNR) noted a shoreland development increase by about 74% with conversion of seasonal cabins to permanent dwellings and development of new permanent homes. This act directed the DNR to develop rules and oversee programs for shoreland management for Cities and Counties. In 1976, the DNR adopted Shoreland rules for Cities. These Shoreland rules are MN Rules Chapter 6120, Shoreland and Floodplain Management.

In response to the adoption of State rules, the City in 1984 studied the differences between our existing zoning controls and the State Shoreland Management Standards. This research and review was completed by a Shoreland subcommittee. Their recommendations for reclassification of several lakes, and relaxation of lot area and lot coverage requirements were

presented to and supported by both the Planning Commission and City Council. On December 26, 1984, the City submitted a preliminary request to the DNR for comment prior to submittal of the formal request (Attachment A). This letter included a summary of City comments for seeking the lake reclassification which were due to existing development and present zoning being relatively compatible with the requirements of General Development, the lot area requirements of Recreational Development classification exceed existing development (95%+ developed) and present zoning, and General Development classification more compatible with development around the lake. The City received a response from the DNR of a willingness to accept all of the requested changes with the exception of riparian lot dimensions for Valentine Lake (Attachment B). Based on that direction, the City Council passed Resolution 85-22, Lake Reclassification and Zoning Provision Modifications on May 13, 1985 to request official approval from the DNR (Attachment C). The City's resolution is in accordance with MN Rules 6120.3000 Subp. 4 which states "*any local government may at any time submit a resolution and supporting data requesting a change in any shoreland management classification of waters within its jurisdiction to the commissioner for consideration.*" The following items were the reclassifications and development controls the City was requesting:

Lake Josephine

- Relaxation of General Development requirements to allow –
 - 14,000 square foot lot area for riparian lots.
 - 35% lot coverage

Lake Johanna

- Reclassification from Recreational Development to General Development
- Relaxation of General Development requirements to allow –
 - 14,000 square foot lot area for riparian lots.
 - 35% lot coverage

Little Lake Johanna

- Reclassification from Recreational Development to General Development
- Relaxation of General Development requirements to allow –
 - 14,000 square foot lot area for riparian lots.
 - 35% lot coverage

Valentine Lake

- Relaxation of Natural Environment requirements to allow -
 - 14,000 square foot lot area for non-riparian lots.
 - 35% lot coverage

Round Lake

- Relaxation of Recreational Development requirements to allow -
 - 14,000 square foot lot area for non-riparian lots.
 - 35% lot coverage for residential districts
 - 75% lot coverage for industrial and commercial districts

Karth Lake

- Reclassification from Recreational Development to General Development
- Relaxation of General Development requirements to allow –
 - 14,000 square foot lot area for riparian lots.

- 35% lot coverage

Sunfish Lake

- Relaxation of Natural Environment requirements to allow -
 - 35% lot coverage for residential lots
 - 75% lot coverage for commercial lots

Note: The DNR regulations in 1984 allowed a maximum of 30% for lot coverage on residential properties. Today’s requirement under MN Rule Section 6120.3300 is a maximum of 25% for lot coverage.

The table below compares the City’s shoreland regulations and current Minnesota Rule 6120.3300 Subp. 2a for Lot Area, Setback from Ordinary High Water (OHW), and lot coverage by lake classification.

	City Ord. - Natural Environment Waters	MN Rule 6120 - Natural Environment	City Ord. - Recreational Development Waters	MN Rule 6120 – Recreational Development	City Ord. - General Development Waters	MN Rule 6120 - General Development
Lot Area (riparian)	40,000	40,000	20,000	20,000	14,000	15,000
Lot Area (nonriparian)	14,000	20,000	14,000	15,000	14,000 (R-1) 11,000 (R-2, R-3, and R-4)	10,000
Structure Minimum Setback from OHW	150	150	75	75	50	50
Lot Coverage	35%	25%	35%	25%	35%	25%

Between 1985 and today, that resolution was either never sent or lost on the part of the DNR.

To aid in the work session discussion Staff has created exhibits (Attachment D) of areas/neighborhoods around Lake Johanna, Little Lake Johanna, and Karth Lake with Structure Minimum setback information shown for Recreational Development and General Development lake classifications as a reference for reviewing location of existing development around these lakes.

Ordinance Revisions

The City’s first ordinance adoption for shoreland requirements was in September 1985, Ordinance No. 237, which was previously referred to as “Arden Hills Shoreland Management Ordinance”. This ordinance incorporated the language and reclassifications as recommended in the May 1985 resolution. Much of today’s ordinance maintains that same language and has remained essentially unchanged over the years. These shoreland requirements have been used by the City in administering and issuance of land use, zoning, and building permits since adoption of the ordinance. Since adoption, the City has issued approximately five variances to the shoreland ordinance requirements relating to structure setback from OHW.

There have been a few ordinance revisions over the years. The City completed the codification of city ordinances in 2001 in which the Shoreland Management Ordinance was renumbered to Section 334. At that time it was noted that minor updates were made to address some of the technical requirements set by the DNR. This process occurred again in November 2006 with the shoreland ordinance being renumbered to Section 1330, Shoreland Regulation and it was said during this re-codification process that most of the zoning code was unaltered.

The most substantive update of the shoreland ordinance occurred between 2009 and 2010. For this ordinance amendment, the Planning Commission and City Council held a number of work sessions as well as a Community Meeting on May 21, 2009. This ordinance review was intended to address a number of holes that still remained unaddressed after the 2002 update. During this process the City conducted an extensive review of development regulations including, but not exclusive to, exceptions to OHW setbacks, wetland setbacks, accessory structure allowances, additional definitions, removal of vegetation and grading and filling standards in order to gain a greater consistency with the DNR guidelines. This research did not involve review of lake classifications. However, incorporated into this ordinance amendment Little Lake Johanna was shifted to a Recreational Development Lake. It is suspected that the inconsistency in lake classification was caught as part of that review and amended to reflect DNR categorization. No resolution was passed or necessary for the change in classification because the City was updating our language to be in conformance with the DNR. It is unknown in review of the record of why Lake Johanna was not modified or if Staff was aware of its inconsistency in lake classification. This amendment process was completed on February 22, 2010 when the City passed Ordinance 2010-004.

Lake Classification

For the work session discussion, the City Council has asked to review the three lakes as recommended for reclassification and gather information on how lake classification determinations are made. Lake classification is used to determine lot size, setbacks and, to a certain degree, land uses on adjacent land. The classification does not pertain to surface water use of boats or motors, hunting or fishing or fish management. Those are governed by other regulations. Minnesota Rule 6120.3000 Subp. 1a. identifies the types of public water classes with a general description of each class. For this report staff has provided below the descriptions for waterbody classifications specific to the reclassification discussion:

A. Natural environment lakes are generally small, often shallow lakes with limited capacities for assimilating the impacts of development and recreational use. They often have adjacent lands with substantial constraints for development such as high water tables, exposed bedrock, and unsuitable soils. These lakes, particularly in rural areas, usually do not have much existing development or recreational use.

B. Recreational development lakes are generally medium-sized lakes of varying depths and shapes with a variety of landform, soil, and groundwater situations on the lands around them. They often are characterized by moderate levels of recreational use and existing development. Development consists mainly of seasonal and year-round residences and recreationally-oriented commercial uses. Many of these lakes have capacities for accommodating additional development and use.

C. General development lakes are generally large, deep lakes or lakes of varying sizes and depths with high levels and mixes of existing development. These lakes

often are extensively used for recreation and, except for the very large lakes, are heavily developed around the shore. Second and third tiers of development are fairly common. The larger examples in this class can accommodate additional development and use.

The DNR provides information on their website on the data points used in determination of lake classifications as noted below:

Natural Environment Lakes – Natural Environment Lakes usually have less than 150 total acres, less than 60 acres per mile of shoreline, and less than three dwellings per mile of shoreline. They may have some winter kill of fish; may have shallow, swampy shoreline; and are less than 15 feet deep.

Recreational Development Lakes – Recreational Development Lakes usually have between 60 and 225 acres of water per mile of shoreline, between 3 and 25 dwellings per mile of shoreline, and are more than 15 feet deep.

General Development Lakes – General Development Lakes usually have more than 225 acres of water per mile of shoreline and 25 dwellings per mile of shoreline, and are more than 15 feet deep.

In addition to lake size, shoreline, and depth, the DNR also considers existing development, crowing potential, ecological classification, soil, slope, and vegetation as part of their aggregate assessment. The table below identifies the three lakes under review as part of this discussion along with the lake classification and other pertinent statistical information.

	City Lake Classification	DNR Lake Classification	Resolution 85-22	Lake Size*	Lake Depth*	Shore Length*
Lake Johanna	General Development	Recreational Development	General Development	211.91 acres (DNR) 205.99 acres (MPCA)	17 feet to 43 feet (DNR)	3.02 miles (DNR)
Little Lake Johanna	Recreational Development	Recreational Development	General Development	17.17 acres (DNR) 17.01 acres (MPCA)	28 feet (DNR) 38 feet (MPCA)	0.7 miles (DNR)
Karth Lake	General Development	General Development	General Development	18.45 acres (MPCA)	Unknown	0.9 miles (DNR)

*Statistical information was obtained from the DNR or Minnesota Pollution Control Agency (MPCA).

As part of the City’s 1984 preliminary request, I have copied below the justification statements that were included in the letter to the DNR for seeking the lake reclassification and changes to development controls for the three lakes applicable to the work session discussion:

- Lake Johanna: The shoreline and shoreland area of Lake Johanna is 95 percent developed, with only a few platted lots and a minimal amount unplatted land remaining

vacant. Furthermore, the lake's development density meets the General Development criteria.

The minimum area for lots in the R-1 District is 14,000 square feet for both riparian and nonriparian lots; in the R-2 District, the minimum lot area is 11,000. Since nearly all lots are developed or are platted lots of record, it is considered desirable to establish the waterfront lot area to be consistent with the size of the majority of existing lots. Likewise, a 35 percent lot coverage would be consistent with current development.

- Little Lake Johanna: The Arden Hills portion of the shoreland is completely developed with large parcel institutional uses (college campus and nursing home) and single-family lots platted under the 14,000 square foot minimum lot area requirement. Reducing the 15,000 General Development requirement to 14,000 square feet for riparian lots would be consistent with present ordinance requirements and existing development. The 35 percent coverage would also be consistent with existing development.
- Karth Lake: The shoreline and shoreland area of Karth Lake is almost totally platted and developed under R-1 zoning, allowing 14,000 square foot lots and 35 percent coverage. Furthermore, the development density meets the General Development criteria. Reclassification to General Development, the allowance of 14,000 square foot lot area for all lots (riparian and nonriparian), and a coverage increase to 35 percent would be consistent with existing residential development.

Current Impacts

In 2019, the City contacted the DNR upon discovery of the discrepancy between the shoreland classification for Lake Johanna (Attachment E). The DNR replied to the City acknowledging receipt of a 1984 request for shoreland reclassification of Lake Johanna, Little Johanna Lake, and Karth Lake from Recreational Development to General Development, but noted that there was no record of ever receiving the resolution, and therefore the DNR did not finalize the classification changes. It was stated that the DNR still concurs with the reasoning supporting the requested reclassifications of these three lakes made in 1984 and is ready to officially adopt the new classifications upon receipt of a resolution. City staff is unsure if Resolution 85-22 was submitted to the DNR and/or if it was misplaced in processing on their end. However, no formal action has been taken to date by the DNR for formal approval.

This past month City staff contacted Dan Scollan, East Metro Area Hydrologist with the DNR, regarding next steps and available options for proceeding with Resolution 85-22. Mr. Scollan has indicated that the DNR has reviewed the 1984/85 documentation and would proceed with approval of Resolution 85-22 as submitted. Their decision in support of the reclassifications is the result of the lake classification factors having not appreciably changed since 1985. Looking at all of the classification criteria holistically, the DNR still agrees with the City's reasoning presented in 1985 and concurs that the area development is still consistent with the 1985 Council request as outlined. As an alternate, the DNR would also process reclassification of just one of the lakes in Resolution 85-22, but would need submittal of a new resolution that requests only the reclassification(s) the City is currently seeking. It should be noted that a change on the City's part in lake classification other than what is noted under current ordinance may result in existing development/structures around that particular lake becoming legal nonconforming due to newly applicable lot dimensional standards (i.e. lot area, lot width, and setbacks).

Next Steps

Planning Staff is looking for Council direction on handling of Resolution 85-22 with regards to processing approval from the DNR on lake classification and development controls.

Processes for Council consideration include the following –

- 1) Council directive for submittal of Resolution 85-22 to the DNR as approved on May 13, 1985.
 - a. This action would require an ordinance amendment to Section 1330.02 Subd. 1, Classification of Lakes to classify Little Johanna as General Development.
- 2) Council directive to request a modified version of lake reclassification (i.e. one or two of the three previously named lakes) along with the development control standards as prepared in 1985.
 - a. This action would require a new resolution for the DNR stating lake reclassifications requested and reiteration of development control standards as prepared in 1985., and/or
 - b. An ordinance amendment to Section 1330.02 Subd. 1, Classification of Lakes in accordance with lake classifications as determined.
- 3) Council directive to adopt the current lake classifications as categorized by the DNR.
 - a. This action would require a new resolution for the DNR for approval of the development controls standards as prepared in 1985., and
 - b. An ordinance amendment to Section 1330.02 Subd. 1, Classification of Lakes to classify Lake Johanna as Recreational Development.

Budget Impact

N/A

Attachment

- A. Preliminary Request Letter
- B. DNR Comments
- C. Resolution 85-22
- D. Lake Setback Maps
- E. 2019 DNR Reclassification Letter
- F. Presentation Slides