

*This opinion is nonprecedential except as provided by  
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A20-0919**

Steven Schussler, et al.,  
Appellants,

vs.

City of the Village of Minnetonka Beach,  
Respondent,

Lake Minnetonka Conservation District, et al.,  
Respondents.

**Filed February 22, 2021  
Affirmed in part, reversed in part, and remanded  
Rodenberg, Judge\***

Hennepin County District Court  
File No. 27-CV-20-2647

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Minnetonka Conservation District, et al.)

Considered and decided by Slieter, Presiding Judge; Gaïtas, Judge; and Rodenberg,  
Judge.\*

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to  
Minn. Const. art. VI, § 10.

## **NONPRECEDENTIAL OPINION**

**RODENBERG, Judge**

When respondent, City of the Village of Minnetonka Beach (the city), applied for a municipal multiple use dock permit from respondent Lake Minnetonka Conservation District (LMCD), appellants Steven Schussler and Sunhi Ryan-Schussler (appellants) objected. At issue was Dock #10, one of 24 docks on Lake Minnetonka managed by the city. Dock #10 is situated at the end of a dedicated fire lane that runs along and over the southernmost 30 feet of appellants' property. Appellants sued, asserting that Dock #10 interferes with their riparian rights as fee owners of the fire lane, is not legal under the relevant LMCD ordinance, constitutes a nuisance, and that their rights as property owners are otherwise violated by the existence and placement of Dock #10.

After all parties moved for summary judgment, the district court concluded that appellants own the fire lane in fee and that the public, via the city as trustee, has an easement over it for use as an "avenue." But the district court declined to adopt appellants' remaining contentions that they hold a superior interest in the fire lane and that Dock #10 is not legal.

We determine that the district court did not err in granting in part and denying in part appellants' motion for summary judgment on the issues of the parties' property interests in the fire lane and the LMCD Code of Ordinances consent requirement. And we discern no error in the district court's determinations that the city has riparian rights consequent to the city's fire lane that ends at the water's edge, that the city may construct and maintain a dock at the water's edge for access to the lake and rent boat storage units

on the dock to members of the public, that appellants cannot defeat the city's riparian rights by declining to consent to Dock #10, and that Dock #10 lawfully existed in 1984. Therefore, we affirm those portions of the summary judgment. Because we conclude that genuine issues of material fact remain concerning whether the city's use of Dock #10 is a reasonable exercise of the city's riparian rights and whether the changes to the legal nonconforming dock that existed in 1984 render it no longer a permitted nonconforming use, we reverse in part, and remand.

## **FACTS**

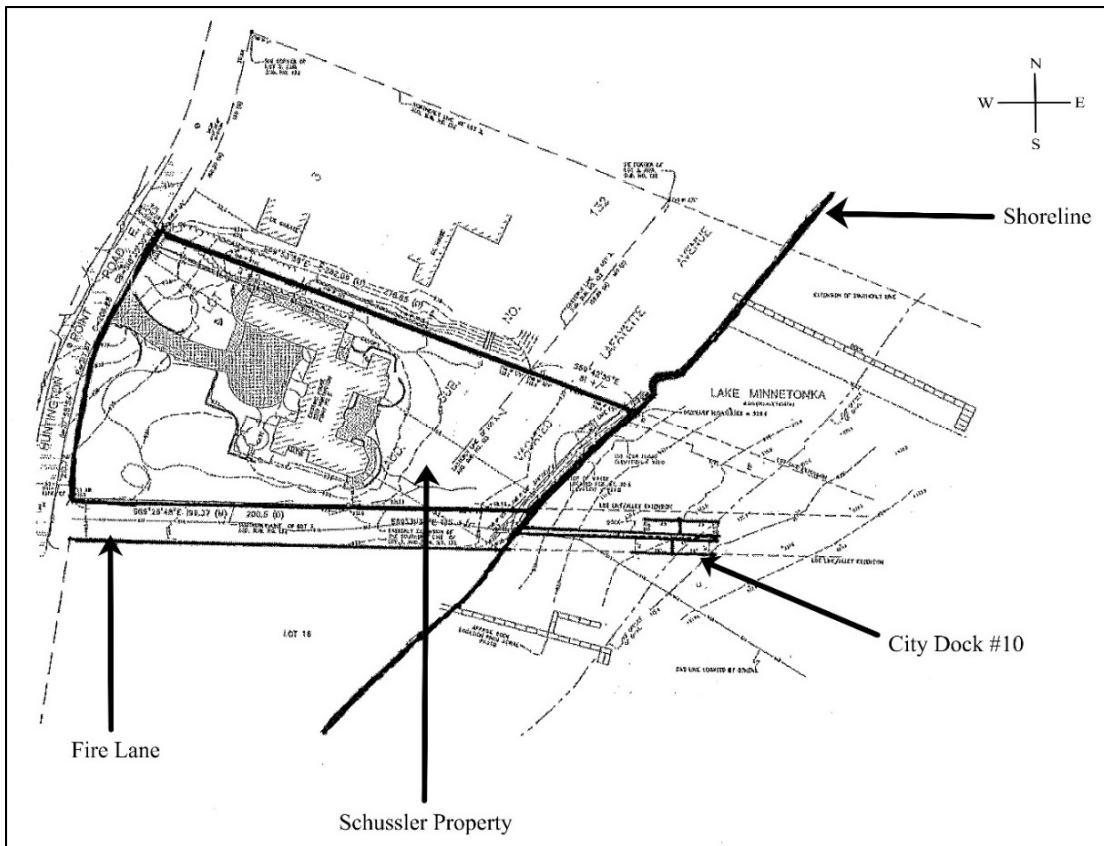
Appellants own fee title to a homestead in Minnetonka Beach. The property includes approximately 110 feet of shoreline on Lake Minnetonka with attendant riparian rights. A 30-foot-wide "fire lane" over appellants' lot was dedicated to the city in an 1889 supplemental plat. The 1889 plat states that "The Avenues, Streets, Alleys and Parks as shown on the annexed plat are hereby dedicated to the public for the uses contemplated therein."

Dock #10, a municipal dock owned and licensed by the city, has been situated at the lake's edge since at least 1977. At that time, six boat storage units were installed on Dock #10 and the dock was 90 feet long. Since 1977, the number of boat storage units has decreased to four, the length of the dock increased to 158 feet, and the configuration of the dock has changed as neighboring land owners provided or rescinded their consent for the dock to encroach on their authorized dock use areas (ADUA).<sup>1</sup>

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<sup>1</sup> An authorized dock use area is an area extending into the lake which can be used for mooring or docking boats. LMCD Code of Ordinances (LMCD Code) § 1-3.01, subd. 8

The diagram below shows the configuration of Dock #10 in relation to appellants' property as of 2019:



Appellants' property narrows as it approaches the lake. Because of this shape, the extended lot lines are not parallel, but instead meet and cross one another some distance into Lake Minnetonka. The fire lane, on the other hand, has parallel lot lines. In 2019, Dock #10 had four boat storage units, extended 158 feet into the lake, and was configured so that it was parallel with the extended lot lines of the fire lane. But because appellants' property and corresponding ADUA narrows as it extends into the lake, Dock #10, although

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(2019). The ADUA is bounded on one end by the shoreline. LMCD Code § 2-3.03, subd. 2(a) (2019). The sides of the ADUA are the extended lot lines of the property and are parallel into the lake. *Id.*

still within its own ADUA, extended into the sightlines of appellants' homestead. Appellants also claim that their ability to use the lake in front of their home is impaired by the dock's existence because, among other things, the lake is quite shallow well out into the lake in that area.

Since at least 1978, Dock #10 has been subject to a permitting system established by the LMCD. The LMCD is the regulatory body for Lake Minnetonka. LMCD Code § 1 1.01(d) (2019); Minn. Stat. § 103B.611, subd. 3 (2018). Under the LMCD's permitting scheme, the city must apply annually for a municipal multiple dock use license in order to maintain docks on the lake.<sup>2</sup> LMCD Code §§ 4-1.03; 4-2.05, subd. 4 (2019). Then, the city may lease individual boat storage units on those docks to city residents and members of the public for use. Minnetonka Beach, Minn. City Code (MBC) § 906(1)(B), (2)(A) (2008). Like the city, lease holders must reapply annually. *Id.*, § 906(2)(C), (F); (5) (2008).

In 2019, appellants objected to the city's application for a municipal multiple dock license for 2020. Appellants believed their rights to the fire lane were superior to those of the city, and that the city did not have the authority build or maintain Dock #10. Despite appellants' objections, the city submitted the application to the LMCD. In response, appellants sued.

Appellants made a number of claims in their complaint concerning their riparian rights as fee owners of the fire lane and the validity of Dock #10. Appellants also moved

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<sup>2</sup> A municipal multiple dock is any dock constructed for the storage of five or more watercraft that is owned, operated, or licensed by a municipality, county, or state agency. LMCD Code § 1-3.01, subds. 52, 55 (2019). Because the parties do not raise any issue as to Dock #10 only holding four boat storage units, we do not address the question here.

the district court for a temporary restraining order to bar the LMCD from granting the city's license. The district court denied appellants' motion, but instructed the city not to issue permits for Dock #10 until the proceedings in district court were completed.

All parties then moved the district court for summary judgment. Appellants sought summary judgment declaring that: (1) appellants own fee title to the entire fire lane; (2) the fire lane was dedicated to the public for use as an avenue by the 1889 plat; (3) the public has an easement over the fire lane for use as an avenue; (4) the city's permitting and licensing of the use of Dock #10 violates the 1889 plat and Minnesota law; (5) the city must void all permits related to Dock #10; (6) the city must no longer issue any permits related to the fire lane or Dock #10; (7) the 2020 municipal dock license application violates the LMCD Code and is void as a matter of law because it is unsupported by the consent of the fee owners of the fire lane; and (8) no dock can be placed at the end of the fire lane without appellants' consent as fee owners. Appellants also moved for a temporary injunction. The city and LMCD argued in their motions for summary judgment that the use of the fire lane was consistent with the 1889 plat, was consistent with the relevant LMCD ordinances, was a preexisting nonconforming use, and did not interfere with appellants' riparian or other rights.

After a hearing on the motions, the district court granted appellants' motion in part and denied it in part. The district court declared that appellants are the fee owners of the fire lane, that the fire lane is statutorily dedicated for public use as an avenue by the 1889 plat, and that the general public has an easement over the fire lane. But the remainder of appellants' motion was denied. The district court also denied as moot appellants' motion

for a temporary injunction. Except for the declarations the district court made in favor of appellants, and the denial of LMCD's claim that appellants' complaint was barred, all other portions of the respondents' motions for summary judgment were granted.

This appeal followed.

## **DECISION**

Appellants raise five arguments before this court. First, they assert that the fire lane, as a publicly dedicated avenue, cannot be used for placement of a "private" dock. Second, appellants assert that, even if maintaining Dock #10 is a valid exercise of the city's riparian rights, it violates LMCD Code because appellants have not consented as fee owners to the dock's existence. Underlying these arguments is appellants' third contention that there remain unresolved genuine issues of material fact with regard to their riparian rights. Next, appellants argue that the dock was never lawfully in existence, but if it was, subsequent changes in the dock's structure have defeated the dock's status as a legal nonconforming use. Finally, appellants claim that the district court erroneously based its decision on appellants' knowledge of these property issues before they bought their home.<sup>3</sup>

Appellate courts review a district court's ruling on motions for summary judgment de novo. *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017). A grant of summary judgment is appropriate where there are no genuine issues of material

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<sup>3</sup> Appellants challenge the district court's dismissal of counts 1, 2, 3, 4, and 9 of their complaint. Their briefing on appeal does not expressly challenge the dismissal of counts 5 (nuisance), 6 (implied easement for view, air, and light over the fire lane), 7 (due-process violations), or 8 (open-meeting-law violations).

fact and the district court correctly applied the law. *Id.* With this legal standard in mind, we turn to appellants' arguments.

We begin our de novo review of the district court's partial denial of appellants' motion for summary judgment by considering the foundational question of whether the city has riparian rights to the lake via the fire lane and whether it validly exercised those rights in the construction and regulation of Dock #10. Then we consider whether the consent requirement in the LMCD Code is unenforceable, whether Dock #10 was once a legal nonconforming structure, and whether subsequent changes to the dock's structure and configuration have resulted in the loss of that status. Finally, we address whether the district court improperly relied on appellants' knowledge of these issues before they bought the home.

**I. The district court did not err in determining that the city has riparian rights as a result of the dedication of the fire lane in the 1889 plat, but there is an unresolved genuine issue of material fact concerning the reasonableness of the exercise of the city's riparian rights in constructing and maintaining Dock #10 as it now exists.**

Appellants argue that the city's current use of the fire lane is impermissible. They assert that the city's rights with respect to the fire lane are limited to uses specifically identified by the 1889 plat and are subordinate to appellants' rights as fee owners of the fire lane. Based on this interpretation, appellants contend that the city's use of the fire lane and Dock #10 is illegal because it allows for private use of a public easement.

The district court granted appellants' motion for a summary declaration that they own the fire lane in fee, but it granted respondents' motion for summary judgment that Dock #10 and the city's permitting scheme are a valid exercise of the city's authority. The

district court determined that the city, as trustee of the public’s riparian rights to the fire lane, has “paramount” rights to the lane.

**A. The district court correctly concluded that the city easement over the fire lane includes riparian rights to access Lake Minnetonka.**

Land donated for public purposes via plat dedication is held in trust for the public by the municipality in which the land is located and for the purposes described in the dedication language. Minn. Stat. § 505.01, subd. 1 (2018). A “public way dedicated or donated on a plat shall convey an easement only.” *Id.*; see also *Bolen v. Glass*, 755 N.W.2d 1, 4 (Minn. 2008) (concluding that when land is transferred via plat dedication, the property interest conveyed is a terminable easement). Where dedicated land ends at a body of water, the dedication includes riparian rights to that water. *Troska v. Brecht*, 167 N.W. 1042, 1044 (Minn. 1918).<sup>4</sup> Fee title to the dedicated land remains with the dedicator and subsequent fee owners while the municipality maintains an easement over the land—so long as the easement is used for the purposes described in the dedication. *Bolen*, 755 N.W.2d at 4.

Here, the 1889 plat dedication specified that “The Avenues, Streets, Alleys, and Parks as shown on the annexed plat are hereby dedicated to the public for the uses contemplated therein.” It identified a fire lane as one such dedication along the southern

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<sup>4</sup> In Minnesota, a riparian owner has the “right to make such use of the [waterway] over its entire surface, in common with all other abutting owners.” *Johnson v. Seifert*, 100 N.W.2d 689, 697 (Minn. 1960). These rights include the right to “build and maintain, for private or public use, wharves, piers, and landings and extending into the water,” and the right to use the water for “hunting, fishing, boating, sailing, [and] irrigating.” *McLafferty v. St. Aubin*, 500 N.W.2d 165, 168 (Minn. App. 1993).

boundary of the lot now owned by appellants. By this language, the dedication conveyed to the city a terminable easement over the fire lane, held in trust for the “uses contemplated therein” by the public. Because the fire lane ends at the shore of Lake Minnetonka, the easement includes riparian rights to the lake. *Troska*, 167 N.W. at 1044.

The city currently provides for public use of Dock #10 via a permitting system. Anyone may apply for a permit to use one or more of the four boat storage units that the city places on Dock #10. MBC § 906(2)(C). The city has a system of priority in place that may favor one applicant over another, but no member of the public is restricted from applying to use Dock #10’s boat storage units. *Id.* Nor does the city’s regulation of Dock #10 conflict with the public’s ability to use the dock, fire lane, or shoreline for other purposes. Furthermore, the regulation of public access to the dock is within the city’s authority to “prescribe rules to secure to the public the public uses of which the waters are susceptible and to preserve public order.” *Nelson v. De Long*, 7 N.W.2d 342, 349 (Minn. 1942). Therefore, the regulated use of Dock #10 is within the scope of uses contemplated by the 1889 plat dedication.

Appellants attempt to persuade us that the city cannot use the fire lane by placing Dock #10 at the end of it. They cite a number of cases not involving riparian rights, but concerning parcels of land dedicated for public use. In one such case, *Headley v. City of Northfield*, the issue was whether the city could convert a majority of the town’s public square into a high school athletic complex and playground. 35 N.W.2d 606, 607 (Minn. 1949). The appropriate use of a public square was also at issue in *City of Zumbrota v. Strafford Western Emigration Co.*, where the municipality sought to sell the square to a

private developer for the construction of a senior citizen's home. 290 N.W.2d 621, 622 (Minn. 1980). But these cases, and others relied upon by appellants to support their argument, do not address the issue of *riparian rights*. And riparian rights are central here. As such, we decline to accept appellants' invitation to import the reasoning in those cases to the analysis here. The law on which we rely is Minnesota's well-established law concerning riparian rights.

We agree with the district court's conclusion that, as a matter of law, the city has a terminable easement over the fire lane which includes riparian rights to Lake Minnetonka. Because the city's use of Dock #10 as trustee for the public's easement interest is compatible with the uses contemplated by the 1889 plat, the city may use and regulate the public use of both. *Bolen*, 755 N.W.2d at 4; Minn. Stat. § 505.01, subd. 1.

The district court correctly applied the relevant law in its analysis. It did not err in determining that the city has riparian rights as a result of the dedicated easement over the fire lane and that those rights do not, as a matter of law, violate appellants' riparian rights as fee owners of the fire lane. But that does not end our analysis. Because the city and appellants have competing riparian rights, we turn to the common law concerning riparian rights to determine whether any genuine issues of material fact exist with regard to the appellants' legal and equitable claims.

**B. There remains a genuine issue of material fact concerning appellants' claim that Dock #10 impairs their riparian rights.**

Both appellants and the city have riparian rights based on their property interests. Appellants argue that, as fee owners of the fire lane, their rights are superior to the city's

rights. But the district court concluded that, when riparian interests are in conflict, a fee owner may not interfere with an easement holder's rights. Citing the Minnesota Supreme Court decision in *McLafferty*, the district court determined that the city, as holder of the public's rights to the fire lane, has "paramount" rights to the fire lane. 500 N.W.2d at 168. On that basis, it summarily dismissed appellants' complaint. But because both the district court and this court are bound by supreme court precedent, *State v. Curtis*, 921 N.W.2d 342, 346 (Minn. 2018), and because one owner of riparian rights may not unduly interfere with another's enjoyment of riparian rights, we must reverse and remand.

When riparian rights are in conflict, as they are here, the rights are held in common and must be shared. *Seifert*, 100 N.W.2d at 697. No rights holder may unduly impede another's ability to enjoy their riparian rights. *Id.* at 696-97. Whether a rights holder's use is permissible is a question of reasonableness. *Id.* ("[A]n abutting or riparian owner of a lake . . . has a right to make such use of the lake over its entire surface, in common with all other abutting owners, provided such use is reasonable and does not unduly interfere with the exercise of similar rights on the part of other abutting owners."). Reasonableness "is a question of fact to be determined from the circumstances of each case." *Petraborg v. Zontelli*, 15 N.W.2d 174, 182 (Minn. 1944). The question of reasonableness must be considered even though the public's right to use the water body may be "paramount" to the rights of other riparian owners. *Nelson*, 7 N.W.2d at 349 ("[T]he riparian rights of all concerned were subject to the paramount rights of the public to public use of the waters and to the power of the state to adopt *reasonable* regulations to secure such uses to the

public.” (Emphasis added)). The *McLafferty* decision, relied upon by the district court in granting the city’s dispositive motions, supports this reasonableness test.

In *McLafferty*, the parties disputed a city’s ability to restrict abutting property owners with attendant riparian rights from using an avenue for lake access. 500 N.W.2d at 166. Although the city had riparian rights by virtue of a street easement along the lake, the Minnesota Supreme Court determined that the city did not hold *exclusive* riparian rights over the avenue. *Id.* at 167-68. Instead, the supreme court, citing *Seifert*, affirmed that when riparian rights are in conflict, the question of whether a party’s use is permitted by the law is one of reasonableness. *Id.* at 168.

Here, although the city has riparian rights by virtue of the 1889 plat dedication, those rights are not exclusive. The city’s exercise of riparian rights must still be measured for its reasonableness. *Seifert*, 100 N.W.2d at 697.

As shown in the diagram above, appellants’ lot is much narrower at the shoreline than it is in the portions of the lot remote from the shoreline. The extension of appellants’ north lot line intersects with the extension of the south lot line at a point somewhat farther into the lake than the end of Dock #10. Appellants contend that, because Lake Minnetonka is very shallow in the area, Dock #10 impairs their ability to enjoy their riparian rights. Although appellants complain mightily about the impact of Dock #10 on their view of the lake, it is not the only impairment they claim. They also claim that Dock #10’s current configuration prevents them from navigating motorized boats into the portion of the lake in front of their home. According to an expert affidavit produced by the appellants, the existence of Dock #10 in its current configuration presents an unreasonable risk of danger

to swimmers entering the lake from appellants' property and to users of non-motorized watercraft in the area.

The district court erred in determining that, as a matter of law, the city is not impairing appellants' riparian rights by its placement of Dock #10. On our de novo review, we conclude that there remains an unresolved fact issue concerning whether the city's exercise of its riparian rights is reasonable. We therefore reverse the district court's summary judgment dismissing that portion of appellants' complaint alleging violation of their riparian rights. We remand for resolution of the factual issue of the reasonableness of the city's use of Dock #10 in its current configuration. Factors to consider include the purpose of the use, the way in which the right is used, the necessity of the use, and the injury alleged by the other rights holder. *Petraborg*, 15 N.W.2d at 182. We hold only that the fact issue remains for resolution on this record; we express no opinion concerning how that issue will be or should be resolved by the finder of fact on remand.

**II. The district court correctly concluded that the LMCD Code provision requiring the appellants' consent to Dock #10 is unenforceable.**

Appellants next argue that, even if Dock #10 is a valid use of the fire lane contemplated by the 1889 plat, it is still invalid under the LMCD Code. According to appellants, the LMCD Code requires the city to obtain appellants' consent to construct and use Dock #10 because appellants own fee title to the fire lane. The district court disagreed. It determined that although the LMCD Code, read strictly, requires the consent of fee owners, the provision conflicts with common law principles concerning riparian rights and cannot be enforced. Because we determine that the district court applied the correct legal

standard and that there are no genuine issues of material fact concerning that issue, we affirm the district court's summary judgment dismissing this aspect of appellants' complaint. *Montemayor*, 898 N.W.2d at 628.

The LMCD Code provides that "No person shall use any area of the Lake within any authorized dock use area for docks, moorings, [or] watercraft storage . . . without the consent of the riparian owner." LMCD Code § 2-3.01, subd. 2 (2019). An owner is "the fee owner of land or the beneficial owner of land whose interest is primarily one of possession and enjoyment in contemplation of ultimate ownership." LMCD Code § 1-3.01, subd. 67 (2019). Based only on a strict reading of LMCD Code, the city would be required to obtain the consent of appellants, fee owners of the fire lane with appurtenant riparian rights, to construct Dock #10. But our analysis does not end here.

As discussed above, Minnesota common law requires that holders of riparian rights share access to the body of water, and must act reasonably. *Seifert*, 100 N.W.2d at 696-97. Rights holders must ensure that their use of the water body is reasonable and does not unduly impair the ability of other users to enjoy the water body. *Id.* at 697. But the LMCD Code conflicts with these well-established common law principles because the code purports to permit one user to restrict another's use of his or her riparian rights, regardless of the reasonableness of the restriction. Therefore, we agree with the district court's conclusion that, as a matter of law, the consent requirement in LMCD Code is unenforceable as inconsistent with well-established Minnesota law concerning riparian rights. *Curtis*, 921 N.W.2d at 346.

**III. The district court properly determined that Dock #10 lawfully existed in 1984, but there remains a genuine issue of material fact regarding whether subsequent changes to Dock #10, including extension of the dock's length to 158 feet, renders it ineligible for treatment as a prior nonconforming use.**

Appellants argue that the city's municipal multiple dock system was never "a legal nonconforming use." They further argue that, even if it had once been a legal nonconforming use, it has since lost that status because of changes made since 1984. The district court, focusing only on Dock #10, disagreed with appellants' assertions. The district court determined that Dock #10 was a legal nonconforming structure in 1984 and that the subsequent changes in dock length and configuration did not make Dock #10 illegal. We consider the district court's summary judgment on this issue *de novo*.<sup>5</sup> *Montemayor*, 898 N.W.2d at 628.

All docks on Lake Minnetonka must comply with the LMCD Code. § 2-2.01 (2019). But there is a limited exception to this general rule for some docks with a historical presence on the lake. Docks in existence as of May 3, 1978, may continue to exist—even if they fail to comply with current LMCD Code provisions—so long as the number of restricted watercraft docked at that location does not exceed the number docked there on May 3, 1978. LMCD Code § 2-4.09, subd. 3 (2019). Such nonconforming docks may not

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<sup>5</sup> Although appellants contend that the entire dock system of the city is illegal, the district court properly focused only on Dock #10. The LMCD Code provides no indication that if one dock in a municipal multiple use system violates code provisions, the entire system should be considered invalid. Moreover, the only dock that has any impact on appellants is Dock #10. This case presents no occasion for examining the legality or appropriateness of docks remote from appellants' property, which plainly have no effect on appellants' riparian or other asserted rights.

be changed or reconfigured from their state on May 3, 1978, without the approval of the LMCD. LMCD Code § 2-8.05, -8.11 (2019).

If a change or a reconfiguration of a legal nonconforming dock is proposed, the LMCD must consider whether the proposed changes would result in increased boat storage units, linear footage of boat storage units, or the nonconforming nature of the dock, or if it would create new nonconformities. *Id.*, § 2-8.11. If the LMCD finds that any of these changes would occur, the LMCD may not issue a license for the proposed changes. LMCD Code § 6-2.17, subd. 1 (2019). With these provisions of the LMCD Code in mind, we look to the history of Dock #10 to determine whether it was a legal nonconforming dock in existence on May 3, 1978.

In 1984, the LMCD approved the city's application for a new multiple dock license "from 1977" for 86 boat storage units. Included in the license was Dock #10, which at that time had six boat storage units and was 90 feet long. We agree with the district court that, as a matter of law, Dock #10 was in existence as a legal nonconforming dock as of May 3, 1978, by virtue of the 1984 license for the city's docks dating back to 1977.

We next consider whether the subsequent changes to Dock #10 have resulted in the dock no longer being a legal nonconforming use.

Since 1984, Dock #10 has undergone a number of changes and reconfigurations. As of 2019, Dock #10 had four boat storage units and extended 158 feet into Lake Minnetonka. Dock #10 was also positioned parallel to the extended lot lines of the fire lane in 2019; in 1984, it was angled slightly southward and was not located entirely within

the fire lane's ADUA. As such, the dock was then angled away from the water directly in front of appellants' home.

As explained above, the LMCD Code does not allow any changes to a nonconforming dock that would result in increased boat storage units, increased linear footage of boat storage units, increased nonconforming nature of the dock, or the creation of new nonconformities. LMCD Code § 2-8.11.

Whether the extension of Dock #10 to 158 feet and its reorientation are permissible changes involve questions of fact. The extension of Dock #10 to the length of 158 feet cannot be said as a matter of law to be an insubstantial modification of the preexisting nonconforming use. And the orientation of the dock to put it more directly in front of the appellants' home and nearer appellants' ADUA at least raises a fact question about whether changes to the prior nonconforming use deprives Dock #10 of its status as a nonconforming use that may be lawfully continued.

It is true, as the district court noted in granting summary judgment, that Dock #10 as it is currently oriented is "cabined" in the ADUA defined by the extended lot lines of the fire lane. But since those lot lines are parallel, the extensions of them would continue across the lake to the opposite shoreline without crossing one another, meaning that a dock could extend to the opposite shore of the bay and still remain within the ADUA. It seems axiomatic that not every extension of the dock within the ADUA as so defined would be a permissible change to the city's prior nonconforming use. And Dock #10 is now 68 feet longer than it was in 1984—extending over 50 yards into the lake. Here again, we hold only that the district court improperly granted summary judgment where there exist

genuine issues of material fact; we express no opinion concerning resolution of the fact issues.

Although the district court correctly determined that Dock #10 was a legal nonconforming structure as of May 3, 1978 as a matter of law, it erroneously concluded that no genuine issue of material fact exists concerning whether the changes to the dock after 1984 result in its no longer being a legal nonconforming structure.<sup>6</sup>

**IV. The district court did not improperly rely on appellants’ knowledge of the history of their property when it ruled on the summary-judgment motions.**

Finally, we address the appellants’ claim that the district court improperly relied on appellants’ prior knowledge of these property issues in ruling on the competing motions for summary judgment. Although the district court did reference appellants’ knowledge of the property’s unique challenges before they bought their house—a fact on which the parties agree—it did not improperly rely on that fact.

Appellants’ predecessor in interest had the same concerns that appellants have in this lawsuit. The purchase price negotiated by appellants reflected these concerns, along with other buyer-seller considerations. But the district court did not summarily adjudicate appellants’ claims for this reason. Instead, the district court noted the reality that there has been prior litigation concerning the city’s dock system and that appellants were aware that

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<sup>6</sup> We also note that, while the LMCD approved the changes to and reconfiguration of Dock #10 over the years, the LMCD’s lack of enforcement of the LMCD Code does not necessarily mean those changes were valid. *McCavic v. De Luca*, 46 N.W.2d 873, 877 (Minn. 1951) (“[T]he validity of an ordinance is not affected by failure to enforce it or by its wrongful enforcement or by the fact that it is repeatedly violated.”). On this record, we see no determination by the LMCD concerning these fact issues. Accordingly those fact issues are appropriate for resolution on remand.

the LMCD was allowing Dock #10 to exist at the 158 foot length in the configuration about which they now complain. We see no error in the district court having accurately characterized the history of how this protracted dispute resulted in appellants' current claims.

In sum, on de novo review of the district court's summary adjudication, we affirm the district court's judgment except insofar as it determines as a matter of law that Dock #10 as currently situated is a *reasonable* exercise of the city's riparian rights and that Dock #10 continues to be a legal nonconforming use despite changes to its orientation and length after May 3, 1978. On those issues, there remain genuine issues of material fact for resolution on remand.

**Affirmed in part, reversed in part, and remanded.**