



## STAFF REPORT

DATE: August 16, 2016

**REGULAR**

ITEM #: 26

**MOTION**

**TO:** Mayor and Council

**FROM:** Kristina Handt, City Administrator

**AGENDA ITEM:** No-Wake high water elevation level for Lake Demontreville and Olson

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### **BACKGROUND:**

Included in your packet is a letter from Roger Johnson to the Environmental Committee in May 2016. Mr. Johnson sent this letter to me. It has not been sent to the Environmental Committee because the Council already had the issue of changing the no wake level before them at the February 24, 2015 meeting. Consistent with this Council's practice and Roberts Rules of Order, if an item has already been decided it may only be brought back by two members having voted on the prevailing side. At the February 24, 2015 meeting the following motion was made and failed: **MOTION:** Council Member Bloyer moved **TO CALL FOR PUBLIC HEARING ON DATE UNCERTAIN**. Mayor Pearson seconded the motion. **MOTION FAILED 0-5**. Since all five members were on the prevailing side, any two members of the Council can bring this item back up.

I've included in the packet the staff report from the February 24, 2015 meeting as background. If this item is referred to the Environmental Committee additional attachments and history will be provided to them.

### **ISSUE BEFORE COUNCIL:**

Should the Council refer this matter to the Environmental Committee for review? Should an outside consultant be used to provide a study as first proposed by the DNR in 2015?

### **PROPOSAL DETAILS:**

Council members Lundgren and Smith requested to have this item on the agenda for the purposes of discussion and possible referral to the Environmental Committee. Council member Smith has also expressed interest in having an expert do a study of the lakes to help determine the appropriate level.

### **FISCAL IMPACT:**

Costs for an expert to complete a study are unknown at this time. Further research on that could be completed while the Environmental Committee reviews the issue.

### **OPTIONS:**

- 1) Refer the review of the no wake threshold for Olson Lake and Lake Demontreville to the Environmental Committee
- 2) Authorize staff to obtain quotes for a study
- 3) Keep the no wake levels at 929.7 feet

### **RECOMMENDATION:**

Recommendation of Council Member Lundgren is to refer to the Environmental Committee ***Motion to refer the No-Wake high water elevation level for Lake Demontreville and Olson to the Environmental Committee***



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May 24, 2016

Environmental Committee  
City of Lake Elmo  
3800 Laverne Avenue North  
Lake Elmo, Minnesota 55042

Re: No-Wake ordinance for Lake Demontreville & Olson

Dear Environmental Committee Members:

The Lake Demontreville & Olson Association (LDO) is a non-profit organization comprised of the vast majority of Lake Demontreville and Olson shoreline property owners. The Association would like your assistance in addressing an important environmental issue that affects Lake Demontreville and Olson property owners as well as Lake Elmo residents and non-residents who use the public access to Lake Demontreville and Olson for their enjoyment.

When the two lakes experience high water levels, the shorelines are particularly vulnerable to severe erosion from the wakes generated by motorized watercraft. This erosion is detrimental to shoreline properties, water quality, fish, and natural plants that inhabit the lakes and shore. These detrimental impacts of motorized watercraft have been documented by numerous studies, visual observation, and of course, simple common sense.

When high water levels occur, generally due to extreme winter snowfall or spring rainfall, the City of Lake Elmo has the authority to impose a "No-Wake" rule, when motorized watercraft are restricted to slow speeds until water levels return to normal levels that are not as sensitive to shoreline erosion. It is the City of Lake Elmo that sets this rule, not the Minnesota Department of Natural Resources (DNR) or any other governmental body. Many communities use the DNR's Official High Watermark (OHW) as the benchmark for determining when a No-Wake rule should be imposed.

The DNR has determined the OHM for Lake Demontreville & Olson to be at elevation 929.3 feet. Until 2014, this was the benchmark for determining when the City of Lake Elmo would impose a No-Wake rule to protect the lakes. In 2013, the then seated City Council raised the No-Wake threshold to 929.7 feet...contrary to the preferences of 85% of the shoreline property owners .

The LDO Association has been the steward of these lakes for many years. We are very concerned about the long range health of the lakes. We therefore would like you to consider this issue and recommend that the City Council return the No-Wake threshold to the DNR set OHW level of 929.3 feet.

Our board and membership are available to discuss this request in further detail at your convenience.

Thank you for your consideration,

Roger Johnson, President  
Lake Demontreville Olson Association  
8048 Hill Trail North,  
Lake Elmo, MN 55042  
Tele: 651-777-7766

Cc: LE City Administrator  
LDO Board Members:  
Terry Lizakowski  
Fr. Pat McCorkell  
Link Lavey  
Mark Peterson  
Nick Linsmayer  
Ron Gritzmaker  
Gary Fields  
Charles Shultz  
Jill Lundgren  
Gerald Goracki



# MAYOR & COUNCIL COMMUNICATION

**DATE:** February 24, 2015  
**REGULAR**  
**ITEM #:** 19

**AGENDA ITEM:** Proposed Ordinance Amending 97.21 Watercraft and Water Surface Regulations  
**SUBMITTED BY:** Dean Zuleger, City Administrator at the request of Council Member Justin Bloyer  
**THROUGH:** Mayor Mike Pearson  
**REVIEWED BY:** Dean Zuleger, City Administrator

**SUGGESTED ORDER OF BUSINESS:**

- Introduction of Item..... City Administrator
- Report/Presentation..... City Administrator
- Questions from Council to Staff..... Mayor Facilitates
- Public Comment ..... Mayor Facilitates
- Call for Motion..... Mayor & City Council
- Discussion ..... Mayor & City Council
- Action on Motion ..... Mayor Facilitates

**SUMMARY AND ACTION REQUESTED:** To approve amendments to City Ordinances regulating watercraft regulations (ss 97.21 (2) ), to lower the no wake level on Olson Lake and Lake Demontreville from a negotiated 929.7 to the recognized MNDNR Ordinary High Water level of 929.3.

**FISCAL IMPACT TO CITY:** TBD. Cost of study to determine the ecological / economic impacts that provide a “credible reason” for reducing the negotiated no wake level of 929.7 to the MNDNR OHW of 929.3

**BACKGROUND INFORMATION:** In 2013, the City of Lake Elmo amended its City Ordinances regulating water craft and water surface regulations and submitted the changes to the MNDNR, which approved the ordinance on July 3, 2014. (See Attached Ordinance)

**STAFF REPORT:**

In 2007, the VBWD constructed Project 1007, that placed a weir drain in Olson Lake that drain to a series of ponds and pipes to alleviate high water levels and prevent ecological / economic impact. Prior to 2007, the MNDNR Ordinary High Water Level for this lake system was 930.0. After the weir was constructed, the Ordinary High Water level was reset at 929.3. The Ordinary High Water Level is generally considered the level where terrestrial plants meet the aquatic plant level on a lake shore (see attached diagram). In a

plurality of lakes researched over the last three years that have some form of no wake restriction, there is no standard or formulaic way to establish a no wake level, but admittedly many lakes default to the OHW for uniformity purpose.

In conversations with MNDNR staff there seems to be little objection to using the OHW as a no wake trigger.

During the summer of 2011, the Olson/Demontreville lake complex experienced high waters that caused the City Council to construct an emergency no wake level of 929.7 using a simple formula of halving the pre-2007 OHW and the post-2007 OHW. The issue was fraught with emotion due to the expediency in which the issue was handled. In the winter of 2012, staff worked with the MNDNR to craft an ordinance that would meet with all party's approval to establish a negotiated no wake level of 929.7 on Olsen Lake and Lake Demontreville. Specifically, MNDNR did not want to specify a specific elevation level for no wake imposition on Lake Olson and Lake Demontreville and they wished to make the City Code consistent with MN Statute 86 – governing motorized water craft operation. After several months of MNDNR review and text changes, staff brought a draft ordinance to the City Council for their review on June 5, 2012. At this time several lake shore residents expressed their dislike for the draft as they felt that the statutory norming that took place defeated the intent and purpose of the ordinance. It was agreed that the City Administrator and members of the Tri-Lakes association would meet with MNDNR officials to discuss specific concerns about lake elevation levels and a provision of state statutes that creates a slow, no wake speed for personal watercraft within 150 feet of shoreline.

A delegation from Lake Elmo consisting of Mayor Dean Johnston, Administrator Dean Zuleger, Tri-Lakes President Justin Bloyer and Lake Olson Association President Roger Johnson met with MNDNR's Kim Elverum, Boat & Water Safety Coordinator, to broker a compromise and clarify whether MN Statute 86 had preemption over local ordinances. At this meeting, it was agreed that if MNDNR technical staff agreed to the specific lake level definition of 929.7, the ordinance passed in July 2011 could stand permanently. The City Administrator spoke with MDNR technical staff (Schodeen) who had no objections to a pre-determined no wake level of 929.7.

Appropriate changes were made to the ordinance and were reviewed by Mr. Roger Johnson, Mr. Justin Bloyer and Mayor Dean Johnson for approval prior to final drafting.

In July of 2012, the City of Lake Elmo and affected land owners residing on the shores of Lake Olson, Lake Demontreville and Lake Jane crafted an amendment to current city code that would regulate the use of three lakes in the area known as the Tri-Lake area of the City of Lake Elmo. After considerable debate, the parties reached a consensus on three main areas – with the item germane to this discussion being:

1. A slow, no wake speed condition be set if the lake level of 929.7 feet above sea level is exceeded for five consecutive days for Lake Olson and Lake Demontreville;

The City Council adopted these changes in July 2012, but the issue has been continually fraught with anxiety as lakeshore owners wrestle with the important issues regarding, what is essentially, their backyard. Efforts over the years to determine the appropriate wake related use (especially time restrictions) have resulted in neighborhood surveys, long deliberations by the respective homeowner's associations, and exploration of additional changes that include but are not limited to eliminating wake on the lakes altogether.

In the March of 2013, two City Council Members requested that the City's current lake use ordinances be modified yet again to create an expansion of use allowed under MNDNR statutes for the purpose of more

hours for wake creation a better ability to enforce proper use, and to allow additional time for lakeshore owners to use their “backyard” before the lakes are congested via use by the general public. The request came late at the March 5<sup>th</sup> City Council Meeting.

In May 2013, a lengthy public hearing was held on the changes where a 5-0 vote was taken by the City Council to change the ordinance.

City Staff prepared the ordinance with corroborating data and submitted the ordinance for MNDNR review. After several modifications to comply with MNDNR regulations were made, the MNDNR (July 2, 2013 – see attached) approved the ordinance (see attached) for implementation. During this time a no wake restriction was placed on Olsen Lake & Lake Demontreville for one week in the spirit of the understanding between the negotiating no wake level.

In the Spring / Summer 2014, due to large spring rains and the drainage of Long Lake, Olson Lake and Lake Demontreville exceeded the negotiated no wake level of 929.7 for a two different time periods that totaled 31 days with City staff checking the water level almost every day from May 1<sup>st</sup> to July 14<sup>th</sup>. (See attached Olson / Tri Lakes Level Data). Staff observed during this review period that the weir begins to strenuously drain the lake and pump into an adjoining pond at the MNDNR OHW of 929.3.

On February 12, 2015, at a Council Member’s request, the City Administrator inquired of Mr. Stan Linnell, MNDNR Boating and Water Safety Manager, about what would be needed to reduce the no wake level on Olson Lake and Lake Demontreville from the negotiated 929.7 to the MNDNR OHW level of 929.3. Mr. Linnell noted that the MDNR would ideally need to see “data of ecological / environmental impact” before they would consider a change and that data should come in a form of a study. The City Administrator has inquired with two water resource consulting firms on the “what and how” the gathering of this data would entail and what the cost might be. As of the writing of this memo, no cost information has been received at this time. On February 19, 2015, Mr. Linnell, noted (after conversations with members of the City Council, VBWD, and citizen advocates) that while ideally a study would be preferable, the MNDNR would need to minimally see a “credible, documented reason” to reduce the level. (See Linnell Email 2-19-2015). **Per the MNDNR, a formal public hearing is requested to provide public comment on the proposed change in elevation. The soonest a public hearing could be held is March 17, 2015.**

### ORDINANCE CONSTRUCTION

If the Council pleases, the ordinance would change to read as followed:

**(2) High water conditions. No person shall operate any motorboat at greater than a slow, no-wake speed as defined by M.S. § 86B.005 whenever the lake level of Lakes Olson and Demontreville is above 929.3 feet above sea level (MSL), the Ordinary High Water Level (OHWL) as defined by M.S. 103G.005 and set by the MN Department of Natural Resources. This restriction will remain in effect until the water level drops below 929.3 feet the OHWL as set by the MN Department of Natural Resources, and remains there for 3 consecutive days.**

### KEY ISSUES

During the course of the analysis, three main issues rise to the top of consideration:

1. The weir constructed by the Valley Branch Water Shed District in 2007 begins to aggressively drain the lake at the MNDNR OHW of 929.3 (observable by staff over the last two summers);
2. The City has not experienced a full normal season of boat use since the enactment of the 2013 ordinance change – with 2014 high water levels being compounded by a plugged drain pipe upstream at Long Lake;
3. It appears the MNDNR may request additional ecological / economic data that shows positive impact of lowering the no wake from 929.7 to 929.3. This data has been categorized as “a credible, reason” to make the change. Other than third party information on 2014 damage the City does not have a way to provide that “reason” at this time.

**RECOMMENDATION:** Based upon the background information, a review of key issues, discussion with MNDNR staff, discussion with lake shore owners, staff does not have a recommendation at this time without more information (a normal season of operation and study of the water level effect on terrestrial plants/shore erosion) on the impacts of the level change.

However, if the Council wishes to change the level to the MNDNR OHW to create a formulaic approach to no wake enforcement, the motion would read:

***“Move to call for a public hearing on March 17, 2015, to receive public comment on whether to amend 97.21 of the City Code regulating watercraft and water surface regulations to technically change the no wake level on Olson Lake and Lake Demontreville from the negotiated level of 929.7 to the MNDNR OHW of 929.3 with all other ordinance language staying intact.”***

**ATTACHMENTS:**

**Current Ordinance  
MNDNR Approval  
Lake Level Report  
OHW Technical Drawing  
Linnell Email of 2-17-2015**



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May 24, 2016

Environmental Committee  
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3800 Laverne Avenue North  
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