

Contested Case Hearing on St. John's Bay Transient Pier Scheduled: June 17-21, 2024

Since March of 2023, WEAL has taken ACTION to object to the placement and use of a transient pier proposed by the city of Delafield in St. John's Bay, a State-designated sensitive area on Nagawicka Lake, Waukesha County. Because of its location in a state-designated sensitive area of Nagawicka Lake, the placement of the pier structure requires the approval of a WDNR Individual Waterway Protection Permit. WEAL requested a public information hearing on the city of Delafield's waterway protection permit application. The public informational hearing was held on March 27, 2023. WEAL members and city of Delafield residents testified against this pier, citing the negative impacts this pier structure and use would have to the fish and wildlife habitat and conflicts with paddlers using the bay for non-motorized recreation.

Unfortunately, the WDNR issued permit coverage to the city of Delafield to place the pier structure in St. John's Bay. Undeafated, the local residents organized and formed the Defenders of St. Johns Bay Organization. WEAL and the Defenders of St. John's Bay commenced collaboration to oppose the funding and the permitting of this pier structure.

WEAL and the Defenders of St. John's Bay petitioned the WDNR, formally appealing the WDNR's decision to issue the waterway protection permit to the City of Delafield to place a transient pier in St. John's Bay, a sensitive area on Nagawicka Lake. The WDNR forwarded the appeal petition to the Wisconsin Department of Hearings and Appeals. The appeal will be heard in a contested case hearing conducted by Administrative Law Judge Kristin Frederick.

- **Contested Case Hearing Dates:** The Contested Case Hearing will be held **June 17-21, 2024.**
- **Contested Case Hearing Location:** The Contested Case Hearing will be held **in Room 151 at the Lee Sherman Dreyfus State Office Building, 141 NW Barstow Street (west building entrance) in Waukesha, Wisconsin.**

Public Comment Period: Members of the public will be allowed to offer sworn comments and testimony for the record at the outset of the hearing on Monday, June 17, 2024 at 1:00 p.m.

Public comments will be limited in time and **limited in scope to the issues identified below:**

1. **Whether Permit Application IP-SE-2022-68-02139 met the standards set forth in Wis. Stat. § 30.12(3m), or whether any additional permit conditions are necessary to protect the public interest in Nagawicka Lake.**
2. **Whether the proposed pier and boat slips constitute a reasonable use of the riparian property.**
3. **Whether the City of Delafield has granted any riparian right in land to St. John's Northwestern Academy contrary to Wis. Stat. § 30.133.**

WEAL, the Defenders of St. John's Bay and the Public are limited to present sworn testimony and evidence on any of following public interests and rights the WDNR did not consider in their decision to approve the city of Delafield's application and pier construction plan:

- Public right to **navigate** Wisconsin waterways.
- Public right to **protect fish and wildlife habitat** in Wisconsin waterways.
- Public right to **protect water quality** in Wisconsin waterways.
- Public right to **recreate** in Wisconsin waterways, including **fishing, swimming, boating, hunting.**
- Public right to the **enjoyment of scenic beauty** in Wisconsin waterways.

WEAL and the Defenders of St. John's Bay argue that these undisputed public rights and interests will be impacted by the construction and the use of a transient pier structure in the state-designated sensitive area on Nagawicka Lake, as proposed by the City of Delafield.

- **The proposed permanent pier structure and the boats moored at its slips will cover the near shore habitat, impacting fish and wildlife in St. John's Bay. The near shore habitat is a vital area for fish and wildlife for feeding, cover and rearing.**
- **The proposed pier will lure motorized boats into the shallow St. John's Bay, disturbing, scouring and distributing the bottom sediment deposits into the water column, releasing phosphorus and reducing water clarity. Reduced water clarity impacts swimming and site feeding fish species.**

- **The metal structure will interfere with the enjoyment of scenic beauty with its shiny metal surface against the woody shore cover.**
- **The use of the proposed pier by transient boats motoring in-and-out of St. John's Bay will result in importing and colonization of invasive aquatic species, such as starry stonewort, into St. John's Bay, resulting in shift of the current healthy native plant community to a nuisance invasive plant community.**

WEAL argues that the WDNR did not consider the CUMULATIVE EFFECTS OR IMPACTS of their decision to issue the pier permit to the City of Delafield.

“Cumulative effects” means compounding effects resulting from repeated or other proximal actions, activities or projects.

The WDNR must consider cumulative public interest impacts of piers and boat slips on the shores of navigable waters when evaluating a pier permit application, as outlined in Wisconsin case law. Allowing the proposed transient pier in the St. John's Bay sensitive area increases the likelihood for more or larger piers and a greater number of boat slips on similarly situated properties and similar construction.

Detrimental cumulative impacts which would be reasonably expected to occur include reductions in densities of native aquatic plants and associated adverse impacts to fish spawning and nursery areas, and adverse impacts and conflicts with motorized and non-motorized lake-based recreation resulting from such piers.

Following the hearing, Administrative Law Judge Kristin Frederick, will consider the hearing record and exhibits, sworn testimonies from the public and expert witnesses, State Statutes and Administrative Rules and case law. The Judge can approve the permit as issued by the WDNR, deny the permit, or issue the permit with additional conditions.

More about St. John's Bay: St. John's Bay is located on the southwestern area of Nagawicka Lake. Nagawicka Lake is a high quality lake covering more than 950 acres and is designated as an “aquatic area of statewide importance or greater.” Nagawicka Lake supports endangered, threatened or “special concern” species, as defined by the WDNR. Five *Sensitive Areas* have been identified and mapped on Nagawicka Lake by the WDNR, including the St. John's Bay Sensitive Area. These sensitive areas exhibit special importance biologically, historically, geologically, ecologically or even archaeologically. Sensitive areas with aquatic vegetation commonly offer critical or unique fish and wildlife habitat, including life-cycle critical feeding, refuge and life-stage requirements.

More about the Proposed Pier: The city proposes to place a 6-slip transient pier in the St. John's Bay, a state-designated sensitive area. Five of the boat slips will be available to the general public. One slip will be dedicated to the exclusive use of the St. John's Bay Academy. The pier will be permanent and will not be removed during the off-season. The pier will be made of shiny aluminum material and the deck planks will not have any gaps and impervious to light penetration in the near shore habitat. The city proposed no restrictions on the use of the pier, nor are there any navigational routes to the pier through the shallow bay. The city of Delafield pitched a “wait-and-see” response when asked about the use of the pier.

More updated Contested Case Hearing information can be found on the Defender's of St. John's Bay

Website: <https://stjohnsbaydefenders.com>

Contact Fay Amerson with your questions or comments about WEAL's participation in this Contested Case Hearing: famerson@mac.com