

File



Before The  
State Of Wisconsin  
DIVISION OF HEARINGS AND APPEALS

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Investigation on the Motion of the Department of Natural Resources to Remove or Reconfigure the Five Piers Now Placed on the Bed of Jordan Lake, Town of Jackson, Adams County, Wisconsin by RJD Equity LLC

Case No. 3-WC-98-411CW

Application of RJD Equity LLC, c/o David Raht, as Owner or as Agent for Owner Jordan Lakeside Condominiums, for a Permit to Construct a Pier on the Bed of Jordan Lake, Town of Jackson, Adams County, Wisconsin

Case No 3-NC-95-2067

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FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER AND PERMIT

In October 1995, the Department of Natural Resources (Department) received an application from RJD Equity LLC for a permit to construct a pier on the bed of Jordan Lake for use by unit owners of Clearwater Estates Condominium. On May 15, 1996, Department staff advised RJD Equity LLC that it could place a "T"-shaped pier 150-foot long by six feet wide at the proposed site until the application was resolved. After investigation, the Department recommended that the application for a permit to construct the proposed pier be denied.

RJD Equity LLC is also developing another condominium project, Jordan Lakeside Condominiums. Owners of these units have placed various structures for berthing watercraft on the bed of Jordan Lake in front of their units. Department staff alleges that the maintenance of these structures by a single riparian exceeds the reasonable use to which a riparian owner is entitled. Department staff alleges that maintenance of these structures on the bed of Jordan Lake beyond a reasonable date for removal after the decision in this matter is issued will be detrimental to the rights and interest of the public in Jordan Lake, will violate sec. 30.12 and 30.13, Stats., and will constitute a public nuisance pursuant to sec. 30.294, Stats. The Department also seeks an order requiring the removal of the "T"-shaped pier that RJD Equity LLC has been allowed to place pending a decision on its application for a pier permit.

On August 3, 1998, the files were forwarded to the Division of Hearings and Appeals for hearing. Pursuant to due notice, a combined hearing on the application for a permit and the enforcement action was conducted on June 30 and July 1, 1999, in Wisconsin Dells, Wisconsin.

Mark J Kaiser, Administrative Law Judge, presiding The parties filed briefs after the hearing, the last brief was received on September 9, 1999

In accordance with secs 227.47 and 227.53(1)(c), Stats., the parties to this proceeding are certified as follows:

RJD Equity and Jordan Lakeside Condominium Association, co-applicants, by

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Madison, WI 53705

Wisconsin Department of Natural Resources, by

Attorney Edwina Kavanaugh  
P. O. Box 7921  
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#### FINDINGS OF FACT

Prior to the hearing the parties filed the following stipulation of facts:

1. Exhibit 9 lists the owners of Clearwater Estates Condominium Association.
2. Exhibit 8 lists the owners of Jordan Lakeside Condominium Association
4. Clearwater Estates Condominium Declaration of Interest states the following with regard to transfer of dock interest

"7 The DEVELOPER, subject to the option of the DEVELOPER stated in Paragraph 8 below, will make available to grantees of the easement above described docking privileges at the DEVELOPER'S dock on the shore of Jordan Lake. The DEVELOPER may charge a reasonable rental fee for such docking privilege, and the owner(s) of each Unit shall be entitled to docking space for one (1) boat, together with direct access from said dock to the access-way described in Paragraph 6 above

"8. At the option of the DEVELOPER, instead of utilizing the DEVELOPER'S dock, the DEVELOPER, or its heirs or assigns, may grant the Community Association the right to construct and maintain a dock on Jordan Lake at a location convenient to the access described in Paragraph 6 above, for the exclusive use of the Unit Owners and their invitees. In the event such option is exercised, the sole responsibility for constructing or maintaining such a dock will be that of the Association, provided always, however, that direct access from said

dock to the easement route described in Paragraph 6 will be provided to the Unit Owners and their invitees.”

5. Jordan Lakeside Condominium Declaration of Interest states the following with regard to transfer of dock interest:

“J Piers: The piers servicing the individual Units of Phase 1 and future phases are Limited Common Element and shall be the obligation of the respective Unit Owner associated which such Limited Common Element to maintain and repair as set forth in paragraph 5.05(C)

If a pier is constructed by Declarant from a point at the end of Common Area B and into the lake in accordance with state law, said pier (“Pier No. 1”), shall be maintained and repaired by the Association through assessments levied herein and with slip fees charged to the Clearwater Estates Condominium users

Piers No 1, if constructed by Declarant, may first be utilized by Clearwater Estates Condominium owners but if any slips remain unrented, Unit Owners purchasing Units in the JORDAN LAKESIDE CONDOMINIUM may rent pier space at the same slip fee rental Pier No 1 (if constructed) and Common Areas A, B and the portion of C that is necessary to get from Common Area A to B is subject to an easement granted to the Clearwater Estates Condominium set forth in that certain Declaration of Condominium Ownership and of Easements, Restrictions and Covenants for Clearwater Estates Condominium recorded in Volume 278, Pages 90 and 91, in the Adams County Recorder’s office allowing docking and pier privileges for one (1) boat for each owner in Clearwater Estates Condominium on the Property, which right is subject to the laws of the State of Wisconsin. The easement provides for a 2 car width easement from County G to the Lake and Declarant reserves the right to modify the Common Areas shown on the attached Exhibit A, provided the requisite 2 car width access lane is provided somewhere on the Property to the Clearwater Estates Condominium owners.”

6. The Clearwater Estates Condominium Association has granted authority to bind the Association to decisions of its Board of Directors and the Clearwater Board of Directors has authorized participation in the above-captioned action

7. The Jordan Lakeside Condominium Association has granted authority to bind the Association to the actions of its Board of Directors and the Jordan Lakeside Board of Directors has authorized participation in the above-captioned action

8. The Clearwater Estates Condominiums and Jordan Lakeside Condominiums have agreed to apply jointly for the instant dock permit which will apply to 475 feet of frontage owned by Jordan Lakeside Condominiums

9 Wis. Stat Sec. 703.27 requires that condominium ownership be treated as any other form of ownership by the DNR in the permit process

10. The pier currently in place is no larger, and probably smaller, than has been placed in this location since at least 1957.

11. By reason of the age of the existing dock, the age of the Clearwater Condominium owners and the custom of use of the dock dating back to at least 1960, denial of continued dock access to Clearwater Estates Condominium owners may make access to the Lake more difficult or inconvenient for many owners.

12. The pier's structure as proposed will not increase water pollution in Jordan Lake The dock as proposed will not cause environmental pollution as defined in sec 299.01(4), Stats.

13 Neither Clearwater Estates Condominium Association nor Jordan Lakeside Condominium Association have changed the number, size or configuration of the large dock in any significant manner since the dock was reduced to 150 feet in 1996 pursuant to stipulation with the DNR.

Based on the evidence presented at the hearing, the following additional facts are found:

14. RJD Equity LLC is the developer of Jordan Lakeside Condominium. Either RJD Equity LLC or Jordan Lakeside Condominium Association or both jointly currently own and control 475 feet of frontage on the west side of Jordan Lake Jordan Lake is located in Adams County.

15. Jordan Lake is a kidney-shaped lake approximately 213 acres in size The property developed by RJD Equity LLC was previously owned by Edmund Tangney Mr Tangney purchased the property and a business, the Clearwater Resort, in 1955. He operated the resort until 1984. Mr. Tangney maintained a pier of varying lengths and configurations during the time period he owned the property and operated the resort. Although the size and configuration varied, the pier was apparently always at least 200 feet long with slips for up to seventy boats. The pier was used by both guests staying at the resort and the general public

16. Mr. Tangney also developed a 65-unit mobile home park on the west side of County Trunk Highway "G." In 1979, the mobile home park was converted into a condominium known as Clearwater Estates Condominium. The condominium was developed by Clearwater Enterprises, Inc Mr. Tangney was the president of Clearwater Enterprises, Inc Mr. Tangney continued to maintain the large pier on the bed of Jordan Lake and many of the unit owners of Clearwater Estates Condominium rented slips on the pier. (Although apparently at this time persons other than unit owners of Clearwater

Estates Condominium rented slips on this pier, for purposes of this decision the pier will be referred to as the Clearwater Estates Condominium pier.)

17. In 1995, the Clearwater Estates Condominium pier was approximately 200 feet long and six feet wide. The bars of the "F" were each approximately 100 feet long and six feet wide. The pier had slips for 52 boats. On September 4, 1995, a boat pulling a water skier crashed into the Clearwater Estates Condominium pier at approximately 3:10 a.m. The Bank of Wisconsin Dells, the owner of the property at that time, was issued a citation for allowing a structure to be placed extending beyond 200 feet from the shore without lights in violation of sec. 30.61(6)(a), Stats.<sup>1</sup> After the September 4, 1995 accident the Department of Natural Resources (Department) became aware of the Clearwater Estates Condominium pier and by letter dated September 29, 1995 advised the Bank of Wisconsin Dells that a permit was required for the pier.

18. On October 16 1995, 8.1 acres of Mr. Tangney's property was purchased by RJD Equity LLC. The property purchase by RJD Equity LLC includes 475 feet of frontage on Jordan Lake. A portion this property has been developed as Jordan Lakeside Condominium. Jordan Lakeside Condominium consists of ten units, five facing the lake and five behind the lakefront units. The unit owners of Clearwater Estates Condominium Association were granted an easement across a 75-foot wide stretch of riparian property for access to Jordan Lake and the Clearwater Estates Condominium pier.

19. Since 1995, RJD Equity LLC and Jordan Lakeside Condominium Association constructed and maintained four piers in front of the respective buildings that comprise Jordan Lakeside Condominium and the Clearwater Estates Condominium pier at the easement lot. According to condominium documents, each member of Clearwater Estates Condominium Association was entitled to rent one slip on Clearwater Estates Condominium pier (see paragraph 4, *supra*).

20. By application dated October 26, 1995, RJD Equity LLC applied for a permit for Clearwater Estates Condominium pier. The application originally proposed a pier 200 feet long by four feet wide that would moor up to 35 boats. RJD Equity LLC later revised this proposal and reconfigured the proposed pier to a size 150 feet long by four feet wide with two extensions 57 feet long by four feet wide forming an "F"-shaped pier. As a compromise, the Department agreed to allow RJD Equity LLC to place a "T"-shaped pier with 28 boat slips pending a hearing on the application. RJD Equity LLC is now seeking a permit for a pier of the same size and configuration as the one the Department agreed to allow pending a hearing on the permit application. The length of the proposed pier is 150 feet and the length of the bar of the "T" is between seventy and 85 feet.

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<sup>1</sup> The property has a convoluted ownership history that the parties stipulated that is not made clear in the record of this matter. It was apparently owned by the Bank of Wisconsin Dells for a period of time and then reacquired by Mr. Tangney.

21. The proposed project site is located in the Town of Jackson, Adams County, in the NW ¼ of the NW ¼ of Section 34, Township 15 North, Range 7 East. Jordan Lake is navigable in fact at the proposed project site. The line of navigation at the proposed project site is approximately fifty feet from shore. The Department and RJD Equity LLC (the applicant) have complied with all procedural requirements of sec 30 02, Stats.

22. In 1998, the Department commenced an enforcement action seeking removal of the pier placed pending the hearing on the permit application. The enforcement action was subsequently amended to also include the four individual piers placed in front of the Jordan Lakeside Condominium units. The Department is not seeking removal of these piers but argues that the slips on these piers should be taken into consideration in determining the reasonable use of the riparian frontage owned by RJD Equity LLC and/or Jordan Lakeside Condominium Association. The Department alleges that if the entire 475 feet of frontage is owned by one riparian the small piers placed in front of the Jordan Lakeside Condominium units must also be considered in determining the reasonable use at this site.

23. The existing "T"-shaped pier constitutes a material obstruction to navigation because it extends substantially further into the lake beyond the line of navigation than any other pier in this area. Although the fact that there is no record of any boating accidents involving the existing pier indicates that boaters are aware of the existence of this pier, its length forces boaters further from the shore causing greater congestion in this part of Jordan Lake.

Similarly, the existing pier is detrimental to the public interest in Jordan Lake because it constitutes an unreasonable intrusion into a public waterway for a private purpose and deprives the public of the use of lake area where the pier exists and forces some incidents of navigation, such as water skiing, further out into the lake and reduces the available space for these activities.

24. A "T"-shaped pier that extends no further than 55 feet beyond the ordinary high water mark of Jordan Lake, is no wider than six feet, with additional components parallel to the shoreline (finger piers) that are no longer than 65 feet and with a maximum number of slips of sixteen could be placed at the proposed site. A pier of this size and configuration would not constitute a material obstruction to navigation or be detrimental to the public interest in Jordan Lake if it complies with the conditions set forth in the following permit. The basis for this finding is set forth in the "Discussion" section below.

25. The pier described in the paragraph above would exceed the Department's reasonable use guidelines. However, it is found to be permissible primarily based on the historical usage at this site. The evidence in the record indicates that no other comparably sized piers have been placed on the bed of Jordan Lake in the past. No other applicants for pier permits on Jordan Lake would have a similar pier history to support an

application for a pier substantially exceeding the Department's reasonable use guidelines. Therefore, there is no reason to expect any other piers of comparable size to be permitted on the bed of Jordan Lake. Accordingly, the cumulative impact of the proposed pier along with the impacts resulting from the potential placement of other piers of comparable size is not a concern in this case.

26. Clearwater Estates Condominium Association is not a riparian and has no right to place a pier on the bed of Jordan Lake. Neither RJD Equity nor Jordan Lakeside Condominium Association can be issued a permit to place a pier for the benefit of the unit owners of Clearwater Estates Condominium Association. The basis of this finding will be explained in the "Discussion" section below. However, a permit will be issued to the Clearwater Estates Condominium Association on the assumption that the Clearwater Estates Condominium Association will acquire an ownership interest in riparian property.

27. The four small piers placed in front of the Jordan Lakeside Condominium units do not extend beyond the line of navigation and do not require permits unless owned by a single riparian along with the Clearwater Estates Condominium pier.

28. The permitted structure will not reduce the effective flood flow capacity of Jordan Lake upon compliance with the conditions in the permit.

29. The permitted structure will not adversely affect water quality nor will they increase water pollution in Jordan Lake. The structure will not cause environmental pollution as defined in sec 299.01(4), Stats, if the structure is built and maintained in accordance with this permit.

30. Clearwater Estates Condominium Association is financially capable of constructing, maintaining, monitoring or removing the pier if it should be found in the public interest to do so.

31. The Department of Natural Resources has complied with the procedural requirements of sec 111, Stats, and Ch NR 150, Wis Adm Code, regarding assessment of environmental impact.

## DISCUSSION

A threshold issue that must be resolved is whether a pier may be placed on the bed of Jordan Lake for the use of the unit owners of the Clearwater Estates Condominium Association. The ownership of the riparian property at this site is not clear. It is owned by RJD Equity LLC, Jordan Lakeside Condominium Association, or both. However, it is clear that Clearwater Estates Condominium Association is not a riparian, but only has an easement across a 75 foot wide riparian strip which gives its unit owners access to Jordan Lake.<sup>2</sup>

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<sup>2</sup> The parties stipulated that Clearwater Estates Condominium and Jordan Lakeside Condominium Associations have agreed to apply jointly for the permit at issue in this matter (see paragraph 8, *supra*). However, the fact that the

RJD Equity LLC and Jordan Lakeside Condominium Association are co-applicants for a permit to place a pier for the benefit of the unit owners of Clearwater Estates Condominium Association. Sec 30 12(2), Stats., provides, in part, that "The department, upon application and after proceeding in accordance with s. 30 02 (3) and (4), may grant to any riparian owner a permit to build or maintain for the *owner's* use a structure otherwise prohibited under [sec 30.12(1), Stats.] ." (emphasis added). Pursuant to sec 30 12, Stats., a permit can only be issued for a pier which is placed for the benefit of the riparian owner. Nor can a pier permit be issued to Clearwater Estates Condominium Association for the proposed pier based upon its easement. Piers can only be placed by nonriparians only pursuant to sec. 30.131, Stats. The easement given to the unit owners of Clearwater Estates Condominium Association does not appear to satisfy the requirements of sec. 30.131(1), Stats.; however, even if it did, sec. 30 131, Stats , only allows nonriparians to place piers that do not require a permit It is undisputed that the proposed pier requires a permit

Although under the present ownership of the riparian frontage, a permit for a pier for use by the unit owners of Clearwater Estates Condominium Association cannot be issued, the parties have spent considerable time and resources negotiating and litigating the issue of the size of the pier which should be permitted. Given the time and resources spent, it would be unfair to not address the balancing of the public interest in Jordan Lake with the desire for access to the lake by the unit owners of Clearwater Estates Condominium and determine a reasonable size for a pier which could be placed for use by the unit owners of Clearwater Estates Condominium Association However, a condition of the permit must be that the Clearwater Estates Condominium Association acquire an ownership interest in riparian property on Jordan Lake prior to the construction of the permitted pier.

Presumably, the simplest method of satisfying this condition would be to transfer ownership of the 75 foot wide easement lot to the Clearwater Estates Condominium Association and the following analysis will be based on that assumption However, even if the Clearwater Estates Condominium Association acquires an ownership interest in the entire 475 feet of frontage at this site, the analysis might change slightly, but the result would be similar. The number of slips that could be placed on 475 feet of frontage, according the Department's reasonable use guidelines is eleven slips. The unit owners of Jordan Lakeside Condominium Association have placed four piers with seven boat slips on the bed of Jordan Lake leaving four slips available for the unit owners of Clearwater Estates Condominium<sup>3</sup> Pursuant to the Department's reasonable use guidelines, the Clearwater Estates Condominium Association could place a pier with three slips without a permit on the 75 foot wide access lot.

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parties stipulated Clearwater Estates Condominium is a co-applicant for the permit does not make it lawful to issue a permit to a nonriparian

<sup>3</sup> The unit owners of Jordan Lakeside Condominium Association have also place several personal water craft boat hoists on the bed of Jordan Lake in front of their units Personal water craft boat hoists are counted as boat slips for purposes of the Department's reasonable use guidelines However, the applicants have agreed to remove the personal water craft boat hoists voluntarily and they will not be considered in this decision

The applicants are seeking a permit for a "T"-shaped pier extending 150 feet into the lake with the bar of the "T" approximately seventy to 85 feet long.<sup>4</sup> As stated above, pursuant to the Department's reasonable use guidelines, reasonable use of 75 feet of frontage would only allow the placement of a pier with three boatslips. The Department concedes that based upon the historical use of this area, a pier larger than what would be allowed under the reasonable use guidelines should be permitted. However, the Department did not make a recommendation as to the size of pier that its staff believes would be reasonable other than that the number of slips permitted should be closer to eleven than the 35 sought by the applicants (including the slips on the piers placed by unit owners of Jordan Lakeside Condominiums).

The Department primarily relies on its reasonable use guidelines and argues that the proposed pier would constitute an excessive intrusion into public waters for a private purpose. The Department also alleges that the proposed pier would negatively impact on the natural scenic beauty of the area; however, the Department did not attempt to describe any natural scenic beauty which exists at this site. The Department's witnesses also described Jordan Lake as a high quality fishery, however, most of the sensitive spawning and nursery habitat appears to be at the east end of the lake, the shoreline along which is wetlands and undeveloped. The Department did not present any specific evidence showing that the proposed pier would negatively impact any wildlife or fish habitat. Scott Ironsides, A Department fisheries biologist, testified that the near shore area of Jordan Lake is a narrow band that is all valuable, but that there is not anything especially unique about the site of the proposed pier.

Piers of various configurations have been placed at the proposed site annually for over forty years. If any sensitive habitat existed at this site, it probably has long since been compromised. The applicant's expert witness testified regarding the existence of a bass spawning bed located northeast of the site of the existing pier. Apparently this spawning habitat has not been damaged by the current pier. The applicant's expert also testified that because piers have been placed at this site for a long time the fish have become accustomed to their presence. Removal of the existing pier would have a greater negative impact on the fish habitat in this area than maintaining the pier.

Although it is reasonable to argue that the placement of a pier at the proposed site will not damage habitat since apparently no identifiable damage has occurred in the past forty years, it does not logically follow that the removal of the pier will more negatively impact the area. The testimony at the hearing was that the configuration of the pier has changed repeatedly over the years and neither the past piers nor the proposed pier are permanent piers. Accordingly, there have been at minimum seasonal changes to the habitat in this area related to the removal of the pier each fall and replacement of the pier the following spring. The fish have either adapted to these seasonal changes or at least not been negatively impacted by them. This evidence supports the conclusion that a pier may be placed at this site without negatively impacting the fish habitat.

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<sup>4</sup> The length of the bar component of the existing "T"-shaped pier is not in the hearing record. This estimate is from the Department's initial brief.

in this area, however, it does not follow that not placing a pier at all at this site will negatively impact the habitat

Witnesses for the applicants also testified that the past and existing pier protect the near shore area at this site by forcing boating activity further from the shore. Although this is undoubtedly true, it is not appropriate to use the placement of piers as a form of shoreline and habitat protection. The main value of this testimony is to further demonstrate the difficult balancing which the Department is required to perform. The Department is charged both with preserving the environment of the lake and maximizing recreational use of the lake. The fact that neighboring riparians support the placement of the proposed pier because it forces other boaters to stay further away from their shoreline indicates that this pier does constitute an excessive intrusion into the public waterway for a private purpose. The length of the existing pier is excessive and cannot be permitted.

One of the Department witnesses testified that a pier extending 75 feet into the water would be the maximum length that would be reasonable. Although this length would still extend past the line of navigation, based upon the historical use in the area, it is a reasonable compromise for the length of the pier. The testimony at the hearing was that nearly all unit owners of Clearwater Estates Condominium Association own pontoon boats. Pontoon boats typically are 20 feet in length. When 20-foot long pontoon boats are moored to a pier extending 55 feet into the water, the combined length of the pier and moored boats will be 75 feet. Accordingly, the length of the pier permitted will be 55 feet.

The applicants propose a "T"-shaped pier. The record does not indicate the length of the bar of the existing "T." However, since we are dealing with either a 75-foot wide easement or a 75-foot wide access strip, the maximum reasonable length of the bar of the T is 65 feet. This would allow the unit owners of Clearwater Estates Condominium Association to moor additional boats along the base of the T without unduly interfering with the riparian zones of neighboring riparians. The unit owners of Clearwater Estates Condominium Association will be allowed to place additional finger piers along the base of the pier as long as the pier is not wider than 65 feet at any part and the total number of slips does not exceed sixteen.

Permitting sixteen boat slips on 75 feet of frontage far exceeds the Department's reasonable use guidelines; however, historical usage must also be considered. In 1995, when this pier first came to the attention of the Department, it had slips for 52 boats. The near shore area at this site also received intense usage during the time period Mr. Tangney operated the Clearwater Resort. Although the near shore area of lakes in general is important habitat for fish and wildlife, the Department did not present evidence of any specific values which would be negatively impacted by the construction and maintenance of the proposed pier. Any damage that might have occurred as a result of placing a large pier at this site certainly would have already occurred over the last forty years. The testimony at the hearing was that the area remains one of the best fishing areas on the lake and a bass spawning nest remains near the pier.

The primary consideration with respect to the proposed pier is the distance that it extends into the lake and the amount of area that it makes unavailable for use by the public. The intent of

restricting the length of the pier to 55 feet is to reduce the amount of intrusion into the public waterway. The sixteen boat slips allowed on this pier is the maximum number of pontoon boats that conceivably can fit onto a pier of this length. It is acknowledged the mooring of sixteen pontoon boats at this pier will essentially consume the entire riparian zone associated with 75 feet of shoreline, however, based on the historical use of this area it is reasonable. It is also acknowledged that eleven unit owners of the Clearwater Estates Condominium who had slips in 1999 will not be able to rent slips on the permitted pier in the future; however, a pier of the size permitted is the largest which can be justified at this site for private use. The longer piers that were placed in the past provided a public benefit that the proposed pier will not. It will be necessary for the permittee to develop a method to allocate the available slips among the unit owners of Clearwater Estates Condominium in an equitable manner.<sup>5</sup>

The finding that a pier with up to sixteen slips will not be injurious to public rights in Jordan Lake is based in part upon historical usage at this site and also on the testimony that virtually all unit owners of the Clearwater Estates Condominium Association own pontoon boats which have less of a negative impact on the lake than other motor boats. However, it is conceivable as the tastes and/or the demographics of the membership of Clearwater Estates Condominium Association changes over time, these pontoon boats may be replaced by higher powered motor boats. It must be kept in mind that the permit can be rescinded or amended if it is determined that the permitted pier has become detrimental to the public interest in Jordan Lake.

The Department has requested that any permit include the four individual piers placed by unit owners of Jordan Lakeside Condominium Association. This will not be done for two reasons. The first reason is that almost no evidence regarding those four piers was placed in the record. It is difficult to make any meaningful findings regarding these piers based on the evidence in the record. The second reason is that, as discussed above, a condition of the permit is that Clearwater Estates Condominium Association acquire an ownership interest in riparian property and that the permit be issued to the Clearwater Estates Condominium Association. It is assumed for purposes of this decision that this will be accomplished by transferring ownership of the 75-foot easement lot to the Clearwater Estates Condominium Association. If so, separate permits would need to be issued for the Clearwater Estates Condominium pier and the four smaller piers. If the four small piers are owned by a different riparian and are considered separately from the Clearwater Estates Condominium pier, they do not appear to require a permit. Additionally, although the four smaller piers are part of the Department's enforcement action, no application for a permit has been filed with respect to these piers and the public notice of the hearing did not indicate that a permit for these piers would be an issue at the hearing.

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<sup>5</sup> William Street, the applicant's expert, testified that his parents rent a slip on the existing pier. However, he indicated on cross-examination that this fact did not influence his testimony in support of maintaining the existing pier. He testified that his parents have access to another dock at which they could moor their boat or that they could use the public landing to launch their boat. Presumably, other unit owners of Clearwater Estates Condominium would have similar alternatives to renting a slip at the existing pier.

## CONCLUSIONS OF LAW

1. RJD Equity LLC is a riparian owner within the meaning of sec 30 12, Stats
2. The existing Clearwater Estates Condominium pier described in the Findings of Fact constitutes a structure within the meaning of sec. 30.12, Stats.
3. Pursuant to sec. 30 12, Stats., and sec. NR 326.05, Wis. Adm. Code, a permit is required for the existing Clearwater Estates Condominium pier The pier was constructed and maintained without a permit. Accordingly, the construction and maintenance of this pier constitutes a violation of secs 30.12 and 30.15(1)(d), Stats
- 4 The existing Clearwater Estates Condominium pier constitutes an impairment to navigation and is "detrimental to the public interest in navigable waters" within the meaning of sec 30 12(2), Stats., because it constitutes an excessive intrusion into a public waterway for a private purpose Accordingly, a permit can not be issued for the existing pier.
- 5 The construction and maintenance of the existing Clearwater Estates Condominium pier in violation of secs 30 12 and 30 15, Stats , constitutes a public nuisance pursuant to sec. 30.294, Stats. This violation is abated if RJD Equity LLC removes the existing pier within the time limit set in the following order and the Clearwater Estates Condominium Association places a pier in accordance with the conditions of the following permit.
6. Pursuant to secs 30 03(4)(a) and 227.43(1)(b), Stats., the Division of Hearings and Appeals has the authority to issue the following order
7. The proposed pier is intended for the benefit of nonriparians (the unit owners of Clearwater Estates Condominium Association) and cannot be placed pursuant to either sec. 30.12 or 30 131, Stats , unless and until the Clearwater Estates Condominium Association acquires an ownership interest in riparian property on Jordan Lake.
- 8 The pier authorized in the following permit does not constitute an impairment to navigation and is not "detrimental to the public interest in navigable waters" within the meaning of sec 30.12(2), Stats , if maintained in accordance with the conditions of the permit.
9. The Division of Hearings and Appeals has authority under secs 30.12 and 227.43(1)(b), Stats , and in accordance with the foregoing Findings of Fact, to issue a permit for the maintenance of said structure subject to the conditions specified.
- 10 The project is a type III action under sec. NR 150 03(8)(f)4, Wis Adm. Code. Type III actions do not require the preparation of a formal environmental impact assessment

## ORDER

RJD Equity LLC shall remove the existing "T"-shaped pier placed for the benefit of the unit owners of Clearwater Estates Condominium Association on the bed of Jordan Lake within 45 days of this order. After removal of the existing pier and compliance with the conditions set forth in the following permit, the Clearwater Estates Condominium Association may place and maintain a pier in accordance with the conditions of the permit

## PERMIT

AND THERE HEREBY DOES ISSUE AND IS GRANTED to the Clearwater Estates Condominium Association a permit under sec. 30 12, Stats., for the construction of a structure as described in the foregoing Findings of Fact, subject, however, to the conditions that

1. Clearwater Estates Condominium Association shall obtain an ownership interest in riparian property prior to the construction of the permitted pier and the permit shall be issued to Clearwater Estates Condominium Association.
2. The authority herein granted can be amended or rescinded if the structures become a material obstruction to navigation or become detrimental to the public interest
3. The permittee shall waive any objection to the free and unlimited inspection of the premises, site, or facility at any time by any employe of the Department of Natural Resources for the purpose of investigating the construction, operation, and maintenance of the project.
4. The permittee must immediately seed and mulch or riprap any area where topsoil is exposed during construction to prevent soil from being eroded and washed into the waterway
5. The permittee must notify the Water Management Specialist, at the Wisconsin Rapids Service Center, 473 Griffith Avenue, Wisconsin Rapids, Wisconsin 54494, (715) 421-7815, in writing at least five days before starting the project and again five days after completing it.
6. The permittee may construct a "T"-shaped pier up to six feet wide and extending 55 feet into Jordan Lake with the bar of the "T" no wider than 65 feet. The permittee can construct additional finger piers along the base of the "T" to increase the number of slips on the pier as long as the pier is no wider than 65 feet at any point and the total number of slips does not exceed sixteen
7. The permittee shall obtain any necessary authority needed under local zoning ordinances and from the U S Army Corps of Engineers
8. This permit does not authorize the placement of mooring buoys at this location without modification of this permit.

9 All canopies or boat shelters must comply with the standards in Ch. NR 326, Wis. Adm. Code. In particular, canopies and boat shelters may not have side drops

10. The permittee shall locate the pier in compliance with sec. NR 326.07(3), Wis. Adm. Code.

11. This permit granted herein shall expire three years from the date of this decision, if the structures are not completed before then

12 A copy of this permit shall be included as part of the Clearwater Estates Condominium documents and filed with the Adams County Register of Deeds to ensure that potential purchasers of units in Clearwater Estates Condominium are aware of these limitations and restrictions. Proof of filing with the Register of Deeds shall be provided to the Department.

13. Acceptance of this permit shall be deemed acceptance of all conditions herein.

This permit shall not be construed as authority for any work other than that specifically described herein.

Dated at Madison, Wisconsin on November 17, 1999

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
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Madison, Wisconsin 53705-5400  
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By Mark Kaiser  
MARK J. KAISER  
ADMINISTRATIVE LAW JUDGE

## NOTICE

Set out below is a list of alternative methods available to persons who may desire to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with sec. 227.48, Stats, and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1 Any party to this proceeding adversely affected by the decision attached hereto has the right within twenty (20) days after entry of the decision, to petition the secretary of the Department of Natural Resources for review of the decision as provided by Wisconsin Administrative Code NR 220. A petition for review under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

2 Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Natural Resources a written petition for rehearing pursuant to sec. 227.49, Stats. Rehearing may only be granted for those reasons set out in sec. 227.49(3), Stats. A petition under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

3 Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form, is entitled to judicial review by filing a petition therefor in accordance with the provisions of sec. 227.52 and 227.53, Stats. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (2) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Since the decision of the Administrative Law Judge in the attached order is by law a decision of the Department of Natural Resources, any petition for judicial review shall name the Department of Natural Resources as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of secs. 227.52 and 227.53, Stats, to insure strict compliance with all its requirements.