



AXLEY BRYNELSON, LLP



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May 28, 2021

***Via E-Mail and FedEx***

Moose Lake Advancement Association  
Attn: President, Greg O'Hearn  
N67W33015 Oak Ridge Ln.  
Hartland, WI 53029

RE: Moose Lake Advancement Association (the "Association") Memorandum Of  
Understanding Regarding Moose Lake High Water Levels  
Our File No. 26989.86251

Dear Mr. O'Hearn and MLAA:

Please be advised the undersigned represents the Town of Merton. In light of your Association's upcoming meeting on June 1, 2021, I am writing this letter to you and all of the Association's members to clarify the Town's position regarding the Memorandum of Understanding provided to the Town as well as to clarify the Town's direction that your Association become a Lake Management District.

I have reviewed all documents presented to the Town regarding Moose Lake's high water levels. The Town and I have also met with the Association in order to discuss the high water issue and the proposed courses of action in order to remedy the same. The Town understands the high water level of the lake has been, and is continuing to be, an issue for residents and other stakeholders. However, the Town is not statutorily required to take any action regarding the high water level and it is the Town's belief that it is not the best situated party to resolve this issue.

Any action the Town undertakes to assist the Association in the complex matter of lowering the lake's levels would be voluntary. In addition, it is clear that the only dam on the lake is Highway C, which is under Waukesha County's jurisdiction. Contrary to assertions made by the Association at the Town board meeting on May 24<sup>th</sup>, 2021, the Town has never advised the Association to sue Waukesha County, but rather suggested, as non-legal advice, that the Association work together with the County to resolve the high water issue. For more information, please see my Memorandum dated April 30, 2021.

The Association's proposed resolution to the chronic high water level is to place a pipe between Moose Lake and Okauchee Lake in order to drain water from Moose to Okauchee, therefore lowering Moose Lake's high water level. Regardless of how the Association gets to their final solution of placing the pipe from Moose Lake to Okauchee Lake, the Association will need to work with both the County and a private land owner to place the pipe. The Association suggests



placing the pipe one of two ways, either by negotiating an easement between the County and the private landowner as identified in the Association's report from 2019, or by eminent domain.

The Town has received your Memorandum of Understanding (the "MOU") and following the Association's presentation at the Town's board meeting on May 24<sup>th</sup>, 2021, the Town has the following requests for the Association before the Town would consider signing onto the MOU.

The Town is suggesting that the Association circulate a petition pursuant to Wis. Stat. 33 in an effort to formally create a lake management district. In addition, the Association should hire legal counsel in order to discuss the process and powers that the Association would have as a lake management district under the statutes. Comments made during the Association's presentation at the Town board meeting lead me to believe the Association may not understand the powers it would have as a lake management district. As a lake management district, you would have all of the powers that you are requesting the Town use to resolve the high lake levels, but you would be in control of how those powers are utilized. The blind poll the Association conducted last year, for which the results were provided to the Town, indicates that residents on the lake would be in favor of the proposed actions the Association would be able to take legally and essentially independently as a lake management district. The poll also demonstrated that the Association would have the support to gather the requisite amount of signatures for the petition. In addition, the funds to resolve the lake's issue did not appear to pose a problem for the residents. Therefore, becoming a lake management district and managing the easement negotiation or eminent domain process independently of the Town would be the Association's quickest and most efficient manner of resolving its issue.

The Town will also need clear direction from the DNR as to what can be done regarding lowering Moose Lake's water levels. It is unclear from previous correspondence and the MOU what the DNR would approve as to potential resolutions to the high water problem and the details of those resolutions. Both the Town and the Association have corresponded with the DNR and Theresa Alvarez regarding the water level and potential resolutions, but any action that the Association takes would need to be approved of by the DNR, in writing, so that all parties involved have clear direction as to what type of engineering plans, approvals, and other required acts or documents the DNR would need in order to move forward with placing a pipe between Moose Lake and Okauchee Lake.

The Town will take no action on the MOU until the Association circulates a petition pursuant to the statutes to organize as a lake management district and until the Town corresponds with the DNR on particulars of the Association's proposed plans to place a pipe as discussed herein. I cannot give the Association legal advice but it is in the Association's best interest to hire counsel to walk them through the process and benefits of becoming a lake district.

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Sincerely,

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TJM/avr

cc: Town of Merton  
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