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Former DNR employee and researcher says pier would harm sensitive bay

Day two of pier hearing brings more witnesses against the pier's permit to stand

By Bridget Dean - Freeman Staff
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One of Tuesday's witnesses, David Marshall, can be seen here conducting research on the small, non-game fishes along the shorelines of St. John's Bay. Courtesy of James Nelson

WAUKESHA — Following a DNR-stamped permit approval in April 2023 for the city of Delafield to place a six-slip pier in Nagawicka Lake's St. John's Bay, two environmental groups filed for a contested case hearing to reverse the decision. Tuesday marked day two of the contested case hearing for the proposed pier. Five witnesses were slated to be called, including former chairman of the Delafield Parks and Recreation Commission and current Friends of Bark River president Jim Reiher, and former Wisconsin Department of Natural Resources employee David Marshall.

Administrative Law Judge Kristin Fredrick said the hearing will last all week, as the two filing parties — the Defenders of St. John's Bay and the Waukesha County Environmental Action League — as well as the two defendants — the DNR and the city — have a combined 20 witnesses.

Reiher told The Freeman his role at the hearing was not to suggest whether the pier should be placed or not, but to testify the city did not follow its 2020-24 Parks and Recreation five-year strategic plan, an 89-page document created by the commission.

The plan details a short-term goal to "consider, evaluate, and conduct due diligence inquiry into the potential installation of boat slips and pier for public boat access."

Reiher said the city was supposed to consider the results of "due diligence inquiry" for a proposed pier with up to 13 pontoon slips, which would possibly have been available to rent each summer for non-lake residents. Reiher testified that he added the inquiry conditions, yet said that the city never consulted for these studies.

Reiher told The Freeman that during cross-examination DNR attorney Michael Kowalkowki said the Delafield Common Council legally does not have to follow those conditions. Reiher agreed it wasn't legally required, but said that residents should be able to expect the city to follow strategic plans written and approved by its own commission.

Another witness called by the Defenders was Marshall, a semi-retired consultant. He previously worked as a water resource specialist with the DNR and has several published scientific research articles. Defenders' attorney Mary Beth Peranteau asked him to explain some of his research and what it means for the bay.

Marshall testified that the pier would have a negative impact on St. John's Bay's fish and aquatic plants due to the destruction of the edge of the water and shading; it would be detrimental to many small non-game fishes.

"Research has demonstrated that a pier has an impact ... now you start adding boat traffic," said Marshall, adding that the current 44 mostly private piers are above the threshold for the sensitive area that is the bay.

The hearing will resume at 9 a.m. each day this week in the Lee Sherman Dreyfus State Building in downtown Waukesha.