

Lakefront Development Advisory Commission

Report of Recommendation of the Lakefront Development Advisory Commission

Dock Bradford, LLC proposal for new development of the second floor of the Bradford Beach Pavilion

The Recommendation. At its February 17, 2021 meeting the Lakefront Development Advisory Commission passed by a vote of 9 to 0 a resolution recommending approval of the proposed project with the following conditions: **LDAC's support is contingent on compliance with the changes in the proposal reflected in the clarification of plan as explained at the Feb. 17th meeting and on the following:**

1. **Legally enforceable agreement.** The Commission's support is conditioned on understandings and commitments for initial and future operations being memorialized in a legally enforceable agreement between Dock Bradford, LLC. and any of its successors and Milwaukee County. The DNR in a letter dated Mar. 3, 2021 has indicated it has concerns for how public access will be enforced and has made some specifications of what an enforceable agreement for the operation of the project must include. The DNR letter is attached.
2. **Equitable Future changes.** LDAC will support future changes to the contract if they would increase public accessibility and constitute equitable and inclusive spaces racially, economically and geographically. In order to assure that public access and other goals of the project will be adhered to in the future, LDAC's support is contingent on requiring that anytime there is a requested amendment to the existing agreement or contract and any time a substantial change to the operations is at issue, equity and inclusion principles must be adhered to. LDAC support is contingent on the agreement with the County having a requirement that an equity (minority) impact statement that measures what the impact will be on the various ethnic and racial communities in the region be prepared and that consideration of it be at the core of review before any proposed changes are made in operations.
3. **Welcoming atmosphere and affordable prices.** All people should feel they are welcome at Bradford Beach and are not overstepping their boundaries. The design and operation of the venue must be welcoming to all groups who have chosen to make use of Bradford Beach and Milwaukee's lakefront for recreational purposes, and not designed to target a clientele of a specific age, race, or economic status. Because the cost of menu items made available might limit access, the Commission's support is also contingent on requiring that the agreement between the County be modified to provide that the menu at all times include items that are widely affordable so that any member of the public could afford a meal regardless of their economic status at all locations at which food and drink are offered.
4. **Access.** LDAC's support is also contingent on requiring that all the spaces made available for seating must be open to everyone and that all the seating at the beach, first-floor, and second-floor venues be available to patrons and non-patrons alike on a first-come basis. The existing lease does not allow closing any part of the premises from public access or the reservation of tables solely for paying patrons. As there is some evidence that these provisions were not always complied with, it is imperative that the County enforce them and that any new agreement specify that members of the public who are not customers and do not intend to become customers will not be asked or encouraged to leave the tables or seating, even if people who are not patrons occupy all of the seating provided. The agreement is also to provide that reservations will not be taken and, except for alcoholic beverages, those who are seated at any of the tables may provide their own food and drink. The DNR letter indicates that an enforceable agreement for the operation of the project must include clear language regarding signage and conduct of operations allowing full public access and require that social media and other advertising verbiage for The Dock be consistent with the lease agreement and operating plan in regard to this being a public space and not a destination restaurant.
5. **Access by persons with disabilities.** LDAC's recommendation is contingent on meeting requirements for access by persons with disabilities as determined by the City of Milwaukee. At a minimum the agreement with

the County should require that all menu and service options available on the second floor be accessible for persons with disabilities on the beach and/or the first floor.

6. **Employment and hiring.** In order to further equity and inclusion the agreement should also require that employees be paid a living wage and that the private vendor adhere to equitable and inclusive hiring and employment practices. LDAC recognizes that doing so might require higher prices for food and drink in order for the venture to be profitable.
7. **Special events.** The agreement requires that special events that reserve space will be limited to a handful a year and will require prior approval of Milwaukee County Parks. The DNR letter indicates that an enforceable agreement must include restrictions on special events to ensure limited interruptions of full public access.
8. **DNR review of Public Trust compliance.** LDAC's recommendation is contingent upon the results of review by DNR. The DNR letter dated March 3, 2021 expresses concerns about compliance with public trust requirements and indicates it is scheduled to meet further with County Parks on Mar. 16th. The letter is attached. The project must comply with the requirements outlined in the DNR letter and any additional requirements it may specify. If the DNR determines the proposed operations do not comply with Public Trust requirements, LDAC recommends that project should be rejected.
9. **Second floor building capacity.** LDAC conditions its recommendation on obtaining results from the structural study that the Parks department has requested that demonstrate load sufficiency with the long view in mind.
10. **Historic preservation review.** LDAC's recommendation is contingent on compliance with the requirements resulting from historic preservation review.

The Commission's purpose. The Lakefront Development Advisory Commission's purpose is to apply the criteria that have been approved by Milwaukee County and the City of Milwaukee and make nonbinding recommendations to the County, City and/or the State respecting whether a development proposal for the Lakefront should be approved. In order to accommodate consideration of its recommendations, the Commission issues a report that provides the basis for its recommendation. The report includes the Commission's understanding of the facts and records the vote of each member on the recommendation.

Commission consideration of the proposal. The second floor Bradford Beach project is proposed by Dock Bradford LLC, (Dock), that contracts with Milwaukee County to operate specified concessions at Bradford Beach. Dock is an Illinois for-profit with operations at Chicago's Montrose Beach and at Bradford Beach. There is a lease agreement between CCH Management, LLC (the sole owner of Dock Bradford, LLC) and Milwaukee County Parks executed on May 31, 2019. The Lease term is 5 years with 3 1-year options.

Dock submitted a Request for Review of the proposal that was made available to the public. The Request for Review was posted on the Milwaukee County Parks Department website. The Commission sought public comment on the matter prior to its public hearing on the proposal on Jan. 27, 2021.

Public hearing, Jan. 27, 2021.

Over 240 written submissions by the public were received prior to the hearing and posted for public review only one in favor of the proposal and the remainder in opposition. The meeting and hearing were conducted on Microsoft Teams because of distancing orders related to the COVID19 epidemic. At the conclusion of presentation of the proposal and discussion of it with the Commission, four members of the public appeared and presented their views. At the conclusion of the hearing the Commission adjourned to afford the public two weeks to make post hearing submissions. The minutes of the Jan. 27, 2021 meeting are attached.

Public hearing attendance. The members of LDAC present for the Jan. 27th hearing were Chairman Bill Lynch, Alderman Nik Kovac, Supervisor Sheldon Wasserman, chair of the County Parks, Education and Environment Committee, James Hall, Lauri Gorton, Guy Smith, Milwaukee County Parks Director, CoryAnn St.Marie-Carls, Lafayette Crump, Commissioner, Milwaukee Department of City Development, and Dan Bukiewicz (Intergovernmental Cooperation Council south), Supervisor Felesia Martin, John Budzinski, DNR ex officio, and Rep. Jonathan Brostoff, ex officio.

Prior to the hearing Chairman Lynch reported that LDAC had received a Joint Letter (10/31/20) and its enclosures which were attachments to HRA21-25 and is attached to the Jan. 27th meeting minutes. The letter respecting application of public trust requirements to lakefront development proposals was from Midwest Environmental Advocates, Wisconsin Wildlife Federation, Wisconsin Greenfire, Milwaukee Riverkeeper, Milwaukee Water Commons and Preserve Our Parks. Mr. Tony Wilkin Gibart of Midwest Environmental Advocates summarized the letter and the concerns of the 6 organization who joined in it. He also submitted his comments in writing. They are attached to Jan. 27th minutes.

The Commission had also received a staff report from the Milwaukee County Parks Department. It raised concerns about utilities, signage, including its lighting, and structural concerns, including requirements for additional engineering reports. It also included Architectural and Site comments, including the need for documentation of State historic preservation plan review. Respecting Americans with Disabilities Act (ADA) review, the report included Park's support for full accessibility to the container bar, and that Milwaukee County's Office of Persons with Disabilities had agreed an analysis must be performed regarding ADA. Respecting Public Trust Doctrine requirements for food service on lakebed lands, the report indicated that Wisconsin DNR was then reviewing the proposal for compliance with the regulations applicable to lakebed lands.

Commission meeting to act on proposal, Feb. 17th, 2021.

On the day before the Commission was scheduled to meet to discuss the Dock Bradford LLC proposal, Dock submitted a document entitled Clarification of Operation Plan. A copy is attached.

On February 17th, 2021, LDAC met virtually via Microsoft Teams to review the materials and comments that had been submitted and to discuss and act on its recommendations respecting this proposal. Additional public comments received after the public hearing brought the total submissions to over 275.

Feb. 17, 2021 meeting attendance. The members of LDAC present for the Feb. 17, 2021 meeting were Chairman Bill Lynch, Alderman Nik Kovac, Supervisor Sheldon Wasserman, chair of the County Parks, Education and Environment Committee, James Hall, Guy Smith, Milwaukee County Parks Director, Lafayette Crump, Commissioner, Milwaukee Department of City Development, Adam Tindall-Schlicht, Milwaukee Port Director, alternate for the Milwaukee harbor district chairman, CoryAnn St.Marie-Carls, Dan Bukiewicz (Intergovernmental Cooperation Council south), Supervisor Felesia Martin, John Budzinski, DNR ex officio, and Rep. Jonathan Brostoff, ex officio.

Mar. 3, 2021 letter from DNR. John Budzinski in his capacity as Secretary's Director for Southeast Wisconsin of DNR submitted a letter expressing DNR's concerns respecting public access and compliance with Public Trust requirements. This report incorporates the letter's contents. A copy of the letter is attached.

At both the public hearing and the Feb. 17th, 2021, meeting, Mr. Luke Cholodecki and Mr. Nicholas Hynes presented on behalf of Dock Bradford LLC. The Request for Review and a set of drawings submitted by Dock Bradford, LLC., are attached.

Project Description: Dock proposes to install a modular service bar constructed from a shipping container on the second level of the Bradford Beach Pavilion. It would be positioned against the north wall of the structure on the south end of the second floor. It would be removeable if Dock Bradford no longer is operating at Bradford Beach. Doc would supply tables and chairs and lounge areas with umbrellas in the now vacant area to the north. Food and drink service would be offered by wait-staff. Food would be brought from the existing kitchen on the first floor. There are restrooms on the first level, but none are proposed to be added to the second level. There are stairways on the east and south sides of the Pavilion to the second floor, but no elevator, and none is proposed. In addition to the two staircases, there is also access to the second floor from a pedestrian bridge over Lincoln Memorial Drive. A path down from the bluff near the beginning of Wahl Ave. goes to the overpass. The closest parking lot is west of Lincoln Memorial Drive and has 87 total spaces, four of which are handicapped, 2 at the north end across from the Pavilion and two at the south end. In addition to servicing second floor patrons, the second-floor bar would accommodate walk-up service. There is window service for food and drink on the first floor of the Pavilion and at

two satellite bars in Tiki Huts on the beach. Alcoholic beverages are available and would be at the proposed second-floor location as well. The spacing of tables and seating would allow for access by the public from the overpass to the two stairways down to the beach level. The proposed development of the second floor would provide a sit-down dining experience with table service. There are picnic tables on the first level that now are reserved for the Dock's patrons. Now seating at the Tiki Huts is exclusively for customers. Currently people are not allowed to bring their own liquor to drink anywhere at Bradford beach. The Dock will not permit people to bring their own liquor at tables at which they provide service in accordance with liquor license requirements. At the hearing the Dock indicated that they were proposing that there be a special menu for items that would be only available on the second floor. The proposed price of the most expensive item on that menu was \$21.95. The proposed hours of operation are Sun.-Thu, 11am-10pm and Fri-Sat 10am-10pm. At the hearing Dock indicated the Dock is open to doing special events and will service special events in the second-floor area, including those brought to it by Parks, and that it has the right to do so. While its website includes a means for requesting a special event, it is not part of its business plan to do so often.

At the LDAC Feb. 17th meeting the Dock explained the clarification of its operations plan. The clarification resulted from questions presented to the Dock by the DNR. Dock indicated it is now proposing to change its current operations. It would provide table service by wait-staff at the Tiki Bars and on the first level as well as on the second floor. Dock would also offer all menu items, including those previously designated for the second floor only, at all three venues: the Tiki Huts, the first floor and the proposed second-floor area. On the second-floor food will only be able to be ordered by persons sitting at a table, not by people who walk up to the bar. Also, on the first-floor people will have to be seated at a table to order from the more extensive menu. There will be a less extensive menu for those who walk up to the first-floor concession bar to order food or order food at the bars on the first level and beach. If they decide to stop providing table service, they will do so for both the first and second floor areas. They have food runners who bring the food out to people who order it. Dock indicated it was proposing that it would change current practice and all the seating at the three venues would be available to patrons and non-patrons alike on a first-come basis. Members of the public who are not customers and do not intend to become customers will not be asked or encouraged to leave the tables or seating, even if people who are not patrons occupy all of the seating provided. They will not take reservations. Except for alcoholic beverages, those who are seated at any of the tables may provide their own food and drink. Dock asserts that no parking spaces will be specifically reserved just for patrons of the restaurant or dedicated for the Dock's operations. They assert that the first-floor dining and south satellite tiki bar are ADA accessible as are the first-floor restrooms. The Dock is awaiting the City's determination of whether the proposal meets ADA requirements. Included is the matter of whether an elevator to the second level will be required. Any special event request must be submitted to Milwaukee County Parks for approval. They do not anticipate having more than a handful of special events at most a year.

The application of LDAC criteria.

1. Public access

The Public Trust. Among the criteria LDAC is required to apply is that the project must conform to the Public Trust Doctrine. LDAC had received a Joint Letter (10/31/20) and its enclosures which are attachments to the minutes of the January 27th meeting of LDAC. The joint letter was from Midwest Environmental Advocates, Wisconsin Wildlife Federation, Wisconsin Greenfire, Milwaukee Riverkeeper, Milwaukee Water Commons and Preserve Our Parks. Also, Commissioner Budzinski, head of the Milwaukee regional office of the State Department of Natural Resources, explained the pavilion is on filled lakebed land and is part of the lakebed land granted to the County by the State in 1921 specifically for public park and boulevard purposes. He indicated under the requirements of the State Constitution, the State has an affirmative obligation to ensure lakebed areas are open and maintained for the public's use consistent with the Public Trust requirements. Destination restaurants, bars and similar commercial facilities are not an allowable use of lakebed lands under the Public Trust Doctrine. Private restaurants are an incompatible use under the Public Trust Doctrine. Concessions that are ancillary to the public's use are certainly allowable. The DNR has guidelines for operation of food services on public trust lands. The representatives of Dock clarified that He indicated that DNR is conducting a technical and legal review of this project, has met with the Parks Department and will meet again with Milwaukee County Parks to share DNR's

findings about what are and are not allowable uses. LDAC Commissioner, Milwaukee County Parks Department Director, Guy Smith, and staff met with DNR representatives on Friday, Feb 12th. At the date of this report the DNR has not completed its review. In a letter dated Mar.3, 2021, DNR expressed concerns respecting public access and compliance with Public Trust requirements. “At this time, DNR has concerns for how public access will be enforced. These concerns are based on social media posts touting the Dock as a destination restaurant, rather than an amenity to the public beach, and media accounts of vendor signs in 2020 indicating restricted access to tented areas and other seating. DNR’s concerns are consistent with long standing public trust requirements and correspondence to Milwaukee County.” The letter went on to say,

“In our opinion, an enforceable agreement for the operation of the project must include clear language regarding signage and conduct of operations allowing full public access, and restrictions on special events to ensure limited interruptions of full public access. Further, the county should require that social media and other advertising verbiage for The Dock be consistent with the lease agreement and operating plan in regard to this being a public space and not a destination restaurant....

“Projects in lakebed grant areas are highly visible. Stakeholders are vigilant, know the Bradford Beach lakebed grant was made for the public’s use and enjoyment of the area and understand that concessions which are ancillary to the public use are allowable and private restaurants are incompatible under the public trust doctrine. Any citizen may contest infringement of the public trust.”

Another meeting of Milwaukee County Parks department and DNR is scheduled for Mar. 16, 2021.

LDAC’s recommendation is contingent upon the results of review by DNR. If the DNR determines the proposed operations do not comply with Public Trust requirements, the project should be rejected.

The bringing of monetary resources to the entity that controls or has been granted the lakebed is often raised as an issue, but LDAC was informed that an Attorney-General’s opinion concludes that it is only reasonable to insist that public trust purposes be preserved so that all citizens of the State can enjoy equal access to the lake which the State holds in trust for its people. A letter to Milwaukee County Executive Ament respecting a lakefront bar and restaurant proposal in 1996 told the County that they could not develop such facilities. It is appropriate to have concessions and some amenities for people who are using the park, but it cannot become a commercial restaurant or bar establishment.

Whether providing food and drink on public trust land comports with the public trust is fact specific. LDAC’s determination is affected by the understandings of operations presented to LDAC by proponents and the Milwaukee County Parks Department. Essential are the following commitments: All the seating at the satellite (TiKi) bars, and on both the first and second floors will be available to patrons and non-patrons alike on a first-come basis. Members of the public who are not customers and do not intend to become customers will not be asked or encouraged to leave the tables or seating, even if people who are not patrons occupy all of the seating provided. Tables and other seating will not be reserved. The full range of menu items, including relatively low-priced items, will be available at all three locations. Except for alcoholic beverages, those who are seated at any of the tables may provide their own food and drink. Special events that reserve space will be limited to a handful a year and will require prior approval of Milwaukee County Parks. Furthermore, as specified by DNR, there must be an enforceable agreement for the operation of the project that must include clear language regarding signage and conduct of operations allowing full public access, and restrictions on special events to ensure limited interruptions of full public access. Further, the county should require that social media and other advertising verbiage for The Dock be consistent with the lease agreement and operating plan in regard to this being a public space and not a destination restaurant

Access for persons of all socio-economic and cultural groups and preferences.

LDAC is also required to determine how the project provides access throughout the lakefront by all Milwaukee County residents and visitors, including access for persons of all socio-economic and cultural groups and preferences. LDAC recommends public accessibility that includes equity and inclusion.

The Commission considered the numerous public comments and the testimony it received respecting equitable and inclusive public access. The representatives of Dock Bradford, LLC. brought up the issue of what the impact of

their proposed expansion would be on who it is who comes to the beach. They asserted that the Bradford Beach House and Bradford Beach is filled with people who are not residents of the neighborhood, coming from all places far and near, and it is not necessarily welcoming to older residents and families and that with table service they will be better able to serve the residents that live along that area. Census figures show that the population within ½ mile of the pavilion is 88% white, 4% black, 4% two or more races, 2% Asian, and 4% are Hispanic. The Commission considered that areas of the lakefront tend to be racially segregated, with the Bradford Beach pavilion area predominately white, and the area south of Bradford Beach predominately African-American. At the Feb. 17th meeting Dock's representative asserted that they want to be a restaurant and concessionaire for everybody who wants to come to the beach, not only for young volley-ball players. The Commission discussed what impact the proposed project might have on the goal of providing access to all socio-economic and cultural groups to Bradford Beach.

2. Change of existing use.

LDAC is to consider how the proposed use encourages active and passive recreation, consistent with, but not limited to, existing uses. LDAC is also required to recognize the unique opportunities of different parts of the lakefront and the need to budget the allocation of lakefront lands carefully because there is only a fixed amount of it. The second-floor space proposed to be used as a bar and restaurant is currently open space available to everyone for unorganized activities and non-activities. The proposal would dedicate the space for a restaurant and bar with seating. Many members of the public questioned the need for additional opportunities for eating and drinking at Bradford Beach.

3. Building structural evaluation.

LDAC is required to evaluate buildings and structures with the long view in mind. The Parks Department informed the Commission that it was seeking a revised structural memo from Dock Bradford, LLC., that meets the following requirements:

1. Anything that is a part of the final design load, including related wind, snow, and dead loads, should be accounted for in a revised structural memo.
2. The consulting structural engineer must inspect the bottom of the subject slab.
3. A site visit must be made to verify the capacity of the slab.
4. Structural calcs are assumed to be reviewed as a part of the City permit and should be provided to Milwaukee County with that permit package.

LDAC conditions its recommendation on obtaining results from this structural study that demonstrates load sufficiency with the long view in mind.

4. Access by persons with disabilities.

LDAC is required to determine how a proposal conforms to current laws and regulations. LDAC is also required to determine how a project provides access to persons with disabilities. Currently the proposal does not include elevator or accessible ramp access to the second floor. It does not appear that there is any other route to the second floor that is wheel-chair accessible. The proposed second-floor bar and restaurant area will not be fully accessible. The City of Milwaukee Department of Neighborhood Services is conducting a review to determine whether the project complies with requirements for access, and Milwaukee County's Office of Persons with Disabilities is considering the matter as well. LDAC received and considered a memo respecting accessibility issues from Disability Rights Wisconsin. It is attached. LDAC is in strong support of this operation being fully compliant with the Americans with Disabilities Act to the maximum degree possible as is allowable by the ADA. LDAC's recommendation is contingent on meeting requirements for access by persons with disabilities as determined by the City of Milwaukee. At a minimum the agreement with the County should require that all menu and service options available on the second floor be accessible for persons with disabilities on the beach and/or the first floor. Dock Bradford's proposal includes such a requirement.

5. Future expansion.

LDAC is to consider what will happen when this or nearby facilities need to expand. Dock Bradford, LLC. had proposed that in addition to the modular ship container bar additional such units be installed for covered seating. They had also proposed adding a stairway to the top of the bar and tables for service on the bar's roof. These features were not approved when the City of Milwaukee Historic Preservation Commission reviewed the project. Dock Bradford LLC indicated they were no longer seeking such an expansion. To assure that operations will comply with access, public trust, and other legal and policy requirements, the Commission also recommends that the understandings and commitments respecting initial and future operations be required to be memorialized in a legally enforceable agreement between Dock Bradford LLC. and any of its successors and Milwaukee County.

6. Parking.

The Commission is required to determine how a proposal will accomplish the goal of discouraging traffic congestion. The Commission is to determine what will be the impact of the development on parking needs and traffic and pedestrian flow. Dock Milwaukee asserts that the proposed expansion of their bar and restaurant operations will not require additional parking. The closest parking lot across Lincoln Memorial Drive has 87 spaces, 4 of which are handicapped spaces, two at the north end and two at the south end. Several citizen comments questioned the assertion that the parking lot is adequate to support the proposed increase in use of the Pavilion, especially when family parties or other gatherings take place.

7. Historic preservation review.

The County staff report to LDAC indicates the need for documentation of State historic preservation plan review. The proposal has obtained approval with conditions from the City Historic Preservation Commission. LDAC's recommendation is contingent on compliance with the requirements resulting from such review.

LDAC recommendation.

Commissioner Tindall-Schlicht moved that LDAC support the proposal with contingencies. LDAC's support is contingent on compliance with the changes in the proposal reflected in the clarification plan as explained at the Feb. 17th meeting and on the following:

- 1. Legally enforceable agreement.** The Commission's support is conditioned on understandings and commitments for initial and future operations being memorialized in a legally enforceable agreement between Dock Bradford, LLC. and any of its successors and Milwaukee County. The DNR in a letter dated Mar. 3, 2021 has indicated it has concerns for how public access will be enforced and has made some specifications of what an enforceable agreement for the operation of the project must include. The DNR letter is attached.
- 2. Equitable Future changes.** LDAC will support future changes to the contract if they would increase public accessibility and constitute equitable and inclusive spaces racially, economically and geographically. In order to assure that public access and other goals of the project will be adhered to in the future, LDAC's support is contingent on requiring that anytime there is a requested amendment to the existing agreement or contract and any time a substantial change to the operations is at issue, equity and inclusion principles must be adhered to. LDAC support is contingent on the agreement with the County having a requirement that an equity (minority) impact statement that measures what the impact will be on the various ethnic and racial communities in the region be prepared and that consideration of it be at the core of review before any proposed changes are made in operations.
- 3. Welcoming atmosphere and affordable prices.** All people should feel they are welcome at Bradford Beach and are not overstepping their boundaries. The design and operation of the venue must be welcoming to all groups who have chosen to make use of Bradford Beach and Milwaukee's lakefront for recreational purposes, and not designed to target a clientele of a specific age, race, or economic status. Because the cost of menu items made available might limit access, the Commission's support is also contingent on requiring that the agreement between the County be modified to provide that the menu at all times include items that are widely affordable so that any member of the public could afford a meal regardless of their economic status at all locations at which food and drink are offered.

4. **Access.** LDAC's support is also contingent on requiring that all the spaces made available for seating must be open to everyone and that all the seating at the beach, first-floor, and second-floor venues be available to patrons and non-patrons alike on a first-come basis. The existing lease does not allow closing any part of the premises from public access or the reservation of tables solely for paying patrons. As there is some evidence that these provisions were not always complied with, it is imperative that the County enforce them and that any new agreement specify that members of the public who are not customers and do not intend to become customers will not be asked or encouraged to leave the tables or seating, even if people who are not patrons occupy all of the seating provided. The agreement is also to provide that reservations will not be taken and, except for alcoholic beverages, those who are seated at any of the tables may provide their own food and drink. The DNR letter indicates that an enforceable agreement for the operation of the project must include clear language regarding signage and conduct of operations allowing full public access and require that social media and other advertising verbiage for The Dock be consistent with the lease agreement and operating plan in regard to this being a public space and not a destination restaurant.
5. **Access by persons with disabilities.** LDAC's recommendation is contingent on meeting requirements for access by persons with disabilities as determined by the City of Milwaukee. At a minimum the agreement with the County should require that all menu and service options available on the second floor be accessible for persons with disabilities on the beach and/or the first floor.
6. **Employment and hiring.** In order to further equity and inclusion the agreement should also require that employees be paid a living wage and that the private vendor adhere to equitable and inclusive hiring and employment practices. LDAC recognizes that doing so might require higher prices for food and drink in order for the venture to be profitable.
7. **Special events.** The agreement requires that special events that reserve space will be limited to a handful a year and will require prior approval of Milwaukee County Parks. The DNR letter indicates that an enforceable agreement must include restrictions on special events to ensure limited interruptions of full public access.
8. **DNR review of Public Trust compliance.** LDAC's recommendation is contingent upon the results of review by DNR. The DNR letter dated March 3, 2021 expresses concerns about compliance with public trust requirements and indicates it is scheduled to meet further with County Parks on Mar. 16th. The letter is attached. The project must comply with the requirements outlined in the DNR letter and any additional requirements it may specify. If the DNR determines the proposed operations do not comply with Public Trust requirements, LDAC recommends that project should be rejected.
9. **Second floor building capacity.** LDAC conditions its recommendation on obtaining results from the structural study that the Parks department has requested that demonstrate load sufficiency with the long view in mind.
10. **Historic preservation review.** LDAC's recommendation is contingent on compliance with the requirements resulting from historic preservation review.

Commission Action: The motion for approval with conditions was adopted by a unanimous 9-0 roll-call vote of the Commissioners. Voting in favor were Ald. Nik Kovac, Sup. Sheldon Wasserman, Sup. Felesia Martin, James Hall, Guy Smith, Lafayette Crump, Adam Tindall-Schlicht, Dan Bukiewicz, and Chairman Bill Lynch.

William H. Lynch

LDAC Chairperson

Enclosures: Minutes, LDAC Jan. 27, 2021 meeting; Dock Request for Review and drawings; Clarification of Operation Plan; DNR letter, Mar.3,2021. See also Milwaukee County Legistar calendar Lakefront Development Advisory Commission meetings of Jan. 27 and Feb. 17, 2021.

WHL/whl



March 3, 2021

William H. Lynch
Chairman, Lakefront Development Advisory Commission
Milwaukee County Courthouse, Room 306
901 N. 9th Street
Milwaukee, WI 53233

Subject: DNR comments on the Dock's proposal for the Bradford Beach Pavilion

Dear Mr. Lynch:

Thank you for the opportunity to comment on the draft February 17, 2021, Lakefront Development Advisory Commission (LDAC) report on the Dock's proposal for the Bradford Beach Pavilion (attached). The department acknowledges LDAC's recommendation is contingent upon DNR's input concerning how the Dock proposal complies with Public Trust requirements.

At this time, DNR has concerns for how public access will be enforced. These concerns are based on social media posts touting the Dock as a destination restaurant, rather than an amenity to the public beach, and media accounts of vendor signs in 2020 indicating restricted access to tented areas and other seating. DNR's concerns are consistent with long standing public trust requirements and correspondence to Milwaukee County.

In our opinion, an enforceable agreement for the operation of the project must include clear language regarding signage and conduct of operations allowing full public access, and restrictions on special events to ensure limited interruptions of full public access. Further, the county should require that social media and other advertising verbiage for The Dock be consistent with the lease agreement and operating plan in regard to this being a public space and not a destination restaurant.

Under the Wisconsin constitution, Article IX, Section 1, the State of Wisconsin holds all navigable waters in trust for the people of the State of Wisconsin and the nation and has an affirmative obligation to ensure lakebed areas, including those that are filled pursuant to state authorization, are open and maintained for the public's use consistent with the public trust requirements. The Department takes this important responsibility seriously and must scrutinize any plans which may incorporate private use of lakebed areas.

Projects in lakebed grant areas are highly visible. Stakeholders are vigilant, know the Bradford Beach lakebed grant was made for the public's use and enjoyment of the area and understand that concessions which are ancillary to the public use are allowable and private restaurants are incompatible under the public trust doctrine. Any citizen may contest infringement of the public trust.

Thanks again for the opportunity to comment on the draft LDAC report. The department has an important public trust role and is glad to be a resource to the LDAC, Milwaukee County Parks and stakeholders. DNR may have more information to share after meeting with Milwaukee County Parks, March 16, 2021. Please contact Michelle Scott, DNR Waterways Supervisor, (920) 252-0679, Michelle.Scott@wisconsin.gov, or me if you have questions or we can assist you and the LDAC further.

Sincerely,

John Budzinski
Secretary's Director for Southeast Wisconsin
(414) 303-0132
John.Budzinski@wisconsin.gov

Encl: Draft February 2021, Lakefront Development Advisory Commission (LDAC) report on the Dock's proposal for the Bradford Beach Pavilion

Cc: Guy Smith, Director Milwaukee County Parks
Michelle Scott, DNR
Mike Kowalkowski, DNR