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STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0708

State of Minnesota,
Respondent,

vs.

Mark Brian LaFon,
Appellant.

Filed July 15, 2008
Reversed
Johnson, Judge

Crow Wing County District Court
File No. T4-04-7076

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

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Considered and decided by Toussaint, Chief Judge; Halbrooks, Judge; and Johnson, Judge.

U N P U B L I S H E D O P I N I O N

JOHNSON, Judge

Since 1966, Leland LaFon has owned a home on the shore of Cross Lake in Crow Wing County. The property includes a year-round, wooden boat dock that extends from

one corner of his shoreline property into the lake. The dock, which has remained in the same position since 1966, does not project from the shoreline in a perpendicular manner but, rather, at a rather acute angle so that it is located somewhat conspicuously in front of the adjacent property.

In August 2004, Crow Wing County amended its water-surface-use ordinance to require that lakeshore docks be confined to the riparian zone of the property to which the dock is attached. After the LaFons' next-door neighbor complained to the sheriff's department about the LaFon dock, the county issued a citation to Mark Brian LaFon, Leland LaFon's son. After a one-day bench trial, the district court found Mark LaFon guilty of a misdemeanor for violating the county's water-surface-use ordinance. On appeal, Mark LaFon raises numerous issues. We conclude in part II.A. that enforcement of the ordinance violates the LaFons' right to continue a pre-existing, nonconforming use, and we conclude in part III that the state failed to prove that Mark LaFon engaged in any conduct that violated the ordinance. Therefore, we reverse.

FACTS

The LaFon property is located on the east side of Cross Lake at a place where the uneven shoreline generally runs east and west. The LaFon dock begins at the northeast corner of the LaFon property and runs in a northeasterly direction. Aerial photographs with property lines overlaid were introduced into evidence at trial, and those photographs show that the LaFon dock extends at an angle across approximately half of the width of the property to the east of the LaFon property.

Shortly after Leland LaFon purchased the property in 1966, he and the neighbor to the east reached an understanding that the boat dock could remain in the same location because the water directly in front of the LaFon property was too shallow to allow the LaFons to put a boat in the water there. The neighbor sold the property sometime between 1975 and 1984. Several years later, that purchaser sold the property to his daughter and his son-in-law, Hans Engman. Leland LaFon has owned his property continuously since 1966.

Crow Wing County first adopted a water-surface-use ordinance in 2000. In August 2004, the county amended the ordinance to require that all boat docks be confined within the riparian zone of the owner or lessee of the dock. Crow Wing County, Minn., Water Surface Use Ordinance § 6, ¶ 2 (2004). At approximately the same time, Engman lodged a complaint with the Crow Wing County Sheriff's Department, stating that the LaFon dock interfered with the view of the lake from his home and that it violated the amended ordinance. The sheriff's department issued a citation to Mark LaFon, Leland LaFon's son, for "Violation of Dock Placement," citing the county's water-surface-use ordinance. A notation on the citation indicates that the investigating officer had contacted "the owner of the dock (Mark LaFon) and advised him of the violation." The notation further indicates that Mark LaFon refused to move the dock.

In May 2005, Mark LaFon moved to dismiss the charge, but the district court denied the motion. On August 29, 2006, the district court conducted a one-day bench trial. A county surveyor testified that he surveyed the Engman and LaFon properties and determined the property line between the two. Based on that property line, and using the

formula in the ordinance, the surveyor determined the lines dividing the riparian zones of each property. The map of his survey, which was a trial exhibit, shows that the LaFon dock extends into the Engman riparian zone. Both Mark LaFon and Leland LaFon admitted that the boat dock crosses the line that divides the two riparian zones, as defined by the water-surface-use ordinance.

On November 20, 2006, the district court issued a two-page order and memorandum, finding Mark LaFon guilty. The district court sentenced Mark LaFon to 30 days in jail but stayed the sentence for one year on the condition that he remove the dock or confine it to the LaFon riparian zone. Mark LaFon appeals.

D E C I S I O N

I. Validity of Ordinance

Mark LaFon challenges the validity of the county's ordinance in four ways.

A. Statutory Authority

Mark LaFon argues that the county did not have statutory authority to adopt and enforce the ordinance. "The county governments of this state can exercise only such powers as are expressly granted them by the legislature and such as may be fairly implied as necessary to the exercise of the express powers." *Cleveland v. County of Rice*, 238 Minn. 180, 181, 56 N.W.2d 641, 642 (1952); *see also Altenburg v. Board of Supervisors of Pleasant Mound Twp.*, 615 N.W.2d 874, 880 (Minn. App. 2000) ("counties . . . are entities of state creation and have only the powers conferred to them by the state"), *review denied* (Minn. Nov. 21, 2000). A zoning ordinance is an exercise of "police power exerted in the public interest." *State ex rel. Berndt v. Iten*, 259 Minn. 77, 80, 106

N.W.2d 366, 368 (1960). Counties are authorized to enact zoning ordinances "for the purpose of promoting the health, safety, morals, and general welfare of the community." Minn. Stat. § 394.21 (2006). An ordinance is ultra vires and, thus, without legal force or effect if it is "beyond the limits of the power granted" to the enacting political subdivision. *Lilly v. City of Minneapolis*, 527 N.W.2d 107, 113 (Minn. App. 1995), *review denied* (Minn. Mar. 29, 1995). The interpretation of an ordinance is a question of law for the court. *Frank's Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604, 608 (Minn. 1980).

The ordinance at issue here was enacted pursuant to a statute that provides, in pertinent part:

> A county board may, by ordinance, regulate the surface use of bodies of water located entirely or partially within the county . . .
>
> . . . .
>
> A county board may:
>
> . . . .
>
> (3) regulate the construction, installation, and maintenance of permanent and temporary docks and moorings in a manner consistent with state and federal law . . . .

Minn. Stat. § 86B.205, subds. 2(a), 5(3) (2006). The relevant portions of the water-surface-use ordinance provide:

> Section 6: SURFACE ZONING OF ALL WATERS OF CROW WING COUNTY BY RESTRICTING THE PLACEMENT OF DOCKS.

> These regulations affect all docks . . . placed in public water in Crow Wing County and are in addition to any applicable state statute, rule, or regulation affecting the placement of such structures in public water.
>
> Regulations:
>
> . . . .
>
> 2. Docks, piers, wharfs, boatlifts and moored boats must be confined to the owner's or lessee's riparian zone. The method for describing these zones where the dividing lines are not obvious is described in Exhibit A, attached to and made a part of this ordinance by reference.

Crow Wing County, Minn., Water Surface Use Ordinance § 6, ¶ 2 (2004).

The ordinance's requirement that docks be confined to an owner's or lessee's riparian zone is within the enabling statute's authorization for counties to "regulate the construction, installation, and maintenance" of docks. Minn. Stat. § 86B.205, subd. 5(3). Mark LaFon argues that the ordinance is beyond the scope of section 86B.205 because the ordinance is concerned with "the placement" of docks instead of "the . . . maintenance" of docks. Statutory authorization for regulation is not defeated by the fact that the county ordinance and the state statute use slightly different language. Thus, the county had statutory authority to enforce its ordinance.

B. Reasonableness

Mark LaFon also argues that the ordinance is unconstitutionally unreasonable because it does not accomplish a public purpose. In order to show that an ordinance is unreasonable, a challenger must show that the ordinance "has no substantial relationship to public health, safety, morals, or general welfare." *County of Freeborn v. Claussen*,

295 Minn. 96, 100, 203 N.W.2d 323, 326 (1972); *State v. Reinke*, 702 N.W.2d 308, 311 (Minn. App. 2005) (quotation omitted). "[I]f reasonableness of an ordinance is debatable, courts will not interfere with the legislative discretion." *Claussen*, 295 Minn. at 101, 203 N.W.2d at 326 (quotation omitted). "A municipal ordinance is presumed constitutional; the burden is on the party attacking the ordinance's validity to prove an ordinance is unreasonable or that the requisite public interest is not involved, and consequently that the ordinance does not come within the police power of the city." *Northern States Power Co. v. City of Oakdale*, 588 N.W.2d 534, 541 (Minn. App. 1999) (citing *City of St. Paul v. Dalsin*, 245 Minn. 325, 329, 71 N.W.2d 855, 858 (1955)). This argument presents a question of law that is reviewed de novo. *See County of Morrison v. Wheeler*, 722 N.W.2d 329, 337 (Minn. App. 2006), *review denied* (Minn. Dec. 20, 2006).

By its own terms, the public purpose of the ordinance is to "insure safety for persons and property in connection with the use of" the waters of the county and "to harmonize and integrate the varying uses of" those waters, thereby "promot[ing] the general health, safety and welfare of the citizens of Crow Wing County, Minnesota." Crow Wing County, Minn., Water Surface Use Ordinance § 1 (2004). On its face, this is a legitimate purpose. Section 6 accomplishes this purpose, in part, by defining the rights of waterfront owners in an orderly manner by reference to the property lines of each lot. Mark LaFon has not demonstrated that "the requisite public interest is not involved" or that "the ordinance does not come within the police power of the city." *Northern States Power*, 588 N.W.2d at 541.

C. Vagueness

Mark LaFon also argues that the ordinance is unconstitutionally vague. The Due Process Clause of the Fourteenth Amendment requires that a statute or ordinance imposing criminal penalties not be unduly vague. *State v. Newstrom*, 371 N.W.2d 525, 528 (Minn. 1985). To satisfy the requirements of due process, a criminal offense must be defined with sufficient definiteness such that an ordinary person may understand what conduct is prohibited and the offense is not susceptible to arbitrary and discriminatory enforcement. *Thul v. State*, 657 N.W.2d 611, 618 (Minn. App. 2003), *review denied* (Minn. May 28, 2003). "A statute is not unconstitutionally vague where the words are commonly understood . . . ." *Irongate Enters., Inc. v. County of St. Louis*, 736 N.W.2d 326, 332 (Minn. 2007). "The constitutionality of an ordinance presents a legal question, reviewable de novo by this court." *Wheeler*, 722 N.W.2d at 337.

The county's water-surface-use ordinance defines "riparian zone" by both a verbal description and an exhibit that is incorporated by reference into the ordinance. Water Surface Use Ordinance § 6, ¶ 2. The exhibit contains a diagram showing how the side boundaries of a riparian zone are determined. In essence, the side boundaries of a riparian zone are determined in three steps. First, the ordinance fixes the points where the property lines of each parcel of land reach the shoreline; second, the ordinance draws straight lines connecting those points; third, the ordinance extends lines into the water that bisect the angles formed by lines derived in the second step. The third step is necessary because the riparian zones of property owners in a bay might overlap if the ordinance were to rely on the extended property lines.

The ordinance defines the side boundaries of a riparian zone in a common-sense manner that an ordinary person may understand. Mark LaFon's own testimony on direct examination tends to defeat his vagueness argument:

> Q: Do you agree that the LaFon dock begins on LaFon property?
>
> A: Yes, sir.
>
> Q: And does it extend across the property line between LaFon and Engman if you extend it out into the water? Does it extend across that property?
>
> A: Yes it does.

Similarly, on cross-examination, Mark LaFon testified as follows:

> Q: Now, Mr. LaFon, if I understand your testimony right, you admit that your dock goes into the riparian zone of your neighbors, the Engmans, right?
>
> A: As the new law says, yes.

Mark LaFon's assertion of vagueness is misdirected because it relates to the lack of clarity concerning the navigable portion of the lake, which, under the ordinance, would define the outer-most boundary of the LaFon riparian zone (unless the side boundaries were to intersect without reaching the navigable portion of the lake). But the lack of clarity concerning the navigable portion of the lake is not relevant because the state did not seek to prove that the dock extended beyond the line of navigability. Rather, the state sought to prove only that the dock extended over a side boundary of the LaFon riparian zone and into the Engman's riparian zone, and there appears to be no dispute that the dock crosses the side boundary at a place where the lake is not navigable. Thus, the ordinance is not unconstitutionally vague as applied to the facts of this case. *See State v.*

Kortkamp, 633 N.W.2d 863, 866-67 (Minn. App. 2001) (holding that criminal statute prohibiting obstruction of access to parking space for physically disabled not unconstitutionally vague).

D. Ex Post Facto Clause

Mark LaFon also argues that the ordinance punishes conduct that was committed before the enactment of the ordinance in violation of the ex post facto clause of the United States and Minnesota constitutions. *See* U.S. Const. art. I, § 9; Minn. Const. art. I, § 10. We review alleged violations of ex post facto principles de novo. *Rud v. Fabian*, 743 N.W.2d 295, 301 (Minn. App. 2007).

The state may prosecute conduct that began before enactment of a statute or ordinance if the "course of conduct was continuous." *State v. Howard*, 360 N.W.2d 637, 640 (Minn. App. 1985); *see also Samuels v. McCurdy*, 267 U.S. 188, 193, 45 S. Ct. 264, 265 (1925). The alleged course of conduct at issue here is the alleged failure to "confine" the dock to the LaFon riparian zone. The trial record reveals that the alleged course of conduct began not later than 1966, long before the ordinance was enacted, continued after the enactment of the ordinance, and was continuing at the time of trial. Because the alleged criminal conduct, if it occurred at all, was occurring after the amendment to the ordinance, the ordinance does not violate the ex post facto clause.

In sum, the ordinance by which Mark LaFon was convicted is not invalid.

II. Interference with Private Property Rights

Mark LaFon argues that the criminal charges are inconsistent with his or his father's private property rights, specifically, the right to continue using the dock, certain

riparian rights, and rights arising from an alleged prior acquisition of a prescriptive easement across Engman's riparian zone. These arguments may be viewed either as raising issues of due process, *see State v. Kuluvar*, 266 Minn. 408, 419, 123 N.W.2d 699, 704 (1963) (holding that prosecution for interfering with public waters by dredging channel did not "unconstitutionally infringe upon any rights of a riparian owner"), or the efficacy of an affirmative defense, such as justification or claim of right, *cf. State v. Brechon*, 352 N.W.2d 745, 747-51 (Minn. 1984) (holding that "claim of right" is element of offense of criminal trespass because language appears in statute). Questions of law are reviewed de novo. *State v. Jackson*, 749 N.W.2d 353, 357 (Minn. 2008).

A. Right to Pre-existing, Nonconforming Use

Mark LaFon argues that he and his father have a right to retain the dock because it was a lawful, pre-existing use before the 2004 amendment to the ordinance. Mark LaFon preserved this issue at trial by objecting to the district court's exclusion of evidence relating to this subject and by arguing for acquittal in his post-trial brief.

"It is a fundamental principle of the law of real property that uses lawfully existing at the time of an adverse zoning change may continue to exist until they are removed or otherwise discontinued." *Hooper v. City of St. Paul*, 353 N.W.2d 138, 140 (Minn. 1984) (holding that homeowner may continue use of carriage house as residential rental property); *cf. Wheeler*, 722 N.W.2d at 334-36 (holding that business was not lawful nonconforming use due to noncompliance with zoning ordinance); *Reinke*, 702 N.W.2d at 312-13 (holding that business was not lawful nonconforming use at time ordinance was enacted). Uses are deemed "lawful" if they conform to "then-existing zoning

classifications." *Hooper*, 353 N.W.2d at 141. We assume that the *Hooper* doctrine applies to zoning regulations affecting water surfaces and shoreline as well as zoning regulations affecting land. *See In re Application of Central Baptist Theological Seminary*, 370 N.W.2d 642, 646-47 (Minn. App. 1987) (addressing argument that statute protected "existing rights" to erect radio tower in lake but concluding that right was not riparian and not actually in use), *review denied* (Minn. Sept. 19, 1985); *see also Waukesha County v. Seitz*, 409 N.W.2d 403, 405-06 (Wis. Ct. App. 1987) (holding that property owner had "vested interest" in prior, nonconforming use consisting of commercial marina).

The right to continue using a lawful, nonconforming use may be limited in time. A county or other form of local government may "determine the useful life for a nonconforming use and require that it cease at the end of that life." *Oswalt v. County of Ramsey*, 371 N.W.2d 241, 246-47 (Minn. App. 1985) (holding that city's determination of useful life of nonconforming residence was unreasonable), *review denied* (Minn. Sept. 26, 1985). The supreme court explained the limits of the public policy behind this rule in *Claussen*:

> It is not required . . . that preexisting nonconforming uses be allowed to expand or enlarge. The public policy behind that doctrine is to increase the likelihood that such uses will in time be eliminated due to obsolescence, exhaustion, or destruction. This in turn will lead to a uniform use of the land consistent with the overall comprehensive zoning plan.

295 Minn. at 99, 203 N.W.2d at 325. If an "amortization" period is reasonable, the nonconforming use can be eliminated by the municipality without compensation.

Oswalt, 371 N.W.2d at 246 (citing *Klicker v. State*, 293 Minn. 149, 152, 197 N.W.2d 434, 436 (1972)).

In this case, the water-surface-use ordinance does not contain a so-called grandfather clause that would permit a property owner to retain a lawful, nonconforming use, nor does the ordinance make any mention of an amortization period for nonconforming uses. Mark LaFon cites a grandfather clause in the Crow Wing County Zoning Ordinance, which states, "Any structure existing on the effective date of this Ordinance . . . may be continued," subject to certain conditions. Crow Wing County, Minn., Zoning Ordinance § 5.4 (2006).[1] It appears from the record that the county's zoning ordinance and the county's water-surface-use ordinance are distinct and separate from each other. Thus, in light of the record of this case (which may not be fully developed on this point), we must conclude that the grandfather clause in the zoning ordinance does not apply to the water-surface-use ordinance under which Mark LaFon was prosecuted.

The county sought to enforce the ordinance with respect to the LaFon dock almost immediately after the ordinance was enacted. Section 6 was added to the ordinance on August 24, 2004. A deputy sheriff took photographs of the dock in August 2004 after receiving a complaint from the Engmans. The undated citation appears to have been issued to Mark LaFon sometime in October 2004. There was no attempt by the county to

[1] It appears that article 5 of the zoning ordinance is based on Minn. Stat. § 394.36 (2006), which contains similar provisions. Neither party cited this statute, and Mark LaFon has not argued that the statute requires the county to adopt corresponding provisions in the water-surface-use ordinance. Accordingly, we have not analyzed the statute, and we take no position at this time as to whether it should apply.

establish an amortization period for the LaFon dock. In light of the district court record, we conclude that the county's prosecution infringed on the LaFons' right to continue a pre-existing, lawful, nonconforming use. *See Hooper*, 353 N.W.2d at 140. Thus, the district court erred by finding Mark LaFon guilty. *See Kuluvar*, 266 Minn. at 419, 123 N.W.2d at 704; *Brechon*, 352 N.W.2d at 747-51.

B. Riparian Rights

Mark LaFon also argues that the ordinance is inconsistent with the riparian rights inherent in the LaFon property. Again, Mark LaFon preserved this issue at trial by objecting to the district court's exclusion of evidence on this subject and by arguing for acquittal in his post-trial brief.

Under the common law of Minnesota, "one may have rights to the use and enjoyment of the water . . . through ownership of lakeshore . . . . These rights the law calls riparian. One does not own the water; one owns riparian rights to the use and enjoyment of the water." *Pratt v. State Dep't of Natural Resources*, 309 N.W.2d 767, 772 (Minn. 1981). Riparian rights of lakeshore property include the right to "reasonably use the surface of waters abutting a parcel of real property." *Magnuson v. Cossette*, 707 N.W.2d 738, 744 (Minn. App. 2006) (citing *Johnson v. Seifert*, 257 Minn. 159, 168-69, 100 N.W.2d 689, 696-97 (1960)); *see also Bloomquist v. Commissioner of Natural Res.*, 704 N.W.2d 184, 187 (Minn. App. 2005). A riparian owner "has a right to make such use of the lake over its entire surface, in common with all other abutting owners, provided such use is reasonable and does not unduly interfere with the exercise of similar

rights on the part of other abutting owners." *Johnson*, 257 Minn. at 169, 100 N.W.2d at 697.

Riparian rights also include the right to build and maintain wharves, piers, and landings on the riparian land that extend into the water from the property owner's land. *State ex rel. Head v. Slotness*, 289 Minn. 485, 487, 185 N.W.2d 530, 532-33 (1971); *State v. Korrer*, 127 Minn. 60, 71-72, 148 N.W. 617, 622 (1914); *McLafferty v. St. Aubin*, 500 N.W.2d 165, 168 (Minn. App. 1993). A person who owns lakeshore property has a common-law right to wharf out to the navigable portion of the lake. *Slotness*, 289 Minn. at 487, 185 N.W.2d at 532; *Korrer*, 127 Minn. at 71-72, 148 N.W. at 622; *Miller v. Mendenhall*, 43 Minn. 95, 97, 44 N.W. 1141, 1141 (1890). The supreme court has referred to "the owner's access to the water" as a "strong common law tradition of Minnesota" and the "principal value of . . . land" on navigable waters. *Reads Landing Campers Ass'n v. Township of Pepin*, 546 N.W.2d 10, 14 (Minn. 1996). Nonetheless, the "exercise of riparian rights is subject to state regulation in the public interest." *Bartell v. State*, 284 N.W.2d 834, 838 (Minn. 1979) (citing *Korrer* and *Miller*).

To establish that his conviction should be reversed, Mark LaFon must show that the enforcement of the ordinance deprived him or his father of riparian rights to which they are entitled by the ownership of lakeshore property. By enforcing the ordinance, the state deprived the LaFons of one means of wharfing out to the navigable portion of Cross Lake. The record is unclear as to whether the ordinance forecloses all means of accessing the navigable portion of the lake. Mark LaFon testified that in order to reach the navigable portion of the lake in a perpendicular manner, a dock would need to extend

from the LaFon property into the lake a distance of approximately 400 to 500 feet. Mark LaFon also testified that neither he nor his father sought a permit from the county for the construction of such a dock or inquired of the county as to whether the county would permit such a dock. A deputy sheriff testified that there are other docks in the county that are several hundred feet long in order to access navigable waters and that such docks can be made safe with lighting at nighttime and by being removed during the winter. The deputy also indicated that the sand bar in front of the LaFon property could be dredged to provide the LaFons access to navigable water. In light of the state's interest in regulating riparian rights, significant questions exist as to whether the LaFons have an absolute right to access the navigable portion of the lake, let alone a right to the most efficient means of reaching the navigable portion of the lake. Furthermore, there is some suggestion in the caselaw that the LaFons' right to wharf out exists only "in front of" the LaFon property, *see Slotness*, 289 Minn. at 487, 185 N.W.2d at 532; *see also Korrer*, 127 Minn. at 71-72, 148 N.W. at 622, but these cases were not concerned with encroachments on a neighbor's riparian zone, and it also appears that the phrase "in front of" refers merely to the water immediately off the shore, not to all of the water between the shore and the navigable portion of the lake, *see Slotness*, 289 Minn. at 487, 185 N.W.2d at 532 (discussing "exclusive right of access to the water in front of his land").

For these reasons, Mark LaFon has not demonstrated that enforcement of the ordinance in this case has resulted in a deprivation of riparian rights to which the LaFons are entitled under Minnesota law. *See Crookston Cattle Co. v. Minnesota Dep't of Natural Res.*, 300 N.W.2d 769, 774 (Minn. 1980) (approving state's grant of permit to

city to pump groundwater as valid exercise of the state's regulation of riparian rights); *cf. BECA, LLP v. County of Douglas*, 607 N.W.2d 459, 463-64 (Minn. App. 2000) (reversing county's prohibition of all docks on shore of lake as term of conditional use permit, reasoning that condition was "severe limitation of a right generally reserved to riparian owners"). Our resolution of this issue is based on a limited record due to the district court's exclusion of evidence offered by Mark LaFon. Thus, we do not intend for our resolution of this issue in this case to be dispositive of any future dispute related to the LaFons' riparian rights. If we were not reversing the conviction on other grounds, we would reverse and remand for a new trial to provide Mark LaFon an opportunity to present all relevant evidence and legal arguments concerning his and his father's riparian rights. *See State v. Post*, 512 N.W.2d 99, 101-02 (Minn. 1994) (reversing conviction in part because district court wrongfully excluded defendant's evidence). Nonetheless, the facts received into evidence indicate that alternative means of vindication of the LaFons' riparian rights remain available, at least in theory.

C. Prescription

Mark LaFon argues that his father acquired a prescriptive right to maintain the dock in its historic position. The district court excluded much of Mark LaFon's evidence on this issue, reasoning that the LaFons had not previously obtained a ruling in a civil action on the issue of prescription.

"The state owns the bed of navigable waters below the low-water mark in trust for the people for public uses . . . ." *Slotness*, 289 Minn. at 486, 185 N.W.2d at 532; *Schmidt v. Marschel*, 211 Minn. 539, 543, 2 N.W.2d 121, 123 (1942). Public property cannot be

acquired by adverse possession. Minn. Stat. § 541.01 (2006). The public-lands exception to adverse possession also applies to prescriptive easements. *Heuer v. County of Aitkin*, 645 N.W.2d 753, 757 (Minn. App. 2002). Moreover, the prohibition on prescription of public property applies to waterways. *Bloomquist*, 704 N.W.2d at 188 (holding that owner of riparian land may not acquire rights to channel between pond and lake).

Because the surface water and lakebed are held in trust by the state, the LaFons did not, by prescription, acquire a property right to the current location of the dock. Thus, the district court did not err by sustaining the state's objection to the admission of such evidence.

III. Sufficiency of the Evidence

Mark LaFon argues that the state failed to prove beyond a reasonable doubt that he engaged in conduct that constitutes a violation of the water-surface-use ordinance. When examining a sufficiency-of-the-evidence claim following a bench trial, we apply the same standard of review that we apply to jury trials. *State v. Levie*, 695 N.W.2d 619, 626 (Minn. App. 2005). Our review consists of a "painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach their verdict." *State v. Caine*, 746 N.W.2d 339, 356 (Minn. 2008) (quotation omitted).

Mark LaFon first argues that the state failed to prove that the dock was not confined to the LaFon riparian zone because the county never proved the contours of the navigable portion of the lake. Establishing the area of navigability, however, was not

necessary to the determination that the LaFon dock was not in compliance with the ordinance. As stated above in part I.C., there was no dispute concerning the location of the line dividing the LaFon riparian zone from the Engman riparian zone, nor was there any dispute that the LaFon dock extended into the Engman riparian zone. Thus, the evidence was sufficient to establish that the dock was not confined to the LaFon riparian zone.

Mark LaFon also argues that he cannot be convicted of a violation of the ordinance because he never has owned the property to which the dock is attached. An ordinance defining a criminal offense must be "strictly construed so that all reasonable doubt concerning legislative intent is resolved in favor of the defendant." *State v. Kelley*, 734 N.W.2d 689, 692 (Minn. App. 2007) (citing *State v. Colvin*, 645 N.W.2d 449, 452 (Minn. 2002)), *review denied* (Minn. Sept. 18, 2007). The relevant portion of the ordinance provides, "Docks, piers, wharfs, boatlifts and moored boats must be confined to the owner's or lessee's riparian zone." Water Surface Use Ordinance § 6(2). The state did not prove that Mark LaFon had any status resembling that of an owner or lessee. On the contrary, the record is clear that Leland LaFon owns the property, that Mark LaFon's primary residence is in St. Paul, and that Mark LaFon is a frequent guest. But we do not assume that a person must be an owner or a lessee to be held criminally liable. The language of the ordinance would allow some other person (such as a contractor, for example) to be prosecuted for the failure of a dock to be confined to a particular riparian zone.

Notwithstanding the uncertainty as to whether only owners and lessees may be prosecuted under the ordinance, the evidence is insufficient to prove that Mark LaFon engaged in conduct amounting to a failure to "confine" the dock to his father's riparian zone. The state did not present any evidence concerning any act or omission by Mark LaFon that caused the dock to not be confined to the LaFon riparian zone. Most of the testimony received during the one-day trial related to the position of the dock and the features of shoreline surrounding the LaFon property. There was some evidence that Mark LaFon spends time at his father's property and uses the dock. But this evidence does not prove that Mark LaFon was responsible for the failure of the dock to be confined to the LaFon riparian zone. Thus, the evidence is insufficient to prove that Mark LaFon is guilty of the offense of which he was convicted.

Reversed.